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Washington, DC 20002

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Contents

Federal Register

Vol. 75, No. 112

Friday, June 11, 2010

Agency for Healthcare Research and Quality
NOTICES
Meetings:
Healthcare Policy and Research Special Emphasis Panel, 33315

Agriculture Department
See Food and Nutrition Service
See Forest Service
See Rural Utilities Service

Army Department
NOTICES
Environmental Impact Statements; Availability, etc.:
Disposal and Reuse of Fort Monroe, VA, 33273

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Meetings:
Advisory Council for the Elimination of Tuberculosis, 33316
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, 33315

Centers for Medicare & Medicaid Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33308–33309
Medicare and Medicaid Programs:
Procedure for Hospitals Seeking to Enter Into an Agreement with a Different Organ Procurement Organization Following an 1138(a)(2) Waiver, 33313–33315

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33309–33310

Coast Guard
RULES
Safety Zones:
City of Martinez Fourth of July Fireworks, Martinez, CA, 33170–33172

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33241–33242

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement List; Additions and Deletions, 33269–33271

Commodity Futures Trading Commission
PROPOSED RULES
Co-location/Proximity Hosting Services, 33198–33202

Comptroller of the Currency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33385–33386

Defense Acquisition Regulations System
RULES
Defense Federal Acquisition Regulation Supplement:
New Designated Country–Taiwan–DFARS (Case 2009–D010), 33195–33196
PROPOSED RULES
Defense Federal Acquisition Regulation Supplement:
Contractor Insurance/Pension Review (DFARS Case 2009–D025), 33237
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Defense Federal Acquisition Regulation Supplement; Foreign Acquisition, 33271–33273

Defense Department
See Army Department
See Defense Acquisition Regulations System
See Navy Department

Education Department
NOTICES
Applications for New Awards (FY 2010):
Reducing Obesity and Obesity-Related Health Conditions Among Adolescents and Young Adults With Disabilities From Diverse Race and Ethnic Backgrounds, 33277–33281
Rehabilitation Engineering Research Centers; Universal Design in the Built Environment and Technologies for Children with Orthopedic Disabilities, 33274–33277
Final Priorities:
Disability and Rehabilitation Research Projects and Centers Program; Rehabilitation Engineering Research Centers, 33281–33285
Reducing Obesity and Obesity-Related Secondary Health Conditions Among Adolescents and Young Adults With Disabilities From Diverse Race and Ethnic Backgrounds, 33285–33288

Employee Benefits Security Administration
NOTICES
Grant of Individual Exemptions:
Morgan Stanley & Co. Inc. and its current and future affiliates and Subsidiaries (Morgan Stanley) and Union Bank, N.A. and its affiliates (Union Bank), etc., 33333–33343
Proposed Exemptions:
Citigroup Global Markets, Inc. and Its Affiliates (together, CGMI or the Applicant; and L–11624, Boston Carpenters Apprenticeship and Training Fund (the Fund), et al., 33343–33355

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Approval and Promulgation of Air Quality Implementation Plans:
Reasonable Further Progress Plan, 2002 Base Year Emission Inventory, Maryland, et al., 33172–33174
Approval and Promulgation of Implementation Plans:
New Mexico; Interstate Transport of Pollution, 33174–33190
Pesticide Tolerances:
Trifloxystrobin, 33190–33195
PROPOSED RULES
Amendments to the Protocol Gas Verification Program and Minimum Competency Requirements for Air Emission Testing, 33392–33420
Extension of Public Comment Period for Proposed Rule on the Approval and Promulgation of Implementation Plans:
Excess Emissions During Startup, Shutdown, Maintenance, and Malfunction Activities; Texas, 33220
NOTICES
Environmental Impact Statements; Availability, etc.:
Weekly Receipt, 33299–33300
Meetings:
FIFRA Scientific Advisory Panel, 33300–33303

Federal Accounting Standards Advisory Board
NOTICES
Meetings:
Joint Meeting of FASAB and GASB, 33306

Federal Aviation Administration
RULES
Airworthiness Directives:
Bell Helicopter Textron Canada Model 222, 222B, 222U, 230, and 430 Helicopters, 33159–33162
Microturbo Saphir 20 Model 095 Auxiliary Power Units (APUs), 33162–33163
Modification of Jet Routes J–32, J–38, and J–538:
Minnesota, 33164
Revision of Class E Airspace:
Galena, AK, 33165
NOTICES
Passenger Facility Charge (PFC) Approvals and Disapprovals, 33376–33379

Federal Bureau of Investigation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33332–33333

Federal Communications Commission
PROPOSED RULES
2010 Quadrennial Regulatory Review:
Review of the Commissions Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of (1996), 33227–33237
Unlicensed Personal Communications Services Devices in the 1920–1930 MHz Band, 33220–33226
NOTICES
Comment Sought on Measurement of Mobile Broadband Network Performance and Coverage, 33303–33305
Meetings:
Consumer Advisory Committee, 33305

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 33306

Federal Emergency Management Agency
NOTICES
Amendment No. 4 to Notice of a Major Disaster Declaration:
Kentucky, 33320

Federal Energy Regulatory Commission
NOTICES
Application Tendered for Filing with the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments:
Public Utility District No. 1 of Douglas County (Douglas PUD), 33289
Application:
Columbia Gas Transmission, LLC, 33289–33290
Availability of Environmental Assessment:
City of Broken Bow, Oklahoma, 33290–33291
Combined Filings, 33291–33295
Declaration of Intention and Petition for Relief Filing and Soliciting Comments:
Clark–Wiltz Mining, 33295–33296
Filing:
Columbia Gulf Transmission Company, 33296
Intent to File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process:
Western Technical College, 33297
Meetings:
Commission Staff Attendance at North American Electric Reliability Corporation, 33297–33298
Records Governing Off-the-Record Communications, 33298
Request Under Blanket Authorization:
Columbia Gas Transmission, LLC, 33298–33299
Florida Gas Transmission Company, LLC, 33299
Revised Filings:
Guardian Pipeline, L.L.C., 33299

Federal Railroad Administration
NOTICES
Petition for Waiver of Compliance, 33379

Federal Reserve System
NOTICES
Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies, 33306
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 33307
Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities, 33307

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act:, 33307

Food and Drug Administration
RULES
Dental Devices:
Classification of Dental Amalgam, Reclassification of Dental Mercury, etc.; Technical Amendment, 33169–33170
NOTICES
Guidance for Industry on Bioequivalence Recommendations for Specific Products; Availability, 33311–33312

Indexing Structured Product Labeling for Human Prescription Drug and Biological Products:
Request for Comments, 33312–33313
Meetings:
Dental Products Panel of Medical Devices Advisory Committee, 33315–33316
Public Workshop:
Antibacterial Resistance and Diagnostic Device and Drug Development Research for Bacterial Diseases, 33317

Food and Nutrition Service
RULES
Supplemental Nutrition Assistance Program:
Quality Control Provisions of Title IV of Public Law (107–171), 33422–33444

Forest Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Rangeland Allotment Management Planning, etc.; Fall River and Pine Ridge Ranger Districts, Nebraska National Forest, 33239–33241
Meetings:
Coconino Resource Advisory Committee, 33241
Northeast Oregon Forests Resource Advisory Committee, 33241
Tuolumne–Mariposa Counties Resource Advisory Committee, 33241

Geological Survey
NOTICES
Environmental Assessment; Availability
Marine Geophysical Survey by the U.S. Geological Survey in the Arctic Ocean; August–September 2010, 33325–33326

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
Meetings:
Presidential Advisory Council on HIV/AIDS, 33307–33308

Health Resources and Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33310–33311

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See U.S. Customs and Border Protection
See U.S. Immigration and Customs Enforcement
PROPOSED RULES
U.S. Citizenship and Immigration Services Fee Schedule, 33446–33488

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
FHA–Application for Insurance of Advance of Mortgage Proceeds, 33320–33321
Availability:
Funding Availability (NOFA) for HUDs Fiscal Year (FY) 2009 Rental Assistance for Non-Elderly Persons with Disabilities; Correction, 33321
Federal Property Suitable as Facilities to Assist the Homeless, 33321–33323
Fiscal Year (FY) 2010 Funding Availability (NOFA) Policy Requirements, 33323–33324
Funding Availability (NOFA) for Fiscal Year (FY) 2009:
Brownfields Economic Development Initiative (BEDI) Second Competition, 33324

Interior Department
See Geological Survey
See Land Management Bureau
See Minerals Management Service
See National Park Service

Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33380–33389

International Trade Administration
NOTICES
Final Results of Countervailing Duty Administrative Review:
Carbazole Violet Pigment 23 from India, 33243–33244
Preliminary Affirmative Countervailing Duty Determination:
Drill Pipe from the People's Republic of China, 33245–33262
Preliminary Results of Antidumping Duty Administrative Review:
Certain Welded Carbon Steel Pipe and Tube from Turkey, 33262–33268

International Trade Commission
NOTICES
Scheduling of the Final Phase of Antidumping Investigations:
Seamless Refined Copper Pipe and Tube from China and Mexico, 33330–33332

Justice Department
See Federal Bureau of Investigation
See Juvenile Justice and Delinquency Prevention Office
PROPOSED RULES
Revision of the Procedures for the Administration of Section 5 of the Voting Rights Act, 33205–33216

Juvenile Justice and Delinquency Prevention Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33332

Labor Department
See Employee Benefits Security Administration
See Veterans Employment and Training Service

Land Management Bureau
NOTICES
Filing of Plats of Survey:
Montana, 33326
Intent to Establish and Call for Nominations:
Rio Grande Natural Area Commission Colorado, 33326–33327

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 33355

Minerals Management Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
1010–NEW, Study of Sharing to Assess Community Resilience, 33324–33325

National Archives and Records Administration
NOTICES
Records Schedules; Availability and Request for Comments, 33355–33357

National Institute of Standards and Technology
NOTICES
Technology Innovation Program (TIP) Notice of Availability of Funds; Amendment, 33268–33269

National Institutes of Health
NOTICES
Request for Information (RFI) on Plan to Develop the Genetic Testing Registry, 33317–33319

National Oceanic and Atmospheric Administration
RULES
Fisheries off West Coast States:
Pacific Coast Groundfish Fishery; Suspension of the Primary Pacific Whiting Season; etc., 33196–33197
NOTICES
Atlantic Coastal Fisheries Cooperative Management Act Provisions:
Weakfish Fishery, 33242–33243
Endangered and Threatened Species:
Take of Anadromous Fish, 33243
Meetings:
Marine Fisheries Advisory Committee, 33244–33245
Pacific Fishery Management Council, 33245

National Park Service
NOTICES
Inventory Completion:
New York University College of Dentistry, New York, NY, 33327–33330
Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA; Correction, 33328–33329

Navy Department
NOTICES
Preferred Supplier Program (PSP):
Withdrawal, 33273

Nuclear Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33357–33358
Confirmatory Order:
Energy Carolinas, LLC; McGuire Nuclear Station, 33358–33361
Issuance of Regulatory Guide, 33361–33362
Opportunity To Request A Hearing And Provide Written Comments On Order Approving Indirect License Transfers, 33362–33365
Withdrawal of Application for Amendment to Facility Operating License:
Entergy Nuclear Operations, Inc., 33365–33366
Exelon Generation Company, LLC; Oyster Creek Nuclear Generating Station, 33366

Personnel Management Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33366–33367

Postal Service
NOTICES
Meetings; Sunshine Act, 33367

Rural Utilities Service
NOTICES
Basin Electric Power Cooperative:
Deer Creek Station, 33238–33239

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33368–33369
Applications:
EQ Advisors Trust, et al., 33369–33374
Meetings; Sunshine Act, 33374
Self-Regulatory Organizations; Proposed Rule Changes:
Chicago Board Options Exchange, Incorporated, 33374–33375

Small Business Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Reporting and Recordkeeping Requirements, 33367
Disaster Declaration:
Kentucky, 33367–33368

Social Security Administration
RULES
Extension of Expiration Dates for Several Body System Listings, 33166–33167
Technical Amendment Language Change from ''Wholly'' to ''Fully'', 33167–33169

State Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Shrimp Exporters/Importers Declaration, 33375–33376
Determination Related to Serbia Under Section 7072(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010, 33376

Surface Transportation Board
NOTICES
Productivity Adjustments:
Railroad Cost Recovery Procedures; Quarterly Rail Cost Adjustment Factor, 33379–33380

Thrift Supervision Office
NOTICES
Appointment of Receiver:
TierOne Bank; Lincoln, NE, 33389

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
See Surface Transportation Board

Treasury Department
See Comptroller of the Currency
See Internal Revenue Service
See Thrift Supervision Office

U.S. Customs and Border Protection
NOTICES
Issuance of Final Determination Concerning a Lift Unit for an Overhead Patient Lift System; Correction, 33320

U.S. Immigration and Customs Enforcement
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
ICE Mutual Agreement between Government and Employers (IMAGE), 33319

Veterans Affairs Department
PROPOSED RULES
Payment or Reimbursement for Emergency Treatment Furnished by Non-VA Providers in Non-VA Facilities:
Certain Veterans with Service-connected or Nonservice-connected Disabilities, 33216–33219

Veterans Employment and Training Service
PROPOSED RULES
Funding Formula for Grants to States, 33203–33205

Separate Parts In This Issue

Part II
Environmental Protection Agency, 33392–33420

Part III
Agriculture Department, Food and Nutrition Service, 33422–33444

Part IV
Homeland Security Department, 33446–33488

Reader Aids
Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
271.....33422
273.....33422
275.....33422
277.....33422

8 CFR

Proposed Rules:
103.....33446
204.....33446
244.....33446
274A 446

14 CFR
39 (2 documents) 33159, 33162
71 (2 documents) 33164, 33165

17 CFR

Proposed Rules:
36.....33198
37.....33198
38.....33198

20 CFR
404 (2 documents) 33166, 33167
405.....33167
408.....33167
416.....33167
418.....33167

Proposed Rules:
1001.....33203

21 CFR
872.....33169

28 CFR

Proposed Rules:
0.....33205
51.....33205

33 CFR
165.....33170

38 CFR

Proposed Rules:
17.....33216

40 CFR
52 (2 documents) 33172, 33174
180.....33190

Proposed Rules:
52.....33220
72.....33392
75.....33392

47 CFR

Proposed Rules:
15.....33220
73.....33227

48 CFR
252.....33195

Proposed Rules:
242.....33237

50 CFR
660.....33196

Rules and Regulations

Federal Register
Vol. 75, No. 112
Friday, June 11, 2010

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0071; Directorate Identifier 2006–SW–27–AD; Amendment 39–16291; AD 2010–10–12]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 222, 222B, 222U, 230, and 430 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) for the specified Bell Helicopter Textron Canada (BHTC) helicopters, that currently requires certain checks and inspections of the tail rotor blades. If a crack is found, the existing AD requires replacing the tail rotor blade (blade) with an airworthy blade before further flight. This amendment requires the same checks and inspections of the blades until they are required to be replaced and removes certain serial numbered and specifically coded blades from the applicability of the AD. This amendment is prompted by the approved rework of certain blades and two newly redesigned blades, which, if installed, constitute terminating action for the inspection requirements. The actions specified by this AD are intended to detect a crack in a blade, and to prevent loss of a blade and subsequent loss of control of the helicopter.

DATES: Effective July 16, 2010.

ADDRESSES: You may get the service information identified in this AD from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101, telephone (817) 280–3391, fax (817) 280–6466, or at *http://www.bellcustomer.com/files/.*

Examining the Docket: You may examine the docket that contains this AD, any comments, and other information on the Internet at *http://www.regulations.gov,* or at the Docket Operations office, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: DOT/FAA Southwest Region, Sharon Miles, ASW–111, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Guidance Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On February 10, 2005, we issued AD 2005–04–09, Amendment 39–13981 (70 FR 8021, February 17, 2005), that superseded AD 2004–26–11, Amendment 39–13923 (70 FR 7, January 3, 2005), to require certain checks and inspections of the blades. Both AD 2004–26–11 and 2005–04–09 also require replacing any cracked blade before further flight. AD 2004–26–11 was prompted by reports of cracked blades and required certain checks, inspections, and replacements, if necessary. AD 2005–04–09 required the same checks and inspections as AD 2004–26–11 but also added two serial numbers to the applicability and corrected some typographical errors.

Since issuing AD 2005–04–09, the manufacturer has introduced a rework procedure for the affected blades and two newly redesigned blades, which, if installed, constitute terminating action for the inspection requirements. Therefore, a proposal to amend 14 CFR part 39 by superseding AD 2005–04–09 for the specified BHTC model helicopters was published as a Notice of proposed rulemaking (NPRM) in the **Federal Register** on July 28, 2008 (73 FR 43648, July 28, 2008). That NPRM proposed the same checks, inspections, and replacements of the blades. The NPRM also proposed to remove certain serial numbered and specifically coded blades from the applicability of the AD. The NPRM was prompted by the approved rework of certain blades and two newly redesigned blades, which, if installed, constitutes terminating action for the inspection requirements.

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on the specified BHTC model helicopters. Transport Canada advises of the discovery of cracked blades during scheduled inspections on three occasions. Two cracks originated from the outboard feathering bearing bore underneath the flanged sleeves. The third crack started from the inboard feathering bearing bore. Investigation found that the cracks originated from either a machining burr or a corrosion site in the bearing bore underneath the flanged sleeves.

BHTC has issued Alert Service Bulletin (ASB) No. 222–04–100, Revision B, for Model 222 and 222B helicopters; ASB No. 222U–04–71, Revision B, for Model 222U helicopters; ASB No. 230–04–31, Revision B, for Model 230 helicopters; and ASB No. 430–04–31, Revision C, for Model 430 helicopters, all dated March 31, 2008. The ASBs specify a visual inspection of the blade root end around the feathering bearings for a crack, not later than at the next scheduled inspection, and thereafter at every 3 flight hours maximum. Further, they describe a visual inspection for a crack, to include removing the blade from the helicopter if a crack is found in the paint, within the next 50 flight hours, and thereafter at every 50 flight hours. In addition, the ASBs state that, on or before December 31, 2008, each blade should be reworked by Rotor Blades, Inc., or exchanged if the blade has less than 4,000 hours TIS or if the blade has 4,000 or more hours TIS, the blade should continue to be repetitively inspected or a replacement blade should be ordered. Transport Canada classified these service bulletins as mandatory and issued AD CF–2004–21R3, dated April 23, 2008, to ensure the continued airworthiness of these helicopters in Canada.

This AD differs from the ASB in that it requires, on or before 90 days after the effective date of the AD, replacing all affected blades with airworthy blades that are not subject to the inspection requirements, without differentiating between blades based on hours TIS. Additionally, this AD does not require operators to send their blades to Rotor Blades, Inc. for rework.

These helicopter models are manufactured in Canada and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral

agreement. Pursuant to the applicable bilateral agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed. However, we have inserted the Joint Aircraft System/Component Code into this AD for informational purposes. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of this AD.

We estimate that this AD will affect 156 helicopters of U.S. registry, and the required actions will take:

- About 0.25 work hour for a pilot check, and 2 work hours for a maintenance inspection, at an average labor rate of $80 per work hour, and
- About 6 work hours to remove and replace the blade. Required parts will cost about $13,410 per blade, assuming one blade per helicopter is replaced each year. Based on these figures, we estimate the cost of this AD on U.S. operators is $3,090,360, assuming each helicopter requires 200 pilot checks and 12 maintenance inspections prior to replacing a blade on or before the compliance date for all affected helicopters.

Regulatory Findings

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

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

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this AD. See the AD docket to examine the economic evaluation.

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing Amendment 39–13981 (70 FR 8021, February 17, 2005), and by adding a new airworthiness directive (AD), Amendment 39–16291, to read as follows:

2010–10–12 Bell Helicopter Textron Canada: Amendment 39–16291. Docket No. FAA–2008–0071; Directorate Identifier 2006–SW–27–AD. Supersedes AD 2005–04–09, Amendment 39–13981, Docket No. FAA–2005–20107.

Applicability: The following helicopter models, with a listed helicopter serial number (S/N) and a listed part-numbered tail rotor blade (blade) installed, that does not have an excepted S/N or code, certificated in any category.

Helicopter model	Helicopter S/N	Blade Part No. (P/N)
222	47006 through 47089	222–016–001–123, –123M, –127, -127M, –131, –135, –139M, –141M, except those P/Ns with S/Ns listed in Exceptions 1 and 2 or the "R" code described in Exception 3.
222B	47131 through 47156	222–016–001–123, –123M, –127, -127M, –131, –135, –139M, –141M, except those P/Ns with S/Ns listed in Exceptions 1 and 2 or the "R" code described in Exception 3.
222U	47501 through 47574	222–016–001–123, –123M, –131, –139M, except those P/Ns with a S/N listed in Exception 2 or the "R" code described in Exception 3.
230	23001 through 23038	222–016–001–123, –123M, –131, –139M, except those P/Ns with a S/N listed in Exception 2 or the "R" code described in Exception 3.
430	49001 through 49107	222–016–001–123, –123M, –131, –139M, except those P/Ns with a S/N listed in Exception 2 or the "R" code described in Exception 3.

Exception 1: Blade, P/N 222–016–001–135 or –141M, S/N A–1502, A–1503, A–1504, A–1505, A–1507, A–1508, A–1509, A–1510, A–1556, A–1557, A–1558, A–1560, A–1561, A–1574, A–1635, A–1636, A–1828, A–1829, and S/Ns with a prefix of "A" and a number greater than 1829 have the intent of this proposal accomplished prior to delivery and no further action is required by this AD.

Exception 2: Blade, P/N 222–016–001–131 and –139M, S/N A–2049, A–2055, A–2060, A–2070, A–2071, A–2085, and S/Ns with a prefix of "A" and a number greater than 2085 have the intent of this proposal accomplished prior to delivery and no further action is required by this AD.

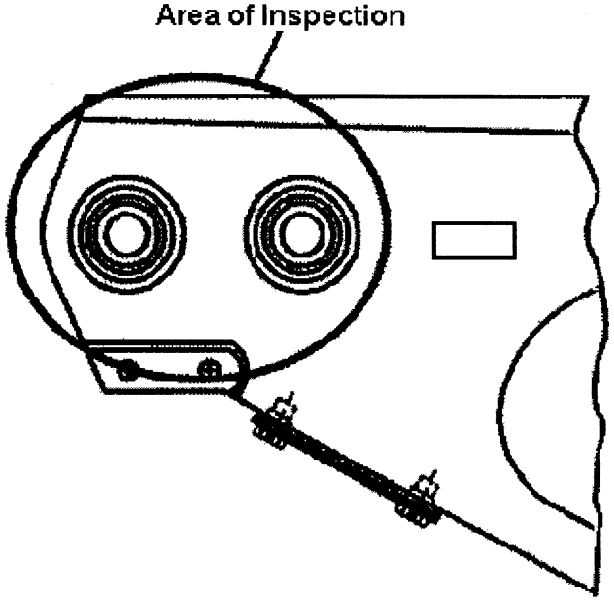
Exception 3: Blades identified with an "R" code in the square block below the P/N field of the Data Plate have already been modified and no further actions are required by this AD.

Note 1: New blades, P/N 222–016–001–139 and –141, with no letter on the Data Plate after the P/N, are not subject to the requirements of this AD.

Compliance: Required as indicated.

To detect a crack in a blade, and to prevent loss of the blade and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 3 hours time-in-service (TIS), unless accomplished previously, and thereafter at intervals not to exceed 3 hours TIS, clean and visually check both sides of each blade for a crack in the paint in the areas shown in Figure 1 of this AD. An owner/operator (pilot), holding at least a private pilot certificate, may perform this visual check and must enter compliance with this paragraph into the helicopter maintenance records by following 14 CFR 43.11 and 91.417(a)(2)(v).



P/N 222-016-001 – all dash numbers
Figure 1
Blade Inspection Area

Note 2: Bell Helicopter Textron Alert Service Bulletin (ASB) No. 222–04–100, Revision B, for Model 222 and 222B helicopters; ASB No. 222U–04–71, Revision B, for Model 222U helicopters; ASB No. 230–04–31, Revision B, for Model 230 helicopters; and ASB No. 430–04–31, Revision C, for Model 430 helicopters, all dated March 31, 2008, contain guidance on the subject of this AD.

(b) If the visual check required by paragraph (a) of this AD reveals a crack in the paint, before further flight, remove the blade and follow the requirements in paragraphs (c)(2) through (c)(3)(ii) of this AD.

(c) Within the next 50 hours TIS, unless accomplished previously, and thereafter at intervals not to exceed 50 hours TIS, clean the blade by wiping down both surfaces of each blade in the inspection area depicted in Figure 1 of this AD using aliphatic naphtha (C–305) or detergent (C–318) or an equivalent. Using a 10X or higher power magnifying glass, visually inspect both sides of the blade in the areas depicted in Figure 1 of this AD.

(1) If a crack is found, even if only in the paint, before further flight, remove the blade from the helicopter and proceed with the following:

(2) Remove the paint on the blade down to the bare metal in the area of the suspected crack by using plastic media blasting (PMB) or a nylon web abrasive pad. Abrade the blade surface in a span-wise direction only.

Note 3: PMB may cause damage to helicopter parts if untrained personnel perform the paint removal. BHT–ALL–SPM, chapter 3, paragraph 3–24, contains guidance on the subject of this AD.

(3) Using a 10X or higher power magnifying glass, inspect the blade for a crack.

(i) If a crack is found, replace the blade with an airworthy blade before further flight.

(ii) If no crack is found in the blade surface, refinish the blade by applying one coat of epoxy polyamide primer, MIL–P–23377 or MIL–P–85582, so that the primer overlaps the existing coats just beyond the abraded area. Let the area dry for 30 minutes to 1 hour. Then, apply one sealer coat of polyurethane, MILC85285 TYI CL2, color number 27925 (semi-gloss white). Reinstall the blade.

Note 4: BHT–ALL–SPM, chapter 4, contains guidance on painting the blade.

(d) On or before 90 days after the effective date of this AD, replace any affected serial-numbered blade with an airworthy blade that has a S/N that is not subject to, or has been excepted from, the requirements of this AD. Installing an airworthy blade that is not subject to the requirements of this AD, or has been excepted from the requirements of this AD, including those blades with an "R" code in the square block below the part number field of the Data Plate, constitute a terminating action for the requirements of this AD.

(e) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Safety Management Group, FAA, ATTN: Sharon Miles, Aviation Safety Engineer,

FAA, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5122, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

(f) The Joint Aircraft System/Component (JASC) Code is 6410: Tail Rotor Blades.

(g) This amendment becomes effective on July 16, 2010.

Note 5: The subject of this AD is addressed in Transport Canada (Canada) AD CF–2004–21R3, dated April 23, 2008.

Issued in Fort Worth, Texas, on April 28, 2010.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–11071 Filed 6–10–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0512; Directorate Identifier 2010–NE–21–AD; Amendment 39–16332; AD 2010–13–01]

RIN 2120–AA64

Airworthiness Directives; Microturbo Saphir 20 Model 095 Auxiliary Power Units (APUs)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by the European Aviation Safety Agency (EASA) to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

The turbine wheel, part number (P/N) 095–01–015–03, of the SAPHIR 20 Model 095 APU is a life-limited part. Microturbo had determined through "fleet leader" testing and inspection that the published life limit of this turbine wheel should be reduced to 9,000 cycles. Use of the turbine wheel beyond 9,000 cycles could lead to the release of high energy debris that could jeopardize aircraft safety.

For the reasons described above, EASA AD 2008–0084 required the implementation of the new life limit on the affected parts and the replacement parts that had exceeded the new life limit.

Microturbo has now determined that the life limit of the turbine wheel should be further reduced to 4,225 cycles. Use of the turbine wheel beyond 4,225 cycles could lead to the release of high energy debris that could jeopardize aircraft safety.

We are issuing this AD to prevent an uncontained burst of the APU turbine that could liberate high-energy fragments resulting in injury and damage to the aircraft.

DATES: This AD becomes effective July 16, 2010.

We must receive comments on this AD by July 26, 2010.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Michael Schwetz, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: michaelschwetz@faa.gov;* telephone (781) 238–7761; fax (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Discussion

EASA, which is the Technical Agent for the Member States of the European Community, has issued AD 2010–0079, dated April 26, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

The turbine wheel, part number (P/N) 095–01–015–03, of the SAPHIR 20 Model 095 APU is a life-limited part. Microturbo had determined through "fleet leader" testing and inspection that the published life limit of this turbine wheel should be reduced to 9,000 cycles. Use of the turbine wheel beyond 9,000 cycles could lead to the release of high energy debris that could jeopardize aircraft safety.

For the reasons described above, EASA AD 2008–0084 required the implementation of the new life limit on the affected parts and the replacement parts that had exceeded the new life limit.

Microturbo has now determined that the life limit of the turbine wheel should be further reduced to 4,225 cycles. Use of the turbine wheel beyond 4,225 cycles could lead to the release of high energy debris that could jeopardize aircraft safety.

For the reasons described above, this AD, which supersedes EASA AD 2008–0084, requires the implementation of the new life limit on the affected parts and the replacement of parts that had exceeded this new limit. This AD also extends the scope to include the P/N 095–01–015–20 turbine wheel, which is physically identical to the P/N 095–01–015–03 turbine wheel but is manufactured using a revised process (approved by EASA).

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Microturbo has issued Service Bulletin 095–49–17, dated March 16, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of EASA and is approved for operation in the United States. Pursuant to our bilateral agreement with France, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This AD requires removal of turbine wheels P/N 095–01–015–03 or P/N 095–01–015–20, before exceeding the new reduced life limit of 4,225 cycles-in-service, and replacement with a new or serviceable part.

FAA's Determination of the Effective Date

Since no domestic operators use this product, notice and opportunity for public comment before issuing this AD are unnecessary. Therefore, we are adopting this regulation immediately.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and

we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0512; Directorate Identifier 2010–NE–21–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2010–13–01 Microturbo: Amendment 39–16332.; Docket No. FAA–2010–0512; Directorate Identifier 2010–NE–21–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 16, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Microturbo Saphir 20 model 095 auxiliary power units (APUs). These APUs are installed on, but not limited to, Eurocopter EC225 and AS332 helicopters.

Reason

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by the European Aviation Safety Agency (EASA) to identify and correct an unsafe condition on an aviation product. EASA AD 2010–0079 states:

The turbine wheel, part number (P/N) 095–01–015–03, of the SAPHIR 20 Model 095 APU is a life-limited part. Microturbo had determined through "fleet leader" testing and inspection that the published life limit of this turbine wheel should be reduced to 9,000 cycles. Use of the turbine wheel beyond 9,000 cycles could lead to the release of high energy debris that could jeopardize aircraft safety.

For the reasons described above, EASA AD 2008–0084 required the implementation of the new life limit on the affected parts and the replacement parts that had exceeded the new life limit.

Microturbo has now determined that the life limit of the turbine wheel should be further reduced to 4,225 cycles. Use of the turbine wheel beyond 4,225 cycles could lead to the release of high energy debris that could jeopardize aircraft safety.

We are issuing this AD to prevent an uncontained burst of the APU turbine that could liberate high-energy fragments resulting in injury and damage to the aircraft.

Actions and Compliance

(e) Unless already done, do the following actions:

(1) Remove turbine wheels P/N 095–01–015–03 or P/N 095–01–015–20, before exceeding the new reduced life limit of 4,225 cycles-in-service, and replace it with a new or serviceable part.

(2) Thereafter, remove turbine wheels P/N 095–01–015–03 or P/N 095–01–015–20, before exceeding the new reduced life limit of 4,225 cycles-in-service, and replace it with a new or serviceable part.

FAA AD Differences

(f) The initial compliance time for the EASA AD is within one month after the effective date of the AD or upon accumulating 4,225 cycles-in-service, whichever occurs later. The initial compliance time for this AD is before exceeding the new reduced life limit of 4,225 cycles-in-service.

Alternative Methods of Compliance

(g) The Manager, Boston Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Refer to EASA AD 2010–0079, dated April 26, 2010, and Microturbo Service Bulletin No. 095–49–17, dated March 16, 2010, for related information. Contact Microturbo, Technical Publications Department, 8 Chemin du pont de Rupe, BP 62089, 31019 Toulouse Cedex, France; telephone 33 0 5 61 37 55 00; fax 33 0 5 61 70 74 45 for a copy of this service bulletin.

(i) Contact Michael Schwetz, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: michaelschwetz@faa.gov;* telephone (781) 238–7761; fax (781) 238-7170, for more information about this AD.

Material Incorporated by Reference

(j) None.

Issued in Burlington, Massachusetts, on June 4, 2010.

Peter A. White,

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

[FR Doc. 2010–13928 Filed 6–10–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1080; Airspace Docket No. 09–AGL–13]

RIN 2120–AA66

Modification of Jet Routes J–32, J–38, and J–538; Minnesota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Jet Routes J–32 and J–38 by terminating portions of the routes that are no longer needed at the Duluth, MN, VHF omnidirectional range/tactical air navigation (VORTAC) that are no longer needed. This action also modifies the J–538 airway description to align it with the corresponding segment of J–538 contained in Canadian airspace. This action is necessary for the safety and management of instrument flight rules (IFR) operations within the National Airspace System (NAS).

DATES: Effective date 0901 UTC, September 23, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On Wednesday, December 9, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to modify jet routes J–32, J–38, and J–538 between the Duluth, MN, VORTAC and the United States (U.S.)/ Canadian border (74 FR 65040). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

The Rule

This action amends Title 14 Code of Federal Regulation (14 CFR) part 71 by modifying Jet Routes J–32, J–38, and J–538 in the Duluth, MN, area. These modifications will enhance the flow of air traffic by removing unused segments of J–32 and J–38, extending between the Duluth, MN, VORTAC and the U.S./ Canadian border that do not meet or connect to any corresponding airways within Canadian airspace. This action also changes the legal description of J–538 to correctly reflect the current charted alignment with the Sioux Narrows, ON, VORTAC.

Jet Routes are published in paragraph 2004 of FAA Order 7400.9T dated August 27, 2009 and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The jet routes listed in this document will be subsequently published in the Order.

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

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the route structure of Jet Routes as required to preserve the safe and efficient flow of air traffic.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 2004 Jet Routes.

* * * * *

J–32 [Modified]

From Oakland, CA, via Sacramento, CA; Mustang, NV; Lovelock, NV; Battle Mountain, NV; Malad City, ID; Boysen Reservoir, WY; Crazy Woman, WY; Dupree, SD; Aberdeen, SD; to Duluth, MN.

* * * * *

J–38 [Modified]

From Duluth, MN; Green Bay, WI; to Peck, MI.

* * * * *

J–538 [Modified]

From Sioux Narrows, ON; Duluth, MN; Dells, WI; to Badger, WI. The airspace within Canada is excluded.

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

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. 2010–13992 Filed 6–10–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0299; Airspace Docket No. 10–AAL–9]

Revision of Class E Airspace; Galena, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This action revises Class E airspace at Galena, AK, to accommodate three amended Standard Instrument Approach Procedures (SIAPs) and the development of one Obstacle Departure Procedure (ODP) at the Edward G. Pitka Sr. Airport. The FAA is taking this action to enhance safety and management of Instrument Flight Rules (IFR) operations at Edward G. Pitka Sr. Airport.

DATES: Effective 0901 UTC, September 23, 2010. The Director of the **Federal Register** approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

History

On Thursday April 8, 2010, the FAA published a notice of proposed rulemaking in the **Federal Register** to revise Class E airspace at Galena, AK (75 FR 17892).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The rule is adopted as proposed.

The Class E2 surface areas are published in paragraph 6002 in FAA Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at Edward G. Pitka Sr. Airport, AK, to accommodate three amended SIAPs and one new ODP at Edward G. Pitka Sr. Airport. This Class E airspace will provide adequate controlled airspace upward from the surface, and from 700 and 1,200 feet above the surface, for safety and management of IFR operations at Edward G. Pitka Sr. Airport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Edward G. Pitka Sr. Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS 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 Federal Aviation Administration Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AAL AK E2 Galena, AK [Revised]

Edward G. Pitka Sr. Airport, AK
(Lat. 64°44′10″ N., long. 156°56′15″ W.)

Within a 4.2 mile radius of the Edward G. Pitka Sr. Airport, AK.

* * * * *

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

* * * * *

AAL AK E5 Galena, AK [Revised]

Edward G. Pitka Sr. Airport, AK
(Lat. 64°44′10″ N., long. 156°56′15″ W.)

That airspace extending upward from 700 feet above the surface within a 7.2-mile radius of the Edward G. Pitka Sr. Airport, AK, and within 3.8 miles either side of the 239 bearing from the Edward G. Pitka Sr. Airport, extending from the 7.2-mile radius to 12.9 miles west of the Edward G. Pitka Sr. Airport, and within 2.9 miles either side of the 110 bearing from the Edward G. Pitka Sr. Airport, extending from the 7.2-mile radius to 14.5 miles east of the Edward G. Pitka Sr. Airport; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Edward G. Pitka Sr. Airport, AK.

Issued in Anchorage, AK, on May 28, 2010.

Michael A. Tarr,

Acting Manager, Alaska Flight Services Information Area Group.

[FR Doc. 2010–13985 Filed 6–10–10; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2010–0021]

RIN 0960–AH20

Extension of Expiration Dates for Several Body System Listings

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are extending the expiration dates of the following body systems in the Listing of Impairments (listings) in our regulations: Cardiovascular System, Endocrine System, Growth Impairment, Hematological Disorders, Musculoskeletal System, Mental Disorders, Neurological, and Respiratory System. We are making no other revisions to these body system listings. This extension will ensure that we continue to have in the listings the criteria we need to evaluate impairments in the affected body systems at the appropriate steps of the sequential evaluation processes for initial claims and continuing disability reviews.

DATES: This final rule is effective on June 11, 2010.

FOR FURTHER INFORMATION CONTACT: Cheryl Williams, Director, Office of Medical Listings Improvement, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

Background

We use the listings in appendix 1 to subpart P of part 404 of 20 CFR at the third step of the sequential evaluation process to evaluate claims filed by adults and children for benefits based on disability under the title II and title XVI programs.[1] 20 CFR 404.1520(d), 416.920(d). The listings are in two parts. There are listings for adults (part A) and children (part B). If you are age 18 or over, we apply the listings in part A when we assess your claim. If you are under age 18, we first use the criteria in part B of the listings. If the criteria in part B do not apply, we may use the criteria in part A when those criteria give appropriate consideration to the effects of the impairment(s) in children. 20 CFR 404.1525(b), 416.925(b).

Explanation of Changes

In this final rule, we are extending until July 2, 2012, the date on which the listings for the following body systems will no longer be effective:

- Growth Impairment (100.00);
- Respiratory System (3.00 and 103.00);
- Hematological Disorders (7.00 and 107.00);
- Endocrine System (9.00 and 109.00);
- Neurological (11.00 and 111.00);
- Mental Disorders (12.00 and 112.00).

We are also extending until February 18, 2013, the date on which the listings for the following body systems will no longer be effective:

- Musculoskeletal System (1.00 and 101.00);
- Cardiovascular System (4.00 and 104.00).

We have already begun the process of updating these listings, and we have taken significant steps to revise and update the listings for body systems that are not affected by this final rule. We have published advance notices of proposed rulemaking requesting comments from the public on whether and how we should update and revise the criteria for the growth impairment listings (70 FR 53323 (2005)), the respiratory listings (70 FR 19358 (2005)), the cardiovascular listings (73 FR 20564 (2008)), and the neurological listings (70 FR 19356 (2005)). We also have published notices of proposed rulemaking proposing to revise the mental disorders listings (68 FR 12639 (2003)) and the listings for the endocrine body system (74 FR 66069 (2009)).[2] We intend to update the listings as quickly as possible, but we may not be able to publish final rules revising these body system listings by the expiration dates we are changing today. Therefore, we are extending the expiration dates as listed above.

Regulatory Procedures

Justification for Final Rule

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in promulgating regulations. The Social Security Act, 702(a)(5); 42 U.S.C. 902(a)(5). Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final regulation. The APA provides exceptions to the notice-and-comment requirements when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest.

We have determined that good cause exists for dispensing with the notice and public comment procedures. 5 U.S.C. 553(b)(B). This final rule only extends the date on which several body system listings will no longer be effective. It makes no substantive changes to our rules. Moreover, our current regulations[3] provide that we may extend, revise, or promulgate the body system listings again. Therefore, we have determined that opportunity for prior comment is unnecessary, and we are issuing this regulation as a final rule.

In addition, for the reasons cited above, we find good cause for dispensing with the 30-day delay in the effective date of this final rule. 5 U.S.C. 553(d)(3). We are not making any substantive changes in these body system listings. Without an extension of the expiration dates for these listings, we will not have the criteria we need to assess medical impairments in these body systems at the appropriate steps of the sequential evaluation processes. We therefore find it is in the public interest to make this final rule effective on the publication date.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the requirements for a significant regulatory action under Executive Order 12866. Thus, OMB did not review it. We have also determined that this final rule meets the plain language requirement of Executive Order 12866.

Regulatory Flexibility Act

We certify that this final rule does not have a significant economic impact on a substantial number of small entities because it affects only individuals.

[1] We also use the listings in the sequential evaluation processes we use to determine whether a beneficiary's disability continues. *See* §§ 404.1594, 416.994, and 416.994a.

[2] In addition, since we last extended the expiration date of some of the listings in May 2008 (73 FR 31025 (2008)), we have published final rules revising the malignant neoplastic diseases body system (74 FR 51229 (2009)); final rules on the hearing loss listings in the special senses and speech body system (75 FR 30693 (2010)) and advance notices of proposed rulemaking for the genitourinary body system, (74 FR 57970 (2009), multiple body system (59 FR 57971 (2009)), and skin body system (74 FR 57972 (2009)).

[3] *See* the first sentence of appendix 1 to subpart P of part 404.

Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

This rule does not create any new or affect any existing collections, and therefore does not require Office of Management and Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Michael J. Astrue,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending appendix 1 to subpart P of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below.

PART 404—FEDERAL OLD–AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend appendix 1 to subpart P of part 404 by revising items 1, 2, 4, 5, 8, 10, 12, and 13 of the introductory text before Part A to read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

1. Growth Impairment (100.00): July 2, 2012.

2. Musculoskeletal System (1.00 and 101.00): February 18, 2013.

* * * * *

4. Respiratory System (3.00 and 103.00): July 2, 2012.

5. Cardiovascular System (4.00 and 104.00): February 18, 2013.

* * * * *

8. Hematological Disorders (7.00 and 107.00): July 2, 2012.

* * * * *

10. Endocrine System (9.00 and 109.00): July 2, 2012.

* * * * *

12. Neurological (11.00 and 111.00): July 2, 2012.

13. Mental Disorders (12.00 and 112.00): July 2, 2012.

* * * * *

[FR Doc. 2010–13988 Filed 6–10–10; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 405, 408, 416, and 418

[Docket No. SSA–2009–0062]

RIN 0960–AH16

Technical Amendment Language Change From "Wholly" to "Fully"

AGENCY: Social Security Administration.

ACTION: Final rules; technical amendment.

SUMMARY: These final rules amend our regulations to replace the word "wholly" with the word "fully" when we describe the favorable or unfavorable nature of determinations or decisions we make on claims for benefits. This change does not alter the substance of the regulations or have any effect on the rights of claimants or any other parties.

DATES: These final rules are effective June 11, 2010.

FOR FURTHER INFORMATION CONTACT: For information about these final rules, call Brian J. Rudick, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–7102. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION: We are changing the word "wholly" to "fully" in a number of places in our regulations. We have used the words "wholly" and "fully" interchangeably in our prior regulations when we refer to determinations or decisions that provide a claimant with all of the relief that he or she seeks. For example, in our rules regarding the administrative review process in subpart J of part 404 of our rules, we sometimes used the phrase "wholly favorable" and other times used the phrase "fully favorable" to mean the same thing. We believe that using the phrase "fully favorable" throughout these rules will make our regulations clearer and more consistent. These editorial changes do not alter the substance of the regulations and will not affect the rights of claimants or any other parties.

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html*.

Regulatory Procedures

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when we develop regulations. Section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5). The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). The changes we are making in these rules promote clear and consistent regulations by ensuring that we use only one term rather than two essentially synonymous terms to describe the nature of our determinations and decisions. The changes do not alter the substance of the regulations or have any effect on the rights of claimants or any other parties. We believe the public would not be particularly interested in commenting on these changes. Therefore, we have determined that opportunity for prior comment is unnecessary, and we are issuing these rules as final rules.

In addition, because we are not making any substantive changes to the existing rules, we find there is good cause for dispensing with the 30-day delay in the effective date of a substantive rule provided by 5 U.S.C. 553(d)(3). Since these changes merely simplify the wording of the regulations, we find that it is unnecessary to delay the effective date of the rules and that it is in the public interest to make these final rules effective on the date of publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866 and were not subject to OMB review.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they only affect States and individuals. Therefore, a regulatory flexibility analysis is not required under

the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

These rules do not create any new or affect any existing collections and, therefore, do not require Office of Management and Budget approval under the Paperwork Reduction Act.

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind; Disability benefits; Old-age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social security.

20 CFR Part 405

Administrative practice and procedure; Blind; Disability benefits; Old-age, Survivors, and Disability Insurance; Public assistance programs; Reporting and recordkeeping requirements; Social security; Supplemental Security Income (SSI).

20 CFR Part 408

Administrative practice and procedure; Aged; Reporting and recordkeeping requirements; Social security; Supplemental Security Income (SSI); Veterans.

20 CFR Part 416

Administrative practice and procedure; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

20 CFR Part 418

Administrative practice and procedure; Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements; Supplemental Security Income (SSI), Medicare subsidies.

Michael J. Astrue,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending Chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart J—[Amended]

■ 1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

§ 404.941 [Amended]

■ 2. In § 404.941, amend the third sentence of paragraph (a) by removing the words "wholly or partially favorable" and adding in their place the words "fully or partially favorable", and amend the heading and the first sentence of paragraph (d) by removing the words "wholly favorable" and adding in their place the words "fully favorable".

§ 404.943 [Amended]

■ 3. In § 404.943, amend the fifth sentence of paragraph (a)(1), the third sentence of paragraph (b)(1), the heading and first sentence of (c)(1), the first sentence of (c)(2) introductory text, and the first sentence of (c)(3) by removing the words "wholly favorable" and adding in their place the words "fully favorable".

§ 404.948 [Amended]

■ 4. In § 404.948, amend the heading of paragraph (a) by removing the words "wholly favorable" and adding in their place the words "fully favorable".

§ 404.953 [Amended]

■ 5. In § 404.953, amend the paragraph heading, and the first, second, and fifth sentences of paragraph (b) by removing the words "wholly favorable" and adding in their place the words "fully favorable".

§ 404.966 [Amended]

■ 6. In § 404.966, amend the second sentence of paragraph (a) by removing the words "wholly favorable" and adding in their place the words "fully favorable".

§ 404.969 [Amended]

■ 7. In § 404.969, amend the first sentence of paragraph (b)(1) by removing the words "wholly or partially favorable" and adding in their place the words "fully or partially favorable".

§ 404.988 [Amended]

■ 8. In § 404.988, amend paragraph (c)(8) by removing the words "wholly or partially unfavorable" and adding in their place the words "fully or partially unfavorable".

Subpart Q—[Amended]

■ 9. The authority citation for subpart Q of part 404 continues to read as follows:

Authority: Secs. 205(a), 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), 421, and 902(a)(5)).

§ 404.1618 [Amended]

■ 10. In § 404.1618, remove the words "wholly or partly unfavorable" and add in their place the words "fully or partially unfavorable".

PART 405—ADMINISTRATIVE REVIEW PROCESS FOR ADJUDICATING INITIAL DISABILITY CLAIMS

Subpart D—[Amended]

■ 11. The authority citation for part 405 continues to read as follows:

Authority: Secs. 201(j), 205(a)–(b), (d)–(h), and (s), 221, 223(a)–(b), 702(a)(5), 1601, 1602, 1631, and 1633 of the Social Security Act (42 U.S.C. 401(j), 405(a)–(b), (d)–(h), and (s), 421, 423(a)–(b), 902(a)(5), 1381, 1381a, 1383, and 1383b).

§ 405.340 [Amended]

■ 12. In § 405.340, amend the heading of paragraph (a) by removing the words "wholly favorable" and adding in their place the words "fully favorable", and revise the first sentence of paragraph (a) by removing the word "wholly" and adding in its place the word "fully".

§ 405.370 [Amended]

■ 13. In § 405.370, amend the first sentence of paragraph (b) by removing the words "wholly favorable" and adding in their place the words "fully favorable".

PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS

Subpart J—[Amended]

■ 14. The authority citation for subpart J of part 408 continues to read as follows:

Authority: Secs. 702(a)(5) and 809 of the Social Security Act (42 U.S.C. 902(a)(5) and 1009).

§ 408.1070 [Amended]

■ 15. In § 408.1070, amend paragraph (b)(1) introductory text by removing the words "wholly or partially favorable" and adding in their place the words "fully or partially favorable".

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart J—[Amended]

■ 16. The authority citation for subpart J of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1614, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382c, 1383, and 1383b).

§ 416.1018 [Amended]

■ 17. In § 416.1018, remove the words "wholly or partly unfavorable" and add in their place the words "fully or partially unfavorable".

Subpart N—[Amended]

■ 18. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

§ 416.1441 [Amended]

■ 19. In § 416.1441, amend the third sentence of paragraph (a) by removing the words "wholly or partially favorable" and adding in their place the words "fully or partially favorable", and amend the heading and the first sentence of paragraph (d) by removing the words "wholly favorable" and adding in their place the words "fully favorable".

§ 416.1443 [Amended]

■ 20. In § 416.1443, amend the fifth sentence of paragraph (a)(1), the third sentence of paragraph (b)(1), the heading and first sentence of paragraph (c)(1), the first sentence of paragraph (c)(2), and the first sentence of paragraph (c)(3) by removing the words "wholly favorable" and adding in their place the words "fully favorable".

§ 416.1448 [Amended]

■ 21. In § 416.1448, amend the heading of paragraph (a) by removing the words "wholly favorable" and adding in their place the words "fully favorable".

§ 416.1453 [Amended]

■ 22. In § 416.1453, amend the paragraph heading, the first sentence, the second sentence, and the fifth sentence of paragraph (b) by removing the words "wholly favorable" and adding in their place the words "fully favorable".

§ 416.1466 [Amended]

■ 23. In § 416.1466, amend the second sentence of paragraph (a) by removing the words "wholly favorable" and adding in their place the words "fully favorable".

§ 416.1469 [Amended]

■ 24. In § 416.1469, amend the first sentence of paragraph (b)(1) by removing the words "wholly or partially favorable" and adding in their place the words "fully or partially favorable".

PART 418—MEDICARE SUBSIDIES

Subpart D—[Amended]

■ 25. The authority citation for subpart D of part 418 continues to read as follows:

Authority: Secs. 702(a)(5) and 1860D–1, 1860D–14 and –15 of the Social Security Act (42 U.S.C. 902(a)(5), 1395w–101, 1395w–114, and –115).

§ 418.3680 [Amended]

■ 26. In § 418.3680, amend the second sentence by removing the words "wholly favorable" and adding in their place the words "fully favorable".

[FR Doc. 2010–13987 Filed 6–10–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. FDA–2008–N–0163] (formerly Docket No. 2001N–0067)

RIN 0910–AG21

Dental Devices: Classification of Dental Amalgam, Reclassification of Dental Mercury, Designation of Special Controls for Dental Amalgam, Mercury, and Amalgam Alloy; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) published a final rule in the **Federal Register** of August 4, 2009 (74 FR 38686) which classified dental amalgam as a class II device, reclassified dental mercury from class I to class II, and designated special controls for dental amalgam, mercury, and amalgam alloy. The effective date of the rule was November 2, 2009. The final rule was published with an inadvertent error in the codified section. This document corrects that error. This action is being taken to ensure the accuracy of the agency's regulations.

DATES: This rule is effective June 11, 2010.

FOR FURTHER INFORMATION CONTACT: Michael Adjodha, Food and Drug Administration, Center for Devices and Radiological Health, 10903 New Hampshire Ave., Bldg. 66, rm. 2606, Silver Spring, MD 20993–0002, 301–796–6276.

SUPPLEMENTARY INFORMATION: Dental amalgam is a metallic restorative material that is used for the direct filling of carious lesions or structural defects in teeth. Dental amalgam is a combination of elemental mercury (liquid) and amalgam alloy (powder), which is composed primarily of silver, tin, and copper (74 FR 38686). The final rule classified the device "dental amalgam" into class II; reclassified the device "dental mercury" (hereinafter "mercury") from class I to class II; and designated a special controls guidance document to support the class II classifications of dental amalgam, mercury, and the device "amalgam alloy." The final rule classified all three devices together in a single regulation, by establishing a new section 21 CFR 872.3070, entitled "Dental amalgam, mercury, and amalgam alloy."

With the establishment of a single classification regulation for the three devices, supported by a designated class II special controls guidance document, FDA also intended to remove from codification the previous classifications of dental mercury and amalgam alloy as separate devices under 21 CFR 872.3700 and 21 CFR 872.3050, respectively. FDA removed the previous classification of amalgam alloy in the codified section of the final rule (74 FR 38686 at 38714), but inadvertently did not remove the previous classification of dental mercury. This document corrects that error.

Publication of this document constitutes final action on the change under the Administrative Procedure Act (5 U.S.C. 553). This technical amendment merely removes a regulatory reference in the Code of Federal Regulations (CFR) that was inadvertently not removed in the final rule. FDA therefore, for good cause, has determined that notice and public comment are unnecessary, under 5 U.S.C. 553(b)(3)(B). Further, this rule places no burden on affected parties for which such parties would need a reasonable time to prepare for the effective date of the rule. Accordingly, FDA, for good cause, has determined this technical amendment to be exempt under 5 U.S.C. 553(d)(3) from the 30-day effective date from publication.

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

Budget under the Paperwork Reduction Act of 1995 is not required.

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

List of Subjects in 21 CFR Part 872

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 872 is amended as follows:

PART 872—DENTAL DEVICES

■ 1. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

§ 872.3700 [Removed]

■ 2. Remove § 872.3700.

Dated: June 8, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–14083 Filed 6–10–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0371]

RIN 1625–AA00

Safety Zone; City of Martinez 4th of July Fireworks, Martinez, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the launching of fireworks being sponsored by the City of Martinez. The fireworks display will be held on July 4, 2010, on the shoreline of the Carquinez Straits. This safety zone is being established to ensure the safety of participants and spectators from the dangers associated with the pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or his designated representative.

DATES: This rule is effective from 9 p.m. through 10:15 p.m. on July 4, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0371 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2010–0371 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying two locations: 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 Ensign Elizabeth Ellerson, U.S. Coast Guard Sector San Francisco, at 415–399–7436 or e-mail at *D11-PF-MarineEvents@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), as it would be impracticable to publish an NPRM with respect to this rule because the event would occur before the rulemaking process could be completed. Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

Background and Purpose

The City of Martinez is sponsoring a brief fireworks display on July 4, 2010. The fireworks show is meant for entertainment purposes and will be used to celebrate Independence Day. The fireworks display is scheduled to launch at 9:30 p.m., on July 4, 2010, and last twenty minutes. A safety zone around the launch site is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics on the fireworks.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone on specified waters of the Carquinez Straits, for the City of Martinez Fourth of July Fireworks Display. The safety zone will apply to the navigable waters around the fireworks site within a radius of 500 feet. The fireworks launch site is on the shoreline of Martinez and will be located in position 38°01′31.77″ N., 122°08′23.75″ W. (NAD83).

The effect of the temporary safety zone will be to restrict general navigation in the vicinity of the fireworks launch site. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the safety zone. This safety zone is needed to keep spectators and vessels a safe distance away from the fireworks launch site to ensure 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 restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are pleasure craft engaged in recreational activities.

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 owners and operators of pleasure craft engaged in recreational activities and sightseeing. This rule will not have a significant economic impact on a substantial number of small entities for several reasons: (i) Vessel traffic can pass safely around the area, (ii) vessels engaged in recreational activities and sightseeing have ample space outside of the effected portion of the area of Martinez, CA to engage in these activities, (iii) this rule will encompass only a small portion of the waterway for a limited period of time, and (iv) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

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 effect 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 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–320 to read as follows:

§ 165.T11–320 Safety Zone; City of Martinez 4th of July Fireworks, Martinez, CA.

(a) *Location.* This temporary safety zone is established for the waters of Martinez, CA. The fireworks launch site will be located in position 38°01′31.77″ N., 122°08′23.75″ W. (NAD 83). The temporary safety zone applies to the navigable waters around the fireworks site within a radius of 500 feet.

(b) *Definitions.* As used in this section, "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the designated representative. Persons and vessels may request permission to enter the safety zone on VHF–16 or through the 24-hour Command Center at telephone (415) 399–3547.

(d) *Effective period.* This section is effective from 9 p.m. through 10:15 p.m. on July 4, 2010.

Dated: May 28, 2010.

P.M. Gugg,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2010–14034 Filed 6–10–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2009–0956; FRL–9160–3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Reasonable Further Progress Plan, 2002 Base Year Emission Inventory, Contingency Measures, Reasonably Available Control Measures, and Transportation Conformity Budgets for the Philadelphia 1997 8-Hour Moderate Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a revision to the Maryland State Implementation Plan (SIP) to meet the reasonable further progress (RFP) plan, the 2002 base year emissions inventory, RFP contingency measure, and reasonably available control measure (RACM) requirements of the Clean Air Act (CAA) for the Maryland portion of the Philadelphia moderate 1997 8-hour ozone nonattainment area. EPA is also approving the transportation conformity motor vehicle emissions budgets (MVEBs) associated with this revision. EPA is approving the SIP revision because it satisfies the emission inventory, RFP, RACM, RFP contingency measures, and transportation conformity requirements for areas classified as moderate nonattainment for the 1997 8-hour ozone national ambient air quality standard (NAAQS) and demonstrates further progress in reducing ozone precursors. EPA is approving the SIP revision pursuant to the CAA and EPA's regulations.

DATES: *Effective Date:* This final rule is effective on July 12, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2009–0956. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* 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 either electronically through *http://www.regulations.gov* or in hard copy for public inspection 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 Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 814–2181, or by e-mail at *pino.maria@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 7, 2010 (75 FR 953), EPA published a notice of proposed rulemaking (NPR) for a SIP revision submitted by the State of Maryland. The NPR proposed approval of Maryland's 2002 base year emissions inventory, RFP plan, RFP contingency measures, RACM, and MVEBs for the Maryland portion of the Philadelphia moderate 1997 8-hour ozone nonattainment area. EPA is approving the SIP revision because it satisfies the emission inventory, RFP, RACM, RFP contingency measure, and transportation conformity requirements of the section 110 and part D of the CAA and EPA's regulations. The formal SIP revision was submitted by the State of Maryland on June 4, 2007.

II. Summary of SIP Revision

The SIP revision addresses emissions inventory, RACM, RFP and contingency measures requirements for the 1997 8-hour ozone NAAQS for the Maryland portion of the Philadelphia 8-hour ozone moderate nonattainment area. The SIP revision also establishes MVEBs for 2008. Other specific requirements of Maryland's June 4, 2007 SIP revision for the Philadelphia 8-hour ozone nonattainment area and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

The following public comment was received on the NPR.

Comment: An anonymous commenter submitted the comment: "We do not need tighter regulations on ozone. Ragweed is more of problem than smog."

Response: The comment, while vaguely expressing a general uncertainty about the rule, does not identify any particular defects in the rule substance or adoption. Importantly, the comment does not oppose EPA's proposed full approval of the rule. Moreover, while the commenter expresses a general dislike for regulations addressing ozone pollution, the commenter does not question the legal obligation for the states to adopt and submit SIP revisions

addressing these specific obligations for the 1997 8-hour ozone NAAQS. *See generally* CAA section 182(b) and 40 CFR part 51 subpart X. EPA, therefore, believes that the commenter has not provided a basis for EPA to not move forward and approve the submitted SIP.

III. Final Action

EPA is approving the 2002 base year emissions inventory; the 2008 ozone projected emission inventory; the 2008 RFP plan; RFP contingency measures; RACM analysis; and 2008 transportation conformity budgets for the Maryland portion of the Philadelphia 8-hour ozone nonattainment area, contained in Maryland's June 4, 2007 SIP revision submittal for the Maryland portion of the Philadelphia 8-hour ozone nonattainment area. The SIP revision satisfies these requirements for 1997 8-hour ozone NAAQS nonattainment areas classified as moderate and demonstrates further progress in reducing ozone precursors.

IV. 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 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 August 10, 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 pertaining to the Maryland portion of the Philadelphia moderate 1997 8-hour ozone nonattainment area's 2002 base year emissions inventory, 2008 ozone projected emission inventory, 2008 RFP plan, RFP contingency measures, RACM analysis, and 2008 transportation conformity budgets 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 27, 2010.

William C. Early,

Acting Regional Administrator, EPA 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 V—Maryland

■ 2. In § 52.1070, the table in paragraph (e) is amended by adding at the end of the table, the entries for Reasonable Further Progress Plan (RFP), Reasonably Available Control Measures and Contingency Measures; 2002 Base Year Inventory for VOC, NO_X and CO; and 2008 RFP Transportation Conformity Budgets for the Maryland portion of the Philadelphia 1997 8-hour Ozone Moderate Nonattainment Area.

The amendments read as follows:

§ 52.1070 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	* *	*	* *	*
Reasonable Further Progress Plan (RFP), Reasonably Available Control Measures, and Contingency Measures.	Maryland portion of the Philadelphia 1997 8-hour ozone moderate nonattainment area.	6/4/07	6/11/10 [Insert page number where the document begins].	
2002 Base Year Inventory for VOC, NO_X, and CO.	Maryland portion of the Philadelphia 1997 8-hour ozone moderate nonattainment area.	6/4/07	6/11/10 [Insert page number where the document begins].	
2008 RFP Transportation Conformity Budgets.	Maryland portion of the Philadelphia 1997 8-hour ozone moderate nonattainment area.	6/4/07	6/11/10 [Insert page number where the document begins].	

■ 3. Section 52.1075 is amended by adding paragraph (j) to read as follows:

§ 52.1075 Base year emissions inventory.

* * * * *

(j) EPA approves as a revision to the Maryland State Implementation Plan the 2002 base year emissions inventories for the Maryland portion of the Philadelphia 1997 8-hour ozone moderate nonattainment area submitted by the Secretary of the Maryland Department of the Environment on June 4, 2007. This submittal consists of the 2002 base year point, area, non-road mobile, and on-road mobile source inventories in area for the following pollutants: volatile organic compounds (VOC), carbon monoxide (CO) and nitrogen oxides (NO_X).

■ 4. Section 52.1076 is amended by adding paragraphs (s) and (t) to read as follows:

§ 52.1076 Control strategy plans for attainment and rate-of-progress: Ozone.

* * * * *

(s) EPA approves revisions to the Maryland State Implementation Plan consisting of the 2008 reasonable further progress (RFP) plan, reasonably available control measures, and contingency measures for the Maryland portion of the Philadelphia 1997 8-hour ozone moderate nonattainment area submitted by the Secretary of the Maryland Department of the Environment on June 4, 2007.

(t) EPA approves the following 2008 RFP motor vehicle emissions budgets (MVEBs) for the Maryland portion of the Philadelphia 1997 8-hour ozone moderate nonattainment area submitted by the Secretary of the Maryland Department of the Environment on June 4, 2007:

TRANSPORTATION CONFORMITY EMISSIONS BUDGETS FOR THE MARYLAND PORTION OF THE PHILADELPHIA AREA

Type of control strategy SIP	Year	VOC (TPD)	NO_X TPD)	Effective date of adequacy determination or SIP approval
Rate of Progress Plan	2008	2.3	7.9	April 13, 2009, (74 FR 13433), published March 27, 2009.

[FR Doc. 2010–13687 Filed 6–10–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0993; FRL–9160–2]

Approval and Promulgation of Implementation Plans; New Mexico; Interstate Transport of Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a portion of a State Implementation Plan (SIP) submitted by the State of New Mexico for the purpose of addressing the "good neighbor" provisions of the Clean Air Act (CAA) section 110(a)(2)(D)(i) for the 1997 ozone National Ambient Air Quality Standard (NAAQS) and the 1997 $PM_{2.5}$ NAAQS. This SIP revision satisfies a portion of the State of New Mexico's obligation to submit a SIP that demonstrates that adequate provisions are in place to prohibit air emissions from adversely affecting another state's air quality through interstate transport. This rulemaking action is being taken under section 110 of the CAA and addresses one element of CAA section 110(a)(2)(D)(i), which pertains to prohibiting air pollutant emissions from within New Mexico from contributing significantly to nonattainment of the 1997 8-hour ozone and $PM_{2.5}$ NAAQS in any other state.

DATES: This final rule will be effective July 12, 2010.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R06–OAR–2007–0993. All documents in the docket are listed at *www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 Freedom of Information Act (FOIA) Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

FOR FURTHER INFORMATION CONTACT: Emad Shahin, Air Planning Section (6PD–L), Environmental Protection

Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6717; fax number (214) 665–7263; e-mail address *shahin.emad@epa.gov.*

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

Outline

I. What action is EPA taking?
II. What is the background for this action?
III. What comments did EPA receive and how has EPA responded to them?
IV. Final Action
V. Statutory and Executive Order Reviews

I. What action is EPA taking?

We are approving a portion of the submission from the State of New Mexico demonstrating that New Mexico has adequately addressed one of the required elements of the CAA section 110(a)(2)(D)(i), the element that prohibits air pollutant emissions from sources within a state from contributing significantly to nonattainment of the relevant NAAQS in any other state. We have determined that emissions from sources in New Mexico do not significantly contribute to nonattainment of the 1997 8-hour ozone NAAQS or the 1997 $PM_{2.5}$ NAAQS in any other state. Because emissions from sources in New Mexico do not significantly contribute to nonattainment in any other state, section 110(a)(2)(D)(i)(I) does not require any substantive changes to New Mexico's SIP.

The remaining three elements of section 110(a)(2)(D) are that a state's SIP contain adequate provisions to prevent: Interference with maintenance of the NAAQS in any other state; interference with measures required to prevent significant deterioration of air quality in any other state; and interference with measures required to protect visibility in any other state. EPA will evaluate the New Mexico SIP and SIP submissions for compliance with these other requirements of section 110(a)(2)(D) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS in future rulemakings.

II. What is the background for this action?

On July 18, 1997, EPA promulgated new standards for 8-hour ozone and fine particulate matter ($PM_{2.5}$). This action is being taken in response to the July 18, 1997 revision to the 8-hour ozone NAAQS and $PM_{2.5}$ NAAQS. This action does not address the requirements for the 2006 $PM_{2.5}$ NAAQS or the 2008 8-hour ozone NAAQS; those standards will be addressed in a later action.

Section 110(a)(1) of the CAA requires states to submit SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the elements that such new SIPs must address, as applicable, including section 110(a)(2)(D)(i) which pertains to interstate transport of certain emissions. On August 15, 2006, EPA issued its "Guidance for State Implementation Plan (SIP) Submission to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards" (2006 Guidance) for SIP submissions that states should use to address the requirements of section 110(a)(2)(D)(i). EPA developed this guidance to make recommendations to states for making submissions to meet the requirements of section 110(a)(2)(D) for the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS.

On September 17, 2007, EPA received a SIP submission from the State of New Mexico to address the requirements of section 110(a)(2)(D)(i) for both the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS. The state based its submittal on EPA's 2006 Guidance. As explained in the 2006 Guidance, the "good neighbor" provisions in section 110(a)(2)(D)(i) require each State to submit a SIP that contains adequate provisions to prohibit emissions from sources within that state from adversely affecting another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. In this rulemaking EPA is addressing only the requirement that pertains to preventing sources in the state from emitting pollutants in amounts which will contribute significantly to nonattainment of the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS in any other state. In its submission, the State of New Mexico indicated that its current SIP is adequate to prevent such significant contribution to nonattainment in any other state, and thus no additional emissions controls are necessary at this time to alleviate interstate transport.

On April 8, 2010, we published a direct final rule and a parallel proposal to approve the portion of New Mexico's SIP submission that addressed one element of the CAA section 110(a)(2)(D)(i), which pertains to prohibiting air pollutant emissions from within New Mexico from contributing significantly to nonattainment of the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS in any other state (75 FR 17868). The direct final rule and proposal stated that if EPA received any relevant adverse comments during the public comment period ending on May 10, 2010, then EPA would withdraw the direct final rule and respond to such comments in a subsequent final action based upon the proposal. EPA received adverse comments during the comment period, and accordingly EPA withdrew the direct final rule on May 3, 2010 (75 FR 23167). The April 8, 2010, proposal (75 FR 17894) provides the basis for today's final action.

III. What comments did EPA receive and how has EPA responded to them?

EPA received three comment letters on the April 8, 2010, direct final rule and proposal. The letters can be found on the internet in the electronic docket for this action. To access the letters, please go to *http://www.regulations.gov* and search for Docket No. EPA–R06–OAR–2007–0993, or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph above. The discussion below addresses those comments and our response.

A. Comments From WildEarth Guardians

Comment No. 1—The commenter argued that New Mexico and EPA did not appropriately assess impacts to nonattainment in downwind states. According to the commenter, New Mexico failed to assess the significance of downwind impacts in accordance with EPA precedent and refers to the 1998 NO_X SIP Call.

EPA Response—EPA disagrees with the commenter on this point. Section 110(a)(2)(D) does not explicitly specify how states or EPA should evaluate the existence of, or extent of, interstate transport and whether interstate transport is of sufficient magnitude to constitute "significant contribution to nonattainment" as a regulatory matter. The statutory language is ambiguous on its face and EPA must reasonably interpret that language when it applies it to factual situations before the Agency.

EPA agrees that the NO_X SIP Call is one rulemaking in which EPA evaluated the existence of, and extent of, interstate transport. In that action, EPA developed an approach that allowed the Agency to evaluate whether there was significant contribution to ozone nonattainment across an entire region that was comprised of many states. That approach included regional scale modeling and other technical analyses that EPA deemed useful to evaluate the issue of interstate transport on that geographic scale and for the facts and circumstances at issue in that

rulemaking. EPA does not agree, however, that the approach of the NO_X SIP Call is the only way that states or EPA may evaluate the existence of, and extent of, interstate transport in all situations, and especially in situations where the state and EPA are evaluating the question on a state by state basis, and in situations where there is not evidence of widespread interstate transport.

Indeed, EPA issued specific guidance with recommendations to states about how to address section 110(a)(2)(D) in SIP submissions for the 1997 8-hour ozone NAAQS. EPA issued this guidance document, entitled "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards" on August 15, 2006.[1] This guidance document postdated the NO_X SIP Call, and was developed by EPA specifically to address SIP submissions for the 1997 8-hour ozone NAAQS.

Within the 2006 Guidance, EPA notes that it explicitly stated its view that the "precise nature and contents of such a submission [are] not stipulated in the statute" and that the contents of the SIP submission "may vary depending upon the facts and circumstances related to the specific NAAQS."[2] Moreover, within that guidance, EPA expressed its view that "the data and analytical tools available" at the time of the SIP submission "necessarily affect the content of the required submission."[3] To that end, EPA specifically recommended that states located within the geographic region covered by the Clean Air Interstate Rule (CAIR)[4] comply with section 110(a)(2)(D) for the 1997 8-hour ozone NAAQS by complying with CAIR itself. For states outside the CAIR rule region, however, EPA recommended that states develop their SIP submissions for section 110(a)(2)(D) considering relevant information.

EPA explicitly recommended that relevant information for section 110(a)(2)(D) submissions addressing significant contribution to nonattainment "might include, but is not limited to, information concerning emissions in the State, meteorological conditions in the State, the distance to the nearest nonattainment area in another State, reliance on modeling conducted by EPA in determining that such State should not be included within the ambit of the CAIR, or such other information as the State considers probative on the issue of significant contribution."[5] In addition, EPA recommended that states might elect to evaluate significant contribution to nonattainment using relevant considerations comparable to those used by EPA in CAIR, including evaluating impacts as of an appropriate year (such as 2010) and in light of the cost of control to mitigate emissions that resulted in interstate transport.

The commenter did not acknowledge or discuss EPA's actual guidance for section 110(a)(2)(D) SIP submissions for the 1997 8-hour ozone NAAQS, and thus it is unclear whether the commenter was aware of it. In any event, EPA believes that the New Mexico submission and EPA's evaluation of it is consistent with EPA's guidance for the 1997 8-hour ozone NAAQS. For example, as discussed in the direct final notice, the State of New Mexico and EPA considered information such as monitoring data in other states, geographical and meteorological information, and technical studies of the nature and sources of nonattainment problems in various downwind states. These are among the types of information that EPA recommended and that EPA considers relevant. Thus, EPA has concluded that the State's submission, and EPA's evaluation of that submission, meet the requirements of section 110(a)(2)(D) and are consistent with applicable guidance.

Finally, EPA notes that the considerations the Agency recommended to states in the 2006 Guidance are consistent with the concepts of the NO_X SIP Call referenced by the commenter: (a) The overall nature of the ozone problem; (b) the extent of downwind nonattainment problems to which upwind state's emissions are linked; (c) the ambient impact of the emissions from upwind States' sources on the downwind nonattainment problems; and (d) the availability of high cost-effective control measures for upwind emissions. The only distinction in the case of the New Mexico submission at issue here would be that because the available evidence indicates that there is so very little contribution of emissions from New Mexico sources to nonattainment in other states, it is not necessary to advance to the final step and evaluate whether the cost of controls for those sources is above or below a certain cost of control as part of determining whether the contribution constitutes "significant contribution to nonattainment" for regulatory purposes, as was necessary in the NO_X SIP Call and in CAIR.

Comment No. 2—The commenter believes that New Mexico and EPA did not appropriately assess impacts to nonattainment in downwind states in terms of air quality. Specifically, the commenter objected to EPA's proposed approval because New Mexico assessed impacts in downwind states by considering only areas that had monitoring data as for evaluating significant contribution to nonattainment. In other words, the commenter is concerned that New Mexico did not assess impacts in areas that have no monitor. The commenter implied that this reliance on monitor data is inconsistent with both section 110(a)(2)(D) and with EPA's guidance, by which the commenter evidently means the NO_X SIP Call. In support of this assertion, the commenter quoted from the NO_X SIP Call proposal in which EPA addressed the proper interpretation of the statutory phrase "contribute significantly to nonattainment:"

> "The EPA proposes to interpret this term to refer to air quality and not to be limited to currently designated nonattainment areas. Section 110(a)(2)(D) does not refer to 'nonattainment areas,' which is a phrase that EPA interprets to refer to areas that are designated nonattainment under section 107 (section 107(d)(1)(A)(I))"

According to the commenter, this statement, and similar ones in the context of the final NO_X SIP Call rulemaking, establish that states and EPA cannot utilize monitoring data to evaluate the existence of, and extent of, interstate transport. Furthermore, the commenter interprets the reference to "air quality" in these statements to support its contention, amplified in later comments, that EPA must evaluate significant contribution in areas in which there is no monitored nonattainment.

EPA response—EPA disagrees with the commenter's arguments. First, the commenter misunderstands the point that EPA was making in the quoted statement from the NO_X SIP Call proposal (and that EPA has subsequently made in the context of

[1] Memorandum from William T. Harnett entitled Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards (Aug. 15, 2006) ("2006 Guidance"); p. 3.

[2] Id. at 3.

[3] Id.

[4] In this action the expression "CAIR" refers to the final rule published in the May 12, 2005 **Federal Register** and entitled "Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to NO_X SIP Call; Final Rule" (70 FR 25162).

[5] Id. at 5.

CAIR). When EPA stated that it would evaluate impacts on air quality in downwind states, independent of the current formal "designation" of such downwind states, it was not referring to air quality in the absence of monitor data. EPA's point was that it was inappropriate to wait for either initial designations of nonattainment for a new NAAQS under section 107(d)(1), or for a redesignation to nonattainment for an existing NAAQS under section 107(d)(3), before EPA could assess whether there is significant contribution to nonattainment of a NAAQS in another state.

For example, in the case of initial designations, section 107(d) contemplates a process and timeline for initial designations that could well extend for two or three years following the promulgation of a new or revised NAAQS. By contrast, section 110(a)(1) requires states to make SIP submissions that address section 110(a)(2)(D) and interstate transport "within 3 years or such shorter period as the Administrator may prescribe" of EPA's promulgation of a new or revised NAAQS. This schedule does not support a reading of section 110(a)(2)(D) that is dependent upon formal designations having occurred first. This is a key reason why EPA determined that it was appropriate to evaluate interstate transport based upon monitor data, not designation status, in the CAIR rulemaking.

The commenter's misunderstanding of EPA's statement concerning designation status evidently caused the commenter to believe that EPA's assessment of interstate transport in the NO_X SIP Call was not limited to evaluation of downwind areas with monitors. This is simply incorrect. In both the NO_X SIP Call and CAIR, EPA evaluated significant contribution to nonattainment as measured or predicted at monitors. For example, in the technical analysis for the NO_X SIP Call, EPA specifically evaluated the impacts of emissions from upwind states on monitors located in downwind states. The NO_X SIP Call did not evaluate impacts at points without monitors, nor did the CAIR rulemaking. EPA believes that this approach to evaluating significant contribution is correct under section 110(a)(2)(D), and EPA's general approach to this threshold determination has not been disturbed by the courts.[6]

Finally, EPA disagrees with the commenter's argument that the assessment of significant contribution to downwind nonattainment must include evaluation of impacts on non-monitored areas. Neither section 110(a)(2)(D)(i)(I) provisions, nor the 2006 Guidance EPA issued for the 1997 8-hour ozone NAAQS, support the commenter's position, as neither refers to any explicit mandatory or recommended approach to assess air quality in non-monitored areas.[7] The same focus on monitor data as a means of assessing interstate transport is found in the NO_X SIP Call and in CAIR. An initial step in both the NO_X SIP Call and CAIR was the identification of areas with current monitored violations of the ozone and/or $PM_{2.5}$ NAAQS.[8] The subsequent modeling analyses for NAAQS violations in future years (2007 for the SIP Call and 2010 for CAIR) likewise evaluated future violations at monitors in areas identified in the initial step. Thus, the commenter is simply in error that EPA has not previously evaluated the presence and extent of interstate transport under section 110(a)(2)(D) by focusing on monitoring data. Indeed, such monitoring data was at the core of both of these efforts. In neither of these rulemakings did EPA evaluate significant contribution to nonattainment in areas in which there was no monitor. This is reasonable and appropriate, because data from a properly placed federal reference method monitor is the way in which EPA ascertains that there is a violation of the 1997 8-hour ozone NAAQS or of the 1997 $PM_{2.5}$ NAAQS in a particular area.

EPA did not use photochemical modeling to determine if an area is violating the 1997 8-hour ozone or 1997 $PM_{2.5}$ NAAQS to designate the area as nonattainment without supporting monitoring data. EPA's regulations for these NAAQS, the monitoring requirements for these NAAQS, and EPA's guidance for designations for these NAAQS provide for such designations for violating areas to be based only on monitoring data. In addition, this is reasonable for these particular NAAQS because photochemical models, while based on the best science available, only provide a best estimate of air quality. EPA's 2007 modeling guidance[9] recognizes that model results and projections will continue to have uncertainty.

Therefore, even if modeling analyses indicated violation of the 1997 8-hour ozone NAAQS in other states, EPA would not make a determination that these areas should be designated nonattainment for these NAAQS without monitoring data in the area to support a determination of nonattainment. In summary, in order for there to be significant contribution to nonattainment for either of these specific NAAQS, there must be a monitor with data showing a violation of that NAAQS. EPA has concluded that by considering data from monitored areas, its assessment of whether emissions from New Mexico contribute significantly to ozone nonattainment in downwind states is consistent with the 2006 Guidance, and with the approach used by both the CAIR rule and the NO_X SIP Call, and EPA modeling guidance.

Comment No. 3—In support of its comments that EPA should assess significant contribution to nonattainment in nonmonitored areas, the commenter argued that existing modeling performed by another organization "indicates that large areas of neighboring states will be likely to violate the ozone NAAQS." According to the commenter, these likely "violations" of the ozone NAAQS were predicted for the year 2018, as reflected in a slide from a July 30, 2008 presentation before the Western Regional Air Partnership ("Review of Ozone Performance in WRAP Modeling and Relevant to Future Regional Ozone Planning").[10] In short, the commenter argues that modeling performed by the WRAP establishes that there will be violations of the 1997 8-hour ozone NAAQS in 2018 in non-monitored areas of states adjacent to New Mexico.

EPA Response—EPA disagrees with this comment on several grounds. First, EPA does not agree that it is appropriate when satisfying the requirements of Section 110(a)(2)(D) to evaluate significant contribution to nonattainment for the 1997 8-hour ozone NAAQS by modeling ambient

[6] *Michigan* v. *U.S. EPA,* 213 F.3d 663, 674–681 (DC Cir. 2000); *North Carolina* v. *EPA,* 531 F.3d 896, 913–916 (DC Cir. 2008) (upholding EPA approach to determining threshold despite remanding other aspects of CAIR).

[7] 2006 Guidance, p. 5.

[8] "Based on this approach, we predicted that in the absence of additional control measures, 47 counties *with air quality monitors* [emphasis ours] would violate the 8-hour ozone NAAQS in 2010 * * *." From the CAIR proposed rule of January 30, 2004 (69 FR 4566, 4581). The NO_X SIP call proposed rule action reads: "* * * For current nonattainment areas, EPA used air quality data for the period 1993 through 1995 to determine which counties are violating the 1-hour and/or 8-hour NAAQS. These are the most recent 3 years of fully quality assured data which were available in time for this assessment." *See,* 62 FR 60336.

[9] EPA–454/B–07–002, April 2007, "Guidance on the Use of Models and other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$ and Regional Haze", Office of Air Quality Planning and Standards, Air Modeling Group. Research Triangle Park, North Carolina, available at *http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf.*

[10] The presentation is available for review as Document ID # EPA–R06–OAR–2007–0993–0008.9 at *Regulations.gov,* Docket ID # EPA–R06–OAR–2007–0993.

levels in areas where there is no monitor to provide data to establish a violation of the NAAQS in question. Section 110(a)(2)(D) does not require such an approach, EPA has not taken this approach in the NO_X SIP Call or other rulemakings under section 110(a)(2)(D), and EPA's prior analytical approach has not been disturbed by the courts.

Second, the commenter's own description of the ozone concentrations predicted for the year 2018 as projecting "violations" of the ozone NAAQS is inaccurate. Within the same sentence, quoted above, slide 28 is described as displaying the projected fourth maximum ozone reading for the year 2018, and as indicating that "* * * air quality * * * will exceed or *violate* [emphasis ours] the 1997 ozone NAAQS." By definition, a one year value of the fourth maximum above the NAAQS only constitutes an exceedance of the NAAQS; to constitute a violation of the 1997 8-hour ozone NAAQS, the average of the fourth high for three consecutive years at the same monitor must exceed the standard. Thus, even if the WRAP presentation submitted by the commenter were technically sound, the conclusion drawn from it by the commenter is inaccurate and does not support its claim of projected violations of the NAAQS in large areas (monitored or unmonitored) of New Mexico's neighboring states.

Even if EPA believed that it was appropriate to use modeling to establish violations of the 1997 8-hour ozone NAAQS, EPA has reviewed the WRAP presentation submitted by the commenter, and believes that there was a substantial error in the WRAP modeling software that led to overestimation of ground level ozone concentrations. A recent study conducted by Environ for the Four Corners Air Quality Task Force (FCAQTF) [11] has demonstrated that excessive vertical transport in the CMAQ and CAMx models over high terrain was responsible for overestimated ground level ozone concentrations due to downward transport of stratospheric ozone.[12] Environ has developed revised vertical velocity algorithms in a new version of CAMx that eliminated the excessive downward transport of ozone from the top layers of the model. This revised version of the model is now being used in a number of applications throughout high terrain areas in the West. In conclusion, EPA believes that this key inadequacy of the WRAP model, noted above, makes it inappropriate support for the commenter's concerns about large areas of other states violating the 1997 8-hour ozone NAAQS projected for 2018 in areas without monitors.

Comment No. 4—As additional support for its assertion that EPA should require modeling to assess ambient levels in unmonitored portions of other states, the commenter relied on an additional study entitled the "2009 Uinta Basin Air Quality Study" (UBAQS). The commenter argued that the UBAQS further supports its concern that New Mexico and EPA, having limited the evaluation of downwind impacts only to areas with monitors, failed to assess ozone nonattainment in non-monitored areas. According to the commenter, UBAQS modeling [13] results show that: (a) the Wasatch Front region is currently exceeding and will exceed in 2012 the 1997 8-hour ozone NAAQS; and (b) based on 2005 meteorological data, portions of the four counties in the southwestern corner of Utah are also currently in nonattainment and will be in nonattainment in 2012.[14]

EPA Response—As noted above, EPA does not agree that it is appropriate to assess significant contribution to nonattainment for the 1997 8-hour ozone NAAQS in the way advocated by the commenter. In particular, EPA does not agree that it is necessary to evaluate significant contribution to areas where only the model predicts nonattainment where there are no monitors. Even if EPA felt it was appropriate to use model results to determine areas that are not attaining the standard, EPA does not agree that the modeled nonattainment of the 1997 8-hour ozone NAAQS (current and projected) in the Wasatch Front Range area in the UBAQS supports the commenter's concerns about the need to evaluate the possibility of significant contribution from New Mexico to nonattainment in these areas. Based on what the commenter presented, EPA sees several problems with the commenter's interpretation of the UBAQS analysis results for counties in Utah's southwestern corner: "based on 2005 meteorological data, portions of Washington, Iron, Kane, and Garfield Counties are also in nonattainment and will be in nonattainment in 2012." [15] First, the commenter's interpretation of the predicted ozone concentrations shown in Figures 4–3a and 4–3b (pages 4 and 5 of the comment letter) is inaccurate. A close review of the legend in these figures indicates that the highest ozone concentrations predicted by the model for portions of the counties noted above are somewhere between 81.00 and 85.99 ppb, but the exact modeled value is not specified and there are only three grid cells with this value range estimated. If the actual model prediction is less than or equal to 84.94 ppb then the area is attaining the 1997 8-hour ozone NAAQS, if it is predicted as greater than 84.94 ppb then the modeling is indicating that it is not attaining those NAAQS. Thus, the current and predicted design values for the three grid cells in southwestern Utah area identified in Figures 4–3a and 4–3b could both be in attainment, or both in nonattainment, or one of them in attainment and the other in nonattainment, for the 1997 8-hour ozone NAAQS. EPA does not believe that this evidence adequately establishes that one or both areas definitely violate the NAAQS, even if the information were taken at face value.

Second, even if the design values predicted for these unmonitored areas were at the top of the 81.00–85.99 ppb range, their reliability would remain questionable. The UBAQS itself identifies and illustrates major shortcomings of its modeling analysis, only to neglect assessing the impact of these shortcomings on the modeling results.[16] The study deviates in at least two significant ways from EPA's 2007 guidance on SIP modeling.[17] One deviation is the UBAQS modeling reliance on fewer than the five years of data recommended by EPA to generate an 8-hour ozone current design value (DVC). UBAQS relaxed this requirement so that sites with as little as 1 year of data were included as DVCs in the analysis. The other deviation is in the computation of the relative responsive

[11] This document is available for review at the *regulations.gov* Web site under Docket ID No. EPA–R06–OAR–2007–0993.

[12] Stoeckenius, T.E., C.A. Emery, T.P. Shah, J.R. Johnson, L.K. Parker, A.K. Pollack, 2009. "Air Quality Modeling Study for the Four Corners Region," pp. ES–3, ES–4, 3–4, 3–12, 3–30, 5–1. Prepared for the New Mexico Environment Department, Air Quality Bureau, Santa Fe, NM, by ENVIRON International Corporation, Novato, CA.

[13] In this action the expression "UBAQS" refers to the "FINAL REPORT UBAQS TECHNICAL REPORT", June 30, 2009. The presentation is available for review as Document ID # EPA–R06–OAR–2007–0993–0008.9 at *regulations.gov,* Docket ID # EPA–R06–OAR–2007–0993.

[14] UBAQS. The southwestern area referred to by the commenter includes portions of Washington, Iron, Kane, and Garfield Counties.

[15] WG's April 16, 2010 comment letter, pp. 3. The letter is available for review at the *regulations.gov* Web site Docket ID No. EPA–R06–OAR–2007–0993.

Page three of the commenter's letter.

[16] *See* UBAQS, pp. 4–27 to 4–29.

[17] EPA, Guidance on the Use of Models and other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$ and Regional Haze. Office of Air Quality Planning and Standards, Air Modeling Group. Research Triangle Park, North Carolina (2007), available at *http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf.*

factor (RRF), which directly affects the modeling's future design value (DVF).[18] Due to unavailability of data satisfying EPA's recommendation that the RRF be based on a minimum of five days of ozone concentrations above 85 ppb, UBAQS modeling uses RRFs based on one or more days of ozone concentrations above 70 ppb.[19] Also, looking at Figures 3–19a–j of the UBAQS report, which cover ozone modeling performance through September of 2005, shows the modeling to have an over prediction bias for ozone. So, EPA concludes that the modeling analysis results provided by the commenter are unreliable for projecting nonattainment status even if EPA believed it was appropriate to use modeling for this purpose for the 1997 8-hr ozone NAAQS.

Finally, even if it were appropriate to consider modeled violations and the modeling were reliable for this purpose, the commenter has not raised any convincing evidence that emissions from New Mexico sources are impacting southwestern Utah during the predicted high ozone events. Specifically, no assessment or source apportionment was performed that indicated sources in New Mexico contributed to the three grid cells with modeled high values that may be modeled nonattainment values in Utah. In fact, the predominant wind direction would not carry emissions from New Mexico into southwestern Utah. Furthermore, in evaluating the Figures provided (Fig 4–3a to 4–4b) and other information in the modeling report, the modeling also does not indicate that emissions from New Mexico are impacting the higher modeled ozone values in the southwestern Utah area.

In summary, EPA does not agree that it is appropriate for purposes of section 110(a)(2)(D) to use modeled nonattainment as a basis for evaluation, for these two NAAQS (1997 8-hour ozone NAAQS and PM 2.5 NAAQS) especially in light of the concerns with the modeling discussed above. Even if EPA were to use modeling for this purpose, the UBAQS modeling analyses does not clearly predict violations of the 1997 8-hour ozone NAAQS in western Colorado and eastern Utah. In particular, the UBAQS modeling does not clearly establish violations of the NAAQS in southwestern Utah because of the way the results were reported. Significantly, the model does project violations in the Salt Lake City area (in 2006 and 2012 model years), but monitors in the area do not substantiate these modeled predictions. Based on monitoring data for 2007–2009, the Salt Lake City area does not have a monitored design value within 6 ppb of the level of the 1997 8-hour ozone NAAQS. In addition, EPA does not consider the UBAQS modeling reliable because the modeling deviates from EPA guidance and appears to have an over-prediction bias. Finally, the commenter did not provide evidence that emissions from New Mexico in fact contributed significantly to the modeled exceedances or violations projected in this modeling.

Comment No. 5—In support of its arguments that EPA should not assess significant contribution to nonattainment through evaluation of impacts at monitors instead of modeling impacts where there is no such monitor, the commenter cited a past statement by EPA to the effect that the ozone monitoring network in the western United States needs to be expanded. The quoted statements included EPA's observation that: "[v]irtually all States east of the Mississippi River have at least two to four non-urban O_3 monitors, while many large mid-western and western States have one or no non-urban monitors." 74 FR 34525 (July 16, 2009). From this statement, the commenter argues that it is not appropriate for EPA to limit evaluation of significant contribution to nonattainment of the ozone NAAQS in other states to reliance on monitoring data instead of modeled ambient levels.

EPA Response—EPA does not disagree that there are relatively few ozone monitors in the western states, and that relatively few of these ozone monitors are currently located in non-urban areas of western states. However, the commenter failed to note that the quoted statement from EPA concerning the adequacy of western monitors came from the Agency's July 16, 2009, proposed rulemaking entitled "Ambient Ozone Monitoring Regulations: Revisions to Network Design Requirements." This statement was thus taken out of context, because EPA was in that proposal referring to changes in state monitoring networks that it anticipates will be necessary in order to implement not the 1997 8-hour ozone NAAQS, the subject of this rulemaking, but rather the next iteration of the ozone NAAQS. Because the new ozone standard is likely to be significantly more stringent than the 1997 8-hour ozone NAAQS, it is anticipated there will be a need to evaluate ambient levels in previously unmonitored areas of the western United States. The fact that additional monitors may be necessary in the future for a newer ozone NAAQS does not mean that the existing ozone monitoring networks are insufficient for the 1997 8-hour ozone NAAQS, as the commenter implies. Indeed, states submit annual monitor network reports to EPA and EPA evaluates these to insure that the deployment of monitors in the state meets the applicable regulatory requirements and guidance recommendations.

For example, New Mexico itself submits just such a report on an annual basis, and EPA reviews it for adequacy.[20] All states submit comparable reports. Absent a specific concern that another state's current monitor network is inadequate to evaluate ambient levels of the 1997 8-hour ozone NAAQS, EPA has no reason to believe that the evaluation of possible significant contribution from New Mexico sources in reliance on those monitors is incorrect.

Comment No. 6—The commenter objected to EPA's proposed approval of the New Mexico's SIP submission because neither New Mexico nor EPA performed a specific modeling analysis to assure that emissions from New Mexico sources do not significantly contribute to nonattainment of the 1997 8-hour ozone NAAQS in downwind States.

EPA Response—First, this comment is incorrect. EPA and New Mexico did provide modeling as part of the evaluation of whether emissions from sources in New Mexico impact monitors with violating data in other states. The modeling is discussed in the proposed federal register and technical support document for this action and is one of the primary considerations in EPA's approval. The modeling that the commenter claims is necessary but absent, is modeling to assess impacts in areas with no monitors. As explained above, EPA believes that the assessment of significant contribution to nonattainment under section 110(a)(2)(D) for these NAAQS should be based upon impacts at monitors.

Second, EPA disagrees with the commenter's belief that only modeling can establish whether or not there is significant contribution from one state to another. As noted above, EPA does not believe that section 110(a)(2)(D) requires modeling. While modeling can be useful, EPA believes that other forms of analysis can be sufficient to evaluate whether or not there is significant contribution to nonattainment. For this reason, EPA's 2006 Guidance

[18] Id., DVC × RRF = DVF.

[19] *See* UBAQS, p. 4–28.

[20] *See* the New Mexico Annual Monitoring Network Plan dated July 14, 2009. The plan is available for review at the regulations.gov Web site under Docket ID No. # EPA–R06–OAR–2007–0993.

recommended other forms of information that states might wish to evaluate as a qualitative approach as part of their section 110(a)(2)(D) submissions for the 1997 8-hour ozone NAAQS. EPA has concluded that the qualitative approach used by New Mexico in addition to modeling to assess the existence of, and extent of, any significant contribution to downwind ozone nonattainment is consistent with EPA's 2006 Guidance.

Comment No. 7—In further support of its argument that EPA must use modeling to evaluate whether there is significant contribution to nonattainment under section 110(a)(2)(D), the commenter noted that EPA itself asks other agencies to perform such modeling in other contexts. As examples, the commenter cited four examples in which EPA commented on actions by other agencies in which EPA recommended the use of modeling analysis to assess ozone impacts prior to authorizing oil and gas development projects. As supporting material, the comment includes quotations from and references to EPA letters to Federal Agencies on assessing impacts of oil and gas development projects.[21] The commenter questioned why EPA's recommendation for such an approach in its comments to other Federal Agencies, did not result in its use of the same approach to evaluate the impacts from New Mexico's emissions and to insure compliance with Section 110(a)(2)(D)(i)(I). The commenter reasoned that the emissions that would result from the actions at issue in the other agency decisions, such as selected oil and gas drilling projects, would be of less magnitude and importance than the statewide emissions at issue in an evaluation under section 110(a)(2)(D).

EPA Response—As explained above, this comment is misplaced because EPA and New Mexico did employ modeling as part of the evaluation. Further, EPA disagrees with the commenter's fundamental argument that modeling is mandatory in all instances in order to evaluate significant contribution to nonattainment, whether by section 110(a)(2)(D), by EPA guidance, or by past EPA precedent. EPA's applicable guidance made recommendations as to different approaches that could lead to demonstration of the satisfaction of the interstate transport requirements for significant contribution to nonattainment in other states. EPA explicitly recommended that relevant information for section 110(a)(2)(D) submissions addressing significant contribution to nonattainment "might include, but is not limited to, information concerning emissions in the State, meteorological conditions in the State, the distance to the nearest nonattainment area in another State, reliance on modeling conducted by EPA in determining that such State should not be included within the ambit of the CAIR, or such other information as the State considers probative on the issue of significant contribution." Even EPA's own CAIR analysis relied on a combination of qualitative and quantitative analyses. EPA's CAIR analysis excluded certain western states on the basis of a qualitative assessment of topography, geography, and meteorology.[22]

Furthermore, EPA believes that the commenter's references to EPA statements commenting on the actions of other agencies are inapposite. As the commenter is aware, those comments were made in the context of the evaluation of the impacts of various federal actions pursuant to National Environmental Policy Act, not the Clean Air Act. As explained above, in the context of section 110(a)(2)(D), EPA does not agree that only modeling is always required to make that different type of evaluation, and EPA itself has relied on other more qualitative evidence when it deemed that evidence sufficient to reach a reasoned determination.

Comment No. 8—In further support of its argument that EPA should require a specific type of modeling to evaluate significant contribution to nonattainment, the commenter referred to EPA regulations governing nonattainment SIPs. The commenter noted 40 CFR 51.112(a)(1), which states that: "[t]he adequacy of a control strategy shall be demonstrated by means of applicable air quality models, data bases, and other requirements specified in appendix W of [Part 51] (Guideline on Air Quality Models)." The commenter argues that this regulation appears to support the commenter's position that modeling is required to satisfy the significant contribution element of 110(a)(2)(D).

EPA Response—EPA disagrees with this comment. The cited language implies that the need for control strategy requirements has already been demonstrated, and sets a modeling analysis requirement to demonstrate the adequacy of the control strategy developed to achieve the reductions necessary to prevent an area's air quality from continuing to violate the NAAQS. EPA's determination that emissions from sources in New Mexico do not contribute significantly to nonattainment for the 1997 8-hour ozone NAAQS in any other state eliminates the need for a control strategy aimed at satisfying the section 110(a)(2)(D) requirements. Moreover, EPA interprets the language at 40 CFR 51.112(a): "[e]ach plan must demonstrate that the measures, rules, and regulations contained in it are adequate to provide for the timely attainment and maintenance of the national standard that it implements," to refer to modeling for attainment demonstrations, an integral part of nonattainment area SIPs under part D of the CAA. This interpretation was upheld by the Sixth Circuit Court of Appeals. *Wall* v. *U.S. EPA,* 265 F.3d 426, 436 (6th Cir. 2001). This modeling may also be appropriate under certain circumstances for maintenance SIPs under section 110(a)(1). Thus, the commenter's cited regulation is not relevant to EPA's technical demonstration assessing whether emissions from New Mexico contribute significantly to nonattainment in any other states under section 110(a)(2)(D)(i).

Comment No. 9—The commenter expressed concern with EPA statements in the proposed approval about the current factual attainment of the Denver Metro/North Front Range area of Colorado. The commenter noted that nine counties in the Denver area are currently formally designated "nonattainment" for the 1997 8-hour ozone NAAQS. The commenter took issue with EPA's description of the nature of the nonattainment problem in this area as resulting from an unusually bad ozone season that "temporarily" resulted in violations of the NAAQS. The commenter argued that data from the 2001–2003 period and the 2005–2007 period showed consistent violations of the 1997 8-hour ozone NAAQS in the Denver area, and that these violations are the reason for the current nonattainment designation.

EPA Response—EPA disagrees that formal designation status of an area is the most important consideration in evaluating the existence of, and extent of, the impacts of interstate transport from one state to another. In past actions under section 110(a)(2)(D), EPA has interpreted that provision to turn upon the actual monitored ambient levels in a downwind area, regardless of the formal designation status of the area. For example, EPA developed the CAIR

[21] WG's April 16, 2010 comment letter, pp. 8–9. Complete versions of the EPA comment letters referenced here were attached to the comment as Exhibits 3 through 6, and are viewable on the Regulations.gov Web site as Documents ID No. EPA–R06–OAR–2007–0993–0008.3 through 0993–0008.6.

[22] *See* 69 FR 4581, January 30, 2004.

rule based upon evaluation of monitor data showing violations of the 1997 $PM_{2.5}$ NAAQS in certain areas, in advance of completing the designation process for those NAAQS under section 107(d). [23] EPA agrees that the designation status of an area is a relevant consideration, but the actual monitored ambient levels are an appropriate measure, especially when there is evidence that the monitored levels are different than reflected by the designation for the area. EPA itself has also looked to future attainment status as a means of evaluating the presence of, and extents of, interstate transport. This analysis depends not upon the anticipated formal designation status of the area, but rather upon the anticipated monitored level of the area.[24]

EPA believes that the commenter is placing undue importance upon the EPA's characterization of the data from Denver area monitors as "temporarily" in nonattainment based on the "bad" ozone season of 2007. EPA agrees that this area has historically had relatively high ambient levels. However, as explained in the proposal, these levels have improved, and more importantly, have improved during the period that is most relevant and most recent. As noted in the proposal, recent monitoring data from the Denver area for the 2007–2009 period indicates that the area is below the level of the NAAQS. For this trend to change, EPA anticipates that the Denver area would have to have dramatically higher ozone levels in 2010 than the area has experienced for many years. EPA believes that it is more reasonable to conclude that the monitored attainment of this area at the time of the analysis done by New Mexico will continue. Therefore there could not be significant contribution from sources in New Mexico to nonattainment in Denver.

EPA believes that the downward trend in monitored nonattainment in the Denver area supports this conclusion. At the time the modeling was performed to support the state's section 110(a)(2)(D) submission, Denver was monitoring attainment (the 2004–2006 8-Hour Ozone Design Value (DV) was 81 ppb).[25] In 2007, the Denver area experienced a particularly bad ozone season, and inclusion of the data from this year did temporarily affect the monitored values in this area. However, the most recent data for this area, preliminary data for 2007–2009 DV (awaiting final data validation), is 82 ppb even with inclusion of the very high ozone values from 2007. Thus, the area's most recent DV based upon preliminary data is several ppb below the 1997 8-hour ozone NAAQS, and the area is therefore currently monitoring attainment.

The downward trend in ozone concentrations is in part the result of a sustained effort to attain the NAAQS in the Denver area. The Denver area has seen a drop in ozone levels in the last 10 years attributable in part to federal measures that have reduced mobile source emissions. In addition, Colorado adopted an Ozone Action Plan in December 2008 that included additional reductions in emissions of ozone precursors (NO_X and VOCs), that will further aid the area in maintaining attainment. Given these facts, EPA concludes that the monitored attainment of the 1997 8-hour ozone NAAQS in the Denver area is likely to continue.

Comment No. 10—The commenter also disputed the EPA statement in the proposal that it is "unlikely that Denver will be in nonattainment at the end of the 2010 ozone season," and questioned why EPA did not cite or include any actual model data to support this assertion. The commenter specifically took issue with EPA's reference to the "2010 ozone season" in the proposal because section 110(a)(2)(D) would prohibit significant contribution to nonattainment at all times, not simply during the "2010 ozone season."

EPA Response—As discussed above, EPA believes the monitoring data adequately demonstrates that the Denver area is attaining the standard and is likely to continue to do so. The commenter is correct that EPA did not cite modeling that showed that Denver would be in attainment in 2010 in the proposal. We are aware, however, of the photochemical modeling for Denver completed as part of the "Ozone Action Plan" adopted by Colorado in December 2008.[26] This plan included the benefits of federal measures and fleet turnover and additional local NO_X and VOC reductions. The plan also included photochemical modeling that indicated all monitors in the area would be in attainment of the 1997 8-hour ozone NAAQS in 2010. The modeling results supplement the monitoring results discussed previously indicating the area is in attainment and will be in attainment in 2010.

Further, EPA believes that the commenter is mistakenly assuming that EPA's reference to the "2010 ozone season" implied that section 110(a)(2)(D) would not require the elimination of emissions from sources in an upwind state that significantly contributed to violations of a NAAQS at any time of the year. In the case of the 1997 8-hour ozone NAAQS, however, it is a fact that there is an "ozone season" in many places across the county. Higher ozone concentration levels typically occur during the warmer, sunnier portions of the year, especially the summer. Like most areas, Denver has an ozone season. Therefore, it is not unreasonable for EPA to evaluate the likely impacts of data from monitors in this area during the "ozone season."

EPA also disagrees that an evaluation focused on impacts on 2010 levels is not adequate for purposes of section 110(a)(2)(D). As further discussed elsewhere in this notice, EPA's 2006 Guidance to states for section 110(a)(2)(D) SIP submissions recommended that states might elect to evaluate the existence of, and extent of, significant contribution to nonattainment in other states by evaluating impacts as of an appropriate year (such as 2010) and in light of the cost of control to mitigate emissions that resulted in interstate transport. EPA itself in the context of the CAIR rule evaluated whether there would be such impacts in 2010. This year was a reasonable choice, because it correlated with the presumptive attainment dates for states with nonattainment areas. For example, in the case of the 1997 $PM_{2.5}$ NAAQS, the applicable attainment date is as expeditiously as practicable, but not later than five years from the effective date of the designation, *i.e.,* by 2010. Because 2010 is a reasonable date for this analysis, given the purpose of section 110(a)(2)(D), and is consistent with EPA's recommendations in the 2006 Guidance, EPA concludes that the selection of this date for the analysis supporting the New Mexico submission was appropriate. The commenter did not suggest another date that would be more appropriate nor did they explain the basis for requiring a different year for this analysis.

Comment No. 11—The commenter also asserted that EPA was wrong in stating that the Denver area had not experienced a 4th highest 8-hour ozone reading of 92 ppb in the last 15 years. The commenter claimed that the Denver metro area experienced a 4th highest

[23] *See:* Final CAIR rule, 70 FR 25,162, 25,263–25,269.

[24] EPA notes that the commenter itself also made the argument that nonattainment for purposes of section 110(a)(2)(D) should be viewed "in terms of air quality, and not in terms of area designations" on page 2 of its own comment letter.

[25] Data from EPA's Air Quality System which is EPA's repository of ambient air quality data. (*http://www.epa.gov/ttn/airs/airsaqs/*).

[26] "Denver Metro Area & North Front Range Ozone Action Plan Including Revisions to the State Implementation Plan", Approved by Colorado Air Quality Control Commission, December 12, 2008.

max of 95 ppb at the Roxborough Park monitor in Douglas County in 2005 and of 95 ppb at the Applewood monitor in Jefferson County in 1998 and in 2003.

EPA Response—In response to this comment, EPA rechecked the data in the EPA's Air Quality System (AQS) and believes the commenter was in error that a fourth highest maximum of 95 ppb occurred at the Roxborough Park (also know as the Chatfield monitor) monitor in 2005. EPA's AQS indicates a value of 84 ppb in 2005. However, EPA's AQS does indicate that a 95 ppb 4th high occurred in 2003 at the Roxborough Park monitor and this may be the date that the commenter intended. In any event, upon closer examination, EPA concludes that the commenter is correct that values above 92 ppb have occurred in the Denver area in the last 15 years.

EPA also notes that the current DVs (2007–2009) for these two monitors (Roxborough Park and Applewood) are 77 ppb and 76 ppb, which is well below the 1997 8-hour ozone NAAQS. Furthermore, these monitors would have to have fourth high daily maximum 8-hour monitored values of 104 and 111 ppb respectively in 2010 to have a 2008–2010 DV violating the 1997 8-hour ozone NAAQS. The fourth high daily maximum value monitored the last 15 years in the Denver area was 95 ppb which is significantly lower than the 104 or 111 ppb values that would have to be monitored for either of these two monitors to be violating the 1997 8-hour ozone NAAQS.

Therefore, EPA believes that the commenter's correction that there have been higher values (maximum of 95 ppb in the last 15 years) at monitors in the Denver area does not fundamentally affect EPA's evaluation in this case. The higher values were not at the monitor that was the basis for the Denver area design value in the last several years. The monitor that has been the basis for the Denver area DV has been the Rocky Flats North monitor. Even though the commenter is correct that the area has monitored higher values at certain monitors in the past, these monitors are not the monitors that have in recent years determined whether the area will continue to monitor attainment because they have not recorded the highest design value in the area. The Rocky Flats North monitor has the highest 2007–2009 Denver area DV of 82 ppb and is based upon fourth high values of 90 ppb in 2007, 79 ppb in 2008, and 79 ppb in 2009. This monitor would have to have a fourth high daily maximum of 97 ppb in 2010 to result in a violation of the 1997 8-hour ozone NAAQS. Therefore, it does not change EPA's conclusion that the Denver area continues to monitor attainment and therefore emissions from sources in New Mexico cannot be contributing significantly to violations of the 1997 8-hour ozone NAAQS in this area.

Comment No. 12—The commenter also pointed to modeling data used by New Mexico that appears to contradict the conclusion that emissions from New Mexico do not contribute significantly to violations of the 1997 8-hour ozone NAAQS in Denver. The commenter argued that data available in New Mexico's own technical support document that was part of EPA's record (Docket No. EPA–R06–OAR–2007–0993) establish that emissions from New Mexico sources "often contributes greater than 2 parts per billion in ozone on days when exceedances of the 1997 ozone NAAQS are recorded in Denver" and can contribute "more than 5% to Denver's total ozone concentrations." Finally, the commenter argued that New Mexico wrongly assumed that this amount of contribution was not relevant "under the assumption that the region was not in nonattainment" when the area is currently designated nonattainment.

EPA Response—EPA disagrees with the commenter's conclusions drawn from the modeling. The modeling was conducted using an emissions inventory from 2002. Because emissions in the year 2010 are expected to be lower, EPA considers this modeling to be a conservative estimate of ozone levels in the future and of the impact of New Mexico's emissions on other states. EPA believes that the modeling shows higher impacts than are actually occurring. The modeling utilized existing CENRAP modeling databases available at the time and the source apportionment evaluation was conducted using the 2002 emission inventory databases. Because the available databases were for 2002 and not 2010, EPA considers the results of the modeling conservative because significant emission reductions are expected to occur throughout the modeled area between 2002 and 2010 (as a result of both federal and state measures, including fleet turnover impacts) that would result in lower ambient ozone levels and fewer exceedances of the 1997 8-hour ozone NAAQS throughout the modeling domain.

Specifically, there are three elements in this analysis that EPA concludes lead to overestimation of the impacts of New Mexico sources and therefore make this modeling less reliable to determine that sources in New Mexico contribute significantly to violations of the 1997 8-hour NAAQS in Colorado (or any other state). These three elements that result from using a 2002 and not a 2010 emission inventory are: (a) Additional emissions reductions in other states as a result of ozone nonattainment SIPs have been implemented that were not reflected in the 2002 emission inventory; [27] (b) additional emissions reductions as a result of federal measures (including On-road, Non-road, and the impacts of fleet turnover) throughout the modeling domain since 2002; and (c) additional reductions from large stationary NO_X sources and from mobile sources as a result of federal measures that have occurred in New Mexico since 2002. As a result of these differences in the emission inventory between 2002 and 2010, New Mexico's Technical Support Document describing and evaluating the modeling indicated that the impacts for New Mexico's emissions were considered conservative estimates and were expected to overstate the State's contribution to areas in other states. EPA believes that these conservative assumptions make the modeling reliable for purposes of determining that there is not a significant contribution from sources in New Mexico to the other states, but less reliable for purposes of determining that there is such significant contribution. EPA believes that the modeling relied upon by the State is conservative because of the three emission elements discussed above and that this is further supported by studies referred to by the commenter. Other studies support the conclusion that the Denver area will be monitoring attainment in 2010 for the 1997 8-hour ozone NAAQS, and therefore emissions from sources in New Mexico would not be contributing significantly to nonattainment in this area. Specifically, the WRAP model emission inventories for 2002 and 2018 showed decreases nationally in ozone precursors (NO_X and VOC.) [28] The UBAQS modeling report included emission inventory assessments between 2006 and 2012 that also showed decreases in New Mexico's NO_X emissions for the part of New Mexico

[27] Additional emission reductions have occurred as a result of 1-hour ozone and 8-hour ozone nonattainment area SIPs for Denver and other areas in the modeling domain (Dallas, Houston, etc.). The most recent SIP submitted indicated that all of the Denver area monitors would be in attainment in 2010 with the 1997 8-hour ozone NAAQS. The Denver SIP also included an analysis of emission inventories in the Denver area that showed a net decrease in NO_X and VOC emissions between 2006 and 2010 (Ibid DOAP) despite the inclusion of growth in Oil and Gas emissions in the Denver area. (DOAP)

[28] WRAP EDMS, *http://vista.cira.colostate.edu/TSS/EDMS.aspx*.

that was in the 12 km modeling grid.[29] Finally, the fact that Denver is monitoring attainment at this time is further indication that the 2002 modeling was conservative because it predicted exceedances in Denver, while the 2010 monitoring data is showing attainment.

Because the modeling was conservative and overstates the extent of contribution from sources in New Mexico to the Denver area, it is inappropriate to use the modeling as a definitive determination of New Mexico's impacts on downwind areas. The modeling was designed to be conservative and as such only provides a clear indication of non impact on downwind nonattainment areas. Therefore, EPA disagrees that the modeling supports the conclusion of significant contribution from New Mexico sources to the Denver nonattainment area as the commenter indicated. The commenter is correct that the CENRAP based modeling with a 2002 emission inventory showed impacts that were above 2 ppb and contribution levels that were above 5%, but due to the conservative nature of the 2002 assessment, EPA does not conclude that it indicates that sources in New Mexico have a significant contribution to nonattainment in Denver.

EPA also believes that NO_X emissions in upwind states are the most relevant consideration for interstate transport of ozone. In the final CAIR rule, EPA concluded that NO_X emissions were the primary pollutant to reduce in order to yield reductions in interstate transport of emissions that affect levels of ozone in the context of the 1997 8-hour ozone NAAQS.[30] Recent photochemical modeling in the New Mexico and Colorado region further support this conclusion, and therefore we have thus focused on NO_X emissions in the context of ozone in this action as well.

As reflected in the New Mexico submission and the UBAQS modeling documentation, New Mexico has decreased emissions of NO_X from several sources which would lessen New Mexico's impact on ozone in areas outside of New Mexico. Therefore, the reductions in NO_X emissions in New Mexico would decrease the impacts from New Mexico on Denver's ambient ozone levels when transport conditions would occur that New Mexico's emissions could impact the Denver area. A review of the UBAQS report indicates New Mexico's NO_X reductions are mostly from elevated point source reductions (*i.e.*, from tall stationary source stacks). Elevated emissions would have the greatest chance to transport downwind, so these reductions are likely among the most effective at reducing long range transport impacts on ozone levels regionally. In any event, based on preliminary 2007–2009 data, Denver is attaining the 1997 8-hour ozone NAAQS. Therefore, New Mexico's emissions cannot be considered as contributing significantly to nonattainment of those NAAQS in the Denver area

In summary, the Denver area is monitoring attainment of the 1997 8-hour ozone NAAQS. The modeling submitted by the State to support its submission indicating impacts from sources in New Mexico on the Denver area is conservative, and probably overestimates both the ozone levels in Denver and any impacts from New Mexico's emissions. There have been significant emission reductions in the modeled area, supporting the conclusion that the modeling based on 2002 represents a conservative description of ozone levels and New Mexico's impact on the Denver area and therefore should not be relied upon solely to draw a conclusion about the impact of emissions from New Mexico in the Denver area. Considering the modeling in conjunction with the expected emission reductions and the actual monitoring data in this area, EPA concludes that emissions from New Mexico are not contributing to nonattainment of the 1997 8-hour ozone NAAQS in the Denver area.

Comment No. 13—The commenter argued that New Mexico and EPA inappropriately relied on analyses conducted in connection with CAIR to justify its conclusion that emissions from sources in New Mexico do not contribute significantly to nonattainment in downwind states with regards to the 1997 $PM_{2.5}$ NAAQS. According to the commenter, neither of the modeling analyses EPA used during the development of the CAIR rule supports the conclusion.

The commenter acknowledged that the REMSAD modeling that EPA used initially for CAIR in 2004 assessed emissions from New Mexico, but claimed that EPA eventually "rejected" this modeling and replaced it with analysis using the CMAQ model as a more "accurate" means of assessing $PM_{2.5}$ impacts among states. The commenter did note that EPA explained in the final CAIR rule that it believed the REMSAD model "treats the key physical and chemical processes associated with secondary aerosol formation and transport," but pointed to EPA's statement that the REMSAD model "does not have all the scientific refinements of CMAQ" and also to EPA's use of the CMAQ modeling for the final CAIR rule instead of the REMSAD modeling. The commenter thus implied that the REMSAD modeling could have no relevance to whether emissions from New Mexico sources contribute significantly to nonattainment in other states for purposes of the 1997 $PM_{2.5}$ NAAQS.

Similarly, the commenter argued that the CMAQ modeling could not support the conclusion that New Mexico sources are not contributing significantly to violations of the NAAQS in other states. The commenter claimed that although New Mexico was included in the CMAQ $PM_{2.5}$ modeling domain for CAIR, EPA did not specifically assess impacts from New Mexico to downwind States. The commenter acknowledged that EPA conducted state by state "zero out" modeling for 37 states, but claimed that because EPA had not conducted such a zero out modeling run for New Mexico, the CMAQ model runs do not support the proposed conclusion in this action.

EPA Response—EPA disagrees with the commenter's judgment that the technical analyses conducted in conjunction with CAIR do not provide technical support for the conclusion that New Mexico sources do not contribute significantly to violations of the 1997 $PM_{2.5}$ NAAQS in any other state. EPA agrees that it progressively refined its analytical approach from the time of the proposed CAIR rule to the final CAIR rule, but it does not follow that the analyses done for CAIR are inappropriate for consideration in today's action. EPA believes that the analyses conducted for CAIR in fact provide technical support to the conclusion that emissions from New Mexico sources do not contribute significantly to violations of these $PM_{2.5}$ NAAQS in any other state.

EPA conducted modeling in the CAIR proposal using REMSAD modeling. With respect to the REMSAD modeling, the commenter is correct that EPA specifically evaluated the impact of emissions from New Mexico on other states in the eastern half of the United

[29] "UINTA BASIN AIR QUALITY STUDY (UBAQS)", prepared by Environ for the Independent Petroleum Association of Mountain States (IPAMS), June 30, 2009. Tables 2–18 and 2–20. The UBAQS 12 km grid included parts of northwestern New Mexico (including parts of the San Juan basin) and the emission inventory data indicated that emissions of NO_X from this area were going to decrease from 115,942 tpy in 2006 to 95,867 tpy in 2012.

[30] *See:* Final CAIR rule, 70 FR 25162, 25174 ("As discussed in section III below, for 8-hour ozone, we reiterate the finding of the NO_X SIP Call that NO_X emissions, and not VOC emissions, are of primary importance for interstate transport purposes.")

States. The modeling indicated a 0.03 μg/m^3 maximum impact from New Mexico's emissions on downwind $PM_{2.5}$ nonattainment areas in 2010, which was significantly lower than the 0.15 μg/m^3 value used as the threshold for significance in the proposed CAIR rule and the 0.20 μg/m^3 value used in the final CAIR rule.[31] In other words, EPA's analysis indicated that the impact of emissions from New Mexico sources were only a small fraction of the initial threshold amount that EPA considered relevant as the first stage of the analysis to determine the existence of, and extent of, impact on other states.

The commenter implied that EPA's subsequent use of the CMAQ model for the final CAIR rule per se renders REMSAD invalid for purposes of today's action. To support this assertion, the commenter overstated the potential limitations of the REMSAD model, a misimpression heightened by the way in which the commenter described EPA's own stated position. The full statement by EPA in the final CAIR rule was: [32]

"However, even though REMSAD does not have all the scientific refinements of CMAQ, we believe that REMSAD treats the key physical and chemical processes associated with secondary aerosol formation and transport. Thus, we believe that the conclusions based on the proposal modeling using REMSAD are valid * * *"

This was not a categorical dismissal of REMSAD modeling for all purposes; it was a recognition that REMSAD was reliable for certain purposes even though the subsequent CMAQ modeling was an improvement. During rulemaking, it is appropriate for EPA to make improvements and refinements to models and the associated databases. EPA responded to comments raising concerns about reliance on the REMSAD modeling results from the proposal package and determined that decisions and determinations based on the proposal REMSAD modeling were still valid in the final CAIR rule.

With respect to the CMAQ modeling, New Mexico was not among the 37 states for which it did specific "zero out" modeling runs. EPA disagrees, however, with the commenter's extrapolation that this means EPA "did not assess" the impacts of emissions from New Mexico with respect to the 1997 $PM_{2.5}$ NAAQS in the final CAIR rule. To the contrary, EPA's evaluation of New Mexico with REMSAD was part of the analysis for the proposed CAIR rule and EPA did not reject the results of the REMSAD modeling in the final CAIR rule.[33] The lack of significant impact on nonattainment from New Mexico and other Western States shown by the REMSAD modeling in the proposal helped influence the more refined modeling analysis in the CAIR final rule which focused only on the Eastern States.

In considering this comment, EPA has looked again at the use of the REMSAD modeling for the CAIR proposal for assessing New Mexico's impacts on other States. We continue to believe that the REMSAD results are sufficient to make a determination of no significant contribution to nonattainment of the 1997 $PM_{2.5}$ NAAQS in other states because of the very small impacts that were estimated from emissions from New Mexico sources. The REMSAD modeling had indicated that New Mexico's impacts on downwind 2010 $PM_{2.5}$ nonattainment areas was only 15% of the significance level used in the final CAIR rule. Because the REMSAD modeling indicated values of only 15% of the final significance level, EPA did not consider the differences between the two modeling platforms (REMSAD and CMAQ) to be significant enough to lead to further analysis using CMAQ based modeling. EPA has determined in this action that the results from the REMSAD based modeling continue to support the conclusion that emissions from New Mexico sources are not contributing significantly to violations of the 1997 $PM_{2.5}$ NAAQS in other states. The commenter did not articulate any way in which the distinctions between REMSAD and CMAQ would result in at least a seven-fold increase in the estimated impacts of emissions from New Mexico emissions on another state's 1997 $PM_{2.5}$ nonattainment area. EPA does not believe that such a divergence would be likely.

Comment No. 14—The commenter argued that it is also inappropriate for EPA to rely on the CAIR modeling because the 2004 REMSAD model did not include other western states (including Arizona, California, Nevada, Utah, Idaho, Oregon, and Washington). The commenter asserted that EPA never assessed the impacts of emissions from New Mexico to these western states in the CAIR modeling and that this is problematic because there are $PM_{2.5}$ nonattainment areas in California and in Utah. Although not clear, the commenter apparently argues that the existence of designated $PM_{2.5}$ nonattainment areas in California and Utah renders the CAIR modeling irrelevant. More specifically, the commenter argues that because EPA has recently designated certain counties in the Salt Lake City area and Cache County, Utah as nonattainment for the 2006 $PM_{2.5}$ NAAQS, EPA was obligated to assess and limit downwind impacts accordingly in accordance with Section 110(l) of the Clean Air Act.

EPA Response—EPA disagrees with the commenter on this issue. First, this rulemaking addresses the potential impacts of emissions from New Mexico sources on other states with violations of the 1997 $PM_{2.5}$ NAAQS, not the 2006 $PM_{2.5}$ NAAQS. Therefore, EPA's assessment of New Mexico's SIP was based on potential impacts on areas violating the 1997 $PM_{2.5}$ NAAQS (15 μg/m^3 annual and 65 μg/m^3 24-hour standard). The application of section 110(a)(2)(D) to the 2006 $PM_{2.5}$ NAAQS, or other NAAQS, will be addressed in later actions that pertain to those NAAQS.

Second, EPA believes that the analysis conducted in conjunction with CAIR is both relevant and very probative in evaluating the presence of, and extent of, interstate transport from New Mexico sources to other states in this action. The CAIR modeling and analysis specifically evaluated impacts on areas that were violating the 1997 $PM_{2.5}$ NAAQS. The other western states identified by the commenter were in the CAIR modeling domain but were not evaluated further in the CAIR rule because, with the exception of California and Montana, these states were in attainment of the 1997 $PM_{2.5}$ NAAQS.[34] Absent areas with violations of those NAAQS, there could be no significant contribution to violations of the 1997 $PM_{2.5}$ NAAQS. With regard to California and Montana, EPA indicated in the CAIR rule that interstate transport impacts were not a significant contributor to these areas, therefore impacts from New Mexico sources to California were not likely.[35]

Finally, even aside from the CAIR analysis, EPA does not believe that emissions from New Mexico sources contribute significantly to violations of the 1997 $PM_{2.5}$ NAAQS in California. The areas of California with violations of the 1997 $PM_{2.5}$ NAAQS are generally

[31] *See,* Final CAIR rule 70 FR 25162, at 25174.

[32] *See,* Final CAIR rule 70 FR 25162, at 25234.

[33] In this action, "CAIR Proposal" refers to the proposal rule published on January 30, 2004 in the **Federal Register** and entitled "Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone", Interstate Air Quality Rule, 69 FR 4566.

[34] *See,* Final CAIR rule 70 FR 25162, at 25169: ("Only two States in the western part of the U.S., California and Montana, have counties that exceeded the $PM_{2.5}$ standards") and ("Because interstate transport is not believed to be a significant contributor to exceedances of the $PM_{2.5}$ standards in California or Montana, today's final CAIR does not cover these States").

[35] Id.

located far to the west, hundreds of miles from New Mexico sources, across large expanses of mountain ranges that would impede transport, and generally upwind from New Mexico. EPA believes that the predominant meteorological conditions would carry New Mexico emissions to the east, north, or south but not generally to the west. As a result, EPA concludes that it is very unlikely that New Mexico's emissions transport hundreds of miles to the west to the 1997 $PM_{2.5}$ NAAQS in California.[36] The CAIR modeling only addressed areas that were expected to be in nonattainment in 2010, based on existing monitoring data at the time and 2010 photochemical modeling. Other than California, none of the other states mentioned by the commenter were monitoring nonattainment, or designated nonattainment for the 1997 $PM_{2.5}$ standards, at the time these analyses were conducted.

Although not cited by the commenter, EPA notes that there has been one monitored violation of the 1997 $PM_{2.5}$ annual NAAQS in Utah. It occurred in 2002–2004 time period at a single monitor in the Salt Lake City area. This violation has not continued. In this instance, the state concluded that the monitor was heavily impacted by a nearby source. After the state instituted controls at the source, the design value has dropped to less than 45 $\mu g/m^3$ in the last four years. EPA notes that the impact of a nearby source does not in and of itself negate the possibility of impacts of interstate transport at that monitor as well. However, because that monitor has not subsequently shown any violation of the 1997 $PM_{2.5}$ NAAQS, EPA concludes that there are no areas in Utah with violations of that NAAQS to which New Mexico sources could be contributing significantly. All other $PM_{2.5}$ monitors in the area have consistently had DVs below 55 $\mu g/m^3$ since the 2001–2003 DV period.

Comment No. 15—The commenter also criticized modeling that the state and EPA relied upon because of concerns about the accuracy of the underlying emissions inventories on which the models relied. In particular, the commenter claimed that the modeling fails to address recent growth in emission inventories for oil and gas operations in New Mexico that have been raising the emissions from the state higher than have been previously reported in emissions inventories.

The commenter argued that these increases in emissions at least call into question the accuracy of the modeling relied upon by EPA to support the proposed approval of the State's submission, and at worst demonstrate that EPA has failed to address a key aspect of contribution to nonattainment in downwind states from New Mexico sources.

The commenter listed several recent reports that estimated increased emissions of SO_2, NO_X, and VOCs that result from the growth of oil and gas exploration in certain areas in New Mexico. The more recent studies cited by the commenter were:

- The November 25, 2009 inventory of 2006 oil and gas emissions in the San Juan Basin of New Mexico, which includes San Juan, Rio Arriba, McKinley, and Sandoval Counties, prepared by the Independent Petroleum Association of the Mountain States ("IPAMS"). This inventory found that oil and gas point and area sources within this region annually released 42,075 tons of NO_X, 60,697 tons of volatile organic compounds ("VOCs") and 305 tons of sulfur dioxide ("SO_2").;
- The August 2009 report on 2005 emissions in the Four Corners region of northwestern New Mexico, which found that oil and gas point and area sources within the region annually released 57,682 tons of NO_X, 668 tons of SO_2, and 117,370 tons of VOCs. The report indicates that by 2018, these emissions will increase to 65,543 tons of NO_X, 670 tons of SO_2, and 143,050 tons of VOCs; and
- The 2007 WRAP Phase II Inventory of 2002 oil and gas emissions, which found that oil and gas activities throughout New Mexico released 112,540 tons of NO_X and 13,925 tons of SO_2, and that by 2018 would release 110,034 tons of NO_X and 13,002 tons of SO_2 in the State.

The commenter argued that without specifically addressing these more recent increases in the emissions associated with oil and gas development, New Mexico and EPA have no basis to conclude that the modeling relied upon in the proposed approval is accurate or ensures that emissions are not and will not significantly contribute to nonattainment in other states. The commenter also noted that the modeling prepared for CAIR utilized emission inventories from 2001, which would likewise fail to account for the more recent increase in emissions associated with oil and gas development.

EPA Response—EPA shares the commenter's concern with emissions from oil and gas development, and agrees that dramatic increases in such emissions, and especially emissions from sources that are not appropriately controlled, have the potential to contribute significantly to violations of NAAQS in other states. However, EPA has investigated this issue in response to the commenter's concerns in this action, and has concluded that the information currently available does not indicate that New Mexico's emissions from oil and gas development are significantly contributing to violations of the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS in other states. To reach this conclusion, EPA has used available information and extrapolated what the impacts of the additional emissions from oil and gas development would be in a worst case scenario, as part of evaluating how those increases would affect the modeling results and other information EPA relied upon in the proposal.

EPA has to make regulatory decisions using the emissions inventories and analyses that are available at the time of the decision. These inventories are, of course, constantly being updated and refined. The CAIR modeling used a base year emission inventory from 2001 that EPA then projected to 2010, which was the timeframe that EPA used for the analysis of New Mexico's impacts on areas in other states with monitors projected to have violations of the 1997 $PM_{2.5}$ NAAQS. The CENRAP modeling used a 2002 inventory to assess New Mexico's ozone impacts on areas in other states with monitors projected to have violations of the 1997 8-hour ozone NAAQS. At the time this modeling was conducted, EPA believed that the emission estimates for oil and gas development were appropriate.

The commenter cited studies that have been conducted more recently to refine estimates of current emissions and future projected emission levels from oil and gas development in areas of New Mexico. These more recent studies indicate that emissions from oil and gas development are likely much higher than those assumed in the models. Because the studies do not indicate the amount of emissions growth that has happened since the 2001/2002 timeframe, however, it is difficult to determine the impact this presumed increase would have. Therefore, to evaluate this concern, below we consider a worst case estimate impact of oil and gas emissions on whether emissions from sources in New Mexico significantly contribute to nonattainment in other states.

The reports cited by the commenter indicate that emissions from all oil and gas development in New Mexico in the years from 2002–2006 have a range of up to 112,540 tpy of NO_X, 117,370 tpy of VOC, and 13,925 tpy of SO_2. In

[36] EPA reached this same conclusion in the CAIR rule. *See,* Final CAIR rule 70 FR 25162, at 25169.

comparison, the modeling conducted using the 2002 CENRAP emission inventory databases included emissions from all sources in New Mexico with totals of 306,194 tpy of NO_X, 1,749,081 tpy of VOC and 100,174 tpy of SO_2.[37] The modeling conducted for CAIR included an inventory from all sources of 242,782 tpy of NO_X and 173,724 tpy of SO_2 for the 2010 base level emissions for sources in New Mexico.[38] These emissions inventories used for the CENRAP modeling and the CAIR modeling did include some emissions from oil and gas development activities in New Mexico, so EPA believes that some portion of emissions attributed to such sources in the more recent studies were included in statewide emission inventories from all sources and thus in the CENRAP and CAIR modeling.

It would be very difficult to ascertain the exact amount of emissions from oil and gas sources that were included in the emission inventories for these two modeling evaluations and thus to ascertain the exact amount that the inventories used for the modeling exercises underestimate such emissions. Therefore, to evaluate how much the additional emissions from oil and gas development could impact the determination, we have used a worst case estimate of how much higher the emissions in New Mexico could be, based on the studies provided by the commenter. If one uses the highest NO_X value from these reports of 112, 540 tpy and compare that with the 306,194 tpy of NO_X (from the CENRAP based modeling), the percentage increase in NO_X emissions would be a 36% increase in NO_X emissions over the modeled emissions. Similarly, if one compares the highest SO_2 value from the reports (using 13,925 tpy from the reports and 100,174 tpy from the CENRAP based modeling) the percentage increase in SO_2 emissions would be less than a 8% increase in SO_2 emissions over the modeled emissions. EPA believes that these are worst case scenario increases, because they include the highest estimate of oil and gas development emission from the reports supplied by the commenter, but they probably overestimate the true increase over the inventories used for the modeling, and double count the emissions of oil and gas that were in the original modeling.

EPA notes that these estimates also do not include the significant reductions that have occurred in New Mexico from non oil and gas sectors, such as federal motor vehicle controls and fleet turn over and controls on SO_2 and NO_X emissions installed on large stationary sources including the San Juan Generating Station. In addition, emissions in other parts of the modeling domain outside of New Mexico would be expected to have decreased after 2002 due to federal and state controls including fleet turnover and would not have been included in the CENRAP based modeling for ozone and only partially included in the CAIR modeling.

EPA relied on photochemical modeling conducted for CAIR for the $PM_{2.5}$ analysis in determining that New Mexico's emissions do not make a significant contribution in areas in other states with monitors showing violations of the 1997 $PM_{2.5}$ NAAQS. As discussed elsewhere in this notice, the modeling indicated that the largest impact from New Mexico's emissions on any such monitor in another state was only 15% of the significance level used in the final CAIR rule. In the worst case estimate above, NO_X emissions could at most be 36% higher and SO_2 could be at most 8% higher than was modeled in CAIR. Although the impact on the model would not necessarily be linear, EPA does not believe that such a relatively small increase in total SO_2 and NO_X emissions would increase the impact of New Mexico emissions by the more than 7 fold necessary to reach the significance level EPA used in CAIR for the 1997 $PM_{2.5}$ NAAQS.

EPA relied on photochemical modeling based on 2002 emission inventories (available from CENRAP's efforts) in determining that New Mexico's emissions do not make a significant contribution in areas in other states with monitors showing violations of the 1997 8-hour ozone NAAQS. EPA relied on this modeling to evaluate the possible contribution from New Mexico sources to areas that were monitoring violations of the 1997 8-hour NAAQS. EPA considers the modeling conservative in that it used 2002 inventories, and for the *entire* modeling grid (which covered most of the continental U.S. and parts of Canada and Mexico), and it did not include the benefits from emission reductions after 2002 from federal and state requirements including fleet turnover. The modeling did not indicate values that were close to the significance levels for New Mexico's impacts on out of state areas which were nonattainment and/or monitoring nonattainment of the 1997 8-hour ozone NAAQS. The area monitoring nonattainment with the highest modeled impact from sources in New Mexico was the Dallas/Fort Worth Area. The modeled daily average contribution from sources in New Mexico was 0.4% with a contribution average of 0.4 ppb. EPA's screening criteria for the first step of the analysis for any significant contribution, established in CAIR and upheld by the court, were 1% and 2 ppb respectively. EPA believes that even a conservative estimate of a 36% increase in NO_X emissions from New Mexico's sources would not more than double New Mexico's impact on other states, even before considering the other offsetting NO_X emission reductions between 2002 and 2010 from other source categories. Therefore, EPA concludes that these new emission estimates would not result in significant enough changes in impacts from New Mexico's sources to change the determination that emissions from sources in New Mexico do not significantly contribute to violations of the 1997 8-hour ozone NAAQS in other states, based on available information. Accordingly, New Mexico does not need to amend its SIP substantively to reduce any additional emissions to prevent such impacts on other states.

Finally, EPA notes that photochemical modeling is a very detailed and complicated process and there are continual refinements in emission inventories and other modeling databases. Unfortunately, the statutory and regulatory requirements, and especially the timing requirements, for developing and evaluating SIPs do not allow for time or resources to do every possible refinement to emission inventories on a continual basis. In this specific case, EPA agrees that the sudden expansion of oil and gas development and the emissions increases from such activities are a source category for which emissions inventories need updating, to insure that future regulatory actions by both states and EPA continue to be based upon the most recent and accurate information available

EPA is concerned with the growth in emissions from oil and gas development in New Mexico and other areas of the country, including other states in Region 6. On May 10, 2010, EPA Region 6 held a meeting with the principal oil and gas producers, trade organizations, and the five States in the Region, with the goal of finding ways to improve the emission inventory for these sources. Region 6 has initiated this process because a clearer understanding of these emissions will be necessary for future air quality plans under the new revised standards.

Comment No. 16—The commenter also objected to EPA's proposed approval because "New Mexico's SIP, as written, simply does not contain any

[37] WRAP EDMS, CENRAP TSD.

[38] CAIR Proposal TSD.

language that prohibits emissions that contribute significantly to nonattainment in any other state." The commenter also noted that EPA did not assess whether the SIP does or does not contain such provisions. The commenter appears to have argued that 110(a)(2)(D)(i) requires a state SIP to contain an explicit provision literally prohibiting emissions that contribute significantly to nonattainment in any other state and that, in order to approve the New Mexico interstate transport SIP, EPA must examine the SIP to determine whether it contains such an explicit prohibition.

EPA Response—EPA disagrees with the commenter's interpretation of the statutory requirements. Section 110(a)(2)(D)(i) has no language that requires a SIP to contain a specific provision literally prohibiting significant contribution to nonattainment in any other state or, for that matter, to contain any particular words or generic prohibitions. Instead, EPA believes that the statute requires a state's SIP to contain substantive emission limits or other provisions that in fact ensure that sources located within the state will not produce emissions that have such an effect in other states. Therefore, EPA believes that satisfaction of the "significant contribution" requirement is not to be demonstrated through a literal requirement for a prohibition of the type advocated by the commenter.

EPA's past application of section 110(a)(2)(D) did not require the literal prohibition advocated by the commenter. For example, in the 1998 NO_X SIP Call. [39] EPA indicated that "the term 'prohibit' means that SIPs must eliminate those amounts of emissions determined to contribute significantly to nonattainment * * *." As a result, the first step of the process to determine whether this statutory requirement is satisfied is the factual determination of whether emissions from sources in the State contribute significantly to nonattainment in downwind areas.[40] If this factual finding is in the negative, as is the case for EPA's assessment of the contribution from emissions from sources in New Mexico, then section 110(a)(2)(D)(i)(I) does not require any changes to the State's SIP. If, however, the evaluation reveals that there is such a significant contribution to nonattainment in other States, then EPA requires the State to adopt substantive provisions to eliminate those emissions. The state could achieve these reductions through traditional command and control programs, or at its own election, through participation in another mechanism such as the cap and trade program of the NO_X SIP Call. Thus, EPA's approach in this action is consistent with the Agency's interpretation of 110(a)(2)(D)(i) in the 2006 guidance, the CAIR Rule, and the NO_X SIP Call, none of which required the *pro forma* literal "prohibition" of the type advocated by the commenter.

Comment No. 17—The commenter noted a specific provision for stationary source permitting in the New Mexico SIP that the commenter argued is inadequate to ensure that sources in New Mexico will not significantly contribute to nonattainment in other States. According to the commenter, New Mexico has a regulatory provision that requires the State agency to deny an application for a permit or permit revision for a stationary source under certain circumstances, including the violation of any NAAQS. The commenter claimed that New Mexico interprets this authority to allow the denial of such a permit, only if the source is physically located in a designated nonattainment area.

EPA Response—EPA disagrees with the commenter's characterization of the State's regulations that New Mexico can only deny a permit for new or modified sources located in a designated nonattainment area. EPA has reviewed the New Mexico permitting provisions cited by the commenter. Section 20.2.72.208 NMAC contains the reasons the department must deny a permit. Section 20.2.72.208 D explicitly provides that one of the reasons the State will deny a permit is if "the construction, modification, or permit revision will cause or contribute to air contaminant levels in excess of any National Ambient Air Quality Standard or New Mexico Ambient Air Quality Standard unless the ambient air impact is offset by meeting the requirements of either 20.2.79 NMAC or 20.2.72.216 NMAC, whichever is applicable." Section 20.2.79 NMAC and 20.2.72.216 NMAC apply in nonattainment areas which have more stringent requirements than attainment areas.

EPA believes that the provisions of Section 20.2.72.208 NMAC apply in attainment areas of the State and are unambiguous. The State's regulations provide that it "shall deny" a permit for a source located in an attainment area, if that new or modified source would cause or contribute to air contaminant levels that exceed any NAAQS, whether those violations occur in New Mexico or elsewhere. To verify this understanding of the State's regulations, EPA contacted NMED regarding this comment. NMED responded with an E-mail that is included in the docket for this rulemaking confirming that the provisions of 20.2.72.208 NMAC apply in the attainment areas of the State and provide for denial of permits if the construction, modification or revision will cause or contribute to levels in excess of the NAAQS.

Comment No. 18—The commenter argued that EPA cannot approve the section 110(a)(2)(D) submission from New Mexico because the State and EPA did not comply with the requirements of section 110(l). Evidently, the commenter believes that the section 110(a)(2)(D) submission for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS is a revision to the SIP that will interfere with attainment of the 2006 $PM_{2.5}$ NAAQS and the 2008 ozone NAAQS. The commenter argued that a section 110(l) analysis must consider all NAAQS once they are promulgated, and argued that EPA recently took the same position in proposing to disapprove a PM_{10} maintenance plan.

EPA Response—EPA agrees that a required section 110(l) analysis must consider the potential impact of a proposed SIP revision on attainment and maintenance of all NAAQS that are in effect and impacted by a given SIP revision. However, EPA disagrees that it failed to comply with the requirements of section 110(l) in this action or that section 110(l) requires disapproval of the SIP submission at issue here.

Section 110(l) provides in part that: "the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement of this chapter." EPA has consistently interpreted Section 110(l) as not requiring a new attainment demonstration for every SIP submission. EPA has further concluded that preservation of the status quo air quality during the time new attainment demonstrations are being prepared will prevent interference with the States' obligations to develop timely attainment demonstrations. 70 FR 58,199, 58,134 (Oct. 5. 2005); 70 FR 17.029, 17,033 (Apr. 4, 2005); 70 FR 53, 57 (Jan. 3, 2005); 70 FR 28,429, 28,431 (May 18, 2005).

New Mexico's submission is the initial submission by the State to address the significant contribution to nonattainment element of 110(a)(2)(D)(i) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. This submission does not revise or remove any existing emissions limit for any NAAQS, or

[39] 63 FR 57356, October 27, 1998

[40] *See* 2005 CAIR Rule (70 FR 25162) and 1998 NO_X SIP Call (63 FR 57356).

change any other existing substantive SIP provisions relevant to the 1997 8-hour ozone or 1997 $PM_{2.5}$ NAAQS or any other NAAQS. Simply put, it does not make any substantive revision that could result in any change in emissions. As a result, the submission does not relax any existing requirements or alter the status quo air quality. Therefore, approval of the submission will not interfere with attainment or maintenance of any NAAQS.

EPA's discussion in the notice cited by the commenter concerning a PM10 maintenance plan in another state is consistent with this interpretation. In the cited action, EPA noted that: "Utah had either removed or altered a number of stationary source requirements," creating the possibility of a relaxation of existing EPA approved SIP requirements and thereby interfering with attainment, a possibility that is not present here. *See* 74 FR 62727 (Dec. 1, 2009). Thus, the action cited by the commenter is clearly distinguishable.

The commenter did not provide any specific basis for concluding that approval of this SIP submission would interfere with attainment or maintenance of any NAAQS, or with any other applicable requirement of the Clean Air Act. EPA concludes that approval of the submission will not make the status quo air quality worse, and is in fact consistent with the development of an overall plan capable of meeting the Act's attainment requirements. In particular, EPA has determined that the submission complies with the requirements of section 110(a)(2)(D)(i). Accordingly, assuming that section 110(l) applies to this SIP submission, EPA finds that approval of the submission is consistent with the requirements of section 110(l).

Comment No. 19—In a separate comment letter, the commenter expressed concern with EPA's proposed approval of the State's submission for the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS because the state "does not appropriately limit ozone" in its PSD permitting program. To support this claim, the commenter noted that EPA has previously made a "finding of failure to submit" because New Mexico had not made another submission that would have the effect of making NO_X a regulatory precursor for ozone in the context of PSD. According to the commenter, EPA should not approve the State's submission for section 110(a)(2)(D)(i)(I) for the significant contribution to nonattainment requirement because of this outstanding obligation with respect to the PSD requirements of the CAA for the 1997 8-hour ozone NAAQS.

EPA Response—EPA acknowledges that it made the finding of failure to submit noted by the commenter.[41] However, EPA disagrees with the commenter's view of how that prior finding affects today's specific action. First, the "finding of failure to submit" to which the commenter refers is not for a failure to make a submission with respect to section 110(a)(2)(D). In that prior action, EPA made a formal finding that the State had, at that time, not yet made a different SIP submission, necessary to comply with a separate requirements of section 110(a)(2)(C) and section 110(a)(2)(J).

Second, EPA believes that the cited finding of failure to submit does not relate to the requirements of section 110(a)(2)(D)(i)(I) with respect to significant contribution to nonattainment at issue in this action, but rather to the separate requirements of section 110(a)(2)(D)(i)(II) that SIPs include measures to prevent interference with measures required for "prevention of significant deterioration." EPA's 2006 Guidance explained the Agency's views of what the four separate and distinct elements of section 110(a)(2)(D) require.[42] EPA's guidance made recommendations to States for making submissions to meet each of the separate requirements of section 110(a)(2)(D) for the 1997 8-hour ozone standards and 1997 $PM_{2.5}$ standards. Within the guidance, EPA recommended that States evaluate the existence of, and extent of, significant contribution to nonattainment in other States by various means, intended to consider relevant facts about such contribution to nonattainment. By contrast, EPA recommended that States meet the separate requirement that their SIPs contain measures to prevent interference with measures required to prevent significant deterioration of air quality in other States by different means. In particular, EPA explained that this latter element of section 110(a)(2)(D) would be the correct context in which to confirm that the State in question had updated its own SIP to contain measures related to PSD.

In the 2006 Guidance, EPA explicitly identified the regulatory requirements and separate SIP revision necessary to implement the PSD program for the 1997 8-hour ozone NAAQS as among the requirements that EPA considered relevant to the prevention of significant deterioration requirements of section 110(a)(2)(D).[43] EPA stated its view that implementation of the PSD permitting program within the State would address the requirement to prohibit emissions that interfere with measures to prevent significant deterioration in neighboring States. EPA also explained that the permitting program for the 8-hour ozone NAAQS would require that new or modified sources will not cause or contribute to violations of the NAAQS in neighboring States, so that additional SIP submissions with rule changes or modeling demonstrations would not be required to establish that a State's program complies with the requirement in section 110(a)(2)(D)(i)(II). In short, EPA believes that evaluation of a State's SIP for compliance with section 110(a)(2)(D)(i)(II) is the proper context in which to determine whether such SIP meets current federal PSD requirements. Today's action does not address this element of section 110(a)(2)(D), and accordingly, the finding of failure to submit is not a basis not to approve the State's submission for this purpose.

Finally, EPA notes that the State of New Mexico has subsequently made a submission to comply with the rule that was the basis for the finding of failure to submit cited by the commenter. EPA is in the process of evaluating that submission and will act on it at a later date. EPA anticipates that it may elect to act upon that separate submission at the same time it acts upon the State's section 110(a)(2)(D) submission for the prevention of significant deterioration requirement, as EPA has recently done in the case of the section 110(a)(2)(D) submission for the State of North Dakota.

B. Comments From New Mexico Environment Department, Air Quality Bureau

Comment No. 1—The commenter stated that while it did not object to EPA's proposed approval of the "contribute to nonattainment" prong of section 110(a)(2)(D)(i) of the CAA, it believed that EPA should have approved the SIP submission as meeting all prongs of that section. The commenter asserted its belief that New Mexico satisfied all requirements of section 110(a)(2)(D) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS in its submission, following EPA's recommendations in the 2006 Guidance for this SIP revision.

EPA Response—We appreciate NMED's comments. At this time, EPA is only taking action on the portions of the

[41] *See,* Completeness Findings for Section 110(a)(2) State Implementation Plans for the 8-hour Ozone NAAQS, 73 FR 16,205 (March 28, 2008).

[42] "Guidance for State Implementation Plan (SIP) Submission to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards" August 15, 2006.

[43] Id, at pages 6–8.

State's submission that pertain to the significant contribution to nonattainment requirements of section 110(a)(2)(D) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. EPA will act on the remaining requirements of section 110(a)(2)(D) for these NAAQS at a later date.

IV. Final Action

We are approving one element of the Interstate Transport SIP submitted by the State of New Mexico on September 17, 2007. Specifically, in this action we are approving the element that addresses the requirement of Section 110(a)(2)(D)(i)(I) that emissions from sources in that State do not "contribute significantly" to violations of the 1997 8-hour ozone or 1997 $PM_{2.5}$ NAAQS in any other State. After fully considering all comments received on the proposal and direct final rule EPA has concluded that the State's submission, and additional evidence evaluated by EPA, establish that emissions from New Mexico sources do not contribute significantly to nonattainment of the relevant NAAQAS in any other State. Accordingly, New Mexico does not need to include additional emission limitations on its sources to eliminate any such contribution to other States for purposes of these NAAQS.

At a later date, EPA will act on addressing the remaining requirements of section 110(a)(2)(D)(i) which are: interference with the maintenance of the NAAQS in any other state; interference with measures required to prevent significant deterioration of air quality in any other State; and interference with measures required to protect visibility in any other State.

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 August 10, 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, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 28, 2010.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 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 GG—New Mexico

■ 2. The second table in § 52.1620(e) entitled "EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP" is amended by adding an entry to the end to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE NEW MEXICO SIP

Name of SIP provision	Applicable geographic or non-attainment area	State sub-mittal/effective date	EPA approval date	Explanation
*	* *	*	*	* *
Interstate transport for the 1997 ozone and PM $_{2.5}$ NAAQS.	New Mexico	09/17/07	06/11/10 [*insert FR page number where the document begins*].	06/11/10 Approval for revisions to prohibit significant contribution to nonattainment in any other State.

[FR Doc. 2010–13686 Filed 6–10–10; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0278; FRL–8829–2]

Trifloxystrobin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation increases existing tolerances for residues of trifloxystrobin in or on corn, field, forage; corn, sweet, forage; and corn, sweet, stover. Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). Additionally, EPA is removing several tolerances which have expired.

DATES: This regulation is effective June 11, 2010. Objections and requests for hearings must be received on or before August 10, 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–2009–0278. 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 site 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. 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–2009–0278 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 August 10, 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–2009–0278, 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 8F7487) by Bayer CropScience, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.555 be amended by increasing existing tolerances for residues of the fungicide trifloxystrobin, benzeneacetic acid, (*E,E*)-α-(methoxyimino)-2-[[[[1-[3-(trifluoromethyl) phenyl]ethylidene]amino]oxy]methyl]-methyl ester), in or on corn, field, forage at 6.0 parts per million (ppm); corn, sweet, forage at 7.0 ppm; and corn, sweet, stover at 4.0 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*. There were no comments received in response to the notice of filing.

Based upon the review of the data supporting the petition, the Agency is increasing the existing meat, fat and meat byproduct of cattle, goats, horses, and sheep tolerances to 0.1 ppm. 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 trifloxystrobin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with trifloxystrobin 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.

Trifloxystrobin exhibits very low toxicity following single oral, dermal and inhalation exposures. It is a strong dermal sensitizer. In repeated dose tests in rats, the liver is the target organ for trifloxystrobin; toxicity is induced following oral and dermal exposure for 28 days. In the available toxicity studies on trifloxystrobin, there was no estrogen, androgen, and/or thyroid mediated toxicity. The toxicological database for trifloxystrobin does not show any evidence of treatment-related effects on the immune system. Further, there was no evidence of neurotoxicity at the limit dose in an unacceptable acute neurotoxicity study or in the other subchronic and chronic studies in the database. There is no evidence of increased susceptibility following pre-natal exposure to rats and rabbits and post-natal exposures to rats. Trifloxystrobin was determined not to be carcinogenic in mice or rats following long-term dietary administration. Trifloxystrobin is positive for mutagenicity in Chinese Hamster V79 cells, albeit at cytotoxic dose levels. However, trifloxystrobin is negative in the remaining mutagenicity studies.

Specific information on the studies received and the nature of the adverse effects caused by trifloxystrobin 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 "Trifloxystrobin. Human Health Risk Assessment for a Section 3 Petition Proposing Increased Tolerances for Residues in/on Field, Sweet and Pop Corn" at pages 17 to 21 in docket ID number EPA–HQ–OPP–2009–0278.

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 trifloxystrobin used for human risk assessment is shown in the following Table.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR TRIFLOXYSTROBIN 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 13–49 years of age)	NOAEL = 250 milligrams/kilograms/ day (mg/kg/day) UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 2.5 mg/kg/day aPAD = 2.5 mg/kg/day	Developmental Toxicity-Rabbit. LOAEL = 500 mg/kg/day based on increased fetal skeletal anomalies.
Chronic dietary (All populations)	NOAEL= 3.8 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.038 mg/ kg/day cPAD = 0.038 mg/kg/day	Two-Generation reproduction study-Rat. LOAEL = 55.3 mg/kg/day based on decreases in body weight, body weight gains, reduced food consumption and histopathological lesions in the liver, kidneys and spleen.
Incidental Oral Short- (1 to 30 days) and Intermediate- (1-6 months) Term	Offspring NOAEL= 3.8 mg/kg/day UF_A = NA UF_H = NA FQPA SF = NA	LOC for MOE = 100	Two-Generation reproduction study-Rat. LOAEL = 55.3 mg/kg/day based on reduced pup body weights during lactation.
Dermal Short- (1 to 30 days) and Intermediate- (1 to 6 months) Term	Dermal study NOAEL = 100 mg/kg/ day UF_A = NA UF_H = NA FQPA SF = NA	LOC for MOE = 100	28-Day Dermal Toxicity Study-Rat. LOAEL = 1,000 mg/kg/day based on increases in mean absolute and relative liver and kidney weights.
Inhalation Short- (1 to 30 days), and Intermediate- (1 to 6 months) Term	Oral study NOAEL= 3.8 mg/kg/day (inhalation absorption rate = 100%) UF_A = NA UF_H = NA FQPA SF = NA	LOC for MOE = 100	Two-Generation reproduction study-Rat. LOAEL = 55.3 mg/kg/day based on decreases in body weight, body weight gains, reduced food consumption and histopathological lesions in the liver, kidneys and spleen.
Cancer (oral, dermal, inhalation)	Trifloxystrobin is classified as "Not Likely Human Carcinogen" based on the lack of evidence of carcinogenicity in mouse and rat cancer studies.		

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.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to trifloxystrobin, EPA considered exposure under the petitioned-for tolerances as well as all existing trifloxystrobin tolerances in 40 CFR 180.555. EPA assessed dietary exposures from trifloxystrobin 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 for females 13 to 49 years old, EPA conducted an analysis using the Dietary Exposure Evaluation Model (DEEM™7.81), which 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). EPA used tolerance level residues. EPA assumed all commodities with established or proposed tolerances were treated with trifloxystrobin.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998, CSFII to be included in DEEM. As to residue levels in food, EPA used tolerance level residues for all commodities with the exception of apples, oranges and grapes. For these commodities EPA used anticipated residues. EPA assumed all commodities with established or proposed tolerances were treated with trifloxystrobin.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that trifloxystrobin does not pose a cancer risk 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 FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for trifloxystrobin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of trifloxystrobin. 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), GENeric Estimated Exposure Concentration (GENEEC), and/or Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of trifloxystrobin for the proposed new application are higher than those previously assessed for corn; however, the EDWCs for both corn rates are less than those previously estimated, via GENEEC, for turf use.

Based on the PRZM/EXAMS, GENEEC, and/or SCI-GROW models, the EDWCs of trifloxystrobin plus its major degradation product, CGA-321113 for acute exposures are estimated to be 47.99 parts per billion (ppb) and 47.31 ppb for chronic exposures. 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).

Trifloxystrobin is currently registered for the following uses that could result in residential exposures: ornamentals and turfgrass. EPA assessed residential exposure using the following assumptions: adult post application dermal exposure; child's post application dermal and/or hand to mouth. 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*.

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 trifloxystrobin to share a common mechanism of toxicity with any other substances, and trifloxystrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that trifloxystrobin 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*. There is no indication of increased susceptibility of rat or rabbits to trifloxystrobin. In the prenatal developmental study in rats, there was no developmental toxicity at the limit dose. In the prenatal developmental study in rabbits, developmental toxicity was seen at a dose that was higher than the dose that caused maternal toxicity. In the two generation reproduction study, there was no offspring toxicity at the highest dose tested.

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 trifloxystrobin is complete except for neurotoxicity and immunotoxicity testing. Recent changes to 40 CFR part 158 make neurotoxicity and immunotoxicity testing 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. Although acute and subchronic neurotoxicity and immunotoxicity studies are needed to complete the database, there are no concerns for immunotoxicity or neurotoxicity based on the results of the existing studies. The toxicological database for trifloxystrobin does not show any evidence of treatment-related effects on the immune system. There was a decrease in the incidence of hemosiderosis in the spleen of F0 and F1 parental males and females in the 2-generation reproduction study. The effect was not seen in any other toxicity studies, and it was not a primary effect on the spleen. This decrease may indicate a decrease of red blood cell turnover; but it is not an effect on the immune system. Further, there was no evidence of neurotoxicity at the limit dose in an unacceptable acute neurotoxicity study or in the other subchronic and chronic studies in the database. The EPA does not believe that conducting neurotoxicity or immunotoxicity studies will result in a dose less than the PODs already used in this risk assessment and an additional database uncertainty factor for potential neurotoxicity and/or immunotoxicity does not need to be applied.

ii. There is no indication that trifloxystrobin is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional uncertainty factors (UFs) to account for neurotoxicity.

iii. There is no evidence that trifloxystrobin results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the two-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The acute and chronic dietary food exposure assessments utilize existing and proposed tolerance level residues and 100% crop treated information for all commodities, except for apples, oranges, and grapes which utilized anticipated residue levels for the chronic dietary. By using these screening-level assessments with minor refinement, actual exposures/risks from residues in food will not be underestimated. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to trifloxystrobin in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by trifloxystrobin.

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.

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, using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to trifloxystrobin will occupy <1% of the aPAD for females 13 to 49 years old.

2. *Chronic-term risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to trifloxystrobin from food and water will utilize 15% of the cPAD for the general U.S. population and 43% of the cPAD for children 1 to 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 trifloxystrobin 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).

Trifloxystrobin 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 trifloxystrobin.

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 aggregate MOEs of 1,200 for adults (dermal residential + dietary food and drinking water exposures); 680 for children 1 to 2 years old (dermal residential + dietary food and drinking water exposures); and 170 for children 1 to 2 years old (incidental oral + dietary food and drinking water exposures). Because EPA's level of concern for trifloxystrobin 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). Trifloxystrobin is not expected to pose an intermediate-term risk based on a short soil half-life (approximately 2 days).

5. *Aggregate cancer risk for U.S. population*. Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, trifloxystrobin 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 trifloxystrobin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography with nitrogen phosphorus detection (GC/NPD)), Method AG-659A is 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 a MRL for trifloxystrobin in or on maize fodder (dry) at 10 ppm. Canada has a proposed (not yet established) MRL of 0.02 for corn grain, sweet corn, popcorn grain for parent and metabolite. Since the Codex MRL is for a commodity that is not recognized domestically and would normally not be transported across international borders, there is no concern for international harmonization. Also, since the Canadian MRL has not been established, there is no concern for international harmonization.

C. Revisions to Petitioned-For Tolerances

Trifloxystrobin tolerances for crop commodities listed in 40 CFR 180.555(a)(1) are expressed in terms of the residues of the fungicide trifloxystrobin, benzeneacetic acid, (*E,E*)-α-(methoxyimino)-2-[[[[1-[3-(trifluoromethyl) phenyl]ethylidene] amino]oxy]methyl]-, methyl ester, and the free form of its acid metabolite CGA–321113, (*E,E*)-methoxyimino-[2-[1-(3-trifluoromethyl-phenyl)-ethylideneaminooxymethyl]-phenyl]acetic acid. EPA has revised the trifloxystrobin tolerance expression to clarify the chemical moieties that are covered by the tolerances and specify how compliance with the tolerances is to be measured.

EPA's analysis of the adequacy of the existing tolerances for meat, fat and meat byproduct of cattle, goats, horses, and sheep tolerances based on the proposed tolerances as well as existing tolerances indicates they need to be increased to 0.1 ppm from 0.05 ppm. Also, EPA is removing from paragraph (b), tolerances for soybean, forage; soybean, hay; and soybean, seed which expired and were revoked on December 31, 2009.

V. Conclusion

Therefore, existing tolerances in 40 CFR 180.555(a) are increased for residues of trifloxystrobin, benzeneacetic acid, (*E,E*)-α-(methoxyimino)-2-[[[[1-[3-(trifluoromethyl) phenyl]ethylidene]amino]oxy]methyl]-methyl ester, in or on corn, field, forage at 6.0 ppm; corn, sweet, forage at 7.0 ppm; and corn, sweet, stover at 4.0 ppm. EPA is also removing paragraph (b) tolerances for soybean, forage; soybean, hay; and soybean, seed which expired December 31, 2009.

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 27, 2010.

Daniel J. Rosenblatt,

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 § 180.555 as follows:

■ a. Revise the introductory text of paragraph (a).

■ b. Revise the following entries in the table in paragraph (a): cattle, fat; cattle, meat; cattle, meat byproducts; corn, field, forage; corn, sweet, forage; corn, sweet, stover; goat, fat; goat, meat; goat, meat byproducts; horse, fat; horse, meat; horse, meat byproducts; and sheep, fat; sheep, meat; and sheep, meat byproducts.

■ c. Revise paragraph (b).

The revisions read as follows:

§ 180.555 Trifloxystrobin; tolerances for residues.

(a) *General.* Tolerances are established for residues of trifloxystrobin, 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 the sum of trifloxystrobin, benzeneacetic acid, (*E,E*)-α-(methoxyimino)-2-[[[[1-[3-(trifluoromethyl) phenyl]ethylidene] amino]oxy]methyl]-, methyl ester, and the free form of its acid metabolite CGA–321113, (*E,E*)-methoxyimino-[2-[1-(3-trifluoromethyl-phenyl)-ethylideneaminooxymethyl]-phenyl]acetic acid, calculated as the stoichiometric equivalent of trifloxystrobin, in or on the commodity.

Commodity	Parts per million
* * * * *	
Cattle, fat	0.1
Cattle, meat	0.1
Cattle, meat byproducts	0.1
* * * * *	
Corn, field, forage	6.0
* * * * *	
Corn, sweet, forage	7.0
* * * * *	
Corn, sweet, stover	4.0
* * * * *	
Goat, fat	0.1
Goat, meat	0.1
Goat, meat byproducts	0.1
* * * * *	
Horse, fat	0.1
Horse, meat	0.1
Horse, meat byproducts	0.1
* * * * *	
Sheep, fat	0.1
Sheep, meat	0.1
Sheep, meat byproducts	0.1
* * * * *	

(b) *Section 18 emergency exemptions.* [Reserved]

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[FR Doc. 2010–13938 Filed 6–10–10; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

Defense Federal Acquisition Regulation Supplement; New Designated Country—Taiwan—DFARS Case 2009–D010)

AGENCY: Defense Acquisition Regulations System; Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is adopting, as final, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add Taiwan as a designated country, due to the accession of Taiwan to membership in the World Trade Organization Government Procurement Agreement.

DATES: *Effective date:* June 11, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition

Regulations System, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060. Telephone 703–602–0328; facsimile 703–602–0350. Please cite DFARS Case 2009–D022.

SUPPLEMENTARY INFORMATION:

A. Background

On July 15, 2009, Taiwan became a designated country under the World Trade Organization Government Procurement Agreement. DoD published an interim rule at 74 FR 61045 on November 23, 2009, that added Taiwan to the list of World Trade Organization Government Procurement Agreement countries in the trade agreement provisions and clauses in Part 252.

DoD notes that being added as a "designated country" under trade agreements does not affect Taiwan's status with regard to being an acceptable source for specialty metals and items containing specialty metals. The exception to the specialty metals restrictions is only for specialty metals that are melted or produced in a "qualifying country" or items that contain specialty metals and are manufactured in a qualifying country. The qualifying countries are listed at DFARS 225.003(10). Taiwan is not a qualifying country.

DoD received comments from one respondent, but the comments were outside the scope of this case.

This rule was subject to Office of Management and Budget review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This is not a major rule.

B. Regulatory Flexibility Act

DoD certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. Although the rule opens up Government procurement to the products of Taiwan in acquisitions that are subject to trade agreements, DoD only applies the trade agreements to acquisitions of those non-defense items listed at DFARS 225.401–70. Acquisitions of supplies that are set aside for small businesses are exempt.

C. Paperwork Reduction Act

Although the interim rule did not make any direct change to the provision at DFARS 252.225–7020, the addition of Taiwan as a designated country does affect the certification and information collection requirements in that provision, which is currently approved under Office of Management and Budget Control Number 0704–0229. DFARS 252.225–7020(a) references the definition of "designated country" in the clause at DFARS 252.225–7021, which has been changed by this rule to include Taiwan. The impact, however, is negligible.

List of Subjects in 48 CFR Part 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR part 252 which was published at 74 FR 61045 on November 23, 2009, is adopted as a final rule without change.

[FR Doc. 2010–14123 Filed 6–10–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 100421192–0193–01]

RIN 0648–XW80

Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Suspension of the Primary Pacific Whiting Season for the Shore-based Sector South of 42° North Latitude

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

ACTION: Fishing restrictions.

SUMMARY: NMFS announces the suspension of the Pacific whiting (whiting) fishery primary season for the shore-based sector south of 42° N. lat. at 8 p.m. local time (l.t.) May 16, 2010. "Per trip" limits for whiting were reinstated until 0001 hours June 15, 2010, at which time the primary season for the shore-based sector opens coastwide. This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. This action is intended to keep the harvest of whiting at the 2010 allocation levels.

DATES: Effective from 8 p.m. l.t. May 16, 2010, until 0001 hours June 15, 2010.

FOR FURTHER INFORMATION CONTACT: Becky Renko at 206–526–6110.

SUPPLEMENTARY INFORMATION: The regulations at 50 CFR 660.323(a) established separate allocations for the catcher/processor, mothership, and shore-based sectors of the whiting fishery. The 2010 commercial Optimum Yield (OY) for Pacific whiting is 140,996 mt. This is calculated by deducting the 49,939 mt tribal allocation and 3,000 mt for research catch and bycatch in non-groundfish fisheries from the 193,935 mt U.S. total catch OY. Each sector receives a portion of the commercial OY, with the catcher/processors getting 34 percent (47,939 mt), motherships getting 24 percent (33,839 mt), and the shore-based sector getting 42 percent (59,218 mt). The regulations further divide the shore-based allocation so that no more than 5 percent (2,961 mt) of the shore-based allocation may be taken in waters off the State of California before the primary season begins north of 42° N. lat. The 5–percent allocation is intended to minimize incidental catch of Chinook salmon.

The primary season for the shore-based sector is the period or periods when the large-scale target fishery is conducted, and when (per trip) limits are not in effect for vessels targeting Pacific whiting with mid-water gear. Because whiting migrate from south to north during the fishing year, the shore-based primary whiting season begins earlier south of 42° N. lat. than north. For 2010: the primary season for the shore-based sector between 42°-40°30' N. lat. began on April 1; south of 40°30' N. lat., the primary season began on April 15; and the fishery north of 42° N. lat. is scheduled to begin June 15. Although the fishery opened in April, the vessels choose to delay fishing until May 1, 2010.

Because the 2,961 mt allocation for the early season fishery off California was estimated to be reached, NMFS is announcing the suspension of the primary whiting season south of 42° N. lat. Regulations at 50 CFR 660.323 (b)(4) allow this action to be taken. The 20,000–lb (9,072 kg) trip limit that was in place before the start of the primary season south of 42° N. lat. was reinstated and remains in effect until the primary season fishery opens coastwide on June 15. A trip limit of 10,000 lb (4,536 kg) of whiting is in effect year-round (unless landings of whiting are prohibited) for vessels that fish in the Eureka area shoreward of the 100–fm (183–m) contour at any time during a fishing trip. This smaller limit is intended to minimize incidental catch of Chinook salmon, which are more likely to be caught shallower than 100 fm (183 m) in the Eureka area.

To prevent an allocation from being exceeded, regulations at 50 CFR 660.323 (e) allow closure of the commercial whiting fisheries by actual notice to the fishery participants. Actual notice includes e-mail, internet, phone, fax, letter or press release. NMFS provided actual notice by e-mail, internet, and fax on May 14 and 15, 2010.

NMFS Action

This action announces achievement of the shore-based sector allocation specified at 50 CFR 660.323(a) for the fishery south of 42° N. lat. The best available information on May 14, 2010, indicated that 1,289 mt of whiting was taken through May 12, 2010 and that the 2,961 mt shore-based allocation for the early season fishery south of 42° N. lat. would be reached by 8 p.m. l.t., May 16, 2010. For the reasons stated here and in accordance with the regulations at 50 CFR 660.323(b)(4), NMFS herein announces: Effective 8 p.m. l.t. May 16, 2010, until 0001 l.t., June 15, 2010, the primary whiting season south of 42° N. lat is suspended. No more than 20,000–lb (9,072 kg) of whiting may be taken and retained, possessed or landed by a catcher vessel participating in the shore-based sector of the whiting fishery. If a vessel fishes shoreward of the 100 fm (183 m) contour in the Eureka area (43° - 40° 30' N. lat.) at any time during a fishing trip, the 10,000–lb (4,536 kg) trip limit applies.

Classification

This action is authorized by the regulations implementing the groundfish FMP. The determination to take these actions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the office of the Regional Administrator (see **ADDRESSES**) during business hours. The Assistant Administrator for Fisheries (AA), NMFS, finds good cause to waive the requirement to provide prior notice and opportunity for comment on this action pursuant to 5 U.S.C. 553 (3)(b)(B), because providing prior notice and opportunity would be impracticable. It would be impracticable because if this restriction were delayedin order to provide notice and comment, it would allow the allocation for the shore-based fishery south of 42° N. lat. to be exceeded. Similarly, the AA finds good cause to waive the 30–day delay in effectiveness requirement of 5 U.S.C. 553 (d)(3), as such a delay would cause the fishery south of 42° N. lat. to exceed its allocation. Allowing the early season fishery to continue would result in a disproportionate shift in effort, which could result in greater impacts on Endangered Species Act listed Chinook salmon and overfished groundfish species that had been considered when the 2010 Pacific Coast groundfish harvest specifications were established.

This action is taken under the authority of 50 CFR 660.323(b)(4), and is exempt from review under Executive Order 12866.

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

Dated: May 7, 2010.

Carrie Selberg,

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

[FR Doc. 2010–14075 Filed 6–10–10; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 112
Friday, June 11, 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.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 36, 37, and 38

Co-Location/Proximity Hosting Services

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") proposes a rule ("Proposal") that requires Designated Contract Markets (DCMs), Derivatives Transaction Execution Facilities (DTEFs), and Exempt Commercial Markets (ECMs) that list significant price discovery contracts (SPDCs) that offer co-location and/or proximity hosting services to market participants to have equal access to co-location and/or proximity hosting services without artificial barriers that act to exclude some market participants from accessing these services or that act to bar otherwise qualified third-party vendors from providing these services. The Proposal also addresses fees for these services and would require that fees be equitable, uniform, and non-discriminatory, while taking into account the different level of services that may be required by various market participants and requires DCMs, DTEFs, and ECMs with SPDCs, that offer co-location and/or proximity hosting services, to disclose publicly, via their Web sites, the longest, shortest, and average latencies for each connectivity option. Finally, the Proposal would require DCMs, DTEFs, and ECMs with SPDCs, that approve third-parties to provide co-location and/or proximity hosting services to ensure they have sufficient agreements in place to obtain all information necessary from those third-parties to carry out their self-regulatory obligations and other obligations under the Commodity Exchange Act ("Act") and Commission Regulations.

DATES: Comments must be received on or before July 12, 2010.

ADDRESSES: Comments should be sent to David Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be submitted via e-mail at *colocation@cftc.gov.* "Co-location/Proximity Hosting Services" must be in the subject field of responses submitted via e-mail, and clearly indicated on written submissions. Comments may also be submitted at *http://www.regulations.gov.* All comments must be in English, or, if not, accompanied by an English translation.

FOR FURTHER INFORMATION CONTACT: Melissa Mitchell, Attorney-Advisor, 202–418–5448, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

In 1990, the Commission issued a Policy Statement Concerning the Oversight of Screen-Based Trading Systems ("Policy Statement").[1] The Policy Statement consisted of ten principles that set out broad regulatory considerations arising from cross-border screen-based trading. Principles 4 and 6 are relevant to this Proposal. Principle 4 states, "From a technical perspective, the system should be designed to operate in a manner which is equitable to all market participants and any differences in treatment among classes of participants should be identified." Principle 6 states, "Procedures should be established to ensure the competence, integrity, and authority of system users, to ensure that system users are adequately supervised, and that access to the system is not arbitrarily or discriminatorily denied."

At the time of the Commission Policy Statement, screen-based trading of derivatives was a relatively recent development. In fact, in issuing the Policy Statement, the Commission stated its belief that "[T]he Principles reflect the policy considerations underlying the Commission's recent evaluation and approval of the Chicago Mercantile Exchange's Globex trading system and the Amex Commodities Corporation's Amex Access system." The Commission noted that in issuing the Policy Statement, it "[W]ishes to add its support toward achieving the goal of effective regulation of cross border systems which facilitates international cooperation but does not impair the ability of system providers and sponsors to develop and implement innovative technologies."

In the time since the Commission's 1990 Policy Statement, futures and option trading has changed substantially as system providers and sponsors did, in fact, develop and implement innovative technologies. In particular, technological advances affecting futures and option trading have been more pronounced and extensive over the last ten years. For example, DCMs have undergone a decade-long transition from geographically-defined trading pits to global electronic trading platforms. From 2000 to 2009, electronic trading grew from approximately 9 percent to approximately 81 percent of volume on U.S. DCMs. Over the same period, the number of actively traded futures and option contracts listed on U.S. exchanges increased more than seven fold, from 266 contracts in 2000 to 1,866 contracts in 2009.[2] Moreover, total DCM futures and option trading volume rose from approximately 594.5 million contracts in 2000 to approximately 2.78 billion contracts in 2009, an increase of over 368%.[3] In addition to drastic changes in trading on DCMs, during that same ten year period, ECMs were first authorized by statute,[4] and have since gone from a group of nascent trading facilities to, in some cases, large, global electronic trading platforms with significant trading volume, with

[1] 55 FR 48670 (November 21, 1990). The Policy Statement was the Commission adopting the "Principles for the Oversight of Screen-Based Trading Systems for Derivatives Products" recommended by the International Organization of Securities Commissions ("IOSCO") to all member jurisdictions. The IOSCO Principles were formulated by eight jurisdictions which comprised Working Party 7 to the IOSCO Technical Committee, under the Chairmanship of the Commission.

[2] Commodity Futures Trading Commission, *FY 2009 Performance and Accountability Report,* p.14.

[3] In addition, futures and option trading volume reached a peak of approximately 3.37 billion contracts in 2008, an increase of over 466% over the trading volume in 2000.

[4] ECMs were first authorized in the Commodity Futures Modernization Act of 2000 ("CFMA"). DTEFs were also first authorized in the CFMA; however there are not, and have never been, any active DTEFs.

contracts that rival DCM contracts, and with contracts that serve a significant price discovery function.

A primary driver of these drastic changes in futures and option trading has been the continual evolution of technologies for generating and executing orders. These technologies have dramatically improved the speed, capacity, and sophistication of the trading functions that are available to market participants.

Many trading firms have trading strategies that are highly dependent upon speed in a number of areas: Speed of market data delivery from exchange servers to the firms' servers; speed of processing of firms' trading engines; speed of access to exchange servers by firms' servers; and, speed of order execution and response by exchanges. For some trading firms, speed is now measured in microseconds, and any latency or delay in order arrival or execution can adversely affect their trading strategy. These trading firms are typically referred to as "high frequency" and/or "algorithmic" traders.[5] High frequency traders are professional traders that use sophisticated computer systems to engage in strategies that generate a large number of trades on a daily basis. Competition among high frequency traders has led to extensive use of co-location and/or proximity hosting services.[6]

In response to the emphasis on speed by trading firms, DCMs and ECMs have adopted highly automated trading systems that can offer extremely high-speed order entry and execution. In addition, to further reduce latency in transmitting market data and order messages, many trading markets offer co-location and/or proximity hosting services that enable market participants to place their servers in close proximity to the trading market's matching engine. Accordingly, the growth of co-location and/or proximity hosting services is largely related to the development of high frequency trading in the futures and option markets.

Co-location and proximity services refer to trading market and/or certain third-party facility space that is made available to market participants for the purpose of locating their network and computing hardware closer to the trading market's matching engine. Along with space, co-location and proximity hosting services usually involve providing various levels of power, telecommunications, and other ancillary products and services necessary to maintain the trading firms' trading systems.

Co-location and proximity services are typically offered by trading markets that operate their own data centers or by third-party providers that host or connect to the computer systems of the trading markets. These services may permit: (1) Market participant servers to be located within the trading market's dedicated space in a data center; (2) market participant servers to be located in their own dedicated space within the same data center as the trading market; (3) market participant servers to be located in a separate data center on the same floor or in the same building as the trading market's data center; and/or (4) approved third-party vendors to manage a market participant's connectivity arrangements through proximity hosting services located in various data centers near the trading market's data center. During the Division's review of co-location and proximity hosting services, the Division learned that entities that utilize co-location and/or proximity hosting services include clearing firms, proprietary trading groups, market makers, algorithmic traders, hedge funds, introducing brokers, data centers, and quote vendors. Some firms directly co-locate, while others do so indirectly by trading through a firm that directly co-locates.

While there are multiple co-location and proximity hosting service options available to market participants depending on the trading market involved and the needs of the particular client, it has become clear to the Commission that trading volumes from firms that utilize co-location and/or proximity hosting services is significant. In its review of co-location and proximity hosting services undertaken prior to this Proposal, the Commission learned that volumes from market participants that utilize co-location and/or proximity hosting services varied a great deal. Some regulated trading markets have little to no volume generated thru the use of such services, while others have significant volume. One regulated trading market reported that 29 percent of its traders utilized such services, representing 68 percent of its trading volume, while another reported that well over 100 market participants utilized the service, representing 39 percent of its trading volume, just to name a few. Moreover, the Commission learned that some regulated trading markets plan on expanding co-location and proximity hosting services in the very near future.

In light of the fundamental changes in the technology, products, and platforms of U.S. futures and option trading since the Commission's 1990 Policy Statement, and the significant volume generated by market participants utilizing co-location and/or proximity hosting services, the Commission believes it is necessary to re-address some of the issues raised in the Policy Statement in the form of a proposed rule to deter and prevent potential disruptions to market integrity. Moreover, given the differences in co-location and proximity hosting services offered to market participants, the Commission believes that consistent standards applicable to all regulated trading markets—DCMs, DTEFs, and ECMs with SPDCs—will ensure that co-location and proximity hosting services are offered and administered in an equitable, fair, and transparent manner that will protect all market participants.[7] Ensuring that Commission-regulated markets, and trading on those markets, are equitable, fair, and transparent are critical functions of the Commission and any activity that negatively impacts equitable, fair, and transparent trading on those markets could constitute a disruption to market integrity, for which it is a specific purpose of the Act to detect and prevent.[8]

[5] Rosenblatt Securities recently estimated that high frequency trading amounts to approximately 35% of U.S. future markets volume. *See* Futures Industry, January 2010. at p. 21. Similarly, the Tabb Group forecasts that total U.S. futures volume executed on an automated basis will increase 60% by the close of 2010. Tabb believes this is largely through high frequency trading. *See* "US Futures Markets in the Crosshairs of Algorithmic Revolution," published on Hedgeweek at *http://www.hedgeweek.com* dated November 16, 2009.

[6] Other characteristics of high frequency trading may also include: (1) The use of sophisticated computer systems to generate, route and execute orders, (2) short time-frames for establishing and liquidating positions, (3) submission of numerous orders that are cancelled shortly thereafter, and/or (4) ending the trading day in a neutral overall position.

[7] While this Proposal only sets forth requirements for co-location and third-party proximity hosting services, the Commission is actively considering an appropriate regulatory response to the proliferation of high-frequency and algorithmic traders to ensure that these traders do not have a negative impact on the stability of Commission-regulated futures and option markets or on the critical price discovery and risk management functions of these markets. The Commission notes that similar developments in the U.S. equity markets have been identified by the Securities and Exchange Commission ("SEC"). On January 13, 2010, the SEC issued a concept release requesting public comment on various equity market structure developments, including, among other things, co-location and high frequency trading. *See* SEC, Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 13, 2010), 75 FR 3594 (January 21, 2010).

[8] Section 3(b), 7 U.S.C. 5(c). Congress gave the Commission broad authority in Section 8a(5) of the Act, 7 U.S.C. 12a(5), to make and promulgate rules, such as those contained in this Proposal, reasonably necessary to prevent disruptions to market integrity.

II. The Proposal

Commission Regulation Part 36 generally sets forth the provisions governing exempt markets (including ECMs), Part 37 generally sets forth the provisions governing DTEFs, and Part 38 generally sets forth the provisions governing DCMs. The Proposal would add language to Parts 36, 37, and 38 to impose identical requirements relating to co-location and proximity hosting services offered by ECMs with SPDCs, DTEFs, and DCMs.

For purposes of the Proposal the term "Co-Location/Proximity Hosting Services" is defined as trading market and certain third-party facility space, power, telecommunications, and other ancillary products and services that are made available to market participants for the purpose of locating their computer systems/servers in close proximity to the trading market's trade and execution system. These services help to minimize network and other trading latencies, which is essential for high frequency traders.

The provision relating to "Equal access" would require that co-location and proximity hosting services be available to all qualified market participants willing to pay for the services. Consequently, co-location and proximity hosting services could not be offered on a discriminatory basis to only select market participants or to select categories of market participants. The Commission's view is that access should be equitable, open and fair, and that view is expressed in the Act and Commission Regulations.[9] As a component of open and fair, the Commission believes that DCMs, DTEFs, and ECMs with SPDCs, that offer co-location and/or proximity hosting services must ensure that there is sufficient availability of such services for any and all willing and qualified market participants. For example, if the availability of a service became limited, thereby leaving some market participants or third-party hosting providers without adequate access, the Commission would not view access to those services as open and fair. In addition, the provision relating to "Equal access" would require that fair and open access be available to third-party hosting service providers seeking to provide proximity hosting services to market participants. By this provision, the Commission is seeking to ensure that DCMs, DTEFs, and ECMs with SPDCs, are not the "only game in town" when it comes to co-location and proximity hosting services. Currently, there are third-parties that provide proximity hosting services. If market participants choose not to co-locate directly with the DCM, DTEF, or ECM, they should still have the opportunity to utilize qualified and approved third-party proximity hosting services to decrease their network and other trading latencies.

The provision relating to "Fees" would ensure that fees are not used as a means to deny access to some market participants by "pricing them out of the market." The Commission recognizes that offering co-location and proximity hosting services involves costs to the trading market and third-party host, such as floor/rack space, power, data connections, and technical support, to name just a few. However, the Commission seeks to ensure that the fees charged to market participants and third-party proximity hosting services remain equitable and do not become an artificial barrier to effective market access. Moreover, the Commission's view is that an equitable fee would be a uniform, non-discriminatory set of fees for the various services provided, including but not limited to fees for cabinet space usage, installation and related power provided to market participants, connectivity requirements, and maintenance and other ancillary services. The Commission would not view preferential pricing for certain market participants or certain classes of market participants as equitable pricing.

The provision relating to "Latency transparency" would ensure that general information concerning the longest, shortest, and average latencies for all connectivity options are separately detailed and readily available to the public on regulated trading markets' Web sites. Alternatively, the Commission is studying an alternate approach for disclosing latency information that would be based on the percentile of speed rather than longest, shortest and average latencies.[10] The Commission requests comment on this issue and asks commenters to detail how they believe latency information should best be disclosed so market participants can make fully informed decisions about whether the benefits to be obtained from co-location and/or proximity hosting services are worth the cost.

Specific and separate detail should be set forth for options where a market participant is directly co-located with a trading market; where a market participant is indirectly co-located through a clearing firm, futures commission merchant, introducing broker, or some other entity or market participant; where a market participant is connected via the services of a third-party proximity hosting provider; and all other manners by which market participants connect to the trading markets' electronic trading system(s). This would ensure that any market participant considering co-location or proximity hosting services could easily assess whether incurring the cost is worth the benefit, and would ensure that market participants utilizing co-location or proximity hosting services could regularly assess whether the continued cost of the services is worth the benefits obtained. The Commission believes regulated trading markets should on a monthly basis update latency information on their Web sites. The Commission invites the public to comment on whether the proposed monthly disclosure of latency information is appropriate, or whether an alternative frequency parameter should be adopted. Commenters are specifically instructed to provide information on how such latency frequency disclosure would benefit markets, market participants, and the public.

Finally, the provision relating to "Third-party providers" would ensure that DCMs, DTEFs, and ECMs with SPDCs obtain all information about market participants, their systems, and their transactions from third-party providers necessary to carry out self-regulatory obligations and other obligations under the Act and Commission Regulations. In connection with this obligation, the Commission believes that DCMs, DTEFs, and ECMs with SPDCs should enter into contractual agreements with such third-party providers on terms consistent with the Act and Commission Regulations. In this manner, DCMs, DTEFs, and ECMs with SPDCs will be able to adequately perform their regulatory responsibilities. The Commission further notes that the proposed requirements would better prevent third-party proximity hosting service providers from improperly shielding the identities of market participants from the regulatory oversight of DCMs, DTEFs, ECMs, or the Commission. In addition, the provision relating to "Third-party providers"

[9] See e.g. Sections 5(b)(3), 7 U.S.C. 7(b)(3); Section 5(d)(9), 7 U.S.C. 7(d)(9); Commission Regulation Part 38, Appendix B, Core Principle 9; Sections 5a(c)(2) and (3), 7 U.S.C. 7(a)(c)(2) and (3); and Commission Regulation Part 37, Appendix A, Registration Criteria 2 and 3.

[10] The Commission is considering whether it would be more useful for trading markets to detail latency information in percentiles of speed, for instance the 1% and 99% percentiles of speed rather than high low, or the percentage of transactions at no worse than a given speed (*i.e.* 99% of all transactions had latencies of "x" milliseconds or less).

(along with the provision relating to "Equal access" as discussed above) would ensure that DCMs, DTEFs, and ECMs with SPDCs do not bar otherwise qualified third-parties from being providing co-location or proximity hosting services to market participants trading on that trading market.

III. Related Matters

A. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions before issuing a new regulation or order under the Act.[11] By its terms, Section 15(a) requires the Commission to "consider the costs and benefits" of a subject rule or order, without requiring it to quantify the costs and benefits of its action or to determine whether the benefits of the action outweigh its costs. Section 15(a) requires that the costs and benefits of proposed rules be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. In concluding its analysis, the Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may determine that notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any provisions or to accomplish any of the purposes of the Act.[12]

The proposed regulations will ensure that all market participants have access to co-location and/or proximity hosting services on similar terms. An important goal of this rulemaking is to establish regulations for open and fair access and public disclosure of general latency information for each connectivity option offered by DCMs, DTEFs, and ECMs with SPDCs. The proposed regulations will not require entities to begin offering co-location and/or proximity hosting services, but only apply to those entities that choose to offer such services. The only costs that might be incurred by an entity complying with the proposed regulations (triggered only after an entity decides to offer co-location and/or proximity hosting services) include ensuring the public disclosure of latency information. The Commission believes such costs would be minimal and that the benefits, particularly the benefits to the efficiency, competitiveness and financial integrity of the futures markets and the protection of market participants will outweigh the costs to entities. The Commission also notes that many entities already offer co-location and/or proximity hosting services to their market participants. This means that many of the entities have already incurred costs relating to technology and infrastructure, unrelated to this proposed rule. As such, costs have already been incurred, and would continue to be incurred with or without the requirement to comply with this proposed rule.

After considering the above mentioned factors and issues, the Commission has determined to propose these rules for co-location and/or proximity hosting services for DCMs, DTEFs and ECMs with SPDCs. The Commission specifically invites public comment on its application of the criteria contained in Section 15(a) of the Act and further invites interested parties to submit any quantifiable data that they may have concerning the costs and benefits of the proposed rules.

B. Paperwork Reduction Act of 1995

The proposed rules would require DCMs, DTEFs and ECMs with SPDCs that offer co-location and/or proximity hosting services to make information about the latencies for each connectivity option available to the public via their Web sites. This is information that most of those entities already have access to or keep in the normal course of business and can generally make available to the public via their Web site. Therefore, the Commission believes that the proposed rules will not impose new recordkeeping or information collection requirements, or other collections of information that require approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Accordingly, the Paperwork Reduction Act does not apply. The Commission solicits comment on its estimate that no additional recordkeeping or information collection requirements or changes to existing collection requirements would result from the proposed rules.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The rules proposed herein will affect DCMs, DTEFs, and ECMs with SPDCs. The Commission has previously determined that the foregoing entities are not small entities for purposes of the RFA.[13] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects

17 CFR Part 36

Commodity futures, Exempt commercial markets, Significant price discovery contracts.

17 CFR Part 37

Commodity futures, Derivates transaction execution facilities.

17 CFR Part 38

Commodity futures, Designated contract markets.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act, the Commission hereby proposes to amend 17 CFR Parts 36, 37, 38 as follows:

PART 36—EXEMPT MARKETS

1. The authority citation for Part 36 continues to read as follows:

Authority: 7 U.S.C. 2, 2(h)(7), 6, 6c and 12a, as amended by Title XIII of the Food, Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1624 (June 18, 2008).

2. Amend § 36.3 by adding paragraph (e) to read as follows:

§ 36.3 Exempt commercial markets.

* * * * *

(e) Co-location/Proximity Hosting Services.

(1) *Definition.* The term "co-location/proximity hosting services" means space, power, telecommunications, and other ancillary products and services made available to market participants for the purpose of enabling them to position their computer systems/servers in close proximity to the exempt commercial market's trade and execution systems.

(2) *Equal Access.* An exempt commercial market that lists a significant price discovery contract and offers co-location services to market participants shall allow access to such services to all market participants and third-party proximity hosting service providers otherwise eligible and qualified to use the services.

(3) *Fees.* An exempt commercial market that lists a significant price

[11] 7 U.S.C. 19(a).

[12] *E.g. Fisherman's Dock Co-op., Inc.* v. *Brown,* 75 F3d 164 (4th Cir. 1996); *Center for Auto Safety* v. *Peck,* 751 F2d 1336 (DC Cir. 1985) (agency has discretion to weigh factors in undertaking cost benefit analyses).

[13] 47 FR 18618, 18619 (April 30, 1982) discussing contract markets; 66 FR 42256, 42268 (August 10, 2001) discussing exempt commercial markets and derivatives transaction execution facilities.

discovery contract and offers co-location services to market participants shall ensure that the fees to market participants are imposed in a uniform, non-discriminatory manner. Fees shall not be used as an artificial barrier to access by any market participants. An exempt commercial market that lists a significant price discovery contract shall not offer preferential connectivity pricing arrangements to any market participant on any basis, including user profile, payment for order flow, or any other specialized pricing scheme.

(4) *Latency transparency.* An exempt commercial market that lists a significant price discovery contract and offers co-location services to market participants shall disclose monthly to the public on its Web site the longest, shortest, and average latencies for each connectivity option provided by the exempt commercial market.

(5) *Third-party providers.* An exempt commercial market that lists a significant price discovery contract and approves specific third-parties to provide proximity hosting services to market participants shall ensure it obtains on an ongoing basis all information necessary from those third-parties to carry out its self regulatory obligations and other obligations under the Commodity Exchange Act and Commission Regulations. An exempt commercial market that lists a significant price discovery contract and offers co-location services to market participants shall not act to bar otherwise eligible and qualified third-parties from providing co-location or proximity hosting services to market participants.

PART 37—DERIVATIVES TRANSACTION EXECUTION FACILITIES

3. The authority citation for Part 37 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c, 6(c), 7a and 12a, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

4. Add § 37.10 to read as follows:

§ 37.10 Co-location/Proximity Hosting Services.

(a) *Definition.* The term "co-location/proximity hosting services" means space, power, telecommunications, and other ancillary products and services made available to market participants for the purpose of enabling them to position their computer systems/servers in close proximity to the derivatives transaction execution facility's trade and execution systems.

(b) *Equal Access.* A derivatives transaction execution facility that offers co-location services to market participants shall allow access to such services to all market participants and third-party proximity hosting service providers eligible to use the services.

(c) *Fees.* A derivatives transaction execution facility that offers co-location services to market participants shall ensure that the fees to market participants are imposed in a uniform, non-discriminatory manner. Fees shall not be used as an artificial barrier to access by any market participants. A derivatives transaction execution facility shall not offer preferential connectivity pricing arrangements to any market participant on any basis, including user profile, payment for order flow, or any other specialized pricing scheme.

(d) *Latency transparency.* A derivatives transaction execution facility that offers co-location services to market participants shall disclose monthly to the public on its Web site the longest, shortest, and average latencies for each connectivity option provided by the derivatives transaction execution facility.

(e) *Third-party providers.* A derivatives transaction execution facility that approves specific third-parties to provide proximity hosting services to market participants shall ensure it obtains on an ongoing basis all information necessary from those third-parties to carry out its self regulatory obligations and other obligations under the Commodity Exchange Act and Commission Regulations. A derivatives transaction execution facility that offers co-location services to market participants shall not act to bar otherwise eligible and qualified third-parties from providing co-location or proximity hosting services to market participants.

PART 38—DESIGNATED CONTRACT MARKETS

5. The authority citation for Part 38 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c, 7, 7a–2 and 12a, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

6. Add § 38.7 to read as follows:

§ 38.7 Co-location/Proximity Hosting Services.

(a) *Definition.* The term "co-location/proximity hosting services" means space, power, telecommunications, and other ancillary products and services made available to market participants for the purpose of enabling them to position their computer systems/servers in close proximity to the designated contract market's trade and execution systems.

(b) *Equal Access.* A designated contract market that offers co-location services to market participants shall allow access to such services to all market participants and third-party proximity hosting service providers eligible to use the services.

(c) *Fees.* A designated contract market that offers co-location services to market participants shall ensure that the fees to market participants are imposed in a uniform, non-discriminatory manner. Fees shall not be used as an artificial barrier to access by any market participants. A designated contract market shall not offer preferential connectivity pricing arrangements to any market participant on any basis, including user profile, payment for order flow, or any other specialized pricing scheme.

(d) *Latency transparency.* A designated contract market that offers co-location services to market participants shall disclose monthly to the public on its Web site the longest, shortest, and average latencies for each connectivity option provided by the designated contract market.

(e) *Third-party providers.* A designated contract market that approves specific third-parties to provide proximity hosting services to market participants shall ensure it obtains on an ongoing basis all information necessary from those third-parties to effectively carry out its self regulatory obligations and other obligations under the Commodity Exchange Act and Commission Regulations. A designated contract market that offers co-location services to market participants shall not act to bar otherwise eligible and qualified third-parties from providing co-location or proximity hosting services to market participants.

Issued in Washington, DC on June 1, 2010 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–13613 Filed 6–10–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

20 CFR Part 1001

RIN 1293–AA17

Funding Formula for Grants to States

AGENCY: Veterans' Employment and Training Service (VETS).

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: In this advance notice of proposed rulemaking (ANPRM), VETS is requesting comments, including data and other information, on issues related to the funding formula applicable to the Jobs for Veterans State Grants that are administered by VETS as authorized by 38 U.S.C. 4102A(b)(5). The funding formula for these grants is governed by 38 U.S.C. 4102A(c) (2) (B) and 20 CFR part 1001, subpart F.

VETS plans to consider the information received in response to this notice in deciding whether or not to propose changes to those aspects of the funding formula that are within the Secretary's discretion.

DATES: Submit comments in response to this ANPRM by September 9, 2010.

ADDRESSES: Submit comments as follows:

- *Federal e-Rulemaking Portal:* Submit comments electronically at *http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *Fax:* Commenters may fax submissions, including attachments that are no longer than 10 pages in length, to Gordon Burke, at (202) 693–4755. VETS does not require hard copies of these documents.
- *Regular mail, express delivery, hand (courier) delivery, and messenger service:* Written comments, disk, and CD–ROM submissions may be mailed or delivered by hand delivery/courier to The Veterans' Employment and Training Service, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–1325, Washington, DC 20210. Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Therefore, in order to ensure that comments receive full consideration, VETS encourages the public to submit comments via *http://www.regulations.gov* as indicated above.
- *Instructions:* Please submit your comments by only one method. All submissions must include the Agency name (VETS) and the RIN for this rulemaking (i.e., RIN 1293–AA17). Submissions, including any personal information provided, are placed in the public docket without change and will be available online at *http://www.regulations.gov.* Therefore, VETS cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.
- *Docket:* To read or download submissions or other material in the docket go to *http://www.regulations.gov.* VETS will make all the comments it receives available for public inspection during normal business hours at the above address. If you need assistance to review the comments, VETS will provide you with appropriate aids such as readers or print magnifiers. VETS will make copies of the ANPRM available, upon request, in large print or electronic file on computer disk. VETS will consider providing the ANPRM in other formats upon request. To schedule an appointment to review the comments and/or obtain the ANPRM in an alternate format, contact the office of Gordon Burke at (202) 693–4730 (VOICE) (this is not a toll-free number) or (202) 693–4760 (TTY/TDD). You may also contact Mr. Burke's office at the address listed above.

FOR FURTHER INFORMATION CONTACT: Information regarding this ANPRM is available from Pamela Langley, Chief, Division of Grant Programs, Veterans' Employment and Training Service, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–1312, Washington, DC 20210, *Langley.Pamela@dol.gov,* (202) 693–4708 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Request for Data, Information, and Comments
III. Authority and Signature

I. Background

The Jobs for Veterans Act, enacted November 7, 2002, as Public Law 107–288, amended DOL veterans program laws in 38 USC, chapters 41 and 42, and requires the Secretary of Labor to make funds available to each State, upon approval of an "application" (i.e., a State Plan), to support the Disabled Veterans' Outreach Program (DVOP) and the Local Veterans' Employment Representative (LVER) Program. These two programs provide employment services to veterans and transitioning service members. 38 U.S.C. 4102A (b)(5). The annual formula grants to States for these programs are called the Jobs for Veterans State Grants (JVSGs).

The statute requires that the amount of funding available to each State reflect the ratio of: (1) The total number of veterans residing in the State who are seeking employment; to (2) the total number of veterans seeking employment in all States (38 U.S.C. 4102A(c)(2)(B)(i)(I) and (II)). Additionally, the statute permits the Secretary to establish: (a) Minimum funding levels; and, (b) hold-harmless criteria; both of which have been included in the regulations. The minimum funding level seeks to assure small States of sufficient funds to support a basic level of services to veterans, while the 90 percent hold-harmless applied since FY 2006 seeks to mitigate the impact upon States whose funding may be significantly affected by fluctuations in the data applied to calculate funding levels. 38 U.S.C. 4102A(c)(B)(iii). The Secretary is authorized to establish by regulation the criteria, including civilian labor force and unemployment data, used to determine the funding levels. 38 U.S.C. 4102A(c)(B)(i). The Secretary exercised this authority by promulgating regulations at 20 CFR Part 1001.

This statutory formula was phased in over the fiscal years 2004 and 2005. An Interim Final Rule was published on June 30, 2003 (68 FR 39000), and a Notice of Proposed Rulemaking was published on July 6, 2004 (69 FR 40724). The Final Rule (20 CFR part 1001, subpart F) was published on May 17, 2005 (70 FR 28406). The final rule establishes the funding formula required by the statute and can be viewed from the following link: *http://www.dol.gov/vets/usc/20CFRPart1001SubpartF.pdf.*

A brief summary of the applicable sections of 20 CFR part 1001 is as follows:

Section 1001.150 Method of Calculating State Basic Grant Awards

- Explains how the number of veterans seeking employment is determined using civilian labor force data from the Current Population Survey (CPS) and unemployment data from the Local Area Unemployment Statistics (LAUS), both of which are compiled by DOL's Bureau of Labor Statistics.
- Specifies how each State's basic JVSG allocation is calculated.
- Identifies the procedures implemented if the actual appropriation is higher or lower than the projected appropriation, which provides the basis for estimating the basic grant allocation amount for each State.

Section 1001.151 Other Funding Criteria

- Specifies that up to four percent of the amount available for allocation will be set aside to fund the Transition Assistance Program (TAP) and interventions that respond to exigent circumstances.
- Explains how TAP funding is allocated and distributed among the States.
- Identifies unusually high levels of unemployment and surges in the demand for transitioning services such as TAP workshops as examples of exigent circumstances.

Section 1001.152 Hold-Harmless Criteria and Minimum Funding Level

- Specifies the 80 percent hold-harmless level that applied to the FY 2004 and FY 2005 phase-in period.
- Specifies the 90 percent hold-harmless level that applies from FY 2006 forward.
- Establishes the minimum funding level of 0.28 percent of the previous year's total funding for all States.
- Identifies the procedures followed if the amount appropriated does not provide sufficient funds to comply with the hold-harmless provision.

II. Request for Data, Information, and Comments

VETS is providing the following questions to facilitate the collection of pertinent information and to facilitate public comment on relevant issues. Commenters are encouraged to address any aspect of the funding formula discussed in the regulations quoted above. VETS requests that commenters provide a detailed response to questions, including a rationale or reasoning for the position taken or proposed. Also, relevant data that may be useful to VETS' deliberations or that may assist it in conducting an analysis of the impacts of future grant funding actions should be submitted. To assess the costs, a benefit, or feasibility of any possible regulatory change, VETS needs any specific quantitative information that the commenter can provide about the impact(s) of the recommended change(s) upon grantees. Therefore, for those recommendations involving specific funding formula changes, any data in terms of costs and benefits associated with the recommendation would be helpful. To assist in analyzing comments, VETS requests commenters to reference their responses to one or more specific questions by labeling each response with the question number.

A. Method of Calculating State Basic Grant Awards

Under current regulations, three-year averages of the most recent available data on veterans in the civilian labor force from the CPS and data on the number unemployed from the LAUS have been used in calculating the funding formula to stabilize the effect of annual fluctuations in the data and thereby avoid undue fluctuations in the annual basic grant amounts allocated to States.

1. Has the averaging approach accomplished the objective of stabilizing annual fluctuations in funding for the States?

2. Has the averaging approach produced other positive or negative outcomes for the States?

3. Are there compelling reasons to change the period of time involved in the averaging, e.g., to a longer or shorter period than the current three-year period?

The current regulations implement the statutory provisions by accounting for two key differences among the States: (a) Each State's proportion, relative to other States, of veterans in the civilian labor force (i.e., the segment of the veteran population involved in employment), and, (b) each State's proportion, relative to other States, of those unemployed (i.e., the severity of the economic conditions faced by veteran jobseekers).

4. Are there economic factors other than unemployment, such as the cost of living or the average earnings level, which vary significantly among the States and could be considered for incorporation in the funding formula?

5. Are there geographic differences among the States, such as the dispersion or concentration of veterans, which could be considered for incorporation in the funding formula? For example, are there additional expenses associated with outreach to specific populations of veterans, such as Native American veterans, homeless veterans, and/or incarcerated veterans that should be considered for incorporation in the funding formula?

6. Are there characteristics of those veterans in need of services, such as the proportion of veterans with severe disabilities, the proportion of older veterans, or the proportion of economically disadvantaged veterans, which vary significantly among the States and could be considered for incorporation in the funding formula?

7. For those commenters who suggest additional factors, in response to questions 4 through 6, are there generally recognized, empirically-based measures of the suggested factors that could be considered for inclusion in a revised version of the funding formula?

8. Should differences among States in the ability to expend annual grant funding be taken into consideration in the funding formula? Have some States been unable to expend their entire allocated grant funding, and if not, why not? Are there measures that capture these differences?

VETS has followed the procedure established in the current regulations to allocate funds to the States for FY 2004 through FY 2010. As the first step in this procedure, VETS annually provides the States with estimated allocations, which are prepared by applying updated CPS and LAUS data to the amount of the appropriation requested in the President's Budget. As the second step, VETS has implemented each year the regulatory provisions for adjusting funding when there were differences in the actual appropriations. When the actual appropriation has been less than the requested appropriation, VETS has reduced the amount of the set-aside for TAP and exigent circumstances in order to allocate to the States amounts consistent with the estimated allocations. When the actual appropriation has exceeded the requested appropriation, VETS has allocated to the States amounts consistent with the estimated allocations and has retained the excess funds as undistributed basic grant funds. As a third step, VETS may then distribute the undistributed basic grant funds to the States, in response to their requests, during the remaining months of the applicable fiscal years, and VETS has exercised that authority. Since VETS routinely reviews and reallocates funds during the course of each fiscal year, this third step of the procedure has been handled in conjunction with that pre-existing VETS practice when the actual appropriation has exceeded the requested appropriation.

The regulations also: (a) Provide VETS the authority to allocate revised amounts upon appropriation, if there is a compelling reason to do so; and, (b) specify the procedure to be followed if an actual appropriation is insufficient to comply with the hold-harmless provision. To-date, however, VETS has not exercised its authority to allocate revised amounts, nor has it received an actual appropriation that was insufficient to comply with the hold-harmless provision.

9. Have there been instances when VETS appears to have overlooked compelling reasons to exercise its authority to immediately allocate

increased amounts to States, upon receipt of an actual appropriation that exceeded the requested appropriation?

10. Have there been instances when VETS appears to have overlooked compelling reasons to exercise its authority to immediately allocate decreased amounts to States, upon receipt of an actual appropriation that fell short of the requested appropriation?

11. For those commenters who believe that compelling reasons have been overlooked, what criteria could be applied to determine that a compelling reason exists in any given instance?

B. Other Funding Criteria

Funding for TAP workshops is allocated on a per-workshop basis. Funding to the States is provided under the respective approved State Plans.

12. Should there be a different basis for the funding of TAP activities?

13. Should there be a different vehicle for providing funding for TAP activities?

14. For those commenters who believe that a different basis or vehicle should be implemented for funding TAP activities, what alternate basis or vehicle is suggested?

Funds for exigent circumstances, such as unusually high levels of unemployment or surges in the demand for transitioning services, including the need for TAP workshops, are allocated based on need.

15. Have there been instances when VETS appears to have overlooked exigent circumstances that warranted adjustments to the actual awards?

16. Are there specific examples of exigent circumstances that should be identified in Veterans' Program Letters or in other policy documents?

C. Hold-Harmless Criteria and Minimum Funding Level

A hold-harmless rate of 90 percent of the prior year's funding is the level currently established to limit the funding reduction that a State can experience in a single year. A minimum funding level of .28 percent (.0028) of the previous year's total funding for all States is the level currently established to provide small States with sufficient funds to support a basic level of services to veterans. Both of these rates reflect direct adoption of statutory provisions governing corresponding functions for Wagner-Peyser funding.

17. Is there a compelling reason to set the hold-harmless rate at a different level?

18. Is there a compelling reason to set the minimum funding level at a different level?

19. For those commenters who believe that there is a compelling reason to revise the hold-harmless rate or the minimum funding level, what alternatives are suggested and what justifications are offered to support implementation of those alternatives?

20. Is there a compelling reason to change the hold-harmless rate to be a fixed percentage of the prior year's expenditures rather than a fixed percentage of the prior year's funding?

D. Other Aspects of the Existing Regulations

If any commmenters have concerns or suggestions that apply to aspects of the existing regulations that have not been identified in the preceding sections and questions, VETS will appreciate receiving comments that address any aspect of these regulations.

Signed in Washington, DC, this 4th day of June 2010.

John M. McWilliam,

Deputy Assistant Secretary for Operations and Management, Veterans' Employment and Training Service.

[FR Doc. 2010–13870 Filed 6–10–10; 8:45 am]

BILLING CODE 4510–79–P

DEPARTMENT OF JUSTICE

28 CFR Parts 0 and 51

[CRT Docket No. 109; AG Order No. 3161–2010]

Revision of the Procedures for the Administration of Section 5 of the Voting Rights Act

AGENCY: Civil Rights Division, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Attorney General is considering amendments to the Department of Justice's "Procedures for the Administration of Section 5 of the Voting Rights Act of 1965." The proposed amendments are designed to clarify the scope of section 5 review based on recent amendments to section 5, make technical clarifications and updates, and provide better guidance to covered jurisdictions and minority citizens concerning current Department practices. Interested persons are invited to participate in the consideration of these amendments.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before August 10, 2010. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

ADDRESSES: You may submit written comments, identified by the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking, by any of the following methods:

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

Fax: 202–307–3961.

Mail: Chief, Voting Section, Civil Rights Division, United States Department of Justice, Room 7254–NWB, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

Hand Delivery/Courier: Chief, Voting Section, Civil Rights Division, United States Department of Justice, Room 7254–NWB, 1800 G Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: T. Christian Herren, Jr., Acting Chief, Voting Section, Civil Rights Division, United States Department of Justice, Room 7254–NWB, 950 Pennsylvania Avenue, NW., Washington, DC 20530, or by telephone at (800) 253–3931.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You also must locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

Personal identifying information and confidential business information identified and located as set forth above

will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

The reason that the Department of Justice is requesting electronic comments before Midnight Eastern Time on the day the comment period closes is because the inter-agency Regulations.gov/Federal Docket Management System (FDMS) which receives electronic comments terminates the public's ability to submit comments at Midnight on the day the comment period closes. Commenters in time zones other than Eastern may want to take this fact into account so that their electronic comments can be received. The constraints imposed by the Regulations.gov/FDMS system do not apply to U.S. postal comments which will be considered as timely filed if they are postmarked before Midnight on the day the comment period closes.

Discussion

The proposed amendments seek to clarify the scope of section 5 review based on recent amendments to section 5, make certain technical clarifications and updates, and provide better guidance to covered jurisdictions and citizens. In many instances, the proposed amendments describe longstanding practices of the Attorney General in the review of section 5 submissions. These proposed amendments should aid in ensuring that all covered changes affecting voting are promptly submitted for review and minimize the potential for litigation.

The proposed amendments clarify that the Attorney General's delegation of authority to the Assistant Attorney General for Civil rights over submissions under section 5 of the Voting Rights Act also includes authority over submissions under section 3(c) of the Voting Rights Act (§ 0.50(h)). The proposed amendments also clarify the stated authority for the Part 51 procedures to reflect the 2006 statutory amendments to the Voting Rights Act; revise language to conform to the substantive section 5 standard in the 2006 amendments (§ 51.1); clarify the definition of the Voting rights Act to reflect the enactment of the 2006 amendments; clarify the definition of the benchmark standard, practice, or procedure (§ 51.2); make technical corrections to the delegation of authority from the Attorney General to the Assistant Attorney General, and from the Chief of the Voting Section to supervisory attorneys within the Voting Section (§ 51.3); make technical corrections to reflect the new expiration date for section 5 coverage contained in the 2006 amendments; clarify that jurisdictions may seek earlier termination of coverage through a bailout action (§ 51.5); and incorporate the Supreme Court's holding in *Northwest Austin Mun. Utility Dist. No. One* v. *Holder,* 557 U.S. ___, 129 S.Ct. 2504 (2009), that any jurisdiction required to comply with section 5 may seek to terminate that obligation pursuant to the procedures that implement section 4(a) of the Act (§§ 51.5 and 51.6).

The proposed amendments clarify that the review period commences only when a submission is received by the Department officials responsible for conducting section 5 reviews and clarifies the date of the response (§ 51.9); revise language to conform to the substantive section 5 standard in the 2006 amendments (§ 51.10, § 51.11); clarify that, in determining whether a change is covered, any inquiry into whether the change has the potential for discrimination is focused on the generic category of changes to which the specific change belongs (§ 51.12); clarify that a voting change is covered regardless of the manner or mode by which a covered jurisdiction acts to adopt it (§ 51.12); and clarify that dissolution or merger of voting districts, *de facto* elimination of an elected office, and relocations of authority to adopt or administer voting practices or procedures are all subject to section 5 review (§ 51.13).

The proposed amendments also clarify that section 5 review ordinarily should precede court review, that a court-ordered change that initially is not covered by section 5 may become covered through actions taken by the affected jurisdiction, and that the interim use of an unprecleared change should be ordered by a court only in emergency circumstances (§ 51.18); make a conforming change updating the address for the Voting Section (§ 51.19); make technical changes in the format in which information may be submitted to the Attorney General to reflect changes in information technology (§ 51.20); and clarify those circumstances in which the Attorney General will not review a submission (§§ 51.21, 51.22).

In addition, the proposed amendments clarify the authority authorized to make section 5 submissions (§ 51.23); make technical amendments to the addresses to which submissions can be delivered to reflect changes in the location of the Voting Section and its mail-handling procedures, to note the availability of electronic submissions and telefacsimile submissions, and to note to the availability of e-mail as a means of submitting additional information on pending submissions (§ 51.24); clarify the addresses and methods by which jurisdictions may deliver notices of withdrawal of submissions (§ 51.25); clarify the language used in describing the required contents of submissions (§ 51.27); and make technical changes to the format in which information may be submitted to the Attorney General (§ 51.28).

The proposed amendments also clarify the addresses and methods by which persons may provide written comments on submissions and clarify the circumstances in which the Department may withhold the identity of those providing comments on submissions (§ 51.29); clarify the circumstances under which the Attorney General may conclude that a decision on the merits is not appropriate and the circumstances under which consideration of the change may be reopened (§ 51.35); clarify the procedures for the Attorney General to make written and oral requests for additional information regarding a submission (§ 51.37); make technical revisions to the section that provides for recommencing the 60-day period where a jurisdiction voluntarily provides material supplemental information, or where a related submission is received (§ 51.39); and clarify the language regarding the failure of the Attorney General to respond to a submission (§ 51.42).

The proposed amendments also clarify the procedures when the Attorney General decides to reexamine a decision not to object (§ 51.43); revise language to conform to the substantive section 5 standard in the 2006 amendments (§ 51.44); clarify that the Attorney General can reconsider an objection in cases of misinterpretation of fact or mistake of law, consistent with existing § 51.64(b) (§ 51.46); clarify the manner in which the 60-day requirement applies to reconsideration requests and revise language to conform to the substantive section 5 standard in the 2006 amendments (§ 51.48); and clarify the procedures regarding access to section 5 records (§ 51.50).

The proposed amendments clarify the substantive standard to reflect the 2006 amendments to the Act and the manner in which the Attorney General will evaluate issues of discriminatory purpose under section 5 (§ 51.52, § 51.54, § 51.55, § 51.57, § 51.59); clarify the application of section 5 to de-annexations (§ 51.61); and clarify the Appendix to include reference to a list

of bailouts by political subdivisions subject to section 5.

Administrative Procedure Act

This proposal amends interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice and therefore the notice requirement of 5 U.S.C. 553(b) is not mandatory. Although notice and comment is not required, we are nonetheless choosing to offer this proposed rule for notice and comment.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities because it applies only to governmental entities and jurisdictions that are already required by section 5 of the Voting Rights Act of 1965 to submit voting changes to the Department of Justice, and this rule does not change this requirement. It provides guidance to such entities to assist them in making the required submissions under section 5. Further, a Regulatory Flexibility Analysis was not required to be prepared for this rule because the Department of Justice was not required to publish a general notice of proposed rulemaking for this matter.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132—Federalism

This rule does not have federalism implications warranting the preparation of a Federalism Assessment under section 6 of Executive Order 13132 because the rule does not alter or modify the existing statutory requirements of section 5 of the Voting Rights Act imposed on the States, including units of local government or political subdivisions of the States.

Executive Order 12988—Civil Justice Reform

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

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 28 CFR Parts 0 and 51

Administrative practice and procedure, Archives and records, Authority delegations (government agencies), Civil rights, Elections, Political committees and parties, Voting rights.

Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301, 28 U.S.C. 509, 510, and 42 U.S.C. 973b, 1973c, the following amendments are proposed to Chapter I of Title 28 of the Code of Federal Regulations:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Subpart J—Civil Rights Division

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

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510.

2. In § 0.50, revise paragraph (h) to read as follows:

§ 0.50 General functions.

* * * * *

(h) Administration of sections 3(c) and 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. 1973a(c), 1973c).

* * * * *

3. The authority citation for Part 51 is revised to read as follows:

PART 51—PROCEDURES FOR THE ADMINISTRATION OF SECTION 5 OF THE VOTING RIGHTS ACT OF 1965

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, and 42 U.S.C. 1973b, 1973c.

4. In § 51.1, revise paragraph (a)(1) to read as follows:

§ 51.1 Purpose.

(a) * * *:

(1) A declaratory judgment is obtained from the U.S. District Court for the District of Columbia that such qualification, prerequisite, standard, practice, or procedure neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, or

* * * * *

5. In § 51.2, revise the definitions for "Act" and "Change affecting voting or change" to read as follows:

§ 51.2 Definitions.

* * * * *

Act means the Voting Rights Act of 1965, 79 Stat. 437, as amended by the Civil Rights Act of 1968, 82 Stat. 73, the Voting Rights Act Amendments of 1970, 84 Stat. 314, the District of Columbia Delegate Act, 84 Stat. 853, the Voting Rights Act Amendments of 1975, 89 Stat. 400, the Voting Rights Act Amendments of 1982, 96 Stat. 131, the Voting Rights Language Assistance Act of 1992, 106 Stat. 921, the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, 120 Stat. 577, and the Act to Revise the Short Title of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act, 122 Stat. 2428, 42 U.S.C. 1973 et seq. Section numbers, such as "section 14(c)(3)," refer to sections of the Act.

* * * * *

Change affecting voting or *change* means any voting qualification, prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on the date used to determine coverage under section 4(b) or from the existing standard, practice, or procedure if it was subsequently altered and precleared under section 5. In assessing whether a change has a discriminatory purpose or effect, the comparison shall be with the standard, practice, or procedure in effect on the date used to determine coverage under section 4(b) or the most recent precleared standard, practice, or procedure. Some examples of changes affecting voting are given in § 51.13.

* * * * *

6. Revise § 51.3 to read as follows:

§ 51.3 Delegation of authority.

The responsibility and authority for determinations under section 5 and section 3(c) have been delegated by the Attorney General to the Assistant Attorney General, Civil Rights Division. With the exception of objections and decisions following the reconsideration of objections, the Chief of the Voting Section is authorized to perform the functions of the Assistant Attorney General. With the concurrence of the Assistant Attorney General, the Chief of the Voting Section may designate

supervisory attorneys in the Voting Section to perform the functions of the Chief.

7. Revise § 51.5 to read as follows:

§ 51.5 Termination of coverage.

(a) *Expiration.* The requirements of section 5 will expire at the end of the twenty-five-year period following the effective date of the amendments made by the Fannie Lou Hamer, Rosa Parks, Coretta Scott King, Cesar E. Chavez, Barbara C. Jordan, William C. Velasquez, and Dr. Hector P. Garcia Voting Rights Act Reauthorization and Amendments Act of 2006, which amendments became effective on July 27, 2006. See section 4(a)(8) of the VRACA.

(b) *Bailout.* Any political subunit in a covered jurisdiction or a political subdivision of a covered State, a covered jurisdiction or a political subdivision of a covered State, or a covered State may terminate the application of section 5 ("bailout") by obtaining the declaratory judgment described in section 4(a) of the Act.

8. Revise § 51.6 to read as follows:

§ 51.6 Political subunits.

All political subunits within a covered jurisdiction (*e.g.,* counties, cities, school districts) that have not terminated coverage by obtaining the declaratory judgment described in section 4(a) of the Act are subject to the requirements of section 5.

9. Revise § 51.9 to read as follows:

§ 51.9 Computation of time.

(a) The Attorney General shall have 60 days in which to interpose an objection to a submitted change affecting voting for which a response on the merits is appropriate (see § 51.35, § 51.37).

(b) The 60-day period shall commence upon receipt of a submission by the Voting Section of the Department of Justice's Civil Rights Division or upon receipt of a submission by the Office of the Assistant Attorney General, Civil Rights Division, if the submission is properly marked as specified in § 51.24(f). The 60-day period shall recommence upon the receipt in like manner by the Voting Section of a resubmission (*see* § 51.35), additional information (*see* § 51.37), or material, supplemental information or a related submission (*see* § 51.39).

(c) The 60-day period shall mean 60 calendar days, with the day of receipt of the submission not counted, and with the 60th day ending at 11:59 p.m. Eastern Time of that day. If the final day of the period should fall on a Saturday, Sunday, or any day designated as a holiday by the President or Congress of the United States, or any other day that is not a day of regular business for the Department of Justice, the next full business day shall be counted as the final day of the 60-day period. The date of the Attorney General's response shall be the date on which it is transmitted to the submitting authority by any reasonable means, including placing it in a postbox of the U.S. Postal Service or a private mail carrier, sending it by telefacsimile, e-mail, or other electronic means, or delivering it in person to a representative of the submitting authority.

10. In § 51.10, revise paragraph (a) to read as follows:

§ 51.10 Requirement of action for declaratory judgment or submission to the Attorney General.

* * * * *

(a) Obtain a judicial determination from the U.S. District Court for the District of Columbia that the voting change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

* * * * *

11. Revise § 51.11 to read as follows:

§ 51.11 Right to bring suit.

Submission to the Attorney General does not affect the right of the submitting authority to bring an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change affecting voting neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

12. Revise § 51.12 to read as follows:

§ 51.12 Scope of requirement.

Except as provided in § 51.18 (court-ordered changes), the section 5 requirement applies to any change affecting voting, even though it appears to be minor or indirect, returns to a prior practice or procedure, seemingly expands voting rights, or is designed to remove the elements that caused the Attorney General to object to a prior submitted change. The scope of section 5 coverage is based on whether the generic category of changes affecting voting to which the change belongs (for example, the generic categories of changes listed in § 51.13) has the potential for discrimination. *NAACP* v. *Hampton County Election Commission,* 470 U.S. 166 (1985). The method by which a jurisdiction enacts or administers a change does not affect the requirement to comply with section 5, which applies to changes enacted or administered through the executive, legislative, or judicial branches.

13. In § 51.13, revise paragraphs (e), (i), and (k) and add paragraph (l) to read as follows:

§ 51.13 Examples of changes.

* * * * *

(e) Any change in the constituency of an official or the boundaries of a voting unit (*e.g.,* through redistricting, annexation, deannexation, incorporation, dissolution, merger, reapportionment, changing to at-large elections from district elections, or changing to district elections from at-large elections).

* * * * *

(i) Any change in the term of an elective office or an elected official, or any change in the offices that are elective (*e.g.,* by shortening the term of an office; changing from election to appointment; transferring authority from an elected to an appointed official that, in law or in fact, eliminates the elected official's office; or staggering the terms of offices).

* * * * *

(k) Any change affecting the right or ability of persons to participate in political campaigns.

(l) Any change that transfers or alters the authority of any official or governmental entity regarding who may enact or seek to implement a voting qualification, prerequisite to voting, or standard, practice, or procedure with respect to voting.

14. Revised § 51.18 to read as follows:

§ 51.18 Federal court-ordered changes.

(a) *In general.* Changes affecting voting for which approval by a Federal court is required, or that are ordered by a Federal court, are exempt from section 5 review only where the Federal court prepared the change and the change has not been subsequently adopted or modified by the relevant governmental body. *McDaniel* v. *Sanchez,* 452 U.S. 130 (1981). Court-ordered changes covered by section 5 should be submitted for review prior to review by the Federal court, except as provided in paragraph (d) of this section. (*See* also § 51.22.) *Connor* v. *Waller,* 421 U.S. 656 (1975).

(b) *Subsequent changes.* Where a Federal court-ordered change is not itself subject to the preclearance requirement, subsequent changes necessitated by the court order but decided upon by the jurisdiction remain subject to preclearance. For example, voting precinct and polling changes made necessary by a court-ordered

redistricting plan are subject to section 5 review.

(c) *Alteration in section 5 status.* Where a Federal court-ordered change at its inception is not subject to review under section 5, a subsequent action by the submitting authority demonstrating that the change reflects its policy choices (*e.g.,* adoption or ratification of the change, or implementation in a manner not explicitly authorized by the court) will render the change subject to review under section 5 with regard to any future implementation.

(d) *In emergencies.* Changes affecting voting that are ordered by a Federal court, and that reflect the policy choices of a submitting authority, may be implemented on an emergency interim basis without compliance with section 5 only where a Federal court orders such implementation and only to the extent ordered by the Federal court. (*See* also § 51.34.) A Federal court's authorization of the emergency interim use without preclearance of a voting change does not exempt any use of the practice not explicitly authorized by the court from section 5 review.

15. Revise § 51.19 to read as follows:

§ 51.19 Request for notification concerning voting litigation.

A jurisdiction subject to the preclearance requirements of section 5 that becomes involved in any litigation concerning voting is requested to notify the Chief, Voting Section, Civil Rights Division, at the addresses, telefacsimile number, or e-mail address specified in § 51.24. Such notification will not be considered a submission under section 5.

16. In § 51.20, revise paragraphs (b) through (e) and add a new paragraph (f) to read as follows:

§ 51.20 Form of submissions.

* * * * *

(b) The Attorney General will accept certain machine readable data in the following electronic media: 3.5 inch 1.4 megabyte disk, compact disc read-only memory (CD–ROM) formatted to the ISO–9660/Joliet standard, or digital versatile disc read-only memory (DVD–ROM). Unless requested by the Attorney General, data provided on electronic media need not be provided in hard copy.

(c) All electronic media shall be clearly labeled with the following information:

(1) Submitting authority.

(2) Name, address, title, and telephone number of contact person.

(3) Date of submission cover letter.

(4) Statement identifying the voting change(s) involved in the submission.

(d) Each magnetic medium (floppy disk or tape) provided must be accompanied by a printed description of its contents, including an identification by name or location of each data file contained on the medium, a detailed record layout for each such file, a record count for each such file, and a full description of the magnetic medium format.

(e) Text documents should be provided in a standard American Standard Code for Information Interchange (ASCII) character code; documents with graphics and complex formatting should be provided in standard Portable Document Format (PDF). The label shall be affixed to each electronic medium, and the information included on the label shall also be contained in a documentation file on the electronic medium.

(f) All data files shall be provided in a delimited text file and must include a header row as the first row with a name for each field in the data set. A separate data dictionary file documenting the fields in the data set, the field separators or delimiters, and a description of each field, including whether the field is text, date, or numeric, enumerating all possible values is required; separators and delimiters should not also be used as data in the data set. Proprietary or commercial software system data files (*e.g.* SAS, SPSS, dBase, Lotus 1–2–3) and data files containing compressed data or binary data fields will not be accepted.

17. Revise § 51.21 to read as follows:

§ 51.21 Time of submissions.

Changes affecting voting should be submitted as soon as possible after they become final, except as provided in § 51.22.

18. Revise § 51.22 to read as follows:

§ 51.22 Submitted changes that will not be reviewed.

(a) The Attorney General will not consider on the merits:

(1) Any proposal for a change submitted prior to final enactment or administrative decision except as provided in paragraph (b) of this section.

(2) Any submitted change directly related to another change that has not received section 5 preclearance if the Attorney General determines that the two changes cannot be substantively considered independently of one another.

(3) Any submitted change whose enforcement has ceased and been superseded by a standard, practice, or procedure that has received section 5 preclearance or that is otherwise legally enforceable under section 5.

(b) For any change requiring approval by referendum, by a State or Federal court, or by a Federal agency, the Attorney General may make a determination concerning the change prior to such approval if the change is not subject to alteration in the final approving action and if all other action necessary for approval has been taken. (*See* also § 51.18.)

19. Revise § 51.23 to read as follows:

§ 51.23 Party and jurisdiction responsible for making submissions.

(a) Changes affecting voting shall be submitted by the chief legal officer or other appropriate official of the submitting authority or by any other authorized person on behalf of the submitting authority. A State, whether partially or fully covered, has authority to submit any voting change on behalf of its covered jurisdictions and political subunits. Where a State is covered as a whole, State legislation or other changes undertaken or required by the State shall be submitted by the State (except that legislation of local applicability may be submitted by political subunits). Where a State is partially covered, changes of statewide application may be submitted by the State. Submissions from the State, rather than from the individual covered jurisdictions, would serve the State's interest in at least two important respects: First, the State is better able to explain to the Attorney General the purpose and effect of voting changes it enacts than are the individual covered jurisdictions; second, a single submission of the voting change on behalf of all of the covered jurisdictions would reduce the possibility that some State acts will be legally enforceable in some parts of the State but not in others.

(b) A change effected by a political party (*see* § 51.7) may be submitted by an appropriate official of the political party.

(c) A change affecting voting that results from a State court order should be submitted by the jurisdiction or entity that is to implement or administer the change (in the manner specified by paragraphs (a) and (b) of this section).

20. Revise § 51.24 to read as follows:

§ 51.24 Delivery of submissions.

(a) *Delivery by U.S. Postal Service.* Submissions sent to the Attorney General by the U.S. Postal Service, including certified mail or express mail, shall be addressed to the Chief, Voting Section, Civil Rights Division, United States Department of Justice, Room 7254–NWB, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

(b) *Delivery by other carriers.* Submissions sent to the Attorney

General by carriers other than the U.S. Postal Service, including by hand delivery, should be addressed or may be delivered to the Chief, Voting Section, Civil Rights Division, United States Department of Justice, Room 7254–NWB, 1800 G Street, NW., Washington, DC 20006.

(c) *Electronic submissions.* Submissions may be delivered to the Attorney General through an electronic form available on the Web site of the Voting Section of the Civil Rights Division at *http://www.justice.gov/crt/voting/.* Detailed instructions appear on the Web site. Jurisdictions should answer the questions appearing on the electronic form, and should attach documents as specified in the instructions accompanying the application.

(d) *Telefacsimile submissions.* In urgent circumstances, submissions may be delivered to the Attorney General by telefacsimile to (202) 616–9514. Submissions should not be sent to any other telefacsimile number at the Department of Justice. Submissions that are voluminous should not be sent by telefacsimile.

(e) *E-mail.* Submissions may not be delivered to the Attorney General by e-mail in the first instance. However, after a submission is received by the Attorney General, a jurisdiction may supply additional information on that submission by e-mail to *vot1973c@usdoj.gov.* The subject line of the e-mail shall be identified with the Attorney General's file number for the submission (YYYY–NNNN), marked as "Additional Information," and include the name of the jurisdiction.

(f) *Special marking.* The first page of the submission, and the envelope (if any), shall be clearly marked: "Submission under Section 5 of the Voting Rights Act."

(g) The most current information on addresses for, and methods of making, section 5 submissions is available on the Voting Section Web site at *http://www.justice.gov/crt/voting/.*

21. In § 51.25, revise paragraph (a) to read as follows:

§ 51.25 Withdrawal of submissions.

(a) A jurisdiction may withdraw a submission at any time prior to a final decision by the Attorney General. Notice of the withdrawal of a submission must be made in writing addressed to the Chief, Voting Section, Civil Rights Division, to be delivered at the addresses, telefacsimile number, or e-mail address specified in § 51.24. The submission shall be deemed withdrawn upon the Attorney General's receipt of the notice.

* * * * *

22. In § 51.27, revise paragraphs (a) through (d) to read as follows:

§ 51.27 Required contents.

* * * * *

(a) A copy of any ordinance, enactment, order, or regulation embodying the change affecting voting for which section 5 preclearance is being requested.

(b) A copy of any ordinance, enactment, order, or regulation embodying the voting standard, practice, or procedure that is proposed to be repealed, amended, or otherwise changed.

(c) A statement that identifies with specificity each change affecting voting for which section 5 preclearance is being requested and that explains the difference between the submitted change and the prior law or practice. If the submitted change is a special referendum election and the subject of the referendum is a proposed change affecting voting, the submission should specify whether preclearance is being requested solely for the special election or for both the special election and the proposed change to be voted on in the referendum (*see* §§ 51.16, 51.22).

(d) The name, title, mailing address, and telephone number of the person making the submission. Where available, a telefacsimile number and an e-mail address for the person making the submission also should be provided.

* * * * *

23. In § 51.28, revise paragraph (a)(5), and revise paragraph (c) to read as follows:

§ 51.28 Supplemental Contents.

* * * * *

(a) * * *

(a)(5) Demographic data on electronic media that are provided in conjunction with a redistricting plan shall be contained in an ASCII, comma delimited block equivalency import file with two fields as detailed in the following table. A separate import file shall accompany each redistricting plan:

Field No.	Description	Total length	Comments	
1	PL94–171 Reference	Length		STATE215. Each padded with leading zeroes resulting in a 15-digit character. COUNTY3T. RACT6BLOC. K4.
2	District number	3	3	No leading zeros.

(i) *Field 1:* The PL 94–171 reference number is the state, county, tract, and block reference numbers concatenated together and padded with leading zeroes so as to create a 15-digit character field; and

(ii) *Field 2:* The district number is a 3 digit character field with no padded leading zeroes.

Example:

482979501002099,1; 482979501002100,3; 482979501004301,10; 482975010004305,23; 482975010004302,101

* * * * *

(c) *Annexations.* For annexations, in addition to that information specified elsewhere, the following information:

(1) The present and expected future use of the annexed land (*e.g.,* garden apartments, industrial park).

(2) An estimate of the expected population, by race and language group, when anticipated development, if any, is completed.

(3) A statement that all prior annexations (and deannexations) subject to the preclearance requirement have been submitted for review, or a statement that identifies all annexations (and deannexations) subject to the preclearance requirement that have not been submitted for review. *See* § 51.61(b).

(4) To the extent that the jurisdiction elects some or all members of its governing body from single-member districts, it should inform the Attorney General how the newly annexed territory will be incorporated into the existing election districts.

* * * * *

24. In § 51.29, revise paragraphs (b) and (d) to read as follows:

§ 51.29 Communications concerning voting changes.

* * * * *

(b) Comments should be sent to the Chief, Voting Section, Civil Rights Division, at the addresses, telefacsimile number, or email address specified in § 51.24. The first page, and the envelope (if any) should be marked: "Comment under section 5 of the Voting Rights Act." Comments should include, where available, the name of the jurisdiction and the Attorney General's file number (YYYY–NNNN) in the subject line.

* * * * *

(d) To the extent permitted by the Freedom of Information Act, 5 U.S.C. 552, the Attorney General shall not disclose to any person outside the Department of Justice the identity of any individual or entity providing information on a submission or the administration of section 5 where the individual or entity has requested confidentiality; an assurance of confidentiality may reasonably be implied from the circumstances of the communication; disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy under 5 U.S.C. 552; or disclosure is prohibited by any applicable provisions of federal law.

* * * * *

25. Revise § 51.35 to read as follows:

§ 51.35 Disposition of inappropriate submissions and resubmissions.

(a) When the Attorney General determines that a response on the merits of a submitted change is inappropriate, the Attorney General shall notify the submitting official in writing within the 60-day period that would have commenced for a determination on the merits and shall include an explanation of the reason why a response is not appropriate.

(b) Matters that are not appropriate for a merits response include:

(1) Changes that do not affect voting (*see* § 51.13);

(2) Standards, practices, or procedures that have not been changed (*see* §§ 51.4, 51.14);

(3) Changes that previously have received preclearance;

(4) Changes that affect voting but are not subject to the requirement of section 5 (*see* § 51.18);

(5) Changes that have been superseded or for which a determination is premature (*see* §§ 51.22, 51.61(b));

(6) Submissions by jurisdictions not subject to the preclearance requirement (*see* §§ 51.4, 51.5);

(7) Submissions by an inappropriate or unauthorized party or jurisdiction (*see* § 51.23); and

(8) Deficient submissions (*see* § 51.26(d)).

(c) Following such a notification by the Attorney General, a change shall be deemed resubmitted for section 5 review upon the Attorney General's receipt of a submission or other written information that renders the change appropriate for review on the merits (such as a notification from the submitting authority that a change previously determined to be premature has been formally adopted). Notice of the resubmission of a change affecting voting will be given to interested parties registered under § 51.32.

26. Revise § 51.37 to read as follows:

§ 51.37 Obtaining information from the submitting authority.

(a) *Written requests for information.* (1) If the Attorney General determines that a submission does not satisfy the requirements of § 51.27, the Attorney General may request in writing from the submitting authority any omitted information necessary for evaluation of the submission. *Branch* v. *Smith,* 538 U.S. 254 (2003); *Georgia* v. *United States,* 411 U.S. 526 (1973). This written request shall be made as promptly as possible within the original 60-day period or the new 60-day period described in § 51.39(a). The written request shall advise the jurisdiction that the submitted change remains unenforceable unless and until preclearance is obtained.

(2) A copy of the request shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

(3) The Attorney General shall notify the submitting authority that a new 60-day period in which the Attorney General may interpose an objection shall commence upon the Attorney General's receipt of a response from the submitting authority that provides the information requested or states that the information is unavailable. The Attorney General can request further information in writing within the new 60-day period, but such a further request shall not suspend the running of the 60-day period, nor shall the Attorney General's receipt of such further information begin a new 60-day period.

(4) Where the response from the submitting authority neither provides the information requested nor states that such information is unavailable, the response shall not commence a new 60-day period. It is the practice of the Attorney General to notify the submitting authority that its response is incomplete and to provide such notification as soon as possible within the 60-day period that would have commenced had the response been complete. Where the response includes a portion of the available information that was requested, the Attorney General will reevaluate the submission to ascertain whether a determination on the merits may be made based upon the information provided. If a merits determination is appropriate, it is the practice of the Attorney General to make that determination within the new 60-day period that would have commenced had the response been complete. *See* § 51.40.

(5) If, after a request for further information is made pursuant to this section, the information requested by the Attorney General becomes available to the Attorney General from a source other than the submitting authority, the Attorney General shall promptly notify the submitting authority in writing, and the new 60-day period will commence the day after the information is received by the Attorney General.

(6) Notice of the written request for further information and the receipt of a response by the Attorney General will be given to interested parties registered under § 51.32.

(b) *Oral requests for information.* (1) If a submission does not satisfy the requirements of § 51.27, the Attorney General may request orally any omitted information necessary for the evaluation of the submission. An oral request may be made at any time within the 60-day period, and the submitting authority should provide the requested information as promptly as possible. The oral request for information shall not suspend the running of the 60-day period, and the Attorney General will proceed to make a determination within the initial 60-day period. The Attorney General reserves the right as set forth in § 51.39, however, to commence a new 60-day period in which to make the requisite determination if the written information provided in response to such request materially supplements the submission.

(2) An oral request for information shall not limit the authority of the Attorney General to make a written request for information.

(3) The Attorney General will notify the submitting authority in writing when the 60-day period for a submission is recalculated from the Attorney General's receipt of written information provided in response to an oral request as described in § 51.37(b)(1), above.

(4) Notice of the Attorney General's receipt of written information pursuant to an oral request will be given to interested parties registered under § 51.32.

27. Revise § 51.39 to read as follows:

§ 51.39 Supplemental information and related submissions.

(a)(1) *Supplemental information.* When a submitting authority, at its own instance, provides information during the 60-day period that the Attorney General determines materially supplements a pending submission, the 60-day period for the pending submission will be recalculated from the Attorney General's receipt of the supplemental information.

(2) *Related submissions.* When the Attorney General receives related submissions during the 60-day period for a submission that cannot be independently considered, the 60-day period for the first submission shall be recalculated from the Attorney General's receipt of the last related submission.

(b) The Attorney General will notify the submitting authority in writing when the 60-day period for a submission is recalculated due to the Attorney General's receipt of supplemental information or a related submission.

(c) Notice of the Attorney General's receipt of supplemental information or a related submission will be given to interested parties registered under § 51.32.

28. Revise § 51.42 to read as follows:

§ 51.42 Failure of the Attorney General to respond.

It is the practice and intention of the Attorney General to respond in writing to each submission within the 60-day period. However, the failure of the Attorney General to make a written response within the 60-day period constitutes preclearance of the submitted change, provided that a 60-day review period had commenced after receipt by the Attorney General of a complete submission that is appropriate for a response on the merits. (*See* § 51.22, § 51.27, § 51.35.)

29. Revise § 51.43 to read as follows:

§ 51.43 Reexamination of decision not to object.

(a) After notification to the submitting authority of a decision not to interpose an objection to a submitted change affecting voting has been given, the Attorney General may reexamine the submission if, prior to the expiration of the 60-day period, information comes to the attention of the Attorney General that would otherwise require objection in accordance with section 5.

(b) In such circumstances, the Attorney General may by letter withdraw his decision not to interpose an objection and may by letter interpose an objection provisionally, in accordance with § 51.44, and advise the submitting authority that examination of the change in light of the newly raised issues will continue and that a final decision will be rendered as soon as possible.

30. In § 51.44, revise paragraph (c) to read as follows:

§ 51.44 Notification of decision to object.

* * * * *

(c) The submitting authority shall be advised further that notwithstanding the objection it may institute an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change objected to by the Attorney General neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

* * * * *

31. In § 51.46, revise paragraph (a) to read as follows:

§ 51.46 Reconsideration of objection at the instance of the Attorney General.

(a) Where there appears to have been a substantial change in operative fact or relevant law, or where it appears there may have been a misinterpretation of fact or mistake in the law, an objection may be reconsidered, if it is deemed appropriate, at the instance of the Attorney General.

* * * * *

32. In § 51.48, revise paragraphs (a) through (d) to read as follows:

§ 51.48 Decision after reconsideration.

(a) It is the practice of the Attorney General to notify the submitting authority of the decision to continue or withdraw an objection within a 60-day period following receipt of a reconsideration request or following notice given under § 51.46(b), except that this 60-day period shall be recommenced upon receipt of any documents or written information from the submitting authority that materially supplements the reconsideration review, irrespective of whether the submitting authority provides the documents or information at its own instance or pursuant to a request (written or oral) by the Attorney General. The 60-day reconsideration period may be extended to allow a 15-day decision period following a conference held pursuant to § 51.47. The 60-day reconsideration period shall be computed in the manner specified in § 51.9. Where the reconsideration is at the instance of the Attorney General, the first day of the period shall be the day after the notice required by § 51.46(b) is transmitted to the submitting authority. The reasons for the reconsideration decision shall be stated.

(b) The objection shall be withdrawn if the Attorney General is satisfied that the change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

(c) If the objection is not withdrawn, the submitting authority shall be advised that notwithstanding the objection it may institute an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change objected to by the Attorney General neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

(d) An objection remains in effect until either it is specifically withdrawn by the Attorney General or a declaratory judgment with respect to the change in question is entered by the U.S. District Court for the District of Columbia.

* * * * *

33. Revise § 51.50 to read as follows:

§ 51.50 Records concerning submissions.

(a) *Section 5 files.* The Attorney General shall maintain a section 5 file for each submission, containing the submission, related written materials, correspondence, memoranda, investigative reports, data provided on electronic media, notations concerning conferences with the submitting authority or any interested individual or group, and copies of letters from the Attorney General concerning the submission.

(b) *Objection letters.* The Attorney General shall maintain section 5 notification letters regarding decisions to interpose, continue, or withdraw an objection.

(c) *Computer file.* Records of all submissions and their dispositions by the Attorney General shall be electronically stored.

(d) *Copies.* The contents of the section 5 submission files in paper, microfiche, electronic, or other form shall be available for obtaining copies by the public, pursuant to written request directed to the Chief, Voting Section, Civil Rights Division, United States Department of Justice, Washington, DC. Such written request may be delivered to the addresses or telefacsimile number specified in § 51.24 or by electronic mail to *Voting.Section@usdoj.gov.* It is the

Attorney General's intent and practice to expedite, to the extent possible, requests pertaining to pending submissions. Those who desire copies of information that has been provided on electronic media will be provided a copy of that information in the same form as it was received. Materials that are exempt from inspection under the Freedom of Information Act, 5 U.S.C. 552(b), may be withheld at the discretion of the Attorney General. The identity of any individual or entity that provided information to the Attorney General regarding the administration of section 5 shall be available only as provided by § 51.29(d). Applicable fees, if any, for the copying of the contents of these files are contained in the Department of Justice regulations implementing the Freedom of Information Act, 28 CFR 16.10.

34. Revise § 51.52 to read as follows:

§ 51.52 Basic standard.

(a) *Surrogate for the court.* Section 5 provides for submission of a voting change to the Attorney General as an alternative to the seeking of a declaratory judgment from the U.S. District Court for the District of Columbia. Therefore, the Attorney General shall make the same determination that would be made by the court in an action for a declaratory judgment under section 5: Whether the submitted change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. The burden of proof is on a submitting authority when it submits a change to the Attorney General for preclearance, as it would be if the proposed change were the subject of a declaratory judgment action in the U.S. District Court for the District of Columbia. *South Carolina* v. *Katzenbach,* 383 U.S. 301, 328, 335 (1966).

(b) *No objection.* If the Attorney General determines that the submitted change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, no objection shall be interposed to the change.

(c) *Objection.* An objection shall be interposed to a submitted change if the Attorney General is unable to determine that the change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. This includes those situations where the evidence as to the purpose or effect of the change is conflicting and the Attorney General is unable to determine that the change is free of the prohibited discriminatory purpose and effect.

35. Revise § 51.54 to read as follows:

§ 51.54 Discriminatory purpose and effect.

(a) *Discriminatory purpose.* A change affecting voting is considered to have a discriminatory purpose under section 5 if it is enacted or sought to be administered with any purpose of denying or abridging the right to vote on account of race, color, or membership in a language minority group. The term "purpose" in section 5 includes any discriminatory purpose. 42 U.S.C. 1973c. The Attorney General's evaluation of discriminatory purpose under section 5 is guided by the analysis in *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.,* 429 U.S. 252 (1977).

(b) *Discriminatory effect.* A change affecting voting is considered to have a discriminatory effect under section 5 if it will lead to a retrogression in the position of members of a racial or language minority group (*i.e.,* will make members of such a group worse off than they had been before the change) with respect to their effective exercise of the electoral franchise. *Beer* v. *United States,* 425 U.S. 130, 140–42 (1976).

(c) *Benchmark.* (1) In determining whether a submitted change is retrogressive the Attorney General will normally compare the submitted change to the voting practice or procedure in force or effect at the time of the submission. If the existing practice or procedure upon submission was not in effect on the jurisdiction's applicable date for coverage (specified in the Appendix) and is not otherwise legally enforceable under section 5, it cannot serve as a benchmark, and, except as provided in subparagraph (c)(4) below, the comparison shall be with the last legally enforceable practice or procedure used by the jurisdiction.

(2) The Attorney General will make the comparison based on the conditions existing at the time of the submission.

(3) The implementation and use of an unprecleared voting change subject to section 5 review does not operate to make that unprecleared change a benchmark for any subsequent change submitted by the jurisdiction.

(4) Where at the time of submission of a change for section 5 review there exists no other lawful practice or procedure for use as a benchmark (*e.g.,* where a newly incorporated college district selects a method of election) the Attorney General's determination will necessarily center on whether the submitted change was designed or adopted for the purpose of discriminating against members of racial or language minority groups.

(d) *Protection of the ability to elect.* Any change affecting voting that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race, color, or membership in a language minority group to elect their preferred candidates of choice denies or abridges the right to vote within the meaning of section 5. 42 U.S.C. 1973c.

36. In § 51.55, revise paragraph (a) to read as follows:

§ 51.55 Consistency with constitutional and statutory requirements.

(a) *Consideration in general.* In making a determination under section 5, the Attorney General will consider whether the change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group in light of, and with particular attention being given to, the requirements of the 14th, 15th, and 24th Amendments to the Constitution, 42 U.S.C. 1971(a) and (b), sections 2, 4(a), 4(f)(2), 4(f)(4), 201, 203(c), and 208 of the Act, and other constitutional and statutory provisions designed to safeguard the right to vote from denial or abridgment on account of race, color, or membership in a language minority group.

* * * * *

37. Revise § 51.57 to read as follows:

§ 51.57 Relevant factors.

Among the factors the Attorney General will consider in making determinations with respect to the submitted changes affecting voting are the following:

(a) The extent to which a reasonable and legitimate justification for the change exists;

(b) The extent to which the jurisdiction followed objective guidelines and fair and conventional procedures in adopting the change;

(c) The extent to which the jurisdiction afforded members of racial and language minority groups an opportunity to participate in the decision to make the change;

(d) The extent to which the jurisdiction took the concerns of members of racial and language minority groups into account in making the change; and

(e) The factors set forth in *Arlington Heights* v. *Metropolitan Housing Development Corp.,* 429 U.S. 252 (1977), including whether the impact of the official action bears more heavily on one race than another, the historical background of the decision, the

legislative or administrative history, the specific sequence of events leading up to the submitted change, whether there are departures from the normal procedural sequence and whether there are substantive departures from the normal factors considered.

38. In § 51.58, revise paragraph (b) to read as follows:

§ 51.58 Representation.

* * * * *

(b) Background factors. In making determinations with respect to these changes involving voting practices and procedures, the Attorney General will consider as important background information the following factors:

(1) The extent to which minorities have been denied an equal opportunity to participate meaningfully in the political process in the jurisdiction.

(2) The extent to which voting in the jurisdiction is racially polarized and political activities are racially segregated.

(3) The extent to which the voter registration and election participation of minority voters have been adversely affected by present or past discrimination.

39. Revise § 51.59 to read as follows:

§ 51.59 Redistricting plans.

(a) *Relevant factors.* In determining whether a submitted redistricting plan has a prohibited purpose or effect the Attorney General, in addition to the factors described above, will consider the following factors (among others):

(1) The extent to which malapportioned districts deny or abridge the right to vote of minority citizens;

(2) The extent to which minority voting strength is reduced by the proposed redistricting;

(3) The extent to which minority concentrations are fragmented among different districts;

(4) The extent to which minorities are over concentrated in one or more districts;

(5) The extent to which available alternative plans satisfying the jurisdiction's legitimate governmental interests were considered;

(6) The extent to which the plan departs from objective redistricting criteria set by the submitting jurisdiction, ignores other relevant factors such as compactness and contiguity, or displays a configuration that inexplicably disregards available natural or artificial boundaries; and

(7) The extent to which the plan is inconsistent with the jurisdiction's stated redistricting standards.

(b) *Discriminatory purpose.* A determination that a jurisdiction has failed to establish that the adoption was not motivated by a discriminatory purpose may not be based solely on a jurisdiction's failure to adopt the maximum possible number of majority-minority districts.

40. In § 51.61, revise paragraphs (a) and (b) to read as follows:

§ 51.61 Annexations and deannexations.

(a) *Coverage.* Annexations and deannexations, even of uninhabited land, are subject to section 5 preclearance to the extent that they alter or are calculated to alter the composition of a jurisdiction's electorate. *See, e.g., City of Pleasant Grove* v. *United States,* 479 U.S. 462 (1987). In analyzing annexations and deannexations under section 5, the Attorney General considers the purpose and effect of the annexations and deannexations only as they pertain to voting.

(b) *Section 5 review.* It is the practice of the Attorney General to review all of a jurisdiction's unprecleared annexations and deannexations together. *See City of Pleasant Grove* v. *United States,* C.A. No. 80–2589 (D.D.C. Oct. 7, 1981).

* * * * *

41. Revise the Appendix to Part 51 to read as follows:

Appendix to Part 51—Jurisdictions Covered Under Section 4(b) of the Voting Rights Act, as Amended

The requirements of section 5 of the Voting Rights Act, as amended, apply in the following jurisdictions. The applicable date is the date that was used to determine coverage and the date after which changes affecting voting are subject to the preclearance requirement. Some jurisdictions, for example, Yuba County, California, are included more than once because they have been determined on more than one occasion to be covered under section 4(b).

Jurisdiction	Applicable date	Federal Register citation	
		Volume and page	Date
Alabama	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Alaska	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Arizona	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
California:			
Kings County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Merced County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Monterey County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Yuba County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Yuba County	Nov. 1, 1972	41 FR 784	Jan. 5, 1976.
Florida:			
Collier County	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
Hardee County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Hendry County	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
Hillsborough County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Monroe County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Georgia	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Louisiana	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Michigan:			
Allegan County: Clyde Township	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
Saginaw County: Buena Vista Township.	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
Mississippi	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
New Hampshire:			
Cheshire County: Rindge Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Coos County:			
Millsfield Township	Nov. 1, 1968	39 FR 16912	May 10, 1974.

Jurisdiction	Applicable date	Federal Register citation	
		Volume and page	Date
Pinkhams Grant	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Stewartstown Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Stratford Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Grafton County:			
Benton Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Hillsborough County:			
Antrim Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Merrimack County:			
Boscawen Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Rockingham County:			
Newington Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Sullivan County:			
Unity Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
New York:			
Bronx County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Bronx County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Kings County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Kings County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
New York County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
North Carolina:			
Anson County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Beaufort County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Bertie County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Bladen County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Camden County	Nov. 1, 1964	31 FR 3317	Mar. 2, 1966.
Caswell County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Chowan County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Cleveland County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Craven County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Cumberland County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Edgecombe County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Franklin County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Gaston County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Gates County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Granville County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Greene County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Guilford County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Halifax County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Harnett County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Hertford County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Hoke County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Jackson County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Lee County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Lenoir County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Martin County	Nov. 1, 1964	31 FR 19	Jan. 4, 1966.
Nash County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Northampton County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Onslow County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Pasquotank County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Perquimans County	Nov. 1, 1964	31 FR 3317	Mar. 2, 1966.
Person County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Pitt County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Robeson County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Rockingham County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Scotland County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Union County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Vance County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Washington County	Nov. 1, 1964	31 FR 19	Jan. 4, 1966.
Wayne County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Wilson County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
South Carolina	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
South Dakota:			
Shannon County	Nov. 1, 1972	41 FR 784	Jan. 5, 1976.
Todd County	Nov. 1, 1972	41 FR 784	Jan. 5, 1976.
Texas	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Virginia	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.

The following political subdivisions in States subject to statewide coverage are also covered individually:

Jurisdiction	Applicable date	FEDERAL REGISTER citation	
		Volume and page	Date
Arizona:			
Apache County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Apache County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Cochise County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Coconino County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Coconino County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Mohave County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Navajo County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Navajo County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Pima County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Pinal County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Pinal County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975
Santa Cruz County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Yuma County	Nov. 1, 1964.	31 FR 982	Jan. 25, 1966.

The Voting Section maintains a current list of those jurisdictions that have maintained successful declaratory judgments from the United States District Court for the District of Columbia pursuant to section 4 of the Act on its Web site at *http://www.justice.gov/crt/voting.*

Dated: May 27, 2010.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2010–13393 Filed 6–10–10; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AN49

Payment or Reimbursement for Emergency Treatment Furnished by Non-VA Providers in Non-VA Facilities to Certain Veterans With Service-Connected or Nonservice-Connected Disabilities

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its regulations concerning emergency hospital care and medical services provided to eligible veterans for service-connected and nonservice-connected conditions at non-VA facilities as a result of the amendments made by section 402 of the Veterans' Mental Health and Other Care Improvements Act of 2008. These amendments would require VA payment for emergency treatment of eligible veterans at non-VA facilities and expand the circumstances under which payment for such treatment is authorized. In addition, these amendments would make nonsubstantive technical changes such as correcting grammatical errors and updating obsolete citations.

DATES: Comments must be received by VA on or before August 10, 2010.

ADDRESSES: Written comments may be submitted through *http://www.regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to "RIN 2900–AN49–Payment or Reimbursement for Emergency Treatment Furnished by Non-VA Providers in Non-VA facilities to Certain Veterans with Service-connected or Nonservice-connected Disabilities." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph Duran, Policy Specialist, VHA CBO Fee Program Office, VHA Chief Business Office, Department of Veterans Affairs, P.O. Box 469066, Denver, CO 80246. Telephone (303) 398–5191. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Sections 1725 and 1728 of title 38, United States Code, authorize the Secretary of Veterans Affairs to reimburse eligible veterans for costs related to non-VA emergency treatment furnished at non-VA facilities, or to pay providers directly for such costs. Specifically, section 1725 authorizes reimbursement for emergency treatment for eligible veterans with nonservice-connected conditions. In contrast, section 1728 authorizes reimbursement for emergency treatment for eligible veterans with service-connected conditions. These statutory provisions are implemented at 38 CFR 17.1000 through 17.1008 for nonservice-connected conditions, and at 38 CFR 17.120 and 17.121 for service-connected conditions. Sometimes a veteran will require continued, non-emergent treatment after the veteran's medical condition is stabilized. However, until recently VA was not authorized to reimburse or pay for treatment provided after "the veteran can be transferred safely to a [VA] facility or other Federal facility." 38 U.S.C. 1725(f)(1)(C) (2007). Thus, if no such facility could immediately accept the transfer, VA was unable to provide payment to the veteran or medical provider for services rendered beyond the point the veteran was determined to be stable.

On October 10, 2008, the Veterans' Mental Health and Other Care Improvements Act of 2008, Public Law 110–387, was enacted. Section 402 of Public Law 110–387 amended the definition of "emergency treatment" in section1725(f)(1), extending VA's payment authority until "such time as the veteran can be transferred safely to a [VA] facility or other Federal facility and such facility is capable of accepting such transfer," or until such transfer was accepted, so long as the non-VA facility "made and documented reasonable attempts to transfer the veteran to a [VA] facility or other Federal facility." Section 402(a)(1) amended section 1725(a)(1) by striking the term "may reimburse" and inserting "shall reimburse" in its place. This change would require VA to reimburse the covered costs for emergency care received at non-VA facilities for eligible veterans, rather than at the discretion of the Secretary.

Section 402(b) of Public Law 110–387 amended 38 U.S.C. 1728(a). First,

section 402(b)(1) authorized VA to reimburse or pay for "customary and usual charges of emergency treatment" when a veteran makes payment directly to the provider of non-VA emergency care from sources other than VA, whereas the statute had previously authorized reimbursement for "the reasonable value of such care or services." This amendment relates to the amount of payment and will be the subject of another rulemaking. Second, section 402(b)(3) made the definition of "emergency treatment" in section 1725(f)(1) applicable to section 1728. As described above, the definition of emergency treatment now includes care or services furnished until "such time as the veteran can be transferred safely to a [VA] facility or other Federal facility and such facility is capable of accepting such transfer," or until such transfer was accepted, so long as the non-VA facility "made and documented reasonable attempts to transfer the veteran to a [VA] facility or other Federal facility."

This proposed rule would amend the following VA regulations to comply with the amendments made to 38 U.S.C. 1725 and 1728, and would make technical changes such as correcting grammatical errors and updating obsolete regulatory citations: 38 CFR 17.120, 17.121, 17.1002, 17.1005, 17.1006, and 17.1008.

We propose to amend 38 CFR 17.120 by renaming it, "Payment or reimbursement for emergency treatment furnished by non-VA providers to certain veterans with service-connected disabilities." This new heading would clarify that this section covers only eligible veterans who have service-connected disabilities. This is a nonsubstantive change made only to improve the clarity of our regulations. We also propose to amend the introductory text of § 17.120 by striking "may be paid" and replacing it with "will be paid." This amendment reflects the amendment made to 38 U.S.C. 1728(a) by section 402(b)(1), requiring VA to reimburse the covered costs. In addition, we propose to revise § 17.120(a) by striking the terms "care" and "medical services" and the phrase "care or services" in the places they occur, and replacing them with the term "emergency treatment." This amendment would reflect the change made by section 402(b)(1), which replaced the term "hospital care or medical services" in section 1728(a) with the term "emergency treatment."

We propose to revise § 17.120(b) to replace the former standard for determining the existence of a medical emergency with the "prudent layperson" standard. Section 402(b)(3) added a new paragraph (c) to section 1728, which states that the term "emergency treatment," for the purposes of section 1728, "has the meaning given such term in [38 U.S.C.] 1725(f)(1)." Under section 1725(f)(1)(B), emergency treatment means medical care furnished "in a medical emergency of such nature that a prudent layperson reasonably expects that delay in seeking immediate medical attention would be hazardous to life or health." In addition, we propose to add clarifying language regarding the "prudent layperson standard" derived from current 38 CFR 17.1002(b), the regulation that implements section 1725(f)(1), which, again, is now the statutory authority for the definition of "emergency treatment" for both nonservice-connected and service-connected eligible veterans.

We also propose several amendments to 38 CFR 17.121 in order to implement section 402 and reorganize and clarify existing provisions. Our proposed substantive changes to § 17.121 are described below.

We propose to strike the phrase "emergency hospital care and medical services" in all places it occurs in § 17.121 and replace it with the term "emergency treatment," for consistency with the defined term in section 1725(f)(1). We also propose to amend § 17.121 to include the provisions in section 402(a)(2) authorizing reimbursement of non-emergent treatment in certain circumstances. This revision would authorize VA to pay or reimburse for the costs of continued, non-emergent treatment furnished to eligible veterans beyond the point of stabilization if both "the non-VA facility notified VA at the time that the veteran could be safely transferred" but the transfer was not accepted and "the non-VA facility made and documented reasonable attempts to transfer the veteran to a VA facility (or other Federal facility with which VA has an agreement to furnish health care services for veterans)."

Proposed § 17.121(a) would establish the clinical decision maker as the designated VA clinician at the VA facility for purposes of payments or reimbursement of costs under the proposed rule. Although not required by Public Law 110–387, this change adopts similar customary practice utilized in the health care industry. In the health care industry, it is customary practice to utilize the services of health care professionals, such as nurses, for purposes of clinical review. For this reason, establishing the clinical decision maker as a "designated VA clinician" would align VA with customary health care industry practice (*see* Utilization Review Accreditation Commission) as well as promote greater efficiency in the use of VA physician services.

Proposed § 17.121(b)(2) would define a reasonable attempt to mean contact with the local VA facility's transfer coordinator, administrative officer of the day, or designated staff in the facility responsible for accepting transfer of patients, and would require documentation of such contact in the veteran's progress/physicians' notes, discharge summary, or other applicable medical record for that episode of care. It is VA's expectation that documentation within the applicable medical record represents standard business practice throughout the health care industry. Additionally, by regulating the contact and documentation requirements in this way, potentially eligible veterans would be appropriately afforded ample opportunity to qualify for this expanded benefit.

Based on the nature of the amendments made by section 402, we interpret Congress's intent to be that payment for continued non-emergent non-VA care be limited only to those circumstances where a VA or Federal facility with which VA has an agreement to provide care are unavailable to provide treatment. As such, we would clarify § 17.121(c) to state that in the event that a stabilized veteran refuses transfer to an available VA or Federal facility with which VA has an agreement to provide care, we would limit VA payment for an otherwise eligible veteran to the point of stability as determined by a VA clinician.

Finally, we propose to amend the authority citation for § 17.121 to be consistent with the authority citation for § 17.120.

With respect to reimbursement for eligible veterans with nonservice-connected conditions, the introductory text of 38 CFR 17.1002 would be amended by striking "may" in the first paragraph and replacing it with "will." This amendment would reflect the amendment made to section 1725(a)(1) by section 402(a)(1), requiring VA to reimburse the covered costs. Section 17.1002(d) would be removed and paragraphs (e) through (i) would be redesignated as paragraphs (d) through (h).

Proposed paragraph (c) of § 17.1005 would implement the provisions of section 402(b)(3), allowing for reimbursement of non-emergent treatment in certain circumstances. In addition, proposed paragraph (c) includes nonsubstantive language changes for clarity purposes. Based on

the nature of the amendments made by section 402, we interpret Congress's intent to be that payment for continued non-emergent non-VA care be limited only to those circumstances where a VA or Federal facility with which VA has an agreement to provide care are unavailable to provide treatment. As such, proposed paragraph (d) of § 17.1005 would be inserted after the newly added paragraph (c) and would limit VA payment for non-VA emergency treatment when a stabilized veteran who is in need of continued non-emergent treatment refuses transfer to a VA or other Federal facility with which VA has an agreement. When a stabilized veteran refuses transfer to an available VA or other Federal facility with which VA has an agreement to furnish health care services for veterans, VA authorization for payment would be limited to the point of stability.

We propose to amend § 17.1006 to update clinical decision maker terminology consistent with the proposed amendment to § 17.121(a) described above. Currently listed as "the Fee Service Review Physician or equivalent officer," we would change this term to "the designated VA clinician."

Finally, we propose to amend § 17.1008 to add, after "emergency treatment" and before "shall," the following: "and any non-emergent hospital care that is authorized under § 17.1005(c) of this part." This statement would update § 17.1008 to comply with the new provisions added by section 402.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This action contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action 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 the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This proposed rule will not cause a significant economic impact on health care providers, suppliers, or entities since only a small portion of the business of such entities concerns VA beneficiaries. Therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; and 64.011, Veterans Dental Care.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, approved this document on February 3, 2010, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—Veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: June 8, 2010.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of the General Counsel.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 17 as follows:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, and as noted in specific sections.

2. Amend § 17.120 by:

a. Revising the section heading.

b. In the introductory text, removing "may be paid" and adding, in its place, "will be paid", removing "care" and adding, in its place, "emergency treatment", and removing "medical services" and adding, in its place, "emergency treatment".

c. Revising paragraph (a) introductory text.

d. In paragraph (a)(3), removing "United State" and adding, in its place, "United States" and adding the word "or" at the end of paragraph (a)(3).

e. In paragraph (a)(4), removing "§ 17.48(j); and" and adding, in its place," § 17.47(i);".

f. Revising paragraph (b).

The revisions read as follows:

§ 17.120 Payment or reimbursement for emergency treatment furnished by non-VA providers to certain veterans with service-connected disabilities.

* * * * *

(a) *For veterans with service connected disabilities.* Emergency treatment not previously authorized was rendered to a veteran in need of such emergency treatment:

* * * * *

(b) *In a medical emergency.* Emergency treatment, not previously authorized, including ambulance services, was rendered in a medical emergency of such nature that a prudent layperson would have reasonably expected that delay in seeking immediate medical attention would have been hazardous to life or health (this standard is met by an emergency medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in placing the health of the individual in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part); and

* * * * *

3. Section 17.121 is revised to read as follows:

§ 17.121 Limitations on payment or reimbursement of the costs of emergency treatment not previously authorized.

(a) *Emergency Treatment.* Except as provided in paragraph (b) of this section, VA will not approve claims for payment or reimbursement of the costs of emergency treatment not previously authorized for any period beyond the date on which the medical emergency ended. For the purpose of payment or reimbursement of the expense of emergency treatment not previously authorized, VA considers that an emergency ends when the designated VA clinician at the VA facility has determined that, based on sound medical judgment, a veteran:

(1) Who received emergency treatment could have been transferred from the non-VA facility to a VA medical center for continuation of treatment for the disability, or

(2) Who received emergency treatment could have reported to a VA medical center for continuation of treatment for the disability.

(b) *Continued non-emergent treatment.* Claims for payment or reimbursement of the costs of emergency treatment not previously authorized may only be made for continued, non-emergent treatment, if:

(1) The non-VA facility notified VA at the time the veteran could be safely transferred to a VA facility (or other Federal facility with which VA has an agreement to furnish health care services for veterans), and the transfer of the veteran was not accepted; and

(2) The non-VA facility made and documented reasonable attempts to request transfer of the veteran to a VA facility (or to another Federal facility with which VA has an agreement to furnish health care services for veterans), which means that the non-VA facility contacted either the VA Transfer Coordinator, Administrative Officer of the Day, or designated staff responsible for accepting transfer of patients, at a local VA (or other Federal facility) and documented such contact in the veteran's progress/physicians' notes, discharge summary, or other applicable medical record.

(c) *Refusal of transfer.* If a stabilized veteran who requires continued non-emergent treatment refuses to be transferred to an available VA facility (or other Federal facility with which VA has an agreement to furnish health care services for veterans), VA will make payment or reimbursement only for the expenses related to the initial evaluation and the emergency treatment furnished to the veteran up to the point of stabilization, as set forth in paragraph (a) of this section.

(Authority: 38 U.S.C. 1724, 1728, 7304)

4. Amend § 17.1002 by:

a. Revising the introductory text.

b. Removing paragraph (d).

c. Redesignating paragraphs (e) through (i) as new paragraphs (d) through (h) respectively.

The revision reads as follows:

§ 17.1002 Substantive conditions for payment or reimbursement.

Payment or reimbursement under 38 U.S.C. 1725 for emergency treatment will be made only if all of the following conditions are met:

* * * * *

5. In § 17.1005, revise paragraph (b) and add paragraphs (c) and (d) as follows:

§ 17.1005 Payment limitations.

* * * * *

(b) Except as provided in paragraph (c) of this section, VA will not approve claims for payment or reimbursement of the costs of emergency treatment not previously authorized for any period beyond the date on which the medical emergency ended. For the purpose of payment or reimbursement of the expense of emergency treatment not previously authorized, VA considers that an emergency ends when the designated VA clinician at the VA facility has determined that, based on sound medical judgment, a veteran:

(1) Who received emergency treatment could have been transferred from the non-VA facility to a VA medical center for continuation of treatment for the disability, or

(2) Who received emergency treatment could have reported to a VA medical center for continuation of treatment for the disability.

(c) Claims for payment or reimbursement of the costs of emergency treatment not previously authorized may only be made for continued, non-emergent treatment, if:

(1) The non-VA facility notified VA at the time the veteran could be safely transferred to a VA facility (or other Federal facility with which VA has an agreement to furnish health care services for veterans) and the transfer of the veteran was not accepted, and

(2) The non-VA facility made and documented reasonable attempts to request transfer of the veteran to VA (or to another Federal facility with which VA has an agreement to furnish health care services for veterans), which means that the non-VA facility contacted either the VA Transfer Coordinator, Administrative Officer of the Day, or designated staff responsible for accepting transfer of patients at a local VA (or other Federal facility) and documented such contact in the veteran's progress/physicians' notes, discharge summary, or other applicable medical record.

(d) If a stabilized veteran who requires continued non-emergent treatment refuses to be transferred to an available VA facility (or other Federal facility with which VA has an agreement to furnish health care services for veterans), VA will make payment or reimbursement only for the expenses related to the initial evaluation and the emergency treatment furnished to the veteran up to the point of stabilization as set forth in paragraph (a) of this section.

* * * * *

§ 17.1006 [Amended]

6. Amend § 17.1006 by removing "Fee Service Review Physician or equivalent officer" and adding, in its place, "designated VA clinician".

§ 17.1008 [Amended]

7. Amend § 17.1008 by removing "treatment" in both places it appears, and adding, in each place, "treatment and any non-emergent treatment that is authorized under § 17.1005(c) of this part".

[FR Doc. 2010–14110 Filed 6–10–10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2006–0132; FRL–9161–1]

Extension of Public Comment Period for Proposed Rule on the Approval and Promulgation of Implementation Plans; Texas; Excess Emissions During Startup, Shutdown, Maintenance, and Malfunction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: The EPA is announcing a 14-day extension of the public comment period for the proposed "Approval and Promulgation of Implementation Plans; Texas; Excess Emissions During Startup, Shutdown, Maintenance, and Malfunction Activities." As initially published in the **Federal Register** on May 13, 2010 (75 FR 26892), written comments on the proposal for rulemaking were to be submitted to EPA on or before June 14, 2010 (a 30-day public comment period). Since publication, EPA has received requests for additional time to submit comments. Therefore, the public comment period will now end on June 28, 2010. This extension is time-limited because the rule has to be finalized by October 31, 2010 under the terms of a settlement agreement.

DATES: The public comment period for this proposed rule is extended until June 28, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6691, fax (214) 665–7263, e-mail address *shar.alan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Extension of Public Comment Period

The proposed rule was signed on May 5, 2010, and published in the **Federal Register** on May 13, 2010 (75 FR 26892). The EPA has received requests for additional time to comment on the proposal. Since the 30-day public comment period would have concluded on June 14, 2010, EPA has decided to extend the comment period until June 28, 2010. This extension is time-limited because the rule must be finalized by October 31, 2010 under the terms of a settlement agreement.

B. How can I get copies of this document and other related information?

1. Docket. The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2006–0132. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

2. Electronic Access. You may access this **Federal Register** document electronically through the *http://www.gpoaccess.gov/fr/index.html.* Also, the proposed rulemaking was published in the **Federal Register** on May 13, 2010 and is available at *http://edocket.access.gpo.gov/2010/2010-11429.htm.*

Dated: June 3, 2010.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 2010–14094 Filed 6–10–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 10–97; FCC 10–77]

Unlicensed Personal Communications Services Devices in the 1920–1930 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Commission proposes changes to its rules to enable Unlicensed Personal Communications Service (UPCS) devices operating in the 1920–1930 MHz band (known as the UPCS band) to make more efficient use of this spectrum. This action is taken in response to a Petition for Rulemaking filed by the Digital Enhanced Cordless Telecommunications Forum (DECT), an association that promotes digital cordless radio technology for short-distance voice and data applications. The current rules prevent UPCS devices from accessing channels where a certain level of radio noise is detected, even though those channels remain usable. The proposed rule changes would adjust the radio noise level at which a channel would be deemed usable.

DATES: Comments must be filed on or before July 12, 2010, and reply comments must be filed on or before July 26, 2010.

FOR FURTHER INFORMATION CONTACT: Patrick Forster, Office of Engineering and Technology, (202) 418–7061, e-mail: *Patrick.Forster@fcc.gov,* TTY (202) 418–2989.

ADDRESSES: You may submit comments, identified by ET Docket No. 10–97, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site:http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *E-mail:* [Optional: Include the E-mail address only if you plan to accept comments from the general public]. Include the docket number(s) in the subject line of the message.
- *Mail:* [Optional: Include the mailing address for paper, disk or CD–ROM submissions needed/requested by your Bureau or Office. Do not include the Office of the Secretary's mailing address here.]
- *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** of this document.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* ET Docket No. 10–97, FCC 10–77, adopted May 4, 2010, and released May 6, 2010. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–

B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov*.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 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *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. 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 must be addressed to 445 12th Street, SW., Washington, DC 20554.

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), 202–418–0432 (tty).

Summary of Notice of Proposed Rulemaking

1. In the *Notice of Proposed Rule Making* (NPRM), the Commission proposes to amend part 15 of the Rules to enable Unlicensed Personal Communications Service (UPCS) devices operating in the 1920–1930 MHz band (known as the UPCS band) to make more efficient use of this spectrum. The Commission takes this action in response to a Petition for Rulemaking filed by the Digital Enhanced Cordless Telecommunications Forum (DECT), an association that promotes digital cordless radio technology for short-distance voice and data applications. The current rules prevent UPCS devices from accessing channels where a certain level of radio noise is detected, even though those channels remain usable. The proposed rule changes would adjust the radio noise level at which a channel would be deemed usable.

2. In its petition for rulemaking, DECT requested that the Commission modify part 15 of its rules to either eliminate or increase the least-interfered channel monitoring threshold and to reduce the number of channels a UPCS device must use and monitor in order to operate under the least-interfered channel access method. The least-interfered channel monitoring threshold is the radio noise level that a UPCS device must monitor to determine whether there is a channel available on which to transmit. Specifically, DECT proposed that the Commission amend § 15.323(c)(5) of the Rules to: (1) Eliminate the least-interfered channel monitoring threshold or, alternatively, to increase the threshold from 50 decibels (dB) above thermal noise to 65 dB above thermal noise; and (2) reduce from 40 to 20 channels the number of duplex system access channels that a UPCS device must use and monitor in order to operate under the least-interfered channel access method. As described by DECT, a UPCS device without a least-interfered channel monitoring threshold would survey the required minimum number of channels and transmit on the channels with the lowest power. According to DECT, if the least-interfered channel monitoring threshold is eliminated or increased, a UPCS device would be able to access channels that are actually usable for communication but that cannot be accessed under the existing 50 dB above thermal noise threshold. DECT also indicates that if the number of channels a UPCS device must use and monitor is reduced from 40 to 20 channels, broadband UPCS devices that use fewer than 40 channels (i.e., that use wider bandwidth channels) will be permitted to use the least-interfered channel access method and won't be restricted to using only channels with a signal level less than 30 dB above thermal noise. DECT states that neither of these changes will cause interference to adjacent-band Advanced Wireless Service (AWS) and PCS services.

3. DECT claims that its requested part 15 rule changes would also limit the potential for 1915–1920 MHz-band mobile transmitters' out-of-band emissions to restrict UPCS devices' use of the UPCS band once operations begin in the 1915–1920 MHz band.

4. The Commission specifically proposes to revise § 15.323 of our rules to increase least-interfered channel monitoring threshold. The Commission also proposes to reduce from 40 to 20 channels the number of duplex system access channels that a UPCS device must monitor and use under the least-interfered channel access method. The proposed changes would increase the number of channels that could be used by UPCS devices, particularly those devices designed to transmit on wider bandwidth channels, and thus facilitate the introduction of unlicensed devices capable of providing access to broadband services in the 1920–1930 MHz band. The Commission requests comment on these proposals.

5. The Commission believes there is merit to DECT's requests to increase the UPCS least-interfered channel monitoring threshold and to reduce the number of channels that a UPCS device must monitor and use in order to use the least-interfered channel access method. The Commission is persuaded that the requested modifications would have substantive benefits for users of devices that operate in the UPCS band and promote more efficient use of the UPCS-band spectrum. Therefore, it proposes to modify the UPCS Rules as DECT requested. The Commission notes that its previous modifications to the UPCS-band operating rules to widen the maximum allowed bandwidth and permit asynchronous operations together with isochronous operations in the 1920–1930 MHz band have resulted in significantly more use of the UPCS band. It believes these changes that DECT has requested are likely to produce analogous results. In particular, the Commission believes that the proposed rule modifications would facilitate the development of unlicensed devices capable of providing access to broadband services.

6. The Commission proposes to modify § 15.323 to specify a least-interfered channel monitoring threshold of 65 dB above thermal noise, as reflected in the proposed rules set forth in Appendix A of the *NPRM.* It believes this action would serve the public

interest by allowing more devices to access usable channels and thereby increasing the utilization of the UPCS band. The Commission agrees with DECT that increasing this threshold would allow UPCS devices to transmit on channels that currently are restricted from use under the existing 50 dB above thermal noise threshold, but that are actually acceptable for use.

7. The Commission observed that the least-interfered channel monitoring threshold level used in one UPCS system could affect the range and channel availability of other UPCS systems. The absence of a least-interfered channel monitoring threshold—where a UPCS device would survey the required minimum number of channels and transmit on the channels with the lowest power and an alternative approach suggested by DECT—could require affected systems to install additional base stations to mitigate the impact. This scenario could occur in a small office environment with different occupants operating separate systems in close proximity. The Commission believes that increasing the least-interfered channel monitoring threshold to 65 dB above thermal noise is preferable to DECT's alternative proposal to eliminate the threshold and strikes an appropriate balance. The Commission believes that maintaining a specific least-interfered channel monitoring threshold would limit the potential for one UPCS system's devices to restrict the range and access to channels of another UPCS system's devices and avoid undue congestion in the UPCS band.

8. At the same time, an increase in the least-interfered channel monitoring threshold would increase the utilization of the UPCS band and reduce UPCS system infrastructure costs. The Commission noted that DECT states that a threshold increase to 65 dB above thermal noise would increase the utilization of the UPCS band by over 60 percent. Also, as DECT states, although a threshold of 50 dB above thermal noise optimizes the range of UPCS devices, an increase in the monitoring threshold from 50 to 65 dB above thermal noise would allow manufacturers to optimize their systems for density of devices rather than range, depending on the needs of users. As a result, this would allow more UPCS devices to be used within close proximity of one another, such as in adjacent cubicles in an office environment. Although each device would lose some range in such a scenario due to the density of spectral use, any decrease in range would likely have little effect on users because the devices in such dense systems typically operate just a short distance from the nearest base station. The Commission also believes that a least-interfered channel monitoring threshold of 65 dB above thermal noise would help limit the potential for in-band and out-of-band interference, facilitate efficient use of the UPCS spectrum, and permit all users to access the available spectrum on a shared basis. The Commission seeks comment on this proposal. It also seeks comment on our observations with respect to the selection of 65 dB above thermal noise as the monitoring threshold and whether some alternative value or elimination of the threshold would be more appropriate.

9. Because all UPCS devices would continue to operate using a listen-before-talk protocol, they will not interfere with each other once a device is transmitting on a channel. Furthermore, because UPCS devices all operate at relatively low power levels, two devices would need to be within less than 1 foot of each other to impact one another. Consequently, the Commission believes the probability of interference occurring among UPCS devices operating under the proposed monitoring threshold or between such devices and those operating under the current monitoring threshold will remain low. In addition, although an increase in the least-interfered channel threshold could, in some cases, result in an increased number of UPCS devices simultaneously operating in a given location, they would be operating with relatively low peak transmitter power and out-of-band emissions limits. Thus, the Commission believes the potential for harmful interference to nearby relatively higher-power AWS and PCS devices (either fixed or mobile) receiving in the adjacent 1915–1920 and 1930–1990 MHz bands, respectively, will not be significantly increased in such cases. The Commission seeks comment on these observations.

10. The Commission also proposes to modify rule § 15.323 to reduce from 40 to 20 channels the number of channels that a UPCS device must monitor and use in order to operate under the least-interfered channel access method in the 1920–1930 MHz band, as reflected in the proposed rules set forth in Appendix A in the *NPRM.* Such action would appear to serve the public interest by allowing state-of-the-art UPCS devices that can provide broadband services, but using fewer than 40 channels, to operate under the least-interfered channel access method and access channels with a higher signal level, if available. DECT states that halving the number of monitored and used channels is justified by the Commission's previous decision to double the maximum allowed UPCS channel bandwidth from 1.25 to 2.5 megahertz. It also indicates that there are now UPCS devices operating with up to five 2-megahertz-wide channels that provide more advanced state-of-the-art broadband services. When these wider channels are subdivided, however, fewer access channels are available to satisfy the current minimum number of channels to be monitored under the least-interfered channel rule. Devices that can support access to broadband services but use fewer than 40 channels are thus limited to using channels with a signal level less than 30 dB above thermal noise. Consequently, these devices' access to the UPCS band is severely limited in many instances, especially in areas of high use of UPCS devices. Reducing the number of monitored channels would increase the utilization of the UPCS band by allowing wider-bandwidth devices to access channels that are usable under the least-interfered channel access criteria. Also, if the number of channels that must be monitored and used is reduced so that wider-bandwidth devices' access to channels is unrestricted, the ability of these devices to have higher throughputs (*i.e.,* data rates) could help to improve the efficiency of the UPCS band. In addition, maintaining a requirement for UPCS devices to monitor and use at least 20 channels would enable all users to have equal access to the available spectrum on a shared basis. The Commission seeks comment on this proposal.

11. DECT filed comments on the *AWS–2/AWS–3 Service Rules FNPRM,* expressing concern about the potential for the out-of-band emissions limit proposed for 1915–1920 MHz-band mobile transmitters to restrict UPCS devices' access to the UPCS band. Nonetheless, because DECT believes that its proposed part 15 rule changes will improve the utilization, quality, and services of the UPCS band, especially for new state-of the-art broadband services, DECT asks that the Commission not defer action on the instant petition pending the outcome of the AWS–2 proceeding. In this *NPRM,* the Commission addresses only the DECT Forum petition for rulemaking of the part 15 rules for the UPCS band. The Commission neither solicits comments on nor makes any decision with respect to the pending AWS–2 service rules proceeding.

12. *Other Matters.* In January 1993, representatives from a broad range of UPCS equipment manufacturers created

the Unlicensed PCS Ad Hoc Committee for 2 GHz Microwave Transition and Management (UTAM) to facilitate the transition of the 1920–1930 MHz band from fixed microwave radio service use to UPCS use. UTAM incorporated itself as a not-for-profit corporation under the name of UTAM, Inc., in July 1993. In the *Broadband PCS Second Report and Order,* the Commission designated UTAM, Inc., to coordinate and manage the transition of the 1920–1930 MHz band from incumbent fixed microwave operations to UPCS use. The rules the Commission adopted to implement this process were to sunset after a ten-year period. Because the need for UPCS devices to protect fixed microwave incumbents in the 1920–1930 MHz band sunset on April 4, 2005, on its own motion, the Commission proposes to remove § 15.307 of the rules. In proposing this change, the Commission notes that with the sunset of the requirement that UPCS devices protect fixed microwave incumbents in the UPCS band, it is no longer necessary to (1) distinguish between coordinatable and non-coordinatable UPCS devices under the equipment authorization process, as specified in § 15.307(c); (2) require a coordinatable UPCS device to incorporate certain coordination features, as specified in § 15.307(d) and (e); (3) require UPCS operators to protect fixed microwave incumbents in the 1920–1930 MHz band, as set forth in § 15.307(g); and (4) require a UPCS device to cease operating upon relocation until coordination for the new location is verified by UTAM, Inc., as set forth in § 15.307(h). Furthermore, § 15.307(a), (b), and (f) of the Commission's rules, which respectively (1) describe UTAM, Inc.'s function; (2) require each applicant for certification (i.e., authorization) of a UPCS device to be a participating member of UTAM, Inc.; and (3) sets forth that the requirement for including the disabling mechanism in a UPCS device would be discontinued when the Commission determines that UPCS devices no longer need to be coordinated, are also no longer needed. In addition, the Commission proposes to delete the UTAM, Inc.-related labeling requirement in § 15.311, because UPCS devices are no longer coordinated by UTAM, Inc. The Commission further proposes to delete the definitions in § 15.303(b) and (e) that were applicable when UPCS devices were either coordinatable or non-coordinatable because these rules are now unnecessary. The Commission seeks comment on all of these proposals, and on any other rules changes that might be warranted as a result of the sunset of the transition of the band from incumbent fixed microwave operations to UPCS use.

13. The Commission also takes this opportunity to propose modifications to certain other UPCS rules to make them consistent with other changes that have been made to the rules. In this regard, it proposes to amend § 15.31(a)(2) to update the version of the standard by which UPCS devices must be measured for compliance with the performance requirements in part 15 Subpart D of the rules, and to revise § 15.323(a) to correct a typographical error in the second sentence. Also, consistent with the decision in the *AWS Sixth R&O,* the Commission proposes to delete the definition in § 15.303(i) that was applicable when asynchronous and isochronous operations were in separate sub-bands and to amend § 15.319 to specifically state that both asynchronous and isochronous operations are permitted in the 1920–1930 MHz band. These proposed rule modifications are reflected in Appendix A of the *NPRM.* The Commission seeks comment on all of these proposals. In addition, it seeks comment on changes to any of the other rules regarding UPCS devices which should be made due to the kind of errors or intervening events or developments that we have identified in this paragraph.

Ordering Clauses

14. Pursuant to sections 1, 2, 4(i), 301, 302, and 303(f) of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 301, 302a, and 303(f), that this *Notice of Proposed Rulemaking* is hereby adopted.

15. Notice is hereby given of the proposed regulatory changes described in this *Notice of Proposed Rulemaking,* and that comment is sought on these proposals.

16. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Initial Regulatory Flexibility Analysis

17. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rule Making* (*NPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines specified on the first page of the *NPRM.* The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register.**[3]

A. Need for, and Objectives of, the Proposed Rules

18. The *NPRM* proposes rules and seeks comment on specific issues related to the operation of unlicensed Personal Communications Services (UPCS) devices operating in the 1920–1930 MHz band (known as the UPCS band). The proposals are intended to improve the utilization of the UPCS band by increasing access to usable channels whose use is restricted under the current rules, by reducing infrastructure costs through allowing a greater density of UPCS devices to be used with fewer base stations, and by preventing the out-of-band emissions that have been proposed for Advanced Wireless Service (AWS) mobile transmitters in the 1915–1920 MHz from limiting UPCS devices' access to the 1920–1930 MHz UPCS band. The proposals are also designed to allow UPCS devices that are using fewer that 40 defined channels to use the UPCS least-interfered channel access method. Permitting these devices to use the least-interfered channel access method would prevent these devices' access to the UPCS band from being severely limited. The *NPRM* seeks comment on increasing the least-interfered channel threshold that UPCS devices must monitor for when using the least-interfered channel access method from 50 (dB) above thermal noise to 65 dB above thermal noise. In addition, the *NPRM* seeks comment on reducing from 40 to 20 channels the number of channels a UPCS device must define and monitor in order to use the least-interfered channel access method.

B. Legal Basis

19. This action is authorized under sections 1, 4(i), 302, 303(f) and (r), 332, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 4(i), 154(i), 302a, 303(f) and (r), 332, 337.

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA) Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. 603(a).

[3] *See* 5 U.S.C. 603(a).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

20. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[4] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[5] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[6]

21. Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.[7] A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[8] Nationwide, as of 2002, there were approximately 1.6 million small organizations.[9] The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[10] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[11] We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."[12] Thus, we estimate that most governmental jurisdictions are small.

22. The proposals in this *NPRM* affect fixed service (FS) stations licensed under part 101 of our rules, UPCS stations, as well as wireless equipment manufacturers and frequency coordinators.

Fixed Microwave Services. Fixed microwave services include common carrier,[13] private operational-fixed,[14] and broadcast auxiliary radio services.[15] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[16] The Commission does not have data specifying the number of these licensees that have no more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer common carrier fixed licensees and 61,670 or fewer private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

Unlicensed Personal Communications Services. As its name indicates, UPCS is not a licensed service. UPCS consists of intentional radiators operating in the frequency bands 1920–1930 MHz and 2390–2400 MHz that provide a wide array of mobile and ancillary fixed communication services to individuals and businesses. The *NPRM* potentially affects UPCS operations in the 1920–1930 MHz band; operations in those frequencies are given flexibility to deploy both voice and data-based services. There is no accurate source for the number of operators in the UPCS. Since 2007, the Census Bureau has placed wireless firms within the new, broad, economic census category Wireless Telecommunications Carriers (except Satellite).[17] Prior to that time, such firms were within the now-superseded category of "Paging" and "Cellular and Other Wireless Telecommunications."[18] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[19] Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.[20] Of this total, 804 firms; had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[21] For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.[22] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000

[4] *Id.* at 603(b)(3).

[5] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

[6] Small Business Act, 15 U.S.C. 632 (1996).

[7] *See* SBA, Office of Advocacy, "Frequently Asked Questions," *http://web.sba.gov/faqs/faqindex.cfm?areaID=24* (revised Sept. 2009).

[8] 5 U.S.C. 601(4).

[9] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[10] 5 U.S.C. 601(5).

[11] U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, page 272, Table 415.

[12] We assume that the villages, school districts, and special districts are small, and total 48,558. *See* U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

[13] *See* 47 CFR 101 *et seq.* for common carrier fixed microwave services (except Multipoint Distribution Service).

[14] Persons eligible under parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. *See* 47 CFR Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[15] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's rules. *See* 47 CFR part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

[16] 13 CFR 121.201, NAICS code 517210.

[17] U.S. Census Bureau, 2007 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite)"; *http://www.census.gov/naics/2007/def/ND517210.HTM#N517210.*

[18] U.S. Census Bureau, 2002 NAICS Definitions, "517211 Paging"; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.;* U.S. Census Bureau, 2002 NAICS Definitions, "517212 Cellular and Other Wireless Telecommunications"; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*

[19] 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[20] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517211 (issued Nov. 2005).

[21] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[22] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517212 (issued Nov. 2005).

employees or more.[23] Thus, we estimate that the majority of wireless firms are small.

Wireless Equipment Manufacturers are defined by the Census Bureau as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment."[24] The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees.[25] According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year.[26] Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999.[27] Thus, under this size standard, the majority of firms can be considered small.

Frequency Coordinators. Neither the Commission nor the SBA has developed a small business size standard specifically applicable to spectrum frequency coordinators. Since 2007, the Census Bureau has placed wireless firms within the new, broad, economic census category Wireless Telecommunications Carriers (except Satellite).[28] Prior to that time, such firms were within the now-superseded category of "Paging" and "Cellular and Other Wireless Telecommunications."[29] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[30] Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.[31] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[32] For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.[33] Of this total, 1,378 firms had employment of 999 fewer employees, and 19 firms had employment of 1,000 employees or more.[34] Thus, we estimate that the majority of these firms are small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

23. This *NPRM* addresses the possibility of allowing additional flexibility for UPCS devices operating in the 1920–1930 MHz band by eliminating or increasing the least-interfered channel monitoring threshold that a UPCS device must employ when using the least-interfered channel access method. In addition, the *NPRM* addresses the possibility of decreasing from 40 to 20 channels the number of channels that a UPCS device must define and monitor to use the least-interfered channel access method. The item does not contain any new reporting or recordkeeping requirements.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

24. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[35]

25. We have proposed to reduce burdens wherever possible. Our proposals regarding the UPCS band would reduce burdens on small entities. Our proposal to increase the least-interfered channel-threshold will increase the utilization of the UPCS by allowing access to usable channels that are currently restricted under the current Rules, resulting in more efficient use of the UPCS-band spectrum. It will also allow a greater density of UPCS devices to be used with fewer base stations, thereby reducing the infrastructure costs for a UPCS system, and will prevent the out-of-band emissions from adjacent-band AWS mobile transmitters from limiting access to the UPCS band. Our proposal to raise the least-interfered channel threshold, rather than eliminate the threshold, will prevent one UPCS systems' device's from limiting the range of another UPCS system's devices, which would require the installation of additional base stations to mitigate. Our proposal to reduce from 40 to 20 channels the number of channels a UPCS device must define and monitor to use the least-interfered channel access method would prevent devices that can provide state-of-the-art broadband services from being denied use of the least-interfered channel access method and consequently experiencing restricted access to UPCS-band channels.

26. We will continue to examine alternatives in the further with the objectives of eliminating unnecessary

[23] Id. The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[24] U.S. Census Bureau, 2002 NAICS Definitions, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing"; *http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342.*

[25] *See* 13 CFR 121.201, NAICS code 334220.

[26] U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (released May 26, 2005); *http://factfinder.census.gov.* The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which were 929.

[27] *Id.* An additional 18 establishments had employment of 1,000 or more.

[28] U.S. Census Bureau, 2007 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite)"; *http://www.census.gov/naics/2007/def/ND517210.HTM#N517210.*

[29] U.S. Census Bureau, 2002 NAICS Definitions, "517211 Paging"; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.;* U.S. Census Bureau, 2002 NAICS Definitions, "517212 Cellular and Other Wireless Telecommunications"; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*

[30] 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[31] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517211 (issued Nov. 2005).

[32] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[33] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517212 (issued Nov. 2005).

[34] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[35] 5 U.S.C. 603(c).

regulations and minimizing significant economic impact on small entities. We seek comment on significant alternatives commenters believe we should adopt.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

List of Subjects 47 CFR Part 15

Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons set forth in the preamble, the Federal Communications Commission proposes to amend part 15 of Title 47 of the Code of Federal Regulations to read as follows:

PART 15—RADIO FREQUENCY DEVICES

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

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544a.

2. Section 15.31 is amended by revising paragraph (a)(2) to read as follows:

§ 15.31 Measurement standards.

(a) * * *

(1) * * *

(2) Unlicensed Personal Communication Service (UPCS) devices are to be measured for compliance using ANSI C63.17–2006: "Methods of Measurement of the Electromagnetic and Operational Compatibility of Unlicensed Personal Communications Services (UPCS) Devices" (incorporated by reference, see § 15.38). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

3. Section 15.38 is amended by revising paragraph (b)(12) to read as follows:

§ 15.38 Incorporation by reference.

* * * * *

(b) * * *

(12) ANSI C63.17–2006: "Methods of Measurement of the Electromagnetic and Operational Compatibility of Unlicensed Personal Communications Services (UPCS) Devices", 2006, IBR approved for § 15.31.

* * * * *

4. Section 15.303 is amended by removing paragraphs (b), (e), (i), and redesignating paragraphs (a) through (k) as paragraphs (a) through (h) in alphabetical order.

§ 15.303 Definitions.

§ 15.307 [Removed]

5. Remove § 15.307.

§ 15.311 [Removed]

6. Remove § 15.311.

7. Section 15.319 is amended by revising paragraph (b) to read as follows:

§ 15.319 General technical requirements.

* * * * *

(b) All transmissions must use only digital modulation techniques. Both asynchronous and isochronous operations are permitted within the 1920–1930 MHz band.

* * * * *

8. Section 15.323 is amended by revising the section heading and paragraphs (a), (c)(5), (d), and (e) to read as follows:

§ 15.323 Specific requirements for devices operating in the 1920–1930 MHz band.

(a) Operation shall be contained within the 1920–1930 MHz band. The emission bandwidth shall be less than 2.5 MHz. The power level shall be as specified in § 15.319(c), but in no event shall the emission bandwidth be less than 50 kHz.

* * * * *

(c) * * *

(5) If access to spectrum is not available as determined by the above, and a minimum of 20 duplex system access channels are defined for the system, the time and spectrum windows with the lowest power level below a monitoring threshold of 65 dB above the thermal noise power determined for the emission bandwidth may be accessed. A device utilizing the provisions of this paragraph must have monitored all access channels defined for its system within the last 10 seconds and must verify, within the 20 milliseconds (40 milliseconds for devices designed to use a 20 milliseconds frame period) immediately preceding actual channel access that the detected power of the selected time and spectrum windows is no higher than the previously detected value. The power measurement resolution for this comparison must be accurate to within 6 dB. No device or group of co-operating devices located within 1 meter of each other shall during any frame period occupy more than 6 MHz of aggregate bandwidth, or alternatively, more than one third of the time and spectrum windows defined by the system.

* * * * *

(d) Emissions outside the band shall be attenuated below a reference power of 112 milliwatts as follows: 30 dB between the band and 1.25 MHz above or below the band; 50 dB between 1.25 and 2.5 MHz above or below the band; and 60 dB at 2.5 MHz or greater above or below the band. Emissions inside the band must comply with the following emission mask: In the bands between 1B and 2B measured from the center of the emission bandwidth the total power emitted by the device shall be at least 30 dB below the transmit power permitted for that device; in the bands between 2B and 3B measured from the center of the emission bandwidth the total power emitted by an intentional radiator shall be at least 50 dB below the transmit power permitted for that radiator; in the bands between 3B and the band edge the total power emitted by an intentional radiator in the measurement bandwidth shall be at least 60 dB below the transmit power permitted for that radiator. "B" is defined as the emission bandwidth of the device in hertz. Compliance with the emission limits is based on the use of measurement instrumentation employing a peak detector function with an instrument resolution bandwidth approximately equal to 1.0 percent of the emission bandwidth of the device under measurement.

(e) The frame period (a set of consecutive time slots in which the position of each time slot can be identified by reference to a synchronizing source) of an intentional radiator operating in this band shall be 20 milliseconds or 10 milliseconds/X where X is a positive whole number. Each device that implements time division for the purposes of maintaining a duplex connection on a given frequency carrier shall maintain a frame repetition rate with a frequency stability of at least 50 parts per million (ppm). Each device which further divides access in time in order to support multiple communications links on a given frequency carrier shall maintain a frame repetition rate with a frequency stability of at least 10 ppm. The jitter (time-related, abrupt, spurious variations in the duration of the frame interval) introduced at the two ends of such a communication link shall not exceed 25 microseconds for any two consecutive transmissions. Transmissions shall be continuous in every time and spectrum window during the frame period defined for the device.

* * * * *

[FR Doc. 2010–14101 Filed 6–10–10; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 09–182; FCC 10–92]

2010 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Notice of Inquiry ("NOI") initiates the Commission's fifth review of its media ownership rules since the passage of the Telecommunications Act of 1996 ("1996 Act"). Section 202(h) of the 1996 Act requires the Commission to review its ownership rules (except the national television ownership limit) every four years and "determine whether any of such rules are necessary in the public interest as the result of competition." The Commission will take a fresh look at its current ownership rules in order to determine whether they will serve our public interest goals of competition, localism, and diversity going forward. The Commission's challenge is to adapt its rules to ensure that they promote these values in the new marketplace and into the future.

DATES: Comments are due on or before July 12, 2010 and reply comments are due on or before July 26, 2010.

ADDRESSES: You may submit comments, identified by MB Docket No. 09–182, 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: Jennifer Tatel, (202) 418–2330; Amy Brett, (202) 418–2330.

Initial Paperwork Reduction Act of 1995 Analysis. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's NOI in MB Docket No. 09–182, FCC 10–92, adopted May 25, 2010, and released May 25, 2010. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs*). The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording and Braille), send an e-mail to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) (202) 418–0432 (TTY).

Summary of the NOI

1. The NOI asks fundamental questions, the answers to which will help the Commission define its analytical framework, the scope of this proceeding, and the considerations that should underlie media ownership rules for today's environment. The comments and information gathered through this NOI will help the Commission to formulate a subsequent Notice of Proposed Rulemaking, in which it will invite comment on proposals for regulations that will best promote its policy goals in the context of the current media marketplace. The Commission first seeks a comprehensive understanding of the current media marketplace in order to determine whether the current ownership rules are necessary in the public interest as the result of competition. It will explore the impact its current ownership rules have on the affected industries, including radio, television, and, indirectly, the newspaper industry. If it determines that the current rules are not satisfying the public interest standard, it will assess the potential impact of any new or amended rules it might adopt. Given the profound marketplace, economic, and industry changes in recent years, it commences this proceeding with no preconceived notions about the framework that will result from this review or what rules it will adopt. It will examine ownership issues based on the record that is established in this proceeding and will seek to establish a forward-looking framework based on the media marketplace of today, not on marketplace factors as they may have existed in the past.

2. The Commission will take a close look at the impact of consolidation on media markets. In 1996, there were 10,257 commercial radio stations and 5,133 radio owners. Today, there are 11,202 commercial radio stations and 3,143 owners, representing a 39% decrease in the number of owners since 1996. In 1996, there were 1,130 commercial television stations and 450 owners. In 2010, there are 1,302 commercial stations and 303 owners, a 33% decrease in the number of owners. There are currently 175 television station duopolies, which includes owners with attributable local marketing agreements, in the 210 Nielsen TV markets. There are roughly 50 newspaper/broadcast same-market combinations in markets across the country.

3. The media marketplace has seen dramatic changes in recent years. Broadcast audiences and newspaper readership are on the decline. Media industries also are experiencing declining advertising revenues, precipitated in part by the downturn in the national economy. Between 2006 and 2008, advertising revenue declined 13.4% for broadcast television stations; advertising revenue for radio stations dropped 10.7%; and newspaper advertising revenue dropped by 23.1%. PEJ estimates that between 2008 and 2009, revenues for the broadcast television and radio industries each fell 22% and revenues for daily newspapers fell 26% between 2008 and 2009. In 2009, 12 broadcast television and radio companies filed for bankruptcy and several newspaper publishers have either ceased operations or filed for bankruptcy protection.

4. Newspapers and broadcasters have responded to declining revenues in part by cutting staff and closing news bureaus. Some newspapers have given up print editions altogether to concentrate exclusively on online operations. PEJ estimates that the newspaper industry has lost $1.6 billion in annual reporting and editing capacity since 2000, or roughly 30%. This contraction is accompanied by an explosion of content from Internet and mobile sources. Changes in technology are reshaping how people get their news and audio and video programming. PEJ

reports that 59% of Internet users now use social media and blogging and networking sites. PEJ reports that a sustainable business model currently does not exist to finance the production of online content and finds that even the best new media sites have limited ability to produce content.

5. The Internet clearly has not wholly supplanted traditional media, such as broadcast stations, newspapers, and cable systems, but it has increased the quantity of news and programming available to consumers. The Commission's review must take account of the Internet's role and significance. It will examine how traditional media producers are integrating the Internet into their business models and whether revenues from Internet advertising can mitigate the effects of the loss of other advertising dollars. It will attempt to weigh and assess these trends and evaluate the interrelationships between the marketplace and the Commission's ownership rules.

6. Views differ on the impact of the marketplace changes discussed above. Commenters in previous media ownership proceedings have raised concerns that increased consolidation places control of programming choices in the hands of too few owners. They have asserted that consolidation results in insufficient programming variety to serve the needs of local communities. Parties have asserted that owners of multiple stations in a market may reduce or cease production of local programming on some of their co-owned stations and instead rely on the news produced by their other stations or newspapers. Throughout this proceeding, the Commission will examine whether consolidation adversely affects consumers of media, advertisers, creators of content, and platform owners.

7. Some believe that the economic downturn for traditional media will lead to reduced news coverage and a less informed citizenry. Others believe that the advent of new and creative sources of news available on the Internet will fill any gaps left by traditional news media. In this proceeding, the Commission will examine these issues fully and consider what these and other marketplace and technological changes mean for the regulation of media ownership. After a thorough review of marketplace developments, the Commission may determine that the current rules are serving the public interest, or we may determine that changes are necessary.

8. The Commission's ownership rules must be designed to promote its enduring public interest goals in the marketplace of today and tomorrow. Historically, the Commission has formulated its ownership rules to benefit consumers by promoting the three principal policy goals of competition, localism, and diversity. The ownership rules have typically sought to promote these goals by limiting the numbers and types of media outlets a single party can own. The Commission has set limits on the numbers of TV and radio facilities an entity may own in local markets, limited the audience reach nationally of commonly owned television stations, and restricted the cross-ownership of broadcast facilities and newspapers in local markets. Through the ownership rules the Commission strives to ensure that owners promote programming responsive to local needs, including public safety information and quality children's programming. All of these types of programming serve the public interest. The Commission thus must seek to achieve a balance in addressing media ownership limits to ensure that consumers have access to these and other types of important programming. The FCC invites comment on how to ensure that its rules are properly calibrated to promote its goals under current marketplace conditions.

9. Throughout the NOI, the FCC invites suggestions for analytical frameworks that will allow it to assess and balance the goals of the ownership review. Commenters should submit relevant data and studies to assist in crafting ownership rules and identify any ongoing studies or projects that it should take into consideration. Its goal is to have the broadest possible participation from all sectors of the public.

10. Five of the Commission's media ownership rules are the subject of this quadrennial review: The local TV ownership rule, the local radio ownership rule, the newspaper/broadcast cross-ownership rule, the radio/TV cross-ownership rule, and the dual network rule. In 2004, Congress amended Section 202(h) of 1996 Act to exclude the national television multiple ownership rule from the Commission's quadrennial review obligation. What authority, if any, does the FCC retain to evaluate the national television multiple ownership rule set at 39% of television households nationwide as part of the quadrennial review or otherwise.

11. The local television ownership rule provides that an entity may own two television stations in the same designated market area ("DMA") only if: (1) The Grade B contours of the stations (as determined by 47 CFR 73.684) do not overlap, or (2) at least one of the stations in the combination is not ranked among the top four stations in terms of audience share, and at least eight independently owned-and-operated commercial or noncommercial full-power broadcast television stations would remain in the DMA after the combination. To determine the number of voices remaining after the merger, the Commission counts those broadcast television stations whose Grade B signal contours overlap with the Grade B signal contour of at least one of the stations that would be commonly owned.

12. Local Radio Ownership Rule. The local radio ownership rule provides that a person or entity may own, operate, or control: (1) Up to eight commercial radio stations, not more than five of which are in the same service (*i.e.,* AM or FM), in a radio market with 45 or more radio stations; (2) up to seven commercial radio stations, not more than four of which are in the same service, in a radio market with between 30 and 44 (inclusive) radio stations; (3) up to six commercial radio stations, not more than four of which are in the same service, in a radio market with between 15 and 29 (inclusive) radio stations; and (4) up to five commercial radio stations, not more than three of which are in the same service, in a radio market with 14 or fewer radio stations, except that an entity may not own, operate, or control more than 50 percent of the stations in such a market unless the combination of stations comprises not more than one AM and one FM station.

13. Newspaper/Broadcast Cross-Ownership Rule. The newspaper/broadcast cross-ownership rule adopted in 1975 prohibited common ownership of a full-service broadcast station and a daily newspaper if (1) A television station's Grade A service contour completely encompassed the newspaper's city of publication, (2) the predicted or measured 2 mV/m contour of an AM station completely encompassed the newspaper's city of publication, or (3) the predicted 1 mV/m contour for an FM station completely encompassed the newspaper's city of publication. The Commission adopted the newspaper/broadcast cross-ownership rule "in furtherance of our long standing policy of promoting diversification of ownership of the electronic mass communications media." In that Order, the Commission stated that its policy to promote diversity was "derived from both First Amendment and anti-trust policy sources." In the *2006 Quadrennial Review Order,* the Commission established presumptions for the Commission to apply in

determining whether a specific newspaper/broadcast combination serves the public interest. A waiver of the cross-ownership rule is not inconsistent with the public interest where (i) a daily newspaper seeks to combine with a radio station in a top 20 DMA, or (ii) a daily newspaper seeks to combine with a television station in a top 20 DMA and (a) the television station is not ranked among the top four stations in the DMA; and (b) at least eight independently owned and operating "major media voices" would remain in the DMA after the combination. Major media voices are defined as full-power commercial and noncommercial television stations and major newspapers. For markets below the top 20 DMAs, there is a presumption that it is inconsistent with the public interest for an entity to own a newspaper-broadcast combination. The Commission requires an applicant attempting to overcome this negative presumption to demonstrate, by clear and convincing evidence, that the merged entity will increase the diversity of independent news outlets and competition among independent news sources in the relevant market. The Commission will reverse the negative presumption in two limited circumstances: (i) When the proposed combination involves a failed/failing station or newspaper, or (ii) when the proposed combination is with a broadcast station that was not offering local newscasts prior to the combination, and the station will initiate at least seven hours per week of local news after the combination. No matter which presumption applies, the Commission's analysis of the following four factors will inform its review of a proposed combination: (1) The extent to which cross-ownership will serve to increase the amount of local news disseminated through the affected media outlets in the combination; (2) whether each affected media outlet in the combination will exercise its own independent news judgment; (3) the level of concentration in the DMA; and (4) the financial condition of the newspaper or broadcast station, and if the newspaper or broadcast station is in financial distress, the owner's commitment to invest significantly in newsroom operations.

14. Radio/Television Cross-Ownership Rule. The radio/television cross-ownership rule allows a party to own up to two television stations (to the extent permitted under the local television ownership rule) and up to six radio stations (to the extent permitted under the local radio ownership rule) in a market where at least 20 independently owned media voices would remain post-merger. In markets where parties may own a combination of two television stations and six radio stations, the rule allows a party alternatively to own one television station and seven radio stations. A party may own up to two television stations (where permitted under the current local television ownership rule) and up to four radio stations (where permitted under the local radio ownership rule) in markets where, post-merger, at least 10 independently owned media voices would remain. The rule allows a combination of two television stations (where permitted under the local television ownership rule) and one radio station regardless of the number of voices remaining in the market.

15. The Dual Network Rule. The Commission's dual network rule permits common ownership of multiple broadcast networks, but prohibits a merger between or among the "top four" networks (that is, ABC, CBS, Fox, and NBC).

16. In analyzing the policy goals, the Commission will consider their relationship to four groups of participants in the media marketplace, each of which may be affected by the ownership rules: (1) Consumers of media or "end users," *i.e.,* viewers, listeners, and readers; (2) advertisers; (3) creators of content; and (4) platform owners, *i.e.,* media distributors, including broadcasters, newspapers, and cable systems. The FCC seeks comment on how to (1) Define the policy goals of competition, localism, and diversity; (2) determine how best to promote these goals in today's media market; (3) analyze the relevance of the policy goals to each of the four groups of market participants identified; (4) measure whether particular ownership structures promote these goals; (5) determine whether any new or revised rules would promote these goals; (6) determine when a goal has been achieved; and (7) balance the goals when they conflict with each other. Are there other goals to consider? To inform the policy decisions, it seeks relevant data and studies about the levels of competition, localism, and diversity in a variety of media markets, including small and large markets, consolidated and unconsolidated markets, markets with existing cross-ownership, and markets without cross-ownership. Are there existing public or proprietary datasets that the FCC should obtain? Are there ongoing studies or projects to consider? It also seeks comment on the extent to which the policy goals are quantifiable. Are there alternative bases for analysis, including, for example, theoretical analysis, modeling, or simulations?

17. The Section 202(h) statutory directive directly links the Commission's review of the media ownership rules to ensuring that media markets are competitive. The Commission invites comment on how to define the competition goal in today's media marketplace. What analytical approaches should it employ to determine whether common ownership of multiple media outlets increases or decreases competition?

18. In order to evaluate the performance of the media marketplace, how should the Commission measure the current level of competition in that marketplace? It seeks to assess the competitive performance of the relevant markets, not of particular firms, and is particularly interested in proposed definitions of relevant product and geographic markets. They directly impact the applicability of media ownership limits because product market definitions determine which entities compete with each other and thus, how many media outlets are in a market. A narrow product market definition could limit ownership if limits are based on market size. Previously, the Commission's competition analysis has focused on whether the rules result in lower prices, higher output, more choices for buyers, and more technological progress than would be the case if markets were unregulated. Are these still the relevant competitive factors to consider? Are there other factors? Is the competition goal best conceptualized as economic competition?

19. How should the Commission measure whether its ownership rules enhance competition in a way that benefits consumers? As noted above, traditional competitive analysis focuses on price, quality, and innovation. Indeed, competition is not an end in itself but a means to advance consumer welfare. Because broadcast radio and television content is available for free to end users, we cannot use price in analyzing competition for listeners and viewers. Are there potential proxies for consumer welfare?

20. The Commission has found that competition among broadcast outlets is likely to benefit consumers by making available programming that meets consumers' preferences. Is this still the case today? Should the Commission seek to determine whether consumers are getting the content they want from broadcast media? If consumer satisfaction is an important metric for assessing the state of our competition

goal with regard to consumers, how should it be measured?

21. How useful is survey research for assessing end user satisfaction with the range of content provided in the local market? Alternatively, would it be useful to look at empirical and theoretical analyses of competition in other markets to gather information about what market structures, as reflected by the number of firms competing in a market and market share distribution generally, result in a competitive market structure? Could it apply such a figure to the media marketplace?

22. Are there more easily measurable proxies for consumer satisfaction, such as media utilization? What about factors such as increases or decreases in utilization to determine satisfaction? If there is an increase in video programming consumption on the Internet (measured by minutes of use) and a decrease in such consumption via broadcast stations, is that a relevant factor in determining consumer satisfaction for purposes of evaluating our competition goal? What weight should be given to consumer choices in obtaining media content, as revealed by actual behavior?

23. What is the best way to measure consumer satisfaction among particular demographic groups, such as women, racial and ethnic minorities, non-English speakers, and people with disabilities? What is the nexus between media ownership and whether or not a particular demographic group within a designated market area is being served by available broadcast media platforms?

24. The Commission also seeks comment on the degree to which various media providers compete for consumers and how to measure this. Can consumers easily switch among different forms of media without suffering a loss in satisfaction? If not, what are the trade-offs among the levels of satisfaction and the forms of media among which they may switch? Should it analyze the television and radio markets separately or jointly? Do consumers consider radio and television to be substitutes in choosing any service and, if so, for what services? Do television stations adjust the content that they provide in response to changes in content delivered over radio stations and *vice versa*? How do radio and television respond to competition for consumers from other platforms such as the Internet or mobile devices?

25. Should promoting competition in advertising markets be one of the goals of the ownership rules? How should it measure the state of competition in advertising markets? Should it consider performance metrics that are broader than price, or should it rely on traditional competitive analysis? How should it define the relevant product and geographic markets? What is the appropriate analytical framework that would implement the framework suggested by commenters.

26. While end user prices for broadcast radio and television do not exist, advertising prices are available, making it possible to do a traditional competitive analysis of advertising markets. Historically, the Commission has relied on assessments of competition in advertising markets as a proxy for consumer welfare in media markets. Does the state of competition in the advertising market provide a useful indicator of the state of competition for end users? Does an efficient competitive advertising market ensure that all end users have choices that are relevant to their interests and their particular cultures? If the advertising market is found to be competitive, can the Commission then infer that the menu of content broadcasters provide is doing a good job of attracting the demographic groups in which advertisers are interested? Are certain demographic groups underserved in the media market, or is competition in the advertising market a sufficient indicator that its competition policy goal with respect to all consumers is being satisfied?

27. Media markets have been considered "two-sided markets," in which platforms use content to bring together consumers on one side and advertisers on the other side. How should the Commission take this structure into account? How do differences in the program preferences of viewers and advertisers affect the competition policy goal, and how would it balance those preferences if they are not compatible?

28. How should it assess the impact of the ownership rules on content creators? Platform owners purchase content from creators in the programming market. To what extent should competition for content among platforms be a goal? Should competition in the programming market be a goal as an end in itself, beyond the effect it has on consumers and advertisers? If so, why? Can competition in the programming market be fully measured by observing performance metrics in the consumer and advertising segments, or should the Commission develop different measures?

29. Should the ownership rules seek to promote competition among distribution platform owners as an end in itself, apart from any impacts on the other groups of market participants? Does the race, gender, or ethnicity of platform owners affect the interests of consumers, advertisers, or content creators, and how? How does the Commission assess and measure the significance of competition in platform ownership?

30. How should the Commission address different effects on different groups? Should it require efficiencies to be passed through to end users (in the form of more and/or better content) or to advertisers (in the form of a more efficient advertising market with better demographic targeting and/or lower prices) before concluding that they contribute to policy goals? To what extent should the analysis of the impact of market structure on media market participants differ in the context of unserved and underserved communities? What, if any, changes to the media ownership rules could promote minority and female ownership of broadcast stations? What marketplace or other factors would encourage new entry by minorities and/or females? Does consolidation hinder such ownership or does the opportunity to obtain efficiencies of scale and scope help promote growth and better public service by minority and female owners?

31. Consumers of broadcast video content also have choices for video programming among hundreds of cable channels and on many Internet sites such as hulu.com, fancast.com, abc.com, fox.com, and available for download at Netflix.com and at iTunes. Some of the Internet sites provide free content viewable with online commercial interruptions; some provide fee-only content; and others offer content only to their subscribers or members. Consumers of broadcast radio can choose also among over 100 audio channels carried by satellite radio, downloadable podcasts, audio streaming, and other audio entertainment available in cars, on mobile devices, and on computers. What is the impact of such changes on the economic viability of broadcasters, including specifically the viability of their local news and public affairs programming, in terms of the cost of production and resulting station revenue from such programming? Do new media provide opportunities for entry by minorities and females?

32. In what ways does competition from the Internet affect the financial condition of broadcasters? What are the consequences of the current challenges that traditional media face in monetizing their content on the Internet? How should the current financial and other problems being

faced by newspapers factor into analysis? What role have debt and profit margins played in the current media structure? Are there other anticipated near-term marketplace changes that should affect the analysis?

33. Are there unique attributes of broadcasting that should define and measure broadcast competition without reference to other media? If not, what other media should the FCC consider as it assesses competition in the relevant markets and measures performance? The FCC invites comment on how to define and promote localism in the context of the media ownership rules. How does ownership structure affect localism? The Commission has relied on two measures to determine whether licensees are meeting their local programming requirements: (1) The selection of programming responsive to local needs and interests of broadcasters' communities of license, and (2) local news quantity and responsiveness. Does the traditional localism goal need to be redefined in today's media marketplace?

34. The FCC seeks comment on what performance metrics to use to analyze the relevance of the localism goal for each group of market participants in determining whether the ownership rules are in the public interest. How should the Commission define and measure localism as it applies to consumers? One approach is to measure programming of interest to the community in general and local news and public affairs programming in particular. Such programming could be evaluated based on the quantity of programming responsive to local needs and interests, which would largely continue the traditional approach. What programming should be deemed responsive to the community, and how should it be defined and measured? What sources of content should the Commission consider? Should it measure the quantity of local content by time or space devoted to issues, stories, programs or articles, the total number of these, or some combination thereof?

35. Are there other ways of measuring the extent to which the localism goal is being achieved in today's media marketplace? Would a survey on citizen consumption of, and satisfaction with, local content be a useful measure? Is the satisfaction of local end users (viewers, listeners, or readers) an adequate measure of whether locally oriented programming adequately serves local needs? If so, what is a proper gauge of audience satisfaction with locally oriented content? If consumers are satisfied with the amount and responsiveness of local content, does that signify that the media ownership rules are successfully promoting localism?

36. Alternatively, should it examine local programming inputs, such as the number of local journalists, the number of local news bureaus, or expenditures on local news and public affairs, either in absolute terms or as a percentage of total revenues or expenditures? Would such inputs to local programming content be a useful performance metric? Are such inputs a valid proxy for the responsiveness of local programming?

37. Should it consider consumers' interest in locally oriented programming? How should the extent of consumer demand for free, local content factor into the media ownership rules? For instance, if ratings for local news broadcasts have declined over the years, should that affect any emphasis on the goal of localism? Alternatively, is the provision of local news programming socially valuable in itself, regardless of variations in consumer interest in such programming? If so, would measures of civic engagement such as voter turnout or civic knowledge be useful to measure?

38. How should it define and measure localism as it applies to historically underserved minority communities? What is the best approach to measuring satisfaction among particular demographic groups with the quantity and effectiveness of locally-oriented programming? Are there aspects of localism that are relevant specifically to minority communities? Are there particular types of programming, including news and informational programming, which are specifically relevant to minority communities? If so, how should such programming be defined and measured?

39. Should the Commission consider radio and television (and other content platforms such as newspapers, cable, and the Internet) as separate product markets or as a single product market for purposes of achieving our localism goal? How should it account for nonbroadcast distribution outlets for locally oriented programming? How should it account for new media, both in terms of metrics and the impact of new media on traditional media? Does the Internet play a role in the promotion of localism by providing a unique forum for communities and local organizations to share information on niche topics and community-oriented information not provided by other media platforms? What about hyper-local and free community group Web sites? What weight should they be given? While not all consumers have broadband Internet access, information first reported on the Internet—through local blogs, Web sites, listservs and similar online sources—may be picked up by the traditional media and further disseminated to non-users of the Internet. Is that a relevant factor?

40. Do most local news originate from traditional media sources, such as broadcasting and newspapers? How heavily should origination factor into analysis? How should any measure of quantity account for re-broadcasting or re-purposing of content? Does the current prevalent business model for traditional media, in which many companies provide free Internet content, have any adverse effect on the quantity or responsiveness of local content provided? Should the Commission consider mobile platforms in its analysis? Consumers increasingly use smart phones and other mobile devices to access up-to-date information on local school events and closings, local weather, and local civic information. Consumers also are using mobile devices to deliver news and information through social networking Web sites. Should we consider consumer-to-consumer information in our analysis?

41. Should the Commission seek to promote localism with regard to the advertising sector of media markets? Is there a policy reason for the Commission to promote local advertisers' access to local media? If there is such a policy concern, can it be addressed by ensuring that the advertising market is competitive?

42. Should the Commission consider content creators in deciding whether the ownership rules are necessary to advance localism? Does locally produced or originated content make a particular contribution toward the localism goal, and, if so, how should it define "local production" or "origination" in today's media marketplace. What entities should qualify as local content creators? How should it measure the quantity and responsiveness of locally oriented and produced content?

43. Should the Commission consider platform owners in deciding whether the ownership rules are necessary to advance localism? Is local ownership a goal in itself or simply a means to foster the provision of local programming to consumers? Are there differences in the amount and responsiveness of local content provided in markets where there are significant numbers of locally owned and/or managed stations as opposed to markets characterized by nonlocal owners and/or managers?

44. How does market structure affects localism in all of these respects? Is there any particular ownership structure that

would best promote the localism goal? Does combined ownership of outlets within a platform, such as in radio alone, or across platforms, such as with respect to radio/television cross-ownership or newspaper/broadcast cross-ownership, promote or hinder the localism goal? Commenters should provide predictive evidence as to how any proposed changes in any ownership rule (whether the change be an elimination, relaxation, or tightening of an ownership rule or even a waiver or grandfathering of noncompliance with a rule) would likely affect the amount, quality, and/or diversity of the local news, public affairs programming and other information in the community affected by the change. Is there a difference in the degree to which the localism goal is achieved in markets with many single station owners versus markets in which multiple station ownership is more common? Is there any difference in markets where a TV station or radio station is co-owned with a newspaper as opposed to ones that are not? Please submit any relevant studies or data with respect to these issues.

45. How should the Commission define diversity? The Commission historically has approached the diversity goal from five perspectives—program diversity, viewpoint diversity, source diversity, outlet diversity, and minority and female ownership diversity. In this NOI, it seeks comment on the relative importance of each of these aspects of diversity. The Commission seeks to refine the performance metrics and thresholds used to judge how well the current rules operate to achieve the diversity goal. How does their use comport with the values and principles embodied in the First Amendment? Commenters should support their comments with sound empirical evidence demonstrating a link between structural rules and the diversity goal.

46. What is the proper geographic area and the proper product market within which to analyze the achievement of the diversity goal? The Commission tentatively concludes that the appropriate geographic unit is an area within which, roughly speaking, all citizens have the same range of media choices. It seeks comment on this tentative conclusion. Do existing geographic market definitions satisfy this criterion? Are there any reasons to evaluate diversity on a national level for some facets of diversity?

47. Should the Commission apply performance metrics for the diversity goal that aggregate all media outlets in a geographic area or that separate outlets of each media type? Do particular types of media contribute more than others to particular aspects of diversity? Should it analyze local television and radio separately? Should it consider only content aired on broadcast outlets or are other platforms relevant as well? How should it take account of the vast number of channels and range of content available via cable television, satellite television, and the Internet? Which media, if any, are close enough substitutes to be considered in the same "product market?" The costs associated with cable television, satellite television, and the Internet (including paying for the connection and for necessary home equipment) put some services out of reach for some segments of the population. How should that be accounted for? If it concludes that the Internet provides the capability to distribute a nearly limitless variety of content, which facets of the diversity goal would be satisfied? Focusing on the Internet, how should it assess the importance of Internet news blogs and aggregators, such as the Huffington Post or the Drudge Report? Do aggregators contribute to media market diversity, even if they produce little or no original content? Commenters should submit studies and data that evaluate the significance of the Internet in formulating media ownership regulation.

48. The FCC previously has concluded that program diversity, which refers to the variety of programming formats and content, is promoted by competition among media outlets. Is competition among media outlets the optimal way to achieve program diversity generally? Viewed this way, a market structure that provides an acceptable level of competition would also be considered to provide an acceptable level of program diversity. Does increased competition among independently owned media outlets always lead to increased program diversity? Are there situations in which concentrated ownership increases program diversity? Is it possible to obtain an objective measure of program diversity? Are the performance metrics suggested above in connection with the competition goal (*e.g.,* consumer satisfaction, media utilization) adequate for this task? If additional performance metrics are necessary, what would they be and how should they be collected?

49. There are certain types of programming that the Commission historically considers to promote the public interest that we would consider in our analysis of diverse programming. For instance, the Commission requires broadcast licensees to provide programming designed to educate and inform children and to protect children from excessive and inappropriate commercial messages. What is the impact of market structure on the availability of such programming?

50. Viewpoint diversity refers to the availability of media content reflecting a variety of perspectives. How should it measure the level of viewpoint diversity? Is there an objective measure of viewpoint diversity? Should it attempt to measure viewpoint diversity through an analysis or census of available content? Are news and public affairs programs the only relevant sources of viewpoint diversity? How should it define news and public affairs programming? For example, is "Entertainment Tonight" or "The Daily Show" news programming? Can it make such judgments consistent with the First Amendment?

51. As an alternative to measuring the "supply" of content to assess viewpoint diversity, should it take a "demand side" approach and utilize measures of audience satisfaction and media consumption as proxies for viewpoint diversity? How do differences in the number of independent media outlets in an area affect diversity? Do multi-outlet news content providers contribute more or less to viewpoint diversity than singly owned outlets? How does platform ownership and market structure influence viewpoint diversity? Do markets with more independent owners provide more divergent viewpoints on controversial issues? Alternatively, are there benefits of combined ownership, even though it reduces the number of independent owners in a market? Can combined ownership benefit consumers by allowing economies of scale or scope that can benefit end users by enabling broadcasters to provide more diverse programming? In particular, does consolidated ownership enable owners to provide more news programs that represent wide-ranging viewpoints? Does the existence of multiple independent decision makers (sometimes referred to as "gatekeepers") increase the likelihood that all significant viewpoints will be delivered to the public by at least one local outlet? To what extent does consolidated ownership affect the ability of nonaffiliated/independent small companies or women/minority-owned companies that produce programming to get their programming on the air? What effect, if any, has consolidated ownership had on the availability of a variety of diverse viewpoints to women and minority consumers? Are women and minorities increasing their

ownership levels in companies that are content providers or in other aspects of media production aside from station ownership?

52. Source diversity refers to the availability of media content from a variety of content creators. What role does source diversity play? Is source diversity an end in itself or simply a means to achieving other diversity goals? Would an appropriate level of outlet diversity obviate any separate concerns about source diversity? How should it measure the level of source diversity? Is the availability of independent content creators a measure of source diversity? If so, how should it define "independent content creator"? Is source diversity important for all types of programming? What role should consumer satisfaction or media consumption play in evaluating source diversity? Do the responses to these questions change according to whether the focus is on the airing of local news, public affairs programming or other information?

53. Outlet diversity refers in part to the number of independently owned media outlets in a relevant market. Many of our ownership rules have been stated in terms of the number of independent media "voices" in relevant local markets. Should one of the Commission's goals in prescribing media ownership rules be to promote more independent owners in the platform sector of the media marketplace? Should it view outlet diversity as an instrument for ensuring other types of diversity, such as viewpoint and source diversity, or as an end itself? How should it measure the relationship between diverse ownership and our other diversity metrics?

54. Another aspect of outlet diversity is the ownership of platforms by diverse individuals and entities, including minorities, women, and small businesses. What was the impact of the relaxation of the radio ownership limits mandated by Congress in 1996 on minority and female ownership of radio stations, and what studies have been done documenting that impact? Does the FCC's structural media ownership rules have an effect on broadcast ownership by minorities, women, and small businesses? What is the relationship between diversity of broadcast ownership and viewpoint diversity? Commenters should support their views with data, studies, and analysis. Should the ownership rules be used to promote diverse types of broadcast owners and, if so, how can the Commission pursue this goal in a manner consistent with the Constitution and relevant case law?

55. The Commission recognizes that there may be tension among the goals of competition, localism, and diversity. For example, proposed transactions may generate efficiencies and enhance program offerings but reduce the number of independent media owners, viewpoint diversity, minority ownership, or localism. How should it weigh our competition, localism, and diversity goals when they conflict? Should it set minimum thresholds for each goal and permit consolidation as long as the thresholds are met? Should any of the ownership rules be designed to serve one or two goals, rather than all three goals? Are any of our goals more important in regulating some media sectors than others?

56. Should it apply different performance cutoffs or different trade-offs across goals in different-sized markets? Should the competition goal outweigh the diversity of ownership goal in certain instances? Does the impact of consolidation differ between small markets and large markets? For instance, does market size affect whether consolidation results in more or less local or diverse news and public affairs programming? Should it measure performance on an absolute level or proportionally to market size? For instance, should it consider hours of local news and public affairs programming per 100,000 households in the market as opposed to hours of local news in the market?

57. Are there other policy goals, in addition to competition, diversity, and localism to consider, in determining ownership limits in this proceeding? If so, what other goals, why are they important and appropriate to consider from a statutory perspective in this proceeding? Should the Commission consider the impact of its media ownership rules on the availability to all Americans of news and information, not only local but also national news and information? The Commission separately has issued a Public Notice to invite comment on various issues relating to the information needs of communities. The issues raised in that notice are interrelated to issues raised in this ownership proceeding although the focus of this proceeding is narrower, since the Commission concentrated here only on our media ownership rules. Should it consider the impact of our ownership rules on investigative journalism? If so, should the Commission consider only investigative journalism in broadcast media or across all media? If commenters believe that it should undertake such an examination in this proceeding, it invites comment on whether revising multiple ownership rules is necessary to preserve or enhance the availability of news and information and journalism, and, if so, what specific measures should be taken to promote these goals.

58. The Commission invites comment, supported by empirical or other available evidence, on each of the current ownership rules described above, and whether it satisfies the statutory standard. For each of the current ownership rules reviewed in this proceeding, it seeks comment on how the rule affects the local market structure and in turn impacts the Commission's policy goals. Commenters should propose specific analytical frameworks for linking the ownership rules to the policy goals discussed above and measuring the impact of the rules on the policy goals. Would it be useful to target particular rules to particular goals, for example, to use the local television and radio ownership rules to advance the competition goal and the cross-ownership rules to advance the diversity and localism goals? Are there any changes it should make to the rules to promote the goals more effectively? Do the current numerical limits set forth in the ownership rules continue to be necessary to serve our competition, localism, and diversity goals? If it decides to retain the current limits, how should it justify them? Commenters who believe that the current rules do not promote competition, localism, and diversity should propose specific modifications to these rules or describe in detail an alternative framework that would better promote our goals. Commenters should support their contentions with empirical evidence and explain how their recommended approaches would affect the various stakeholders, such as end users, advertisers, content creators, and platform owners. Commenters also should raise any additional pertinent issues with respect to each of these rules beyond those on which they are specifically invited to comment. Commenters who seek modification of the rules should address how to ensure that any revisions to the rules are consistent with the courts' decisions reviewing earlier Commission media ownership orders. For example, what evidentiary bases and what methodological approaches would enable the Commission to provide a reasoned analysis that would be adequate to satisfy judicial scrutiny of any numerical limits it may adopt?

59. The Commission invites commenters who advocate retention of the current ownership rule structure, with or without modification, to address the following specific questions about

the rules: With regard to the local television ownership rule, does the eight-voices test continue to serve our goals? How does the eight-voices requirement promote competition, diversity, and localism? Should it continue to count only full-power television stations as voices, or should a broader or narrower set of voices be considered? What media should be considered when determining the number of voices in a market in applying this rule? Are there other criteria to use to determine what to count as a voice in a given market? Does the current prohibition of mergers among the top-four-rated television stations in a market continue to serve the policy goals? While the Grade B contour no longer exists in the digital world, is an overlap provision or some resort to contours still necessary? Should it make changes to the failed/failing station waiver standard? Should it account for market share other than through the prohibition of a merger among the top-four rated stations? Are there any other aspects of the local television ownership rule that should be revised. Commenters should evaluate the local television ownership rule in the context of the larger marketplace for delivered video. What is the impact on television broadcast programming of competition among MVPDs, and how should it consider this impact in the context of the local television ownership rule? Does the 1996 Act require the Commission to maintain competition among television broadcasters or between broadcasters and other video providers, or both? Is it necessary also to look separately at the broadcast television market? Would consolidation of television station ownership in local markets provide more and better programming? Would permitting one entity to own more television stations in a local market enable the broadcast television service to compete more effectively with MVPDs? Would such combined ownership benefit viewers and/or advertisers through a strengthened competitive position? Is relaxation of the rule warranted in smaller markets to help broadcasters compete with other MVPDs and achieve economies of scale that can allow provision of more responsive and diverse programming to consumers? Television broadcasters assemble their streams of content through a combination of in-house production and outside sources. How does the local market structure of television station ownership affect the market for acquiring content? Would significant consolidation of television stations in a local market have the potential to harm program syndicators that sell their programming directly to individual local stations? Can the local television ownership rule affect this market and, if so, how should it take account of this effect in crafting the local television ownership rule? The current limit may not be reached in particular markets. How can it account for under-limit situations when predicting the effect of changes in the rules on achievement of the goals?

60. Are the current numerical limits appropriate to achieve the goals of the local radio ownership rule? The local radio ownership rule currently distinguishes between AM and FM services. Does it continue to make sense to have sub-caps for the two services? Have recent technological advances eliminated the need for this aspect of the rule? What part should low-power FM stations play in the rule? Should it account for other sources of audio programming in applying the rule? Should the degree of consolidation of other media in the local market be a factor in the rule, or should it continue to count only the number of radio stations in a market in applying the rule? Should this rule take account of market share?

61. With regard to the newspaper/broadcast cross-ownership rule, should the Commission treat newspaper-television combinations differently from newspaper-radio combinations, as we do in the 2006 presumptive standard? Are some goals or metrics more relevant for one or the other type of combinations? Are particular market participants more heavily affected by the rule? Which elements of market structure are most important for measuring the effects of this rule on the policy goals? Would relaxing the newspaper/broadcast cross-ownership rule result in economies of scale and scope that could help newspapers to survive? Alternatively, do the problems faced by newspapers result from extraneous factors that make relief in this area irrelevant? For example, statistics show that fewer people are reading newspapers and, instead, are increasingly getting news and information from nontraditional sources. Statistics also demonstrate an increase in the degree of penetration of new media, including online websites, and social media. Given the fragmentation of sources of news, would structural relief help newspapers sufficiently to result in a net gain in local news and information? Should any such relief operate via a revised rule or via a waiver standard? If the latter, what type of waiver standard should be applicable? Is the presumptive standard adopted in the *2006 Quadrennial Review Order* able to further the competition, diversity, and localism goals as well as result in economies of scale and scope that could help newspapers survive? Is a rule that relies on presumptions preferable in order to achieve the goals? What factors should a relaxed rule or waiver standard take into account? Should any relaxation of the rule continue to account for the number of voices in a community? For instance, is there a basis in the current marketplace for finding that cross-ownerships only in the largest markets would be in the public interest? Should it take into account market share of the media entities that would be combined? If the number of voices is relevant, how should voices be defined for this purpose?

62. With regard to the radio/television cross-ownership rule, are the current procedures for counting voices in a market achieving the goals or should they be modified? Have recent technological developments had an impact on the voices that should be counted when applying the rule? Does the current rule for counting voices make sense in today's media marketplace? If so, do the media voices considered in this rule's voice count adequately encompass relevant media outlets? How should the Commission justify a decision to retain the particular numerical limits contained in the current rule? What type of waiver standard should be applicable?

63. Would the dual network rule be more effective if it targeted mergers among networks with specific characteristics rather than specifically targeting mergers among the four major networks? If so, what characteristics should it consider, and how should it measure them? Would a merger between or among any of the top-four broadcast networks harm competition in the program acquisition market? How does the Commission balance any conflicting goals underlying this rule? What is the appropriate metrics to use in analyzing the competitive effects of the dual network rule on the program acquisition market? Should the Commission measure shares of expenditures on video entertainment programming? Is the dual network rule necessary to protect competition in the national advertising market? What metrics should the Commission use to make this determination? Should it rely on measurements of the shares of national advertising?

64. If the Commission finds that the existing media ownership rules are no longer necessary in the public interest

as the result of competition, it must modify or eliminate the rules. If it modifies the rules, should it use a bright line approach or adopt an alternative approach, such as analyzing changes in ownership on a case-by-case basis, or a hybrid of the two? What are benefits and disadvantages of bright line rules versus a case-by-case approach? Proponents of bright line rules should discuss why to maintain such an approach and should address the questions, asked above, as to whether any modifications should nonetheless be made to the current rules. For example, should the Commission retain numerical limits affecting ownership of radio stations but revise the current limits? Alternatively, should it adopt a new rule structure? Proponents of a case-by-case approach should discuss whether there are certain ownership rules that are particularly suited to a case-specific review process, or whether a case-by-case approach should be applied to all the ownership rules.

65. If it is determined that the existing rules are not necessary in the public interest as the result of competition, should the Commission adopt a broad cross-media approach to media ownership? Such an approach could replace in whole or in part the focus of each of the current rules on specific types of broadcast outlets. What are the costs and benefits of outlet-specific rules as compared to rules that apply to all media together? Would a broad cross-media approach be consistent with the relevant court cases that have reviewed the Commission's ownership rules? When discussing possible approaches to structuring the ownership rules, commenters should address compatibility of the rules with the court remands in *Sinclair, Prometheus,* and *Lamprecht.* Do the holdings in these cases limit the Commission's ability to adopt specific ownership limits? Do the holdings require the Commission to consider any specific factors going forward? Do these cases suggest that a particular approach to ownership regulation is more likely than others to satisfy the courts?

66. Would maintaining bright line rules advance the policy goals? What are the benefits or negative consequences of retaining the current approach? Do bright line rules adequately take into consideration today's media marketplace? Do bright line rules promote efficiency in license transfers and in planning business transactions? Are lenders more likely to provide financing in a climate of regulatory certainty? Are there other benefits to consider in maintaining bright line rules? Conversely, bright line rules do not fully account for either changing economic conditions within a particular local market or all of the variations that may exist across markets. The fairness and predictability of bright line rules must be weighed against their inflexibility and insensitivity to particular circumstances. To what extent does the possibility of waivers mitigate any disadvantages of bright line rules? Are there other disadvantages of bright line rules to be considered?

67. Alternatively, should the Commission adopt a case-by-case approach instead of adopting new or revised bright line rules? A case-by-case approach allows room for consideration of individual circumstances, thereby increasing the likelihood that a decision with respect to a specific transaction will best serve a particular market. A comprehensive review of all the relevant variables in a local market permits a regulator to render a decision that is appropriate for that market at that time. The flexibility of a case-by-case approach is an advantage in the dynamic and rapidly evolving media marketplace. Are there other advantages of a case-by-case approach?

68. A case-by-case approach also has disadvantages. It can make the decisionmaking process less predictable, which can generate uncertainty, posing challenges for market participants and their lenders. In addition, a complicated set of precedents can evolve from a case-by-case approach, compounding uncertainty and confusion for market participants. A compelling set of facts in a particular situation can lead to an unexpected exception or introduce new variables to be considered. Over time, simply understanding the precedents may become a daunting task. The administrative burdens associated with a case-by-case approach are high relative to a bright line approach. A comprehensive review process that accounts for the particular conditions of a local market can prolong decisionmaking and thus chill market activity. Are there other disadvantages to a case-by-case approach?

69. Should the Commission adopt a hybrid of the two approaches for any or all of the ownership rules? For example, a hybrid rule (such as the newspaper/broadcast cross-ownership rule as modified by the Commission in the 2006 ownership review) could define parameters that predict a likely outcome in most cases while allowing room, within specified guidelines, for an analysis of individual circumstances. Commenters are asked to explain how their recommended approaches would affect the various stakeholders, such as end users, advertisers, content creators, and platforms.

70. Should any of the ownership rules incorporate additional factors to be considered when the Commission reviews assignment and transfer applications? Additional factors could potentially include local economic and financial conditions, the applicant's financial status and ability to access capital, the size of the local market, the size of the applicant, the holdings of the applicant's competitors in the market, the applicant's audience ratings and/or advertising revenues, the applicant's history of promoting innovation, or the effects of the digital television transition. Some of our media ownership rules already incorporate some of these factors. Proponents of a hybrid approach should explain which factors they believe should be considered and why and how the Commission should take those factors into account. Should certain factors weigh more heavily than others? Opponents of such an approach should explain why the Commission should not have the flexibility to take these types of factors into account.

71. If the Commission determines that the existing rules are no longer necessary in the public interest as the result of competition, should the Commission adopt a broad cross-media approach to regulating media ownership? Such an approach would look at all conditions in a geographic market in determining the degree of permissible combined ownership in that market. What are the benefits or disadvantages of adopting rules that consider all media in a market together? Would a cross-media approach better account for changes in the media marketplace and today's market realities? What parameters should we use to measure such an approach? How should it define the market, and what components of the media marketplace should the Commission take into account?

72. How should the FCC adjust its rules to account for technological changes that are reshaping how people are getting their news and public affairs information? Should the Commission's rule structure account for all major sources of news and public affairs information? What sources should be included? If there is a decline in demand for mainstream news media, should it take that into consideration? How should the rules account for trends in the news media?

73. If it does consider other sources of news, how should it treat new media outlets that are owned by traditional media sources? Should the Commission

treat Web sites owned by traditional media companies differently from independently owned Web sites? How should it treat online aggregators that do not engage in significant original content production themselves, but rather provide selective access to content created by other online content providers and/or traditional media sources? How should it treat other types of arrangements for shared news sources? How do shared news services affect the coverage of local events? Are these arrangements permissible under the cross-ownership rules and should they be?

74. In the *2002 Biennial Review Order,* the Commission attempted a cross-media approach to media ownership by developing a "diversity index." The Third Circuit vacated and remanded that aspect of the order as insufficiently supported by the record. If the Commission takes a cross-media approach, how can it avoid the shortcomings the court found in the 2002 order?

75. Should the Commission expand its review in this proceeding to include and consider two issues that may relate to our media ownership rules? First, the Commission's cross-ownership and local television ownership rules employ analog broadcast television contours as one criterion in determining whether the applicable rule is violated. However, analog contours are no longer relevant. Should the FCC continue using broadcast television contour for purposes of the ownership rules, and if so, how should it revise the rules?

76. The Commission has defined two digital television service contours, the digital noise limited service contour ("NLSC") and the DTV principal community contour. The digital NLSC approximates the Grade B contour. The FCC does not have an equivalent digital contour for the analog Grade A contour. Should it continue to use contour encompassment as a triggering factor and to count voices in a market as currently used in the media ownership rules? If it continues to use contours to determine compliance or applicability of a rule, what contours should it use? Should it substitute the NLSC for the Grade B contour? Is there a suitable substitute for the Grade A contour? Should it consider using the same digital contour for all of the ownership rules, and not distinguish between different geographic areas, such as the analog Grade A, Grade B, and city grade contours? What are the benefits or harms of adopting a single contour standard? Should it continue to require 100% encompassment for a rule to be triggered?

77. Alternatively, should it eliminate the use of contours and adopt a different analytical approach? If so, what criteria should be used to determine when a rule is triggered? How should it count voices if it does not use a contour-based method? Should it count voices in geographic areas? For instance, if it uses Arbitron metro areas for this purpose, how would it address areas in which Arbitron has not defined radio markets? What are the benefits or harms of substituting a geographic-based approach for a contour approach?

78. To facilitate nationwide broadband deployment, the Commission released and sent to Congress its broadband plan, "Connecting America: The National Broadband Plan" on March 16, 2010. The plan sets out a plan of action and a roadmap "to spur economic growth and investment, create jobs, educate our children, protect our citizens, and engage in our democracy." Is the broadband plan a relevant factor to consider when developing broadcast ownership rules? Does access to broadband affect our policy goals? How does access to audio and video content available over broadband factor into the competition analysis? How does access to broadband affect the diversity goals?

79. What, if any, specific aspects of the broadband plan are relevant here? For example, would ubiquitous access to broadband service in this country impact the media ownership policy? Should the competitive impact of the Internet be given more weight if the percentage of consumers with broadband access substantially increases? The plan finds that mobile services are playing an increasingly important role in our lives and our economy. Should the Commission's policy goals to foster mobile services impact media ownership rules? Should the fact that consumers are increasingly getting news and programming through their mobile devices impact the decisions in this proceeding?

80. Ex Parte. The inquiry this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

81. Comment Filing Procedures. Pursuant to sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 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 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov*.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. 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 must be addressed to 445 12th Street, SW., Washington, DC 20554.

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), 202–418–0432 (tty).

89. Accordingly, *It is ordered,* that pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310, and Section 202(h) of the Telecommunications Act of 1996, this Notice of Inquiry is adopted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–14099 Filed 6–10–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 242

Defense Federal Acquisition Regulation Supplement; Contractor Insurance/Pension Review (DFARS Case 2009–D025)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD proposes to remove and relocate the requirements for conducting a Contractor Insurance/Pension Review from Procedures, Guidance, and Information to the Defense Acquisition Regulation Supplement.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 10, 2010, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2009–D025, using any of the following methods:

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

E-mail: dfars@osd.mil. Include DFARS Case 2009–D025 in the subject line of the message.

Fax: 703–602–0350.

Mail: Defense Acquisition Regulations System, Attn: Ms. Mary Overstreet, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Overstreet, 703–602–0311.

SUPPLEMENTARY INFORMATION:

A. Background

As part of a DFARS Transformation effort, Defense Acquisition Regulation Supplement (DFARS) Case 2003–D050, published at 71 FR 9273, February 23, 2006, moved requirements for Contractor Insurance/Pension Review (CIPR) from DFARS 242.7302 to Procedures, Guidance, and Information (PGI) 242.7302. This DFARS case proposes to move requirements for CIPR back to the DFARS from the PGI. The threshold and requirements for conducting a CIPR are DoD-wide policy that has a significant effect beyond the internal operating procedures of DoD. Since conduct of a CIPR impacts industry, as contractors are required to provide documentation to support the reviews, the requirements for CIPR should be located in the DFARS.

B. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The proposed rule merely relocates the requirements for CIPR from the PGI to the DFARS. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2009–D025) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) applies because information collection requirements in the proposed rule at DFARS subpart 242.73 are currently approved under Office of Management and Budget Control Number 0704–0250. Relocating the requirement has no impact on the information collection requirement.

List of Subjects in 48 CFR Part 242

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR part 242 as follows:

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

1. The authority citation for 48 CFR part 242 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

2. Revise section 242.7302 to read as follows:

242.7302 Requirements.

(a)(1) An in-depth CIPR as described at DFARS 242.7301(a)(1) shall be conducted only when—

(i) A contractor has $50 million of qualifying sales to the Government during the contractor's preceding fiscal year; and

(ii) The ACO, with advice from DCMA insurance/pension specialists and DCAA auditors, determines a CIPR is needed based on a risk assessment of the contractor's past experience and current vulnerability.

(2) Qualifying sales are sales for which cost or pricing data were required under 10 U.S.C. 2306a, as implemented in FAR 15.403, or that are contracts priced on other than a firm-fixed-price or fixed-price with economic price adjustment basis. Sales include prime contracts, subcontracts, and modifications to such contracts and subcontracts.

(b) A special CIPR that concentrates on specific areas of a contractor's insurance programs, pension plans, or other deferred compensation plans shall be performed for a contractor (including, but not limited to, a contractor meeting the requirements in paragraph (a) of this section) when any of the following circumstances exists, but only if the circumstance(s) may result in a material impact on Government contract costs:

(1) Information reveals a deficiency in the contractor's insurance/pension program.

(2) The contractor proposes or implements changes in its insurance, pension, or deferred compensation plans.

(3) The contractor is involved in a merger, acquisition, or divestiture.

(4) The Government needs to follow up on contractor implementation of prior CIPR recommendations.

(c) The DCAA auditor shall use relevant findings and recommendations of previously performed CIPRs in determining the scope of any audits of insurance and pension costs.

(d) When a Government organization believes that a review of the contractor's insurance/pension program should be performed, that organization should provide a recommendation for a review to the ACO. If the ACO concurs, the review should be performed as part of an ACO-initiated special CIPR or as part of a CIPR already scheduled for the near future.

[FR Doc. 2010–14120 Filed 6–10–10; 8:45 am]

BILLING CODE 5001–08–P

Notices

Federal Register
Vol. 75, No. 112
Friday, June 11, 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

Rural Utilities Service

Basin Electric Power Cooperative: Deer Creek Station

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Availability of Final Environmental Impact Statement.

SUMMARY: The Rural Utilities Service (RUS) and the Western Area Power Administration (Western) have issued a Final Environmental Impact Statement (EIS) for the proposed Deer Creek Station project in Brookings and Duel Counties, South Dakota. The Final EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (U.S.C. 4231 *et seq.*) in accordance with the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), RUS's NEPA implementing regulations (7 CFR part 1794), and Western's NEPA implementing regulations (10 CFR part 1021). Western is the lead federal agency as defined at 40 CFR 1501.5; RUS is a cooperating agency. The purpose of the Final EIS is to evaluate the potential environmental impacts of and alternatives to Basin Electric Power Cooperative's (Basin Electric) application for a RUS loan and a Western interconnection agreement to construct the proposed 300 megawatt (MW) Deer Creek Station in Brookings and Deuel Counties, South Dakota (Project). The proposed facility would include a new natural gas-fired combustion turbine set, a heat recovery steam generator (HRSG), and a steam turbine generator set.

DATES: Written comments on this Final EIS will be accepted on or before June 28, 2010, following the publication of the U.S. Environmental Protection Agency's notice of availability for this FEIS in the **Federal Register**.

ADDRESSES: To obtain copies of the Final EIS or further information, contact: Ms. Lauren McGee, Environmental Scientist, USDA, Rural Utilities Service, 1400 Independence Avenue, SW., Stop 1571, Room 2239–S, Washington, DC 20250–1571, telephone: (202) 720–1482, fax: (202) 690–0649, or e-mail: *lauren.mcgee@wdc.usda.gov.*

A copy of the Final EIS has been sent to affected federal, state, and local government agencies and to interested parties and can be viewed online at: *http://www.usda.gov/rus/water/ees/eis.htm.*

Copies of the Final EIS will also be available for public review at the following locations (hours vary; contact individual repositories for available times):

Brookings Public Library 515 3rd Street Brookings, SD; telephone: (605) 692–9407

SDSU Hilton M. Briggs Library, South Dakota State University, Brookings, SD; telephone: (605) 688–5570.

Deubrook Community Library, 100 School Avenue, White, SD.

Elkton City Hall, Elkton, SD.

Siverson Public Library, 100 W. Garfield, Hendricks, MN.

Brookings County Commission Office, 314 6th Avenue, Brookings, SD.

SUPPLEMENTARY INFORMATION: Basin Electric's proposed Project is to construct, own, operate, and maintain the Deer Creek Station Energy Facility, a 300 MW combined-cycle natural gas generation facility, water pipeline, transmission lines, transmission interconnection(s), and other associated facilities in Brookings and Deuel counties in eastern South Dakota. The purpose for the proposed Project is to serve increased load demand for electric power in the eastern portion of Basin Electric's service area. In 2007, Basin Electric prepared a forecast showing load and capability surpluses/deficits through the year 2021. The forecast predicted that by 2014, there will be a deficit of 800–900 MW for the eastern portion of its service area. The proposed Project's addition of 300 MW of generation will help meet Basin Electric's future energy requirements.

On February 6, 2009, Western published in the **Federal Register** a Notice of Intent to prepare an EIS for the Deer Creek Station. The EIS focused on potential impacts to the following resources: soils, topography and geology, water resources, air quality, biological resources, the acoustic environment, recreation, cultural and historic resources, visual resources, transportation, farmland, land use, human health and safety, the socioeconomic environment, environmental justice, and cumulative effects. On February 26, 2010, the Rural Utilities Service published its Notice of Availability of the Draft EIS for the proposed project in the **Federal Register**. The U.S. Environmental Protection Agency acknowledged receipt of the Draft EIS on February 5, 2010, from Western. The 45-day comment period ended on March 22, 2010. Because few comments were received which did not result in the substantial modification of the alternatives or the environmental analysis in the Draft EIS, Western and RUS prepared an abbreviated Final EIS to address the comments received.

Basin Electric's proposed Project is subject to the jurisdiction of the South Dakota Public Utilities Commission (SDPUC) which has regulatory authority for siting power plants and transmission lines within the State. Basin Electric will submit an application for an Energy Conversion Facility Permit and a Route Permit to the SDPUC. The SDPUC permits would authorize Basin Electric to construct the proposed Project under South Dakota rules and regulations.

After considering various ways to meet these future needs, Basin Electric identified construction of the proposed Project as its best course of action. This EIS considered 17 alternatives to meet the future energy requirements of the eastern portion of its service area. These alternatives were evaluated in terms of cost-effectiveness, technical feasibility, and environmental factors.

The EIS analyzes in detail the no action alternative and the proposed action (Deer Creek station and related facilities) at two separate locations: White Site I (Brookings County, T111N R48W, Section 25 NE Quarter) and White Site II (Brookings County, T111N R48W, Section 2 NW Quarter). The proposed action at White Site I has been identified as the preferred alternative.

Because the proposed Project may involve action in floodplains or wetlands, this Notice of Availability also serves as a notice of proposed floodplain or wetland action. The EIS includes a floodplain/wetland

assessment and floodplain/wetland statement of findings.

Any action by RUS related to the proposed Project will be subject to, and contingent upon, compliance with all relevant Federal, state and local environmental laws and regulations, and completion of the environmental review requirements as prescribed in RUS's Environmental Policies and Procedures, 7 CFR part 1794, as amended.

Dated: June 7, 2010.

James F. Elliott,

Acting Deputy Assistant Administrator, Electric Programs, Rural Utilities Service.

[FR Doc. 2010–14020 Filed 6–10–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Rangeland Allotment Management Planning on the Fall River West and Oglala Geographic Areas, Fall River and Pine Ridge Ranger Districts, Nebraska National Forest

AGENCY: Forest Service, USDA.

ACTION: Second revised notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) analyzing the management of rangeland vegetation resources, which includes livestock grazing, on the National Forest System (NFS) lands within the Oglala Geographic Area (OGA) of the Oglala National Grassland on the Pine Ridge Ranger District and the West Geographic Area (WGA) of the Buffalo Gap National Grassland on the Fall River Ranger District of the Nebraska National Forest (Analysis Area) areas as mapped by the 2001 Nebraska National Forest Revised Land and Resource Management Plan (Forest Plan). A Notice of Intent (NOI) for this project was published February 22, 2008 (73 No. 36 FR 9760–9762). More than six months have elapsed since the projected draft environmental impact statement (DEIS) date in that original NOI. This revised NOI is being issued to update the project schedule. There will be a record of decision (ROD) for each geographic area.

Proposed management actions would be implemented beginning in the year 2012. The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so interested and affected people may become aware of how they may participate in the process and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received within 30 days after publication in the **Federal Register**. The draft environmental impact statement is expected February 12, 2011 and the final environmental impact statement is expected September 1, 2011.

ADDRESSES: Send written comments pertaining to this project to Carla Loop, Oglala and Fall River West Geographic Area RAMP, 125 North Main, Chadron, NE 69337. Comments may also be submitted electronically at *nnfinfo@fs.fed.us.* Please enter "RAMP" in the subject line.

FOR FURTHER INFORMATION CONTACT: For further information about the Oglala Geographic Area on the Oglala National Grassland call Lora O'Rourke, Co-Interdisciplinary Team Leader, at 308–432–0300. For further information about the West Geographic Area on the Buffalo Gap National Grassland, call Robert Novotny, Co-Interdisciplinary Team Leader at 605745–4107.

SUPPLEMENTARY INFORMATION: Vegetation resources on approximately 94,174 acres of NFS lands lying within the Oglala National Grassland in Sioux and Dawes Counties of northwest Nebraska, and approximately 117,548 acres of NFS lands lying within the Buffalo Gap National Grassland in Fall River County of southwest South Dakota, are being analyzed to determine if and how existing conditions differ from desired conditions outlined in the 2001 Nebraska National Forest Land and Resource Management Plan (Forest Plan).

Vegetation in the Analysis Area is characteristic of mixed-grass prairie and lesser amounts of ponderosa pine/juniper habitats. Short-grass species include blue grama, buffalograss, and upland sedges. Mid-grass species include western wheatgrass, green needlegrass, and to a lesser extent sideoats grama. Shrubs include Wyoming big sagebrush, greasewood, and yucca glauca. Some creeks transverse the area and support plains cottonwood, green ash, and willow.

A large portion of the Analysis Area evolved under a history of homesteading in the early twentieth century, and a prolonged drought period combined with the economic depression of the late 1920's and early 1930's caused many of these homesteads to fail. Starting in 1930's, land was purchased through the northwestern Nebraska and southwestern South Dakota under the Land Utilization Project initiated by the Agricultural Adjustment Administration. This continued with the Bankhead Jones Farm Tenant Act of 1937, which was designed to develop a program of land conservation. Administration of these lands was turned over to the Soil Conservation Service the following year and transferred to the United States Forest Service in 1954.

Today the Oglala and Buffalo Gap National Grasslands support and provide a variety of multiple resource uses and values. Livestock ranching operations in the area depend on National Grassland acreage to create logical and efficient management units. Cattle and sheep, in accordance with 10-year term and/or annual temporary livestock grazing permits, are currently authorized to graze the allotments within the Analysis Area. In order to determine how existing resource conditions compare to desired conditions, data from monitoring and analysis (historical and present) will be used. During the past 5–7 years, drought conditions have impacted plant vigor, canopy, and litter cover in most parts of the Analysis Area.

Purpose and Need for Action: The purpose of this project is to determine if livestock grazing will continue to be authorized on all, none, or portions, of the 41 allotments in the Fall River West GA and the 35 allotments in the Oglala GA. And if livestock grazing is to continue, how to best maintain or achieve desired conditions and meet forest plan objectives, standards and guidelines.

The action is needed to ensure that the project areas are meeting forest plan desired conditions for plant species composition, vegetation structure, and habitat for sharp-tailed grouse, sage grouse, and black-tailed prairie dog (management indicator species) and swift fox (r2 sensitive species).

There is also a need to review existing livestock management strategies and, if necessary, update them to implement 2001 Forest Plan direction and meet the requirements of section 504 of Public Law 104–19 (Rescissions Act, signed 7/27/95). The 2001 Forest Plan states that livestock grazing may occur as one of the multiple uses on the Nebraska National Forest, consistent with standards and guidelines. Livestock grazing is currently occurring in the analysis area under the direction of existing Allotment Management Plans (AMPs) and through direction provided in annual operating instructions (AOIs). The results of this analysis may require issuing or modifying grazing permits and AMPs including reductions of permitted livestock numbers and/or modifications of the grazing season.

Modifications would be documented in updated term grazing permits and/or grazing agreements and associated AMPs for the allotments.

The Forest Plan identifies lands within the OGA and FRWGA as containing lands that are capable and suitable for grazing by domestic livestock. These lands are to be monitored to evaluate both implementation and effectiveness of management actions.

In all cases, vegetation management tools will be used that meet Forest Plan objectives, standards, and guidelines and that will maintain or move existing resource conditions toward desired conditions for that geographic area. If monitoring indicates that practices are being properly implemented and that resource trends are moving toward meeting desired conditions in a timely manner, management may continue unchanged. If monitoring indicates that there is a need to modify management practices, adaptive options as analyzed in the EIS will be selected and implemented.

Consultation with the U.S. Fish and Wildlife Service, as required by the Endangered Species Act (ESA), will be completed on all proposed activities.

An interdisciplinary team has been selected to do the environmental analysis, as well as prepare and accomplish scoping and public involvement activities.

Possible Alternatives: Potential alternatives include:

1. No action, No change from authorized grazing use or current situation.
2. No Grazing.
3. Livestock grazing incorporating adaptive management to meet the Forest Plan goals, objectives, standards, and guidelines.

Responsible Officials: Charlie R. Marsh, District Ranger at the Pine Ridge Ranger District, 125 North Main Street, Chadron, Nebraska 69337; and Michael E. McNeill, District Ranger at the Fall River Ranger District, 1801 Highway 18 Truck Bypass, Hot Springs, South Dakota 57747–0732 are the Responsible Officials for making the decision on this action. They will document their decision and rationale in a Record of Decision.

The Responsible Officials will consider the results of the analysis and its findings and then document their decisions in two separate Records of Decision (ROD), one for the OGA and one for the FRWGA. The decisions will determine whether or not to authorize livestock grazing on all, part, or none of the Analysis Area, and if so, what adaptive management design criteria, adaptive options, and monitoring will be implemented so as to meet or move toward the desired conditions as specified in the Forest Plan.

Nature of Decision To Be Made: The EIS is not a decision document. The purpose of the EIS document is to disclose the direct, indirect, and cumulative effects of the proposed action and other alternatives that are analyzed. After providing the public an opportunity to comment on the specific activities described in the alternatives, the Responsible Officials will review all alternatives and the anticipated environmental consequences of each in order to make the following decisions:

- Whether or not to authorize livestock grazing within the Analysis Area in whole or in part.
- If grazing is to be Authorized, (a) What grazing systems and prescribed livestock use would be implemented; (b) what structural and non-structural range improvements would be necessary; and (c) what type of monitoring program would be proposed.
- If necessary identify any "mitigation measure(s)" needed to implement the decision. Individual Allotment Management Plans (AMPs) would then be developed to incorporate conditions outlined in the Record of Decision. These AMPs will become part of each associated term permit and/or grazing agreement issued.

Public Scoping Process: Comments and input regarding this proposal were requested from the public, other groups and agencies via direct mailing on March 10, 2008. Comments received during this first scoping process have been made part of the project record and will be addressed in the analysis process. With this revised NOI, additional comments will be accepted 30 days from the publication date of the notice in the Federal Register. Anyone who has or will provide comments to the draft EIS or expresses interest during the comment period will have standing in the process.

Public involvement will be especially important at several points during the analysis, beginning with the scoping process. The Forest Service will seek information, comments, and assistance from Federal, State, local agencies, tribes, and other individuals or organizations that may be interested in, or affected by, the proposal. The scoping activities will include: (1) Engaging potentially affected or interested parties by written correspondence, (2) contacting those on our Forest media list, and (3) hosting public information meeting(s).

Preliminary Issues: Preliminary issues include:

Effects of proposed management strategies on natural ecosystems. This includes elements such as native and desirable nonnative plant and animal communities, black-tailed prairie dog management, riparian areas, upland grasslands, wooded draws, ponderosa pine forested areas, areas of hazardous fuels, and threatened, endangered, sensitive, and management indicator species.

Social-economic effects (positive or negative) on livestock grazing permittees and the local economy from changes in livestock management.

Effects of proposed livestock grazing strategies on recreational activities and/or experiences. Comment Requested: This notice of intent initiates the formal scoping process that guides the development of the environmental impact statement.

Early Notice of Importance for Public Participation in Subsequent Environmental Review: A draft environmental impact statement (DEIS) will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Hams,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental

impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the document. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: June 2, 2010.

Charles R. Marsh,

District Ranger, Pine Ridge Ranger District.

Dated: June 2, 2010.

Michael E. McNeill,

District Ranger, Fall River Ranger District.

[FR Doc. 2010–13979 Filed 6–10–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tuolumne-Mariposa Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tuolumne-Mariposa Counties Resource Advisory Committee will meet on June 14, 2010 at the City of Sonora Fire Department, in Sonora, California. The purpose of the meeting is to hear presentations made by project proponents requesting RAC funding.

DATES: The meeting will be held June 14, 2010, from 12 p.m. to 3 p.m.

ADDRESSES: The meeting will be held at the City of Sonora Fire Department located at 201 South Shepherd Street, in Sonora, California (CA 95370).

FOR FURTHER INFORMATION CONTACT: Beth Martinez, Committee Coordinator, USDA, Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370 (209) 532–3671, extension 320; e-mail *bethmartinez@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Presentation of primarily Forest Service project submittals by project proponents; (2) Public comment on meeting proceedings. This meeting is open to the public.

Dated: June 2, 2010.

Jerry Snyder,

Public Affairs Officer.

[FR Doc. 2010–13981 Filed 6–10–10; 8:45 am]

BILLING CODE 3410–ED–M

DEPARTMENT OF AGRICULTURE

Forest Service

Coconino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Coconino Resource Advisory Committee will meet in Sedona, Arizona. The purpose of the meeting is for the committee members to meet one another for the first time, discuss committee protocols, and duties associated with being a committee member according to Public Law 110–343 (the Secure Rural Schools and Community Self-Determination Act).

DATES: The meeting will be held June 29, 2010 from 1 p.m. to 5 p.m.

ADDRESSES: The meeting will be held in the conference room of the Red Rock Ranger District Administration Office, 8375 State Route 179, Sedona, Arizona 86341. Send written comments to Brady Smith, RAC Coordinator, Coconino Resource Advisory Committee, c/o Forest Service, USDA, 1824 S. Thompson St., Flagstaff, Arizona 86001 or electronically to *bradysmith@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Brady Smith, Coconino National Forest, (928) 527–3490.

SUPPLEMENTARY INFORMATION: Agenda for this meeting include discussion about (1) Orientation to the reauthorized legislation; (2) Purpose of the Secure Rural Schools Act; (3) Roles and responsibilities of the Coconino RAC; (3) Election of Committee Chairperson; (4) Meeting structure, processes and agendas; (5) Budget; and (6) Project solicitation. The meeting is open to the public.

Dated: June 3, 2010.

Paul Flanagan,

Acting Forest Supervisor, Coconino National Forest.

[FR Doc. 2010–13984 Filed 6–10–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of a Meeting of the Northeast Oregon Forests Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Northeast Oregon Forest Resource Advisory Committee (RAC) will meet on June 22, 2010 in John Day, Oregon. The purpose of the meeting is to meet as a Committee to discuss selection of Title II projects under Public Law 110–343, H.R. 1424, the Reauthorization of the Secure Rural Schools and community Self-Determination Act of 2000 (16 U.S.C 500 note; Public Law 106–393), also called "Payments to States" Act.

DATES: The meeting will be held on June 22 from 9 a.m. until 5 p.m.

ADDRESSES: The meeting will be held in the Outpost Pizza and Grill, 201 West Main Street, John Day, Oregon.

FOR FURTHER INFORMATION CONTACT: Kurt Wiedenmann, Designated Federal Official, USDA, Wallowa-Whitman National Forest, La Grande Ranger District, 3502 Highway 30, La Grande, Oregon 97850; Telephone: (541)-962–8582.

SUPPLEMENTARY INFORMATION: This will be the second meeting of the Committee since reauthorization of Public Law 106–393. The meeting will focus on reviewing and recommending 2011 project proposals that meet the intent of the Act. The meeting is open to the public. A public input opportunity will be provided, and individuals will have the opportunity to address the committee at that time.

Dated: June 7, 2010.

Steven A. Ellis,

Forest Supervisor.

[FR Doc. 2010–14077 Filed 6–10–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Hawaiian Monk Seal: Public Knowledge and Opinion Survey.

OMB Control Number: None.

Form Number(s): NA.

Type of Request: Regular submission.

Number of Respondents: 500.

Average Hours per Response: 20 minutes.

Burden Hours: 167.

Needs and Uses: The purpose of this information-gathering activity is to gain a better understanding of public knowledge, attitudes, beliefs, values, and behaviors regarding the endangered Hawaiian monk seal. The information gained will be used to develop management strategies and an outreach and education plan intended to reduce human-seal interactions. Members of the public targeted for this survey will include people likely to encounter Hawaiian monk seals in the wild, including but not limited to: Fishers, surfers, beach goers, divers, operators and patrons of commercial water sports tours, and hotel managers operating in areas of high monk seal activity. The Hawaiian monk seal is listed as endangered under the Endangered Species Act and is also protected under the Marine Mammal Protection Act and Hawaii State law.

Affected Public: Business or other for-profit organizations; individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: June 8, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–14037 Filed 6–10–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW45

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Weakfish Fishery

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

ACTION: Notice of non-compliance findings.

SUMMARY: On May 6, 2010, the Atlantic States Marine Fisheries Commission (Commission) found the State of North Carolina out of compliance with the Commission's Interstate Fishery Management Plan (ISFMP) for Weakfish. Subsequently, the Commission referred the matter to NMFS in a letter dated May 7, 2010, under delegation of authority from the Secretary of Commerce (Secretary), for Federal non-compliance review under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act). The Atlantic Coastal Act mandates that NMFS must review the Commission's non-compliance referral and make specific findings within 30 days after receiving the referral. On May 25, 2010, the Secretary was notified by the Commission that North Carolina had taken corrective action to comply with the management measures in the ISFMP, and the Commission now finds North Carolina in compliance with the Plan. NMFS concurs with this finding and concludes its obligations for this particular non-compliance referral.

DATES: Effective May 25, 2010.

ADDRESSES: Written comments should be sent to Emily Menashes, Acting Director, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Room 13362, Silver Spring, MD 20910. Mark the outside of the envelope "Comments on Weakfish Non-Compliance." Comments may also be sent via fax to (301) 713–0596.

FOR FURTHER INFORMATION CONTACT: Brian Hooker, Fishery Management Specialist, NMFS Office of Sustainable Fisheries, (301) 713–2334.

SUPPLEMENTARY INFORMATION: The Weakfish ISFMP includes management measures for weakfish, also known as grey sea trout, in state and Federal waters. The Commission believes that implementation of these regulations is necessary to rebuild depleted weakfish stocks. North Carolina is consistently one of the top three states for weakfish landings by volume and thus integral to the successful implementation of the ISFMP. On May 4, 2010, the Commission's Weakfish Management Board found the State of North Carolina out of compliance for not fully and effectively implementing and enforcing the Weakfish ISFMP. The Commission's Policy Board and Business Session similarly voted North Carolina out of compliance on May 6, 2010. The Commission subsequently referred its non-compliance finding to NMFS on May 7, 2010.

Federal response to a Commission non-compliance referral is governed by the Atlantic Coastal Act. Under the Atlantic Coastal Act, the Secretary must make two findings within 30 days after receiving the non-compliance referral. First, the Secretary must determine whether the state in question (in this case, North Carolina) has failed to carry out its responsibilities under the ISFMP. Second, the Secretary must determine whether the measures that the State has failed to implement or enforce are necessary for the conservation of the fishery in question. If the Secretary makes affirmative findings on both criteria, then the Secretary must implement a moratorium on fishing in the fishery in question within the waters of the non-complying state. Further, the moratorium must become effective within six months of the date of the Secretary's non-compliance determination. To the extent that the state later implements the ISFMP measures, the Atlantic Coastal Act allows the state to petition the Commission that it has come back into compliance; if the Commission concurs, the Commission will notify the Secretary and, if the Secretary concurs, the moratorium will be withdrawn. The Secretary has delegated Atlantic Coastal Act authorities to the Assistant Administrator for Fisheries at NMFS.

NMFS notified the State of North Carolina, the Commission, the South Atlantic Fishery Management Council, the Mid-Atlantic Fishery Management Council, and the New England Fishery Management Council, in separate letters, of its receipt of the Commission's non-compliance referral. In the letters, NMFS solicited comments from the Commission and Councils. NMFS also informed the State of North Carolina that the State is entitled to meet with and present its comments directly to NMFS.

On May 21, 2010, the North Carolina Division of Marine Fisheries adopted management measures implementing the Weakfish ISFMP. On May 24, 2010, NMFS met with the North Carolina Division of Marine Fisheries regarding

implementation of the ISFMP. On May 25, 2010, the Commission notified the Secretary that North Carolina had taken corrective action to comply with the management measures in the ISFMP, and the Commission now finds North Carolina in compliance with the Weakfish ISFMP. NMFS reviewed the ISFMP and North Carolina's recently approved weakfish management measures and agrees with the Commission that North Carolina's newly enacted measures comply with the requirements of the Weakfish ISFMP. Therefore, NMFS determines that North Carolina is now carrying out its responsibilities under the Commission's Weakfish ISFMP and that the state is in compliance. With such a determination, NMFS' statutory responsibilities in this matter are discharged, the basis for further proceedings no longer exists, and the matter is concluded.

Authority: 16 U.S.C. 5101 *et seq.*

Dated: June 8, 2010

Samuel D. Rauch III,

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

[FR Doc. 2010–14064 Filed 6–8–10; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 6048–XW87

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: NOAA's National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), U. S. Department of Commerce.

ACTION: Issuance of an enhancement permit.

SUMMARY: Notice is hereby given that NMFS has issued scientific research Permit 14268 to Thomas R. Payne and Associates (TRPA) in Arcata, CA.

ADDRESSES: The permit application, the permit, and related documents are available for review, by appointment, at the foregoing address at: Protected Resources Division, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802 (ph: 562–980–4026, fax: 562–980–4027, e-mail at: *matthew.mcGoogan@noaa.gov*. The permit application is also available for review online at the Authorizations and Permits for Protected Species website at *https://apps.nmfs.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Matt McGoogan at 562–980–4026, or e-mail: matthew.mcGoogan@noaa.gov.

SUPPLEMENTARY INFORMATION:

Authority

The issuance of permits, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and, (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations (50 CFR parts 222–226) governing listed fish and wildlife permits.

Species Covered in This Notice

This notice is relevant to the federally endangered Southern California Distinct Population Segment of steelhead (*Oncorhynchus mykiss*).

Permits Issued

A notice of the receipt of an application for Permit 14268 was published in the **Federal Register** on June 17, 2009 (74 FR 28666). Permit 14268 was issued to TRPA on April 27, 2010. Permit 14268 authorizes TRPA to conduct a scientific study with endangered Southern California (SC) Distinct Population Segment (DPS) steelhead (*Oncorhynchus mykiss*) in the Ventura River. The purpose of this study is to use monitoring and sampling methods to gather information that will contribute to the understanding of abundance and distribution of juvenile steelhead in various portions of the Ventura River watershed. Information obtained by this study is anticipated to help support restoration efforts for the endangered SC DPS of steelhead. Permit 14268 authorizes the use of direct underwater observation techniques and electrofishing under certain specified instances as methods to assist in estimating abundance and distribution of steelhead. Electrofishing will be conducted only by qualified individuals and according to NMFS' electrofishing guidelines. See the permit application for a complete project description including tables and figures.

Permit 14268 authorizes TRPA an annual non-lethal take of up to 600 juvenile steelhead. No intentional lethal take has been authorized for this permit. The authorized unintentional lethal take (mortalities) that may occur during research activities is up to 30 juvenile steelhead per year. All mortalities will be sent to NMFS Protected Resource Division in Long Beach, CA for genetic research and processing. Field activities authorized by Permit 14268 will begin in July 2010 and in successive years will be conducted between March 1st and September 30th. Permit 14268 expires on December 31, 2014.

Dated: June 7, 2010.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–14078 Filed 6–10–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–839]

Carbazole Violet Pigment 23 From India: Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 7, 2008, the Department of Commerce published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on carbazole violet pigment 23 from India for the period January 1, 2007, through December 31, 2007. *See Carbazole Violet Pigment 23 from India: Preliminary Results of Countervailing Duty Administrative Review,* 75 FR 977 (January 7, 2010) (*Preliminary Results*).

Following the *Preliminary Results,* we provided interested parties with an opportunity to comment on the *Preliminary Results.* Our analysis of the comments submitted and information received after the *Preliminary Results* did not lead to any changes in the net countervailable subsidy rate. Therefore, the final results do not differ from the *Preliminary Results.* The final net countervailable subsidy rate for Alpanil Industries, Ltd. (Alpanil) is listed below in the section entitled "Final Results of Review."

DATES: *Effective Date:* June 11, 2010.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–2371.

SUPPLEMENTARY INFORMATION:

Background

Since the publication of the *Preliminary Results,* the following events have occurred. The Department issued a supplemental questionnaire to Alpanil on March 10, 2010, and Alpanil filed its response on March 22, 2010. The Department issued a letter to the Government of India (GOI), seeking clarification on the Export Oriented Unit Program, on February 1, 2010, and the GOI responded on February 12, 2010. In response to Alpanil's December 11, 2009 submission to the Department regarding Alpanil's claimed name change to Meghmani Pigments, the Department issued a memorandum on April 20, 2010, determining that it would not examine the matter in this segment of the proceeding, but would consider it in the next appropriate segment of the proceeding. *See Memorandum to File from Myrna Lobo, International Trade Compliance Analyst, AD/CVD Operations, Office 6: Administrative Review of the Countervailing Duty Order on Carbazole Violet Pigment 23 from India—Alpanil Industries, Ltd. Name Change to Meghmani Pigments* (April 20, 2010). On the same day, the Department set a briefing schedule and informed all interested parties of the same. On May 4, 2010, Alpanil filed comments on the *Preliminary Results.* We did not receive comments from any other parties; neither did we receive a request for a hearing.

On May 12, 2010, the Department extended the deadline for the final results from May 14, 2010 to June 8, 2010. *See Carbazole Violet Pigment 23 from India: Extension of Time Limit for Final Results of Countervailing Duty Administrative Review,* 75 FR 26716 (May 12, 2010).

Scope of the Order

The merchandise covered by this order is Carbazole Violet Pigment 23 identified as Color Index No. 51319 and Chemical Abstract No. 6358–30–1, with the chemical name of *diindolo [3,2–b:3',2'–m] triphenodioxazine, 8,18–dichloro–5,15–diethy–5,15–dihydro,* and molecular formula of $C_{34}H_{22}Cl_2N_4O_2$.[1] The subject merchandise includes the crude pigment in any form (*e.g.,* dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (*e.g.,* pigments dispersed in oleoresins, flammable solvents, water) are not included within the scope of the review. The merchandise subject to this order is classifiable under subheading 3204.17.9040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise covered by the order is dispositive.

[1] The bracketed section of the product description, [*3,2–b:3',2'–m*], is not business proprietary information; the brackets are part of the chemical nomenclature.

Period of Review

The period for which we are measuring subsidies, *i.e.,* the period of review ("POR"), is January 1, 2007 through December 31, 2007.

Analysis of Comments Received

All issues raised in Alpanil's case brief are addressed in the "Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Carbazole Violet Pigment 23 (CVP–23) from India, from John M. Anderson, Acting Deputy Assistant Secretary to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration" (June 8, 2010) (Issues and Decision Memorandum), dated concurrently with this notice and which is hereby adopted by this notice. The *Issues and Decision Memorandum* also contains a complete analysis of the programs covered by this review, and the methodologies used to calculate the subsidy rates. A list of the comments raised in the case brief, and addressed in the *Issues and Decision Memorandum,* is appended to this notice. The *Issues and Decision Memorandum* is a public document on file in the Central Records Unit, Room 1117 of the main Department building, and can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the *Issues and Decision Memorandum* are identical in content.

Final Results of Review

In accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (Act) and 19 CFR 351.221(b)(5), we calculated an individual *ad valorem* subsidy rate for Alpanil, the only producer/exporter subject to review for the calendar year 2007, set forth below:

Manufacturer/ exporter	Net countervailable subsidy rate
Alpanil Industries, Ltd	7.79% Ad Valorem.

Assessment and Cash Deposit Instructions

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these final results of review to liquidate shipments of subject merchandise by Alpanil entered, or withdrawn from warehouse, for consumption on or after January 1, 2007 through December 31, 2007. We will also instruct CBP to collect cash deposits of estimated countervailing duties, at the above rate, on shipments of the subject merchandise by Alpanil entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of review. The cash deposit rates for all companies not covered by this review are not changed by the results of this review.

Return or Destruction of Proprietary Information

This notice serves as a reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 7, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I—List of Issues Addressed in the Issues and Decision Memorandum

Comment 1: Whether Pre-Shipment Loans Provided a Benefit to Subject Merchandise

Comment 2: Whether Certain Shortfall Amounts Were Incorrectly Included in the DEPBS Benefit Calculation

[FR Doc. 2010–14109 Filed 6–10–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW89

Marine Fisheries Advisory Committee; Public Meetings

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

ACTION: Notice of open public meeting.

SUMMARY: Notice is hereby given of a meeting of the Marine Fisheries Advisory Committee (MAFAC). This will be the second meeting to be held in the calendar year 2010. Agenda topics are provided under the **SUPPLEMENTARY INFORMATION** section of this notice. All full Committee sessions will be open to the public.

DATES: The meeting will be held June 29 July 1, 2010, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Prospector Hotel, 375 Whittier Street in Juneau, AK 99801; 907–586–3737.

FOR FURTHER INFORMATION CONTACT: Mark Holliday, MAFAC Executive Director; (301) 713–2239 x–120; e-mail: *Mark.Holliday@noaa.gov*.

SUPPLEMENTARY INFORMATION: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given of a meeting of MAFAC. MAFAC was established by the Secretary of Commerce (Secretary) on February 17, 1971, to advise the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. This committee advises and reviews the adequacy of living marine resource policies and programs to meet the needs of commercial and recreational fisheries, and environmental, state, consumer, academic, tribal, governmental and other national interests. The complete charter and summaries of prior meetings are located online at *http://www.nmfs.noaa.gov/ocs/mafac/*.

Matters To Be Considered

This agenda is subject to change.

The meeting is convened to hear presentations and discuss policies and guidance on the following topics: status of the Deepwater Horizon oil spill and NOAA actions including scientific activities, ensuring seafood safety, assessing ecological and economic impacts, declaration of Federal fishery disasters, and conducting natural resource damage assessments; Office of Protected Resources programs and regulatory responsibilities; development of the draft aquaculture policy; recreational fisheries engagement; and NOAA strategic planning. Updates will be presented on NOAA budgets, catch share policy, enforcement activities, and the Interagency Ocean Policy Task Force. The meeting will include discussion of various MAFAC administrative and organizational matters and meetings of the standing subcommittees.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mark Holliday, MAFAC Executive Director; (301) 713–2239 x120 by 5 p.m. on June 16, 2010.

Dated: June 7, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–14082 Filed 6–10–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW86–1

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a working meeting, which is open to the public.

DATES: The GMT meeting will be held Monday, June 28, 2010 from 1 p.m. until business for the day is completed. The GMT meeting will reconvene Tuesday, June 29 through Thursday, July 1, from 8:30 a.m. until business for each day is completed.

ADDRESSES: The GMT meeting will be held at the Pacific Fishery Management Council office, Large Conference Room, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Kelly Ames or Mr. John DeVore, Groundfish Management Staff Officers; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the GMT work session is to complete analyses for the 2011–12 Groundfish Harvest Specifications and Management Measures Environmental Impact Statement (EIS). The main task will be completing any analysis of the Council's preferred alternative for groundfish harvest specifications and management measures for the next biennium. The GMT may also address other assignments relating to groundfish management. No management actions will be decided by the GMT.

Although non-emergency issues not contained in the meeting agenda may come before the GMT for discussion, those issues may not be the subject of formal GMT action during this meeting. GMT action will be restricted to those issues specifically listed 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 GMT'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 Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: June 8, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–14105 Filed 6–10–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–966]

Drill Pipe From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of drill pipe from the People's Republic of China (the PRC). For information on the estimated subsidy rates, see the "Suspension of Liquidation" section of this notice.

DATES: *Effective Date:* June 11, 2010

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or Eric Greynolds, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–4793 and 202–482–6071, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On December 31, 2009, the Department received the petition filed in proper form by the petitioners.[1] This investigation was initiated on January 20, 2010. *See Drill Pipe From the People's Republic of China: Initiation of Countervailing Duty Investigation,* 75 FR 4345 (January 27, 2010) (*Initiation Notice*), and accompanying Initiation Checklist.[2]

On April 8, 2010, the Department postponed the deadline for the preliminary determination. *See Drill Pipe From the People's Republic of China: Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigation,* 75 FR 17902 (April 8, 2010). Normally, under section 703(c)(1)(B) of the Tariff Act of 1930, as amended (the Act), the Department extends the due date of a preliminary determination to no later than 130 days after the day on which the investigation was initiated. However, as explained in the memorandum from the Deputy Assistant Secretary (DAS) for Import Administration, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5 through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. *See* Memorandum to the File from Ronald K. Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm" (February 12, 2010). As such, we extended the due date of the preliminary determination to no later than 137 days after the day on which the Department initiated the investigation. Because that date falls on a weekend, the deadline for completion of this preliminary determination is the next business day, *i.e.,* June 7, 2010.

In the *Initiation Notice,* the Department stated that it intended to rely on data from U.S. Customs and Border Patrol (CBP) for purposes of selecting the mandatory respondents. *See Initiation Notice,* 75 FR at 4347. On January 25, 2010, the Department released the results of a query performed on CBP's custom database for calendar year 2009. *See* Memorandum to the File from Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 3, regarding "Release of Initial Customs and Border Patrol Data" (January 25, 2010). Due to the large number of producers and exporters of drill pipe in the PRC, we determined that it was not practicable to individually investigate each producer and/or exporter. We, therefore, selected two producers and/or exporters of drill pipe to be mandatory respondents: Giant Oil Technology and Service Co., Ltd. (Giant Oil) and Xigang Seamless Steel Tube Co., Ltd. (Xigang), the two largest publicly identifiable producers and/or exporters of the subject merchandise. *See* Memorandum to John M. Andersen, Acting DAS for AD/CVD Operations, from Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 3, through Melissa G. Skinner, Director, AD/CVD Operations, Office 3, regarding "Respondent Selection" (February 23, 2010). Also on February 23, 2010, we issued the initial countervailing duty (CVD) questionnaire to the Government of the People's Republic of China (the GOC) and selected mandatory respondents, to whom we also issued a confirmation of shipment questionnaire on the same date.[3]

On March 5, 2010, Xigang submitted its response to the shipment questionnaire in which the company claimed that it did not export subject merchandise to the United States during the period of investigation (POI). *See* Xigang's Shipment Questionnaire Response at 1–2 (March 5, 2010). Regarding Giant Oil, neither the GOC nor the Department was able to obtain a working address for the company. *See* GOC's Drill Pipe submission (March 8, 2010) and the Memorandum to the File from Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 3, regarding "Inability to Find Working Address for Giant Oil Technology and Service Ltd." (March 19, 2010). Because the initial questionnaire and confirmation of shipment questionnaire could not be delivered to the company, Giant Oil did not submit a response to the Department.

Therefore, on March 19, 2010, the Department selected two other producers and/or exporters to be mandatory respondents in this investigation: DP Master Manufacturing Co., Ltd. (DP Master) and Wuxi Seamless Pipe Co., Ltd. (WSP). *See* Memorandum to John M. Andersen, Acting DAS for AD/CVD Operations, from Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 3, through Melissa G. Skinner, Director, AD/CVD Operations, Office 3, regarding "Selection of Mandatory Respondents" (March 19, 2010). DP Master, initially an interested party who requested to be a voluntary respondent,[4] received a copy of the initial CVD questionnaire on February 23, 2010. On March 19, 2010, the Department also issued the initial CVD questionnaire to WSP, which later reported that it did not export subject merchandise to the United States during the POI. *See* Memorandum to the File from Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 3, regarding "WSP's Questionnaire Response" (June 3, 2010).

On April 16 and 23, 2010, we received DP Master's initial questionnaire response. DP Master responded to the questionnaire on behalf of itself and its four affiliated companies: Jiangyin Sanliang Petroleum Machinery Co., Ltd. (SPM); Jiangyin Liangda Drill Pipe Co., Ltd. (Liangda); Jiangyin Sanliang Steel Pipe Trading Co., Ltd. (SSP); and Jiangyin Chuangxin Oil Pipe Fittings Co., Ltd. (Chuangxin). Collectively, all companies are known as the DP Master Group. On April 20, 2010, we received the GOC's initial questionnaire response.

Regarding supplemental questionnaires, we issued to the DP Master Group a supplemental questionnaire and an addendum to that questionnaire on April 29, 2010, and May 4, 2010, respectively. We received the company's response on May 18, 2010. We issued to the GOC a supplemental questionnaire on May 12, 2010, and an addendum to that questionnaire on May 18, 2010. We received the GOC's response on May 27, 2010.

Period of Investigation

The POI for which we are measuring subsidies is January 1, 2009 through December 31, 2009, which corresponds to the most recently completed fiscal year. *See* 19 CFR 351.204(b)(2).

Scope of the Investigation

The products covered by this investigation are steel drill pipe, and steel drill collars, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes suitable for drill pipe), without regard to the specific chemistry of the steel (*i.e.,*

[1] Petitioners are VAM Drilling USA, Inc., Texas Steel Conversions, Inc., Rotary Drilling Tools, TMK IPSCO, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC.

[2] A public version of this and all public Departmental memoranda are on file in the Central Records Unit (CRU), Room 1117 in the main building of the Commerce Department.

[3] On February 25, 2010, the Department issued an addendum to the initial questionnaire to the GOC, Giant Oil, and Xigang. *See* Addendum to the Initial Questionnaire issued by the Department (February 25, 2010).

[4] *See* section 782(a) of the Act.

carbon, stainless steel, or other alloy steel), and without regard to length or outer diameter. The scope does not include tool joints not attached to the drill pipe, nor does it include unfinished tubes for casing or tubing covered by any other antidumping (AD) or CVD order.

The subject products are currently classified in the following Harmonized Tariff Schedule of the United States (HTSUS) categories: 7304.22.0030, 7304.22.0045, 7304.22.0060, 7304.23.3000, 7304.23.6030, 7304.23.6045, 7304.23.6060, 8431.43.8040 and may also enter under 8431.43.8060, 8431.43.4000, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.49.0015, 7304.49.0060, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, and 7304.59.8055.[5]

While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this investigation is dispositive.

Scope Comments

In accordance with the *Preamble* to the Department's regulations (*see Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*)), in the *Initiation Notice,* we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice.* On February 12, 2010, the Department received scope comments from petitioners and Downhole Pipe and Equipment, L.P. (Downhole Pipe) and Command Energy Services International, Ltd. (Command Energy), U.S. importers of drill pipe from the PRC. On February 22, 2010, Downhole Pipe and Command Energy submitted to the Department comments in response to petitioners' February 12, 2010 scope comments.

The Department is evaluating the comments submitted by the parties and will issue its decision regarding the scope of the AD and CVD investigations in the preliminary determination of the companion AD investigation, which is due for signature on August 5, 2010.

Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (the ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On March 8, 2010, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of drill pipe and drill collars from the PRC. *See Drill Pipe and Drill Collars From China,* Investigation Nos. 701–TA–474 and 731–TA–1176 (Preliminary), 75 FR 10501 (March 8, 2010).

Application of the Countervailing Duty Law to Imports From the PRC

On October 25, 2007, the Department published *Coated Free Sheet Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and accompanying Issues and Decision Memorandum (CFS Decision Memorandum). In *CFS from the PRC,* the Department found that

> * * * given the substantial differences between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.

See CFS Decision Memorandum at Comment 6. The Department has affirmed its decision to apply the CVD law to the PRC in subsequent final determinations. *See, e.g., Circular Welded Carbon Quality Steel Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances,* 73 FR 31966 (June 5, 2008) (*CWP from the PRC*), and accompanying Issues and Decision Memorandum (CWP Decision Memorandum) at Comment 1.

Additionally, for the reasons stated in the CWP Decision Memorandum, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization (WTO), as the date from which the Department will identify and measure subsidies in the PRC for purposes of this investigation. *See* CWP Decision Memorandum at Comment 2.

Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, inter alia, necessary information is not on the record or an interested party or any other person: (A) Withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

GOC—Steel Rounds

The Department is investigating the alleged provision of steel rounds for less than adequate remuneration (LTAR) by the GOC. We requested information from the GOC about the PRC's steel rounds industry in general and the specific companies that produced the steel rounds purchased by the respondents. In both respects, the GOC has failed to provide the requested information within the established deadlines.

Regarding the PRC's steel rounds industry in general, the GOC responded at page 49 of its April 20, 2010 initial questionnaire response, that, for purposes of this investigation, it understands the term "steel rounds" to refer to billets in a round shape that may be an input used in the production of seamless pipe, including drill pipe. At page 50 of the initial questionnaire response, the GOC stated that, "there is no official statistics readily available regarding the production and consumption of steel rounds in China." The GOC added that there is no association in China that has responsibility for the production, exportation, or consumption of steel rounds.[6] The GOC provided no further explanation on the following requested information:

- The number of producers of steel rounds;
- The total volume and value of domestic production of steel rounds that is accounted for by companies in which the GOC maintains an ownership or management interest either directly or through other government entities;[7]

[5] Prior to February 2, 2007, these imports entered under different tariff classifications, including 7304.21.3000, 7304.21.6030, 7304.21.6045, and 7304.21.6060.

[6] *See* GOC Initial Questionnaire Response (IQR) (April 20, 2010) at 50.

[7] Includes governments at all levels, including townships and villages, ministries, or agencies of those governments including state asset

Continued

- The total volume and value of domestic consumption of steel rounds and the total volume and value of domestic production of steel rounds;
- The percentage of domestic consumption accounted for by domestic production;
- The names and addresses of the top ten steel rounds companies—in terms of sales and quantity produced—in which the GOC maintains an ownership or management interest, and identification of whether any of these companies have affiliated trading companies that sell imported or domestically produced steel rounds; and
- Trade publications which specify the prices of the good/service within your country and on the world market. Provide a list of these publications, along with sample pages from these publications listing the prices of the good/service within your country and in world markets during the POI.

On May 12, 2010, we issued a supplemental questionnaire noting that the GOC had failed to provide the information requested in the original questionnaire regarding the steel rounds industry in the PRC.[8] At page 11 of its May 27, 2010 supplemental questionnaire response, the GOC reiterated that "there are no official statistical data regarding these questions and would add that it is also unable to check, confirm the correctness of, let alone submit data concerning this market due to the nature of the products."

With respect to the specific companies that produced the steel rounds purchased by the respondents, we asked the GOC to provide particular ownership information for these producers so that we could determine whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act.[9] Specifically, we stated in our questionnaire that the Department normally treats producers that are majority-owned by the government or a government entity as "authorities."[10] Thus, for any steel rounds producers that were majority government-owned, the GOC needed to provide the following ownership information if it wished to argue that those producers were not authorities:

- Translations of the most recent capital verification report predating the POI and, if applicable, any capital verification reports completed during the POI. Translation of the most recent articles of association, including amendments thereto.
- The names of the ten largest shareholders and the total number of shareholders, a statement of whether any of these shareholders have any government ownership (including the percentage of ownership), and an explanation of any other affiliation between these shareholders and the government.
- The total level (percentage) of state ownership, either direct or indirect, of the company's shares; the names of all government entities that own shares in the company; and the amount of shares held by each.
- Any relevant evidence to demonstrate that the company is not controlled by the government, *e.g.,* that the private, minority shareholder(s) control the company.[11]

On page 54 of the initial questionnaire response, the GOC reported that all but one of the producers that supplied steel rounds to the DP Master Group were state-owned enterprises (SOEs). The GOC did not provide a response to the above questions, thereby conceding that those steel round producers are government authorities. The DP Master Group also identified the firms that produced the steel rounds that it acquired during the POI and, with the exception of a single producer, stated that all of the steel rounds acquired during the POI were produced by SOEs.[12]

With regard to the remaining producer of steel rounds, the GOC stated that it "does not have sufficient time to obtain the information requested at Appendix 5 for this response but will provide it in due course.[13] Based on the name of the steel round producer that the GOC reported, the Department requested that the GOC provide specific documents regarding that supplier, which were submitted to the Department in the *PC Strand From the PRC* investigation.[14] *See Pre-Stressed Concrete Steel Wire Strand From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 75 FR 28557 (May 21, 2010) (*PC Strand from the PRC*), and accompanying Issues and Decision Memorandum (PC Strand Decision Memorandum). At page 11 of its May 27, 2010 supplemental questionnaire response, the GOC stated that the steel round producer is related to but different than the producer in *PC Strand from the PRC.* As such, the GOC stated that the documents requested by the Department are not applicable. The GOC, however, did not provide the information requested at Appendix 5 for this steel rounds producer.

Based on the above, we preliminarily determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts available" in making this preliminary determination. *See* sections 776(a)(1) and (a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available. *See* section 776(b) of the Act.

With respect to the GOC's failure to provide requested information about the production and consumption of steel rounds, we are assuming adversely that the GOC's dominance of the market in the PRC for this input results in significant distortion of the prices and, hence, that use of an external benchmark is warranted. With respect to the GOC's failure to provide ownership information about a certain producer of the steel rounds, we are assuming adversely that this producer is a government authority.

The Department's practice when selecting adverse information from among the possible sources of information is to ensure that the result is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8932 (February 23, 1998) (*Semiconductors From Taiwan*). The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, vol. 1 at 870 (1994).

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

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management bureaus, state-owned enterprises and labor unions.

[8] *See* Department's First Supplemental Questionnaire Issued to the GOC (May 12, 2010) at 3.

[9] *See* Department's Initial Questionnaire (February 23, 2010) at Appendix 5.

[10] *Id.*

[11] *Id.*

[12] *See* DP Master Group IQR (April 16, 2010) at Exhibit 13.

[13] *See* GOC IQR at 54.

[14] *See* Department's First Supplemental Questionnaire Issued to the GOC at 3.

Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See, e.g.,* SAA at 870. The Department considers information to be corroborated if it has probative value. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. *Id.* at 869.

To corroborate the Department's treatment of a certain company that produced the steel rounds purchased by the DP Master Group as an authority and our finding that the GOC dominates the domestic market for this input, we are relying on *Circular Welded Carbon Quality Steel Line Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 73 FR 70961 (November 24, 2008) (*Line Pipe From the PRC*), and accompanying Issues and Decision Memorandum (Line Pipe Decision Memorandum).[15] In that case, the Department determined that the GOC owned or controlled the entire hot-rolled steel industry in the PRC. *See* Line Pipe Decision Memorandum at Comment 1. Evidence on the record of this investigation shows that many steel producers in the PRC are integrated producers, manufacturing both long products (rounds and billets) and flat products (hot-rolled steel). *See* Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding "Additional Information on Steel Rounds" (June 7, 2010).

Consequently, government ownership in the hot-rolled steel industry is a reasonable proxy for government ownership in the steel rounds and billets industry. As a result, we find that the use of an external benchmark is warranted for calculating the benefit that the DP Master Group received from purchasing steel rounds from an SOE during the POI. For details on the calculation of the subsidy rate, *see* below at "Provision of Steel Rounds for LTAR."

GOC—Green Tubes

The Department is investigating the alleged provision of green tubes for LTAR by the GOC. We requested information from the GOC about the PRC's green tubes industry in general and the specific companies that produced green tubes purchased by the respondents. Regarding producers of green tubes, both the GOC and the DP Master Group reported that the only supplier of green tubes to the companies during the POI is an SOE, thereby conceding that the green tube producer is a government authority.[16] With respect to the production and consumption of green tubes in the PRC, the GOC has failed to provide the requested information within the established deadlines (see discussion below).

At page 58 of the April 20, 2010 initial questionnaire response, the GOC stated that, "there is no official statistics readily available regarding the production and consumption of green tubes in China." The GOC added that there is no association in China that has responsibility for the production, exportation, or consumption of green tubes.[17] The GOC provided no further explanation on the following requested information:

- The number of producers of green tubes;
- The total volume and value of domestic production of green tubes that is accounted for by companies in which the GOC maintains an ownership or management interest either directly or through other government entities; [18]
- The total volume and value of domestic consumption of green tubes and the total volume and value of domestic production of green tubes;
- The percentage of domestic consumption accounted for by domestic production;
- The total volume and value of imports of green tubes;
- The names and addresses of the top ten green tubes companies—in terms of sales and quantity produced—in which the GOC maintains an ownership or management interest, and identification of whether any of these companies have affiliated trading companies that sell imported or domestically produced green tubes;
- A discussion of what laws or policies govern the pricing of green tubes, the levels of production of green tubes, or the development of green tubes capacity;
- Price controls on green tubes or any price floors or ceilings;
- The role of state-owned trading companies in the distribution of both domestic and imported green tubes and whether the state-owned trading companies are affiliated with the state-owned green tubes producers;
- VAT and import tariff rates in effect for green tubes;
- An explanation of any export tariff on green tubes;
- An explanation of any export licensing requirements on green tubes;
- A list of the industries in the PRC that purchase green tubes directly, using a consistent level of industrial classification; and
- Trade publications which specify the prices of the good/service within your country and on the world market. Provide a list of these publications, along with sample pages from these publications listing the prices of the good/service within your country and in world markets during the period of investigation.

On May 12, 2010, we issued a supplemental questionnaire noting that the GOC had failed to provide the information requested in the original questionnaire regarding the green tubes industry in the PRC.[19] At page 13 of its May 27, 2010, supplemental questionnaire response, the GOC stated that "there is no well-established definition for green tubes" and reiterated that "there are no official statistical data regarding these questions and that it is also unable to check, confirm the correctness of, let alone submit data concerning this market due to the nature of the products." The GOC explained that in past cases it has consulted the National Statistics Bureau (SSB) to ascertain the number of producers of a particular input and related information.[20] Specifically, in past cases, the GOC explained that it has examined SSB, Major Industrial Output Statistics as the data source for information regarding the annual production of an input or the total production of an input accounted for by SOEs.[21] However, for green tubes no such data are collected or reported.[22] Insomuch as this source does not keep such data, the GOC explained that it has been unable to obtain any data from any

[15] This approach is consistent with the Department's approach to the steel rounds industry in the PRC in *Certain Seamless Carbon and Alloy Steel Standard Line, and Pressure Pipe From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination,* 75 FR 9163, 9165 (March 1, 2010).

[16] *See* GOC IQR at 59; and DP Master Group IQR at Exhibit 14.

[17] *See* GOC IQR at 59.

[18] Includes governments at all levels, including townships and villages, ministries, or agencies of those governments including state asset management bureaus, state-owned enterprises and labor unions.

[19] *See* Department's First Supplemental Questionnaire Issued to the GOC at 4.

[20] *See* GOC First Supplemental Questionnaire Response (First SQR) (May 27, 2010) at 14.

[21] *Id.*

[22] *Id.*

alternative source.[23] The GOC further added that an adverse inference is not appropriate for selecting the benchmark for purchases of green tubes because even the petitioners concede that "no price data are published for unfinished green tube for drill pipe production."[24]

With respect to the GOC's failure to provide requested information about the production and consumption of green tubes in the PRC, we preliminarily find that the GOC acted to the best of its ability in responding to the Department's information request. Unlike its response with respect to steel rounds, the GOC provided details regarding the efforts it took to obtain information regarding green tubes. Therefore, the Department must rely on "facts available" in making the preliminary determination on the PRC green tubes industry. *See* section 776(a)(1) of the Act. Because the record is void of any information on the production and consumption of green tubes in the PRC, we find that the use of an external benchmark is warranted for calculating the benefit that the DP Master Group received from purchasing green tubes from an SOE during the POI.

For a discussion of the external benchmark used and details on the calculation of the subsidy rate, *see* below at "Provision of Green Tubes for LTAR."

GOC—Electricity

The GOC also did not provide a complete response to the Department's February 23, 2010 initial questionnaire regarding its alleged provision of electricity for LTAR. Specifically, the Department requested that the GOC explain how electricity cost increases are reflected in retail price increases.[25] In its April 20, 2010 questionnaire response, the GOC responded that it was unable to provide provincial price proposals for 2006 and 2008.[26] The GOC's response also explained theoretically how the national price increases should be formulated; however, the response did not explain the actual process that led to the price increases.[27] Therefore, on May 12, 2010, the Department issued a supplemental questionnaire reiterating its request for this information.[28] However, the GOC's subsequent supplemental questionnaire response did not address the missing information.[29] The GOC also did not provide sufficient answers to the Department's questions. For example, we asked the GOC to explain how the NDRC developed the national price increase. In response, the GOC provided the Interim Rules on Sales Price of Electricity, but did not provide an explanation on how the NDRC developed the national price increase.[30] Similarly, we asked the GOC to explain the methodology used to calculate each of the cost element increases; however, in response, the GOC stated "the methodology used to calculate each of these cost element increases are mainly common practices of costing."[31] We also asked the GOC to explain how all significant cost elements are accounted for within the province's price proposal. To which, the GOC simply stated "significant cost elements will normally be accounted for within the province's price proposal in a manner consistent with the relevant rules on costing and pricing of electricity."[32]

Consequently, we preliminarily determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts available" in making our preliminary determination. *See* section 776(a)(1), section 776(a)(2)(A), and section 776(a)(2)(B) of the Act. Moreover, we preliminarily determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information as it did not explain why it was unable to provide the requested information. Therefore, an adverse inference is warranted in the application of facts available. *See* section 776(b) of the Act. In drawing an adverse inference, we find that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. We have also relied on an adverse inference in selecting the benchmark for determining the existence and amount of the benefit. *See* section 776(b)(2) of the Act and section 776(b)(4) of the Act. As such, we have placed on the record of this investigation, the July 1, 2008 electricity rate schedules, which were submitted to the Department by the GOC in the CVD investigation on *PC Strand from the PRC,* and which reflect the highest rates that the respondents would have paid in the PRC during the POI. *See* PC Strand Decision Memorandum at "Federal Provision of Electricity for LTAR." Specifically, we have selected the highest rates for "large industrial users" for the peak, valley, and normal ranges. *See* Memorandum to File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding "Electricity Rate Data" (June 7, 2010).

For details on the calculation of the subsidy rate for the DP Master Group, *see* below at "Provision of Electricity for LTAR."

Subsidies Valuation Information

Allocation Period

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (IRS Tables), as updated by the Department of Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 15 years. No interested party has claimed that the AUL of 15 years is unreasonable.

Further, for non-recurring subsidies, we have applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)–(v) provides that the Department will attribute subsidies received by certain other companies to the combined sales of those companies when: (1) Two or more corporations with cross-ownership produce the subject merchandise; (2) a firm that received a subsidy is a holding or parent company of the subject company; (3) a firm that produces an input that is primarily dedicated to the production of the downstream product; or (4) a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to a

[23] *Id.*

[24] *Id.* at 14, with reference to the Petition at Volume III, page III–26.

[25] *See* Department's Initial Questionnaire at Appendix 6.

[26] *See* GOC IQR at 62.

[27] *Id.* at 61–67.

[28] *See* Department's First Supplemental Questionnaire Issued to the GOC at 5–9.

[29] *See* GOC First SQR at 17–24.

[30] *Id.* at 18.

[31] *Id.* at 22.

[32] *Id.*

corporation with cross-ownership with the subject company.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. *See Fabrique de Fer de Charleroi* v. *United States,* 166 F. Supp. 2d 593, 600–604 (CIT 2001).

DP Master Group

As discussed above, the DP Master Group companies are: DP Master, SPM, Liangda, SSP, and Chuangxin. DP Master, SPM, and Liangda are involved in the production of drill pipe.[33] Neither DP Master nor its affiliates are integrated producers; they purchase green tubes and steel rounds for their various pipe production facilities.[34]

Specifically, DP Master produces and exports drill pipe, drill collar, and heavy weight drill pipe.[35] SPM provides machining and threading services for the drill pipes produced by DP Master.[36] Liangda manufactures drill collars for DP Master and provides heat treatment services for the drill pipe produced by DP Master.[37] SSP purchases and supplies green tubes to DP Master and Liangda for the production of drill pipe.[38] Chuangxin, a holding company, is the parent company of the other four companies; it is not involved in the production and/or sale of drill pipe.[39]

DP Master, SPM, Liangda, SSP, and Chuangxin are managed and/or controlled by the same individuals.[40] In accordance with 19 CFR 351.525(b)(6)(vi), we preliminarily determine that DP Master, SPM, Liangda, SSP, and Chuangxin are cross-owned companies. For subsidies received by DP Master, SPM, and Liangda, the companies involved in the production of subject merchandise, we have attributed those subsidies to the consolidated sales of DP Master, SPM, and Liangda, exclusive of intra-company sales. For subsidies received by SSP, the trading company, we have attributed those subsidies to the consolidated sales of SSP, DP Master, SPM, and Liangda, exclusive of intra-company sales. For subsidies received by DP Master, SPM, Liangda, SSP, and Chuangxin, we have attributed those subsidies to the consolidated sales of DP Master, SPM, Liangda, SSP, and Chuangxin, exclusive of intra-company sales.

Benchmarks and Discount Rates

The Department is investigating loans received by the DP Master Group from Chinese policy banks and state-owned commercial banks (SOCBs), which are alleged to have been granted on a preferential, non-commercial basis. The Department is also investigating various grants received by the DP Master Group. Therefore, the derivation of the Department's benchmark and discount rates is discussed below.

Benchmark for Short-Term RMB Denominated Loans: Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, the Department uses comparable commercial loans reported by the company for benchmarking purposes. *See* 19 CFR 351.505(a)(3)(i). If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we "may use a national interest rate for comparable commercial loans." *See* 19 CFR 351.505(a)(3)(ii).

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. However, for the reasons explained in *CFS from the PRC,* loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. *See* CFS Decision Memorandum at Comment 10. Because of this, any loans received by respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, because Chinese banks reflect significant government intervention in the banking sector, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in *Softwood Lumber from Canada,* the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada. *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada,* 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*), and accompanying Issues and Decision Memorandum (Softwood Lumber Decision Memorandum) at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

We are calculating the external benchmark using the regression-based methodology first developed in *CFS from the PRC* and more recently updated in *LWTP from the PRC. See* CFS Decision Memorandum at Comment 10; *see also Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 73 FR 57323 (October 2, 2008) (*LWTP from the PRC*), and accompanying Issues and Decision Memorandum (LWTP Decision Memorandum) at "Benchmarks and Discount Rates." This benchmark interest rate is based on the inflation-adjusted interest rates of countries with per capita gross national incomes (GNIs) similar to the PRC. The benchmark interest rate takes into account a key factor involved in interest rate formation (*i.e.,* the quality of a country's institutions), which is not directly tied to the state-imposed distortions in the banking sector discussed above.

This methodology relies on data published by the World Bank and International Monetary Fund (*see* further discussion below). For the year 2009, the World Bank, however, has not yet published all the necessary data relied on by the Department to compute a short-term benchmark interest rate for the PRC. Specifically, the following data are not yet available: World Governance Indicators and World Bank classifications of lower-middle income countries based on GNI per capita in U.S. dollars. Therefore, for purposes of this preliminary determination, where the use of a short-term benchmark rate for 2009 is required, we have applied the 2008 short-term benchmark rate for the PRC, as calculated by the Department (*see* discussion below). The

[33] *See* DP Master Group IQR at 8.

[34] *Id.* at 12.

[35] *Id.* at 12. Also, DP Master is the only company within the DP Master Group that exports subject merchandise. *Id.* at 8.

[36] *Id.* at 13.

[37] *Id.*

[38] *Id.* at 12.

[39] *Id.* at 8.

[40] *Id.* at 12.

Department notes that the current 2008 loan benchmark may be updated, pending the release of all the necessary 2009 data, by the final determination.

The 2008 short-term benchmark was computed following the methodology developed in *CFS from the PRC.* We first determined which countries are similar to the PRC in terms of GNI, based on the World Bank's classification of countries as: Low income; lower-middle income; upper-middle income; and high income. The PRC falls in the lower-middle income category, a group that includes 55 countries as of July 2007. As explained in *CFS from the PRC,* this pool of countries captures the broad inverse relationship between income and interest rates.

Many of these countries reported lending and inflation rates to the International Monetary Fund and are included in that agency's international financial statistics (IFS). With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as "low middle income" by the World Bank. First, we did not include those economies that the Department considered to be non-market economies for AD purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. For example, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L'Este are dollar-denominated rates; therefore, the rates for these three countries have been excluded. Finally, for the calculation of the inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.

For the resulting inflation-adjusted benchmark lending rate, *see* Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding "2008 Short-Term Interest Rate Benchmark" (June 7, 2010). Because these are inflation-adjusted benchmarks, it is necessary to adjust the respondent's interest payments for inflation. This was done using the PRC inflation rate as reported in the IFS.

Benchmark for Long-Term RMB Denominated Loans: The lending rates reported in the IFS represent short- and medium-term lending, and there are no sufficient publicly available long-term interest rate data upon which to base a robust long-term benchmark. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates. *See Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination,* 73 FR 35642 (June 24, 2008) (*LWRP from the PRC*), and accompanying Issues and Decision Memorandum (LWRP Decision Memorandum) at "Discount Rates." In *Citric Acid from the PRC,* this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question. *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 16836 (April 13, 2009) (*Citric Acid from the PRC*), and accompanying Issues and Decision Memorandum (Citric Acid Decision Memorandum) at Comment 14.

Discount Rates: Consistent with 19 CFR 351.524(d)(3)(i)(A), we have used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government provided the subsidy.

Analysis of Programs

I. Programs Preliminarily Determined To Be Countervailable

A. Policy Loans to Chinese Drill Pipe Producers

The Department is examining whether drill pipe producers receive preferential lending through SOCBs or policy banks. According to the allegation, preferential lending to the drill pipe industry is supported by the GOC through the issuance of national and provincial five-year plans, industrial plans for the steel sector, catalogues of encouraged industries, and other government laws and regulations. Based on our review of the responses and documents provided by the GOC, we preliminarily determine that loans received by the drill pipe industry from SOCBs and policy banks were made pursuant to government directives.

Record evidence demonstrates that the GOC, through its directives, has highlighted and advocated the development of the drill pipe industry. At the national level, the GOC has placed an emphasis on the development of high-end, value-added steel products through foreign investment as well as through technological research, development, and innovation. In laying out this strategy, the GOC has identified the specific products it has in mind. For example, an "objective" of the 10th Five-Year Plan for the Metallurgical Industry (the Plan) was to develop key steel types that were mainly imported; high strength, anticrushing, corrosion resistant petroleum pipe, high pressure boiler pipe, and welded pipe used in oil and gas transmission pipelines were among the listed products.[41] Moreover, among the "Policy Measures" set out in the Plan for achieving its objectives was the encouragement of enterprises to cooperate with foreign enterprises, particularly in the production and development of high value-added products and high-tech products.[42]

Similarly, in the Development Policies for the Iron and Steel Industry (July 2005) at Article 16, the GOC states that it will "enhance the research and development as well as designing and manufacture levels of major technical equipment of our iron and steel industry."[43] To accomplish this, the GOC states it will provide support to key steel projects relying on domestically produced and newly developed equipment and facilities, through tax and interest assistance, and scientific research expenditures.[44]

Later in 2005, the GOC implemented the Decision of the State Council on Promulgating the "Interim Provisions on Promoting Industrial Structure Adjustment" for Implementation (No. 40 (2005)) (Decision 40) in order to achieve the objectives of the Eleventh Five-Year Plan.[45] Decision 40 references the Directory Catalogue on Readjustment of Industrial Structure (Industrial Catalogue), which outlines the projects which the GOC deems "encouraged," "restricted," and "eliminated," and describes how these projects will be considered under government policies.[46] Steel tube for oil well pipe, high-pressure boiler pipe, and long-distance transportation pipe for oil and gas were named in the Industrial

[41] *See* GOC IQR at Exhibit 12 for the Plan at "(III) Implementation Main Points; 2. Production Structure Readjustment."

[42] *Id.* at "(V) Policy Measures."

[43] *Id.* at Exhibit 10.

[44] *Id.* at Article 16.

[45] *Id.* at Exhibit 13.

[46] *Id.* at "Chapter III Catalogue for the Guidance of Industrial Structural Adjustment."

Catalogue as an "encouraged project."[47] For the "encouraged" projects, Decision 40 outlines several support options available from the government, including financing.[48]

Turning to the provincial and municipal plans, the Department has described the inter-relatedness of national level plans and directives with those at the sub-national level. *See* LWTP Decision Memorandum at Comment 6. Based on our review of the sub-national plans, we find that they mirror the national government's objective of supporting and promoting the production of innovative and high-value added products, including drill pipe.

Examples from the five-year plans of the Jiangsu province where the DP Master Group companies are located are as follows:

Outline of the 11th Five-Year Program for Industrial Structural Adjustment and Development in Jiangsu: "Emphasize on the development of high-quality steel products with high added value and high technological content such as motor plates, shipbuilding steel plates, * * * pinion steel, oil well billet, special pipes and sticks, and highly qualified high-carbon hard wires."[49]

The 10th Five-Year Program for Industrial and Commercial Restructuring of Jiangsu: "We should develop functional metallic materials, stainless steel cold-rolled sheet, high-speed railway steel, oil well and pipeline steel, * * * hard alloy products and etc."[50]

Special Program (Guihua) on Adjustment & Development of Iron and Steel Industries during the Eleventh Five-year Period in Jiangsu: "We shall strengthen the guidance of industrial policies, the support from credit policy and the regulation by fiscal and taxation policies to guide the direction of investments."

See Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding "Additional Document for Jiangsu Province—Development of Iron and Steel Industries" (June 7, 2010).

As noted in *Citric Acid from the PRC:*[51]

In general, the Department looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support those objectives or goals. Where such plans or policy directives exist, then we will find a policy lending program that is specific to the named industry (or producers that fall under that industry).[52] Once that finding is made, the Department relies upon the analysis undertaken in *CFS from the PRC*[53] to further conclude that national and local government control over the SOCBs results in the loans being a financial contribution by the GOC.[54]

Therefore, on the basis of the record information described above, we preliminarily determine that the GOC has a policy in place to encourage the development of production of drill pipe through policy lending.

The DP Master Group reported that DP Master and SPM had outstanding loans during the POI.[55] In its April 20, 2010 questionnaire response, the GOC provided information on the banks that provided lending to the companies and reported that there is government ownership in each bank.[56] Consistent with our determination in prior proceedings, we preliminarily find these banks to be SOCBs. *See, e.g., Certain Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination,* 74 FR 64045 (December 7, 2009) (*OCTG from the PRC*), and accompanying Issues and Decision Memorandum (OCTG Decision Memorandum) at Comment 20.

The loans to drill pipe producers from SOCBs in the PRC constitute a direct financial contribution from the government, pursuant to section 771(5)(D)(i) of the Act, and they provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans (*see* section 771(5)(E)(ii) of the Act). Finally, we preliminarily determine that the loans are *de jure* specific within the meaning of section 771 of the Act because of the GOC's policy, as illustrated in the government plans and directives, to encourage and support the growth and development of the drill pipe industry.

To calculate the benefit, we compared the amount of interest DP Master and SPM paid on their outstanding loans to the amount they would have paid on comparable commercial loans. *See* 19 CFR 351.505(a). In conducting this comparison, we used the interest rates described in the "Benchmarks and Discount Rates" section above. We have attributed benefits under this program to total consolidated sales of DP Master, SPM, and Liangda (exclusive of intra-company sales), as discussed in the "Attribution of Subsidies" section above. On this basis, we preliminarily determine a countervailable subsidy of 0.87 percent *ad valorem* for the DP Master Group.

B. Two Free, Three Half Tax Exemption for FIEs

The Foreign Invested Enterprise and Foreign Enterprise Income Tax Law (FIE Tax Law), enacted in 1991, established the tax guidelines and regulations for FIEs in the PRC. The intent of this law is to attract foreign businesses to the PRC. According to Article 8 of the FIE Tax Law, FIEs which are "productive" and scheduled to operate not less than 10 years are exempt from income tax in their first two profitable years and pay half of their applicable tax rate for the following three years. FIEs are deemed "productive" if they qualify under Article 72 of the Detailed Implementation Rules of the Income Tax Law of the People's Republic of China of Foreign Investment Enterprises and Foreign Enterprises. The Department has previously found this program countervailable. *See, e.g.,* CFS Decision Memorandum at 10–11.

DP Master and Liangda are "productive" FIEs and received benefits under this program during the POI.[57] SPM, SSP, and Chuangxin are domestically-owned companies.[58]

We preliminarily determine that the exemption or reduction in the income tax paid by "productive" FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipients in the amount of the tax savings. *See* sections 771(5)(D)(ii) and 771(5)(E) of the Act and 19 CFR 351.509(a)(1). We further preliminarily determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.,* "productive" FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act. *See* CFS Decision Memorandum at Comment 14.

For the 2008 tax year (for which tax returns were filed during the POI), DP Master was in its third year of

[47] *Id.* at Exhibit 14 for Industrial Catalogue at "VII Iron and Steel."

[48] *Id.* at Exhibit 13 at Article 17.

[49] *Id.* at Exhibit 15 at "6. Development Priority."

[50] *Id.* at Exhibit 17 at "Section 1. Optimizing the Industrial Structure; 1. Prioritizing the Development of High Technologies; New Materials Industry."

[51] *See* Citric Acid Decision Memorandum at Comment 5.

[52] *See* CFS Decision Memorandum at 49, and LWTP Decision Memorandum at 98.

[53] *See* CFS Decision Memorandum at Comment 8.

[54] *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 40485 (July 15, 2008) (*OTR Tires from the PRC*), and the accompanying Issues and Decision Memorandum OTR Tires Decision Memorandum) at 15; and LWTP Decision Memorandum at 11.

[55] *See* DP Master Group IQR at 22.

[56] *See* GOC IQR at 10–11.

[57] *See* DP Master Group IQR at 29–30.

[58] *Id.* at 15–16.

profitability and was eligible for 50 percent reduction in its income tax liability.[59] Liangda was in its first year of eligibility and received a 100 percent reduction in its income tax liability for tax year 2008.[60]

To calculate the benefit, we treated the income tax savings enjoyed by DP Master and Liangda as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the companies' tax savings received during the POI by the total consolidated sales of DP Master, SPM, and Liangda (exclusive of intra-company sales), as discussed in the "Attribution of Subsidies" section above. To compute the amount of the tax savings, we compared the income tax amount that each respondent would have paid in absence of the program. On this basis, we preliminarily determine a countervailable subsidy of 9.05 percent *ad valorem* for the DP Master Group.

Further, the respondents reported that the GOC terminated the Two Free, Three Half Tax Exemption for FIEs on January 1, 2008, under the 2008 Enterprise Income Tax Law (EITL).[61] We find that respondents' claims of termination do not meet the requirements specified under 19 CFR 351.526(d)(1), which provide that the Department will not find a program to be terminated and a program-wide change warranted if it finds that the administering authority continues to provide residual benefits under the program. As indicated in the EITL and the Notice of the State Council on the Implementation of the Transitional Preferential Policies in Respect of the Enterprise Income Tax (Transitional Period Notice),[62] from January 1, 2008, enterprises that previously enjoyed this program may continue to enjoy any preferential treatment previously enjoyed until the expiration of the transitional time period. For enterprises that previously had not enjoyed preferential treatment, the preferential time period shall be calculated from 2008. The GOC reported that this program will be terminated at the expiration of the transitional period in 2012.

C. Exemption From City Construction Tax and Education Tax for FIEs

Pursuant to the Circular Concerning Temporary Exemption from Urban Maintenance and Construction Tax and Additional Education Fees for Foreign-Funded and Foreign Enterprises (GUOSHUIFA {1994} No. 38), the local tax authorities exempt all FIEs and foreign enterprises from the city maintenance and construction tax and education fee surcharge.[63] The GOC explained that the construction tax is based on the amount of product tax, value added tax, and/or business tax actually paid by the taxpayer.[64] For tax payers located in urban areas, the rate is seven percent; for taxpayers located in counties or townships, the rate is five percent; and for taxpayers located in areas other than urban areas, counties, and townships, the rate is one percent.[65] Regarding the education fee surcharge, the DP Master Group reported that FIEs pay only one percent of the actual amount of the product tax, value-added tax, and business tax paid, whereas other entities pay four percent of that amount.[66] DP Master and Liangda are FIEs and, therefore, received exemptions under this program.

Consistent with our finding in *Racks from the PRC,* we preliminarily determine that the exemptions from the city construction tax and education surcharge under this program confer a countervailable subsidy. *See Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 37012 (July 27, 2009) (*Racks from the PRC*), and accompanying Issues and Decision Memorandum (Racks from the PRC Decision Memorandum) at "Exemption from City Construction Tax and Education Tax for FIEs in Guangdong Province." The exemptions are financial contributions in the form of revenue forgone by the government and provide a benefit to the recipient in the amount of the savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the exemptions afforded by this program are limited as a matter of law to certain enterprises, *i.e.,* FIEs, and, hence, specific under section 771(5A)(D)(i) of the Act. To calculate the benefit, we treated DP Master's and Liangda's tax savings and exemptions as a recurring benefit, consistent with 19 CFR 351.524(c)(1).

To compute the amount of city construction tax savings, we first determined the rate the companies would have paid in the absence of the program. At page 36 of the May 18, 2010, supplemental questionnaire response, SPM, not an FIE, reported that it paid a five percent "Urban Maintenance and Construction Tax." SPM, DP Master, and Liangda are all located in Chuangxin Village, Jiangyin City.[67] Therefore, we preliminarily determine that DP Master and Liangda should have paid a construction tax of five percent.[68] Next, we compared the rate the companies would have paid in the absence of the program (five percent during the POI) with the rate the companies paid (zero), because they are FIEs.

To compute the amount of the savings from the education fee exemption, we compared the rate the companies would have paid in the absence of the program (four percent during the POI) with the rate the companies paid (one percent).

To calculate the total benefit under the program, we summed the construction tax savings and the education fee exemptions. To calculate the net subsidy rate, we divided the companies' tax savings received during the POI by the total consolidated sales of DP Master, SPM, and Liangda (exclusive of intra-company sales), as discussed in the "Attribution of Subsidies" section above. On this basis, we preliminarily determine the countervailable subsidy to be 0.57 percent *ad valorem* for the DP Master Group.

D. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

Enacted in 1997, the Circular of the State Council on Adjusting Tax Policies on Imported Equipment (Guofa No. 37) (Circular 37) exempts both FIEs and certain domestic enterprises from the VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into prescribed lists of non-eligible items. The National Development and Reform Commission (NDRC) and the General Administration of Customs are the government agencies responsible for administering this program. Qualified enterprises receive a certificate either from the NDRC or one of its provincial branches. To receive the exemptions, a qualified enterprise only has to present the certificate to the customs officials upon importation of the equipment. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and

[59] *Id.* at 30.

[60] *Id.* at 30.

[61] *See* GOC IQR at Exhibit 25 for the EITL.

[62] *Id.* at Exhibit 26 for the Transitional Period Notice.

[63] *See* GOC First SQR at Exhibit 3.

[64] *Id.* at 9.

[65] *Id.*

[66] *See* DP Master Group First Supplemental Questionnaire Response (May 18, 2010) at 33.

[67] *See* DP Master Group IQR at 9.

[68] After issuance of this determination, we will issue a supplemental questionnaire to the GOC and the DP Master Group requesting confirmation on the rate that should have been paid by DP Master and Liangda.

industry technology upgrades. The Department has previously found this program to be countervailable. *See, e.g.,* Citric Acid Decision Memorandum at "VAT Rebate on Purchases by FIEs of Domestically Produced Equipment." DP Master, an FIE, reported receiving VAT and tariff exemptions under this program for imported equipment.

We preliminarily determine that the VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone by the GOC and the exemptions provide a benefit to the recipients in the amount of the VAT and tariff savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1). We further preliminarily determine that the VAT and tariff exemptions under this program are specific under section 771(5A)(D)(iii)(I) of the Act because the program is limited to certain enterprises. As described above, only FIEs and certain domestic enterprises are eligible to receive VAT and tariff exemptions under this program. As noted above under the "Two Free/Three Half Tax Exemption for FIEs" program, the Department finds FIEs to be a specific group under section 771(5A)(D)(i) of the Act. The additional certain enterprises requiring approval by the NDRC do not render the program to be non-specific. This analysis is consistent with the Department's approach in prior CVD proceedings. *See, e.g.,* CFS Decision Memorandum at Comment 16, and OTR Decision Memorandum at "VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment on Encouraged Industries."

Normally, we treat exemptions from indirect taxes and import charges, such as the VAT and tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1) and allocate these benefits only in the year that they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL. *See* 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2). Therefore, we are examining the VAT and tariff exemptions that DP Master received under the program during the POI and prior years.

To calculate the amount of import duties exempted under the program, we multiplied the value of the imported equipment by the import duty rate that would have been levied absent the program. To calculate the amount of VAT exempted under the program, we multiplied the value of the imported equipment (inclusive of import duties) by the VAT rate that would have been levied absent the program. Our derivation of VAT in this calculation is consistent with the Department's approach in prior cases. *See, e.g.,* Line Pipe Decision Memorandum at Comment 8 ("* * * we agree with petitioners that VAT is levied on the value of the product inclusive of delivery charges and import duties"). Next, we summed the amount of duty and VAT exemptions received in each year. For each year, we then divided the total grant amount by the corresponding total sales for the year in question. For certain years, DP Master's total amount of VAT and tariff exemptions was more than 0.5 percent of total sales for the respective year. Therefore, for these exemptions, we had to determine whether DP Master's VAT and tariff exemptions were tied to the capital structure or capital assets of the firm. Based on the description of the items imported in those years, we preliminarily find that the exemptions were for capital equipment.[69] As such, for these exemptions, we have allocated the benefit over the 15-year AUL using discount rates described under the "Benchmarks and Discount Rates" section above.

For the other years, DP Master's total amount of the VAT and tariff exemptions was less than 0.5 percent of the total consolidated sales of DP Master, SPM, and Liangda (exclusive of intra-company sales). Therefore, for those exemptions, we expensed the benefit to the year in which the benefit was received, consistent with 19 CFR 351.524(a). On this basis, we preliminarily determine the countervailable subsidy to be 0.14 percent *ad valorem* for the DP Master Group.

Further, the GOC reported that pursuant to the Announcement of Ministry of Finance, China Customs, and State Administration of Taxation, No. 43 (2008) (Notice 43), dated December 25, 2008, the VAT exemption linked to imported equipment under this program has been terminated but the import tariff exemption has not been terminated.[70] Article 1 of Notice 43 states that as of January 1, 2009, VAT on imported equipment for self-use in domestic and foreign investment projects as encouraged and stipulated in Circular 37 will be resumed and the custom duty exemption will remain in effect. Article 4 of Notice 43 provides for a transition period for the termination of the VAT exemption. Under Article 4, for a project which has a letter of confirmation prior to November 10, 2008, and the imported equipment has been declared with customs before June 30, 2009, VAT and tariff can be exempted. However, for imported equipment for which the import customs declaration is made on or after July 1, 2009, VAT will be collected. As such, the GOC stated the latest possible date for companies to claim or apply for a VAT exemption under this program was June 30, 2009. The GOC reported that there is no replacement VAT exemption program.

Under 19 CFR 351.526(a)(1) and (2), the Department may take a program-wide change to a subsidy program into account in establishing the cash deposit rate if it determines that subsequent to the POI, but before the preliminary determination, a program-wide change occurred and the Department is able to measure the change in the amount of countervailable subsidies provided under the program in question. With regard to this program, we determine that a program-wide change has not occurred and have not adjusted the cash deposit rate. Under 351.526(d)(1), the Department will only adjust the cash deposit rate of a terminated program if there are no residual benefits. However, this program still provides for residual benefits up through and including the POI.

E. Provision of Green Tubes for LTAR

The Department is investigating whether producers, acting as Chinese government authorities, sold green tubes to the DP Master Group for LTAR. The DP Master Group (specifically, SSP) reported purchasing green tubes during the POI directly from a green tube producer. Both the DP Master Group and the GOC reported that the producer from which the respondents obtained green tubes is an SOE.[71] As a result, we determine that the producer, which supplied the DP Master Group with green tubes during the POI, is a government authority and provided to the DP Master Group a financial contribution, in the form of a governmental provision of a good. *See* section 771(5)(D)(iv) of the Act.

Having addressed the issue of financial contribution, we must next analyze whether the sale of green tubes to the DP Master Group by a producer designated as a government authority conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act. The Department's regulations at 19 CFR

[69] *See* DP Master Group First SQR at Exhibit 39.

[70] *See* GOC IQR at 28 and Exhibit 29.

[71] *See* DP Master Group IQR at Exhibit 14, and GOC IQR at 59.

351.511(a)(2) set forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) Market prices from actual transactions within the country under investigation (*e.g.,* actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As we explained in *Softwood Lumber from Canada,* the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation. *See* Softwood Lumber Decision Memorandum at "Market-Based Benchmark."

Beginning with tier one, we must determine whether the prices from actual sales transactions involving Chinese buyers and sellers are significantly distorted. As explained in the *Preamble:*

> Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative {tier two} in the hierarchy.

See Preamble to Countervailing Duty Regulations, 63 FR 65348, 65377 (November 25, 1998) (*Preamble*). The *Preamble* further recognizes that distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market.

In our February 23, 2010 initial questionnaire and May 12, 2010 supplemental questionnaire, we instructed the GOC to provide the percentage of green tubes production accounted for by SOEs during the POI. In its initial and supplemental questionnaire responses, the GOC indicated that there were no official statistics readily available regarding the production and consumption of green tubes in the PRC and, therefore, did not provide the requested information.[72]

Section 776(a)(1) of the Act states that if the necessary information is not available on the record, then the Department shall use the facts otherwise available (FA) in reaching the applicable determination. In this investigation, the GOC has stated for the various reasons noted above that the data requested by the Department does not exist and, therefore it is unable to obtain the percentage of green tube production accounted for by SOEs during the POI. As a result, we lack the necessary information to determine whether the GOC has a predominant role in the domestic market for this input that results in significant distortion of the prices. Moreover, at this stage of the investigation neither the GOC nor the DP Master Group has submitted data that could be used as a tier-one green tube benchmark. Furthermore, we note that the Department has determined that various steel inputs cannot serve as viable tier-one benchmarks in several CVD investigations involving the PRC. *See, e.g.,* Line Pipe Decision Memorandum at Comment 5, *see also* PC Strand Decision Memorandum at "Provision of Wire Rod for LTAR." The Department finds no evidence that the GOC is not cooperating to the best of its ability and, thus, we preliminarily determine that the application of FA is warranted. Specifically, pursuant to section 776(a)(1) of the Act, we preliminarily determine that there is no suitable data on domestic prices for green tubes that are available which could serve as a viable tier-one benchmark as described under 19 CFR 351.511(a)(2)(i). Consequently, as there are no other available tier-one benchmark prices, we have turned to tier two, *i.e.,* world market prices available to purchasers in the PRC.

We examined whether the record contained data that could be used as a tier-two green tubes benchmark under 19 CFR 351.511(a)(2)(ii). The Department has on the record of the investigation CIF import prices from various countries into the PRC of HTS category 7304.23, "seamless drill pipe, other than stainless, for use in drilling for oil or gas," as sourced from Global Trade Atlas.[73] Petitioners argue that these data constitute actual import prices for green tubes and, thus, may serve as the basis for a tier-two benchmark under 19 CFR 351.511(a)(2)(ii). We have reviewed the pricing data sourced from Global Trade Atlas and preliminarily determine that they are not appropriate for use as a tier-two benchmark. Petitioners' green tube prices are not broken out by month but are instead reported on an annual basis.[74] Given that SSP reported its green tube purchases on a monthly basis, the preferred benchmark would be monthly purchases. Therefore, we preliminarily determine that annual green tube prices sourced from Global Trade Atlas are not suitable.

In addition, petitioners have placed on the record of the investigation monthly pricing data for the POI of seamless pipe and tube from various countries, as sourced from the Metal Bulletin Research (MBR).[75] The DP Master Group placed the same seamless pipe and tube pricing data from the MBR on the record of the investigation as well as seamless pipe and tube pricing data from the Steel Business Briefing (SBB) and SteelOrbis (SO).[76] In its May 28, 2010 and June 1, 2010 submissions, the DP Master Group argues that the seamless pipe and tube pricing data from the MBR, SBB, and SO represent pipe and tube products that are at a slightly more advanced stage of finishing than green tube products.[77] The DP Master Group therefore argues that, in order to derive a benchmark that is comparable to green tubes, the Department should average the seamless pipe and tube prices from the MBR, SBB, and SO with the steel rounds pricing data that it supplied in its questionnaire responses.[78] For the steel rounds pricing data supplied by the DP Master Group, see the DP Master Group's April 16, 2010 questionnaire response at Exhibit 13 and May 18, 2010 supplemental questionnaire response at Exhibit 44.

Alternatively, the DP Master Group argues that, in order to more closely approximate green tube pricing, the Department could discount the prices for seamless pipe and tube, as sourced from MBR, SBB, and SO, by the value added during the production process, namely heat treating, upsetting, and other processes performed on green tube to produce seamless pipe and tube. The DP Master Group contends that green tubes represent only 60 percent of the value of the seamless pipe and tube products under consideration as a green tube benchmark and, thus, to the extent the Department uses the seamless pipe and tube prices as a proxy for green tube prices, the Department should reduce the seamless pipe and tube prices by 40

[72] *See* GOC IQR at 58, and GOC First SQR at 13–15.

[73] *See* Petitioners' CVD Benchmark Data Submission (Benchmark Submission) (May 24, 2010) at Exhibit 1.

[74] *Id.*

[75] *See* January through June pricing data in petitioners' December 31, 2009 petition, Volume I at Exhibit 15; *see* July through December pricing data in petitioners' May 28, 2010 submission at Exhibit 1.

[76] *See* DP Master Group's Benchmark Rebuttal and Supplemental Factual Information Submission (Benchmark Rebuttal) (May 28, 2010) submission at 15 and Exhibits 52 through 54.

[77] *See* DP Master Group Benchmark Rebuttal 14.

[78] *Id.* at 15.

percent. The DP Master Group supports its argument in this regard with an affidavit from an engineer.[79]

In their May 28, 2010 and June 1, 2010 submissions, petitioners argue against calculating the green tubes benchmark as the average of steel rounds and seamless pipe and tube prices. Petitioners contend that producing green tubes, drill pipe, and drill collars is a complicated and exacting process, and that such products must be manufactured to withstand severe conditions during the drilling process.[80] In contrast, argue petitioners, steel rounds (also known as billets) are merely pieces of steel that are not comparable to green tubes.

In this preliminary determination, we agree with petitioners that it is not appropriate to construct a green tube benchmark that is equal to the average of seamless pipe and tube prices and steel rounds prices. In light of the extensive further manufacturing required to produce seamless pipe and tube, we preliminarily determine that seamless pipe and tubes are more similar to green tubes than steel rounds.

Therefore, we have used the seamless pipe and tube pricing data, as sourced from MBR, SBB, and SO to construct our green tubes benchmark. We note that the Department has relied on pricing data from industry publications in recent CVD proceedings involving the PRC. *See, e.g.,* CWP Decision Memorandum at "Hot-Rolled Steel for LTAR," and LWRP Decision Memorandum at "Hot-Rolled Steel for LTAR." Concerning the comparability of seamless pipe and tube, we note that the Department has acknowledged the "overlap" between green tubes and other types of seamless pipe and tube (*e.g.,* casing and tubing) "with respect to diameter, wall thickness, and length" as well as an overlap with regard to strength and alloy requirements. *See Oil Country Tubular Goods from Austria: Initiation of Countervailing Duty Investigation,* 67 FR 20739, 20740 (April 26, 2002), and accompanying Initiation Checklist at 15.

In this preliminary determination, we have determined not to reduce the seamless pipe and tube prices by 40 percent as advocated by the DP Master Group. In its June 1, 2010 submission, the DP Master Group relies on an affidavit from an engineer.

The affidavit states:

> In my experience in the industry (as detailed in the attached bio), tool joints and their connection to a standard 30 foot drill pipe represent about half of the cost of finished drill pipe, with the upset and heat-treated tube the other half of the value. With the upset and heat-treated tube (which could be called unfinished or semi-finished drill pipe), the green tube represents approximately 60 percent of the cost before attaching the tool joint, and the upsetting and heat treating process presents about 40 percent of the cost before attaching tool joints.[81]

Aside from the engineer's assertions in the narrative of the affidavit, there is no discussion, description, or documentation to support the engineer's cost estimates. As a result, we find that the DP Master Group has not sufficiently supported its argument in this regard.

Furthermore, we have preliminarily determined not to use certain price series for seamless pipe and tube, as supplied by the DP Master Group in its May 28, 2010 submission. Specifically, we preliminarily determine not to use prices for seamless pipe and tube exported from Ukraine to Turkey; Italy to the United Arab Emirates (UAE); and Japan to the UAE; as sourced from SO, on the grounds that it is not reasonable to conclude that these prices would be available to purchasers of seamless pipe and tube in the PRC, as described under 19 CFR 351.511(a)(2)(ii).

To determine whether the green tubes supplier, acting as a government authority, sold green tubes to the DP Master Group for LTAR, we compared the prices SSP paid to the supplier to the green tubes benchmark price. We conducted our comparison on a monthly basis. To arrive at a single monthly benchmark green tubes price, we simple averaged the prices for each month. When conducting the price comparison, we converted the benchmark to the same currency and unit of measure as reported by SSP for its purchases of green tubes.

As explained in 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, we have added import duties and the VAT applicable to imports of green tubes into the PRC, as reported by the GOC. *See* 19 CFR 351.511(a)(2)(iv). In addition, in accordance with 19 CFR 351.511(a)(2)(iv), we have added ocean freight costs to our green tubes benchmark price. Because our green tube benchmark consists of prices from North America, Europe, the Middle East, and Asia, we have added to the benchmark ocean freight costs from around the world. Specifically, for green tubes benchmark prices from the United States, we used ocean freight rates for shipments from the United States to the PRC.[82] For green tubes benchmark prices from Europe, Japan, and the Middle East, we used the ocean freight utilized in *OCTG from the PRC* and submitted on the record of the investigation by the DP Master Group. Specifically, we utilized an ocean freight rate corresponding to exports from Turkey, Black/Baltic Seas, Mediterranean, and London Metal Exchange (Far East) (LME).[83] In addition, in accordance with 19 CFR 351.511(a)(2)(iv), we have added inland freight costs to the green tubes benchmark as well as to SSP's domestic purchases of green tubes. Our inclusion of inland freight costs in LTAR benefit calculation is consistent with the Department's practice. *See, e.g.,* PC Strand Decision Memorandum at Comment 13.

Comparing the benchmark unit prices to the unit prices paid by SSP for green tubes, we determine that green tubes were provided for LTAR and that a benefit exists in the amount of the difference between the benchmark and what the respondent paid. *See* section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a). We calculated the total benefit by multiplying the unit benefit by the quantity of green tubes purchased.

Finally, with respect to specificity, we determine that the program is specific under section 771(5A)(D)(iii)(I) of the Act because the industries that utilize green tubes are limited. This finding is in keeping with the Department's determination in other China CVD investigations where we found the industries that used a particular steel input to be limited. See *e.g.,* OCTG Decision Memorandum at "Provision of Steel Rounds for LTAR."

We find that the GOC's provision of green tubes for LTAR to be a domestic subsidy as described under 19 CFR 351.525(b)(3). Therefore, to calculate the net subsidy rate, we divided the benefit by a denominator comprised of total

[79] *See* DP Master Group's Additional Comments Submission (Additional Comments) (June 1, 2010) at Exhibit 57.

[80] *See* Petitioners' Comments Regarding Preliminary Determination Submission (Prelim Comments) (May 28, 2010) at 3, and petitioners' Response to DP Master's Rebuttal Comments Submission (Response Submission) (June 1, 2010).

[81] *See* DP Master Group Additional Comments at Exhibit 57.

[82] These publicly available ocean rate data were originally submitted on the record of *PC Strand from the PRC* and placed on the record of the instant investigation. *See* the Preliminary Calculation Memorandum.

[83] *See* DP Master Group IQR at Exhibit 13; *see also* Preliminary Calculations Memorandum.

consolidated sales of DP Master, SSP, SPM, and Liangda (exclusive of intra-company sales), as discussion in the "Attribution of Subsidies" section above. On this basis, we preliminarily determine a countervailable subsidy of 4.96 percent *ad valorem* for the DP Master Group.

F. Provision of Electricity for LTAR

For the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are basing our determination regarding the government's provision of electricity in part on AFA.

In a CVD case, the Department requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific. However, where possible, the Department will normally rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit to the extent that those records are useable and verifiable. The DP Master Group provided data on the electricity the companies consumed and the electricity rates paid during the POI.

Consistent with this practice, the Department finds that the GOC's provision of electricity confers a financial contribution, under section 771(5)(D)(iii) of the Act, and is specific, under section 771(5A) of the Act. To determine the existence and amount of any benefit from this program, we relied on the DP Master Group's reported information on the amounts of electricity all group companies purchased and the amounts they paid for electricity during the POI. We compared the rates paid by the DP Master Group for their electricity to the highest rates that they would have paid in the PRC during the POI.

In its May 27, 2010 supplemental questionnaire response, the GOC reported that the rate schedules that went into effect on July 1, 2008, were replaced with new provincial electricity rate schedules on November 20, 2009.[84] The GOC added that the electricity rate schedule for Jiangsu Province went into effect on December 18, 2009.[85] The GOC provided 2009 provincial electricity rate schedules in its May 27, 2010 submission at Exhibit 17. However, given that these 2009 electricity rate schedules were submitted to the Department on the eve of the preliminary determination of this investigation, we are unable to thoroughly review those provincial rates schedules for use in this determination.[86]

Therefore, for this preliminary determination, we are using the electricity rates schedules dated July 1, 2008 as the source of our benchmark electricity rates for use in the benefit calculations. As such, we have placed on the record of this investigation, the July 1, 2008, electricity rate schedules, which were submitted to the Department by the GOC in the CVD investigation on *PC Strand from the PRC,* and which reflect the highest rates that the respondents would have paid in the PRC during the POI. Specifically, we have selected the highest rates for "large industrial users" for the peak, valley, and normal ranges. The normal and peak rates were selected from the Electricity Sale Rate Schedule of Shanghai. The valley rate was selected from the Electricity Sale Rate Schedule of Beijing. For those electricity rate schedules and electricity rate benchmark chart, *see* Memorandum to File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding "Electricity Rate Benchmark Data" (June 7, 2010). This benchmark reflects an adverse inference, which we have drawn as a result of the GOC's failure to act to the best of its ability in providing requested information about its provision of electricity in this investigation.

Consistent with our approach in *PC Strand from the PRC,* to measure whether the DP Master Group received a benefit under this program, we first calculated the variable electricity cost the respondents paid by multiplying the monthly kilowatt hours (KWH) consumed at each price category (*e.g.,* peak, normal, and valley) by the corresponding electricity rates charged at each price category in Jiangsu Province. Next, we calculated the benchmark variable electricity cost by multiplying the monthly KWH respondents consumed at each price category (*e.g.,* peak, normal, and valley) by the highest electricity rate charged at each price category, as reflected in the electricity rate benchmark chart. To calculate the benefit for each month, we subtracted the variable electricity cost paid by respondents during the POI from the monthly benchmark variable electricity cost.

To measure whether the DP Master Group received a benefit with regard to their transmitter capacity charge, we first multiplied the monthly transmitter capacity charged to respondents by the corresponding consumption quantity. Next, we calculated the benchmark transmitter capacity cost by multiplying respondents' consumption quantities by the highest transmitter capacity rate reflected in the electricity rate benchmark chart. To calculate the benefit, we subtracted the transmitter costs paid by respondents during the POI from the benchmark transmitter costs.

We then calculated the total benefit received during the POI under this program by summing the benefits stemming from the DP Master Group's variable rate payments and transmitter capacity payments.

To calculate the net subsidy rate pertaining to electricity payments made by the DP Master Group, we divided the benefit amount by the total consolidated sales of DP Master, SPM, SSP, Liangda, and Chuangxin (exclusive of intra-company sales), as discussion in the "Attribution of Subsidies" section above. On this basis, we preliminarily determine a countervailable subsidy of 0.13 percent *ad valorem* for the DP Master Group.

II. Programs Preliminarily Determined Not To Provide Countervailable Benefits During the POI

A. Provision of Steel Rounds for LTAR

The Department is investigating whether producers and suppliers, acting as Chinese government authorities, sold steel rounds to the DP Master Group for LTAR. The DP Master Group (specifically, DP Master and Liangda) reported purchasing steel rounds during the POI from trading companies as well as directly from steel round producers. In all instances, the DP Master Group was able to identify the firm that produced the steel rounds that the companies acquired during the POI. In their questionnaire responses,[87] both the DP Master Group and the GOC indicated that, with the exception of a single producer (hereinafter referred to as Producer A), all of the steel rounds acquired by the respondents during the POI were produced by SOEs.[88] As a result, for those producers that the DP Master Group identified as SOEs, we determine that the producers are

[84] *See* GOC First SQR at 24.

[85] *Id.*

[86] For the final determination, we intend to examine the 2009 provincial electricity rate schedules, which were submitted by the GOC.

[87] *See* DP Master Group First SQR at Exhibit 41, and GOC IQR at 53–54.

[88] The identity of Producer A is business proprietary.

government authorities that provided to the respondent a financial contribution, in the form of a governmental provision of a good. *See* section 771(5)(D)(iv) of the Act.

Regarding Producer A, in the initial questionnaire, the Department instructed the GOC to provide ownership information for all input suppliers/producers that the GOC claimed were not GOC authorities.[89] In its questionnaire response, the GOC stated that, with regard to Producer A, the GOC did " * * * not have sufficient time to obtain the information requested in Appendix 5 for this response but will provide it in due course."[90] In its May 12, 2010 supplemental questionnaire response, the Department stated, "to the extent that the GOC has provided information on Producer A in another investigation before the Department, please submit that information for Producer A on the record of this investigation."[91] The Department then referenced several exhibits from *PC Strand from the PRC* in which the GOC had supplied ownership information for an input producer with the same name as Producer A.[92] In its supplemental questionnaire response, the GOC claimed that, though the firms were related and had similar names, Producer A was not the same input producer as the one examined in the context of the *PC Strand from the PRC.*[93] The GOC further stated that, to the best of its knowledge, one shareholder of Producer A is a company based in Hong Kong and publicly listed on the Hong Kong and Clearing Limited stock exchanges.[94] The GOC did not, however, provide ownership information for Producer A as originally requested by the Department in the initial questionnaire.

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, inter alia, necessary information is not on the record or an interested party or any other person: (A) Withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

We preliminarily determine that the GOC did not provide the information requested by the Department as it pertains to Producer A. First, the GOC failed to respond to the ownership questions contained in the Department's initial questionnaire. Second, when given a second opportunity to supply ownership information regarding Producer A, as requested in the supplemental questionnaire, the GOC, instead merely stated that the input producer examined in *PC Strand from the PRC* was not the same as Producer A. We find that in failing to provide the requested information the GOC did not act to the best of its ability. Accordingly, in selecting from among the facts available, we are drawing an adverse inference with respect to Producer A and determine that Producer A is a GOC authority whose sales of steel rounds to the DP Master Group during the POI constitutes a financial contribution, in the form of the provision of a good, within the meaning of section 771(5)(D)(iv) of the Act.

Having addressed the issue of financial contribution, we must next analyze whether the sale of steel rounds to the DP Master Group by producers designated as government authorities conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act. The Department's regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) Market prices from actual transactions within the country under investigation (*e.g.,* actual sales, actual imports or competitively run government auctions) (tier-one); (2) world market prices that would be available to purchasers in the country under investigation (tier-two); or (3) an assessment of whether the government price is consistent with market principles (tier-three). As we explained in *Softwood Lumber from Canada,* the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation. *See* Softwood Lumber Decision Memorandum at "Market-Based Benchmark."

Beginning with tier-one, we must determine whether the prices from actual sales transactions involving Chinese buyers and sellers are significantly distorted. As explained in the *Preamble:*

> Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative {tier two} in the hierarchy.

See Preamble, 63 FR 65377. The *Preamble* further recognizes that distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market.

In our February 23, 2010 initial questionnaire and May 12, 2010 supplemental questionnaire, we instructed the GOC to provide the percentage of steel rounds production accounted for by SOEs during the POI. In its initial and supplemental questionnaire responses, the GOC indicated that there were no official statistics readily available regarding the production and consumption of steel rounds in the PRC and, therefore, did not provide the requested information.[95]

We preliminarily determine that the GOC did not provide the information requested by the Department as it pertains to the share of steel rounds accounted for by SOEs during the POI despite having been given more than one opportunity to do so. We preliminarily determine that, in failing to provide the requested information, the GOC did not act to the best of its ability. Therefore, in accordance with section 776(b) of the Act, we are drawing an adverse inference with respect to the percentage of steel rounds produced by SOEs during the POI. Specifically, we determine that SOEs accounted for a dominant share of the steel rounds market in the PRC during the POI and that domestic prices for steel rounds cannot serve as a viable tier one benchmark, as described under 19 CFR 351.511(a)(2)(i). Consequently, as there are no other available tier one benchmark prices, we have turned to tier two, *i.e.,* world market prices available to purchasers in the PRC.

We examined whether the record contained data that could be used as a tier-two steel rounds benchmark under 19 CFR 351.511(a)(2)(ii). The Department has on the record of the investigation prices for steel rounds, as

[89] *See* Department's Initial Questionnaire at II–12, II–13, and Appendix 5.

[90] *See* GOC IQR at page 54.

[91] *See* Department SQR Issued to the GOC at 3.

[92] *Id.*

[93] *See* GOC First SQR at 11.

[94] *Id.*

[95] *See* GOC IQR at 58, and GOC First SQR at 11–12.

sourced from the SBB.[96] No other interested party submitted tier-two steel rounds prices on the record of this investigation. Therefore, we find that the data from the SBB should be used to derive a tier-two, world market price for steel rounds that would be available to purchasers of steel rounds in the PRC. We note that the Department has relied on pricing data from SBB in recent CVD proceedings involving the provision of steel rounds for LTAR. *See* OCTG Decision Memorandum at "Provision of Steel Rounds for LTAR."

To determine whether steel rounds suppliers, acting as government authorities, sold steel rounds to the DP Master Group for LTAR, we compared the prices that DP Master and Liangda paid to the suppliers to the steel rounds benchmark price. We conducted our comparison on a monthly basis. SBB provides multiple prices for each month of the POI. Specifically, the SBB data contain steel rounds export prices for Latin America, Turkey, the Black Sea/Baltic regions, and East Asia as well as steel rounds price data from the London Metal Exchange (LME) cash bid settlement prices series. The Department used these same price series from SBB to derive the steel rounds benchmark in *OCTG from the PRC. See* OCTG Decision Memorandum at "Provision of Steel Rounds for LTAR" and Comment 13A. Our regulations, at 19 CFR 351.511(a)(2)(ii), state that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Therefore, consistent with 351.511(a)(2)(ii), we averaged the price series noted above. When conducting the price comparison, we converted the benchmark to the same currency and unit of measure as reported by DP Master and Liangda for their purchases of steel rounds.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, we have added import duties and the VAT applicable to imports of steel rounds into the PRC, as reported by the GOC. In addition, in accordance with 19 CFR 351.511(a)(2)(iv), we have added ocean freight costs to our steel rounds benchmark price. Specifically, we have added to the steel rounds benchmark the same ocean freight rates added to the steel rounds benchmark calculated in *OCTG from the PRC.* In addition, in accordance with 19 CFR 351.511(a)(2)(iv), we have added inland freight costs to the steel rounds benchmark as well as to DP Master's and Liangda's domestic purchases of steel rounds. Our inclusion of inland freight costs in the LTAR benefit calculation is consistent with the Department's practice. *See, e.g.,* PC Strand Decision Memorandum at Comment 13.

Finally, with respect to specificity, the GOC stated that steel rounds are used by producers of various types of seamless pipe (including the drill pipe industry).[97] Therefore, we preliminarily determine that this subsidy is specific because the recipients are limited in number. *See* section 771(5A)(D)(iii)(I) of the Act. *See* OCTG Decision Memorandum at Comment 12. We further find the GOC's provision of steel rounds for LTAR to be a domestic subsidy as described under 19 CFR 351.525(b)(3).

Comparing the benchmark unit prices to the unit prices paid by the respondents for steel rounds, we preliminarily determine that steel rounds were not provided for LTAR and that a benefit does not exist. *See* section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a).

B. Export Incentive Payments Characterized as "*VAT Rebates*"

The Department's regulations state that in the case of an exemption upon export of indirect taxes, a benefit exists only to the extent that the Department determines that the amount exempted "exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption." *See* 19 CFR 351.517(a); *see also* 19 CFR 351.102(a)(28) (for a definition of "indirect tax"). To determine whether the GOC provided a benefit under this program, we compared the VAT exemption upon export to the VAT levied with respect to the production and distribution of like products when sold for domestic consumption. The GOC reported that the VAT levied on drill pipe sales in the domestic market is 17 percent and that the VAT exemption upon the export of drill pipe is 13 percent. Thus, we have preliminarily determined that the VAT exempted upon the export of drill pipe did not confer a countervailable benefit because the amount of the VAT rebated on export is lower than the amount paid in the domestic market.

C. GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top Brands

DP Master reported that it received a one-time award in 2008 for being a Jiangsu Province Famous Brand.[98] We preliminarily find that the award represents less than 0.5 percent of total consolidated sales, as well as total consolidated export sales, for DP Master, SPM, and Liangda for 2008. As such, this grant is expensed in 2008, the year of receipt, under 19 CFR 351.524(b)(2), and not allocable to the POI. *See* Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding "DP Master Group Grants" (June 7, 2010) (Grant Memorandum).

Consistent with our past practice, we therefore have not included this program in our preliminary net countervailing duty rate calculations. *See, e.g.,* CFS Decision Memorandum at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE," and *Final Results of Countervailing Duty Administrative Review: Low Enriched Uranium from France,* 70 FR 39998 (July 12, 2005) (*Uranium from France*), and accompanying Issues and Decision Memorandum (Uranium Decision Memorandum) at "Purchases at Prices that Constitute More than Adequate Remuneration," (citing *Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: Certain Softwood Lumber Products From Canada,* 69 FR 75917 (December 20, 2004), and accompanying Issues and Decision Memorandum at "Other Programs Determined to Confer Subsidies").

D. Scientific Innovation Award

In its May 18, 2010 submission, in response to a financial statement item, DP Master reported that it received a one-time scientific innovation award in 2008.[99] We preliminarily find that the award represents less than 0.5 percent of total consolidated sales, as well as total consolidated export sales, for DP Master, SPM, and Liangda for 2008. As such, this grant is expensed in 2008, the year of receipt, under 19 CFR 351.524(b)(2), and not allocable to the POI. *See* Grants Memorandum.

Consistent with our past practice, we therefore have not included this program in our preliminary net

[96] *See* DP Master Group IQR at Exhibit 13, and DP Master Group First SQR at Exhibit 44.

[97] *See* GOC IQR at 52.

[98] *See* DP Master Group IQR at 54, First SQR at 12–13.

[99] *See* DP Master Group First SQR at 9–10.

countervailing duty rate calculations. *See, e.g.,* CFS Decision Memorandum at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE," and Uranium Decision Memorandum at "Purchases at Prices that Constitute More than Adequate Remuneration."

E. Development Fund Grant

In the May 18, 2010 submission, SPM reported that it received a development fund grant in 2008.[100] We preliminarily find that the award represents less than 0.5 percent of total consolidated sales, as well as total consolidated export sales, for DP Master, SPM, and Liangda for 2008. As such, this grant is expensed in 2008, the year of receipt, under 19 CFR 351.524(b)(2), and not allocable to the POI. *See* Grant Memorandum.

Consistent with our past practice, we therefore have not included this program in our preliminary net countervailing duty rate calculations. *See, e.g.,* CFS Decision Memorandum at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE," and Uranium Decision Memorandum at "Purchases at Prices that Constitute More than Adequate Remuneration."

F. VAT Rebates to Welfare Enterprises

In its May 18, 2010 submission, in response to a financial statement item, SPM reported that it received VAT rebates in 2007 and 2008.[101] SPM explained that the rebates date back to when it was "Yinhui Plastic Steel Factory," which was a "welfare" enterprise and, thus, entitled to a refund of output VAT paid to the tax bureau in the prior year. SPM stated that a "welfare" enterprise is an enterprise which hires a certain number of handicapped persons up to 50 percent or more of total production personnel of the enterprise.[102] We preliminarily find that, to the extent any recurring tax benefit was received in the form of a tax rebate, which may have been excessive, it would be expensed in the year of receipt, *i.e.,* 2007 and 2008, under 19 CFR 351.524(a) and (c), and not allocable to the POI.

Consistent with our past practice, we therefore have not included this program in our preliminary net countervailing duty rate calculations. *See, e.g.,* CFS Decision Memorandum at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE," and Uranium Decision Memorandum at "Purchases at Prices that Constitute More than Adequate Remuneration."

III. Programs for Which More Information Is Necessary

A. Technology To Improve Trade R&D Fund

DP Master reported that it received a one-time award in 2009 from the Jiangsu Treasury Department under the Technology to Improve Trade R&D Fund program, which benefitted the company's research and development efforts.[103] Because we lack complete information on this program, we intend to seek additional information from the GOC and the DP Master Group after the preliminary determination. Specifically, we intend to request information on the program's purpose, the laws/regulations related to the program, government agencies that administer the program, the application process, eligibility criteria, and specificity data.

B. Grant Received by Chuangxin

In its May 18, 2010 submission, in response to a question regarding a financial statement item, Chuangxin reported that it received a one-time award in 2009.[104] Because we lack complete information on this program, we intend to seek additional information from the GOC and the DP Master Group after the preliminary determination. Specifically, we intend to request information on the program's purpose, the laws/regulations related to the program, government agencies that administer the program, the application process, eligibility criteria, and specificity data.

C. Provision of Land-Use Rights Within Designated Geographical Areas for LTAR

In the questionnaire responses, the DP Master Group certified that none of the companies are located in a special, economic, development, or trade zone, in Jiangyin City.[105] Additionally, the DP Master Group certified that none of the companies acquired land-use rights based upon being located within a special, economic, development, or trade zone during the period December 11, 2001 through December 31, 2009.[106] We, however, recognize that there is conflicting information on the record as to whether the DP Master Group companies are or are not located in a special, economic, development, or trade zone. Specifically, we note that the business licenses for DP Master, Liangda, and Chuangxin state that these companies are located in the Shengang Industrial Zone, Jiangyin City.[107] Also, according to DP Master's financial statement for the year ending December 31, 2007, the company is registered in a coastal economic open zone.[108]

Given this conflicting information on the record, we intend to seek additional information regarding the location of the companies from the GOC and the DP Master Group after the issuance of this preliminary determination.

IV. Programs Preliminarily Determined To Be Not Used

We preliminarily determine that the DP Master Group did not apply for or receive benefits during the POI under the programs listed below:

1. Export Loans from Policy Banks and SOCBs
2. Treasury Bond Loans
3. Preferential Loans for SOEs
4. Preferential Loans for Key Projects and Technologies
5. Preferential Lending to Drill Pipe Producers and Exporters Classified as Honorable Enterprises
6. Debt-to-Equity (D/E) Swaps
7. Loans and Interest Forgiveness for SOEs
8. Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment
9. Reduction In or Exemption From Fixed Assets Investment Orientation Regulatory Tax
10. Local Income Tax Exemption and Reduction Programs for Productive FIEs
11. Preferential Tax Programs for FIEs Recognized as High or New Technology Enterprises
12. Income Tax Reductions for Export-Oriented FIEs
13. Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring
14. Provision of Land to SOEs for LTAR
15. Provision of Hot-Rolled Steel for LTAR
16. Provision of Coking Coal for LTAR
17. Provision of Electricity at LTAR to Drill Pipe Producers Located in Jiangsu Province

[100] *Id.* at 19–20.

[101] *Id.*

[102] *See* "Circular of the State Administration of Taxation on the Question Concerning Tax Exemption and Reduction for Social Welfare Production Units Run by Civil Affairs Departments," (Guo Shui Fa (1990) No. 127), provided at Exhibit 31 of DP Master Group's SQR (public version).

[103] *See* DP Master Group First SQR at 5–6, 8.

[104] *Id.* at 17.

[105] *Id.* at 40.

[106] *Id.* at 41.

[107] *See* DP Master Group IQR at Exhibit 9, page 632, 638, and 640.

[108] *Id.* at Exhibit 3, page 236.

18. Provision of Water at LTAR to Drill Pipe Producers Located in Jiangsu Province
19. State Key Technology Project Fund
20. Export Assistance Grants
21. Programs to Rebate Antidumping Legal Fees
22. Grants and Tax Benefits to Loss-Making SOEs at National and Local Level
23. Subsidies Provided to Drill Pipe Producers Located in Economic and Technological Development Zones (ETDZs) in Tianjin Binhai New Area
24. Subsidies Provided to Drill Pipe Producers Located in ETDZs in Tianjin Economic and Technological Development Areas
25. Subsidies Provided to Drill Pipe Producers Located in High-Tech Industrial Development Zones.

Verification

In accordance with section 782(i)(1) of the Act, we intend to verify the information submitted by the DP Master Group, WSP, Xigang, and the GOC prior to making our final determination.[109]

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for subject merchandise produced and exported by the DP Master Group. We preliminarily determine the total estimated net countervailable subsidy rate to be:

Producer/Exporter	Net subsidy *ad valorem* rate (%)
DP Master Manufacturing Co., Ltd. (DP Master), Jiangyin Sanliang Petroleum Machinery Co., Ltd. (SPM); Jiangyin Liangda Drill Pipe Co., Ltd. (Liangda); Jiangyin Sanliang Steel Pipe Trading Co., Ltd. (SSP), and Jiangyin Chuangxin Oil Pipe Fittings Co., Ltd. (Chuangxin) (collectively, DP Master Group)	15.72
All Others	15.72

Sections 703(d) and 705(c)(5)(A) of the Act state that for companies not investigated, we will determine an all others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of the subject merchandise to the United States. The all others rate may not include zero and *de minimis* net subsidy rates, or any rates based solely on the facts available. Because we have calculated a rate for only the DP Master Group, the rate for the DP Master Group is the all others rate.

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing CBP to suspend liquidation of all entries of the subject merchandise from the PRC that are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register,** and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated above.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), the Department will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. *See* 19 CFR 351.309(c) (for a further discussion of case briefs). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the deadline for submission of case briefs. *See* 19 CFR 351.309(d). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

In accordance with 19 CFR 351.310(c), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties will be notified of the schedule for the hearing and parties should confirm the time, date, and place of the hearing 48 hours before the scheduled time. Requests for a public hearing should contain: (1) Party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act.

Dated: June 7, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration

[FR Doc. 2010–14111 Filed 6–10–10; 8:45 am]

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[109] With regard to WSP and Xigang, we will verify each company's claim that it did not export subject merchandise to the United States during the POI.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: In response to a request by interested parties, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain welded carbon steel pipe and tube ("welded pipe and tube") from Turkey. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 30052 (June 24, 2009) ("*Review Initiation*"). This review covers the Borusan Group[1] (collectively "Borusan"), Tubeco Pipe and Steel Corporation, Toscelik,[2] Erbosan, Erciyas Boru Sanayi ve Ticaret A.S. ("Erbosan"),

[1] The Borusan Group includes Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Birlesik Boru Fabrikalari San ve Tic., Borusan Istikbal Ticaret T.A.S., Boruson Holding A.S., Boruson Gemlik Boru Tesisleri A.S., Borusan Ihracat Ithalat ve Dagitim A.S., and Borusan Ithicat ve Dagitim A.S.

[2] Toscelik Profil ve Sac Endustrisi A.S., Toscelik Metal Ticaret A.S., Tosyali Dis Ticaret A.S. (collectively "Toscelik").

and the Yucel Group companies.[3] We preliminarily determine that Borusan and Toscelik made sales below normal value ("NV"). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties based on the difference between the export price ("EP") and the NV. The Yucel Group companies reported that they had no shipments to the United States during the POR. The preliminary results are listed below in the section titled "Preliminary Results of Review."

EFFECTIVE DATE: June 11, 2010.

FOR FURTHER INFORMATION CONTACT: Joy Zhang or Christopher Hargett, at (202) 482–1168 or (202) 482–4161, respectively; AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1986, the Department published in the **Federal Register** the antidumping duty order on welded pipe and tube from Turkey. *See Antidumping Duty Order; Welded Carbon Steel Standard Pipe and Tube Products From Turkey*, 51 FR 17784 (May 15, 1986) ("*Antidumping Duty Order*"). On May 1, 2009, the Department published a notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 20278 (May 1, 2009). On June 1, 2009, in accordance with 19 CFR 351.213(b), domestic interested parties, Wheatland Tube Company and Allied Tube and Conduit Corporation, requested reviews of Borusan, Toscelik, Erbosan, and the Yucel Group companies. On June 1, 2009, Borusan also requested a review.

On June 24, 2009, the Department published a notice of initiation of administrative review of the antidumping duty order on welded pipe and tube from Turkey, covering the period May 1, 2008, through April 30, 2009. *See Review Initiation.*

On July 28, 2009, due to the significant number of requests received and the Department's resource constraints at the time of initiation of the instant review, the Department informed known interested parties of its intent to limit the number of companies examined in the current review. *See* Memo to Melissa Skinner, through James Terpstra, from Dennis McClure, "Antidumping Duty Administrative Review of Certain Welded Carbon Steel Pipe and Tube from Turkey: Selection of Respondents for Individual Review," dated July 28, 2009. In accordance with section 777A(c)(2)(B), we selected Borusan and Toscelik.

On July 29, 2009, the Department sent antidumping duty administrative review questionnaires to Borusan and Toscelik.[4] We received Borusan's and Toscelik's Sections A–D questionnaire response in September, 2009. We issued supplemental section A, B, C, and D questionnaires, to which Borusan and Toscelik responded during November and December, 2009, and January 2010.

On January 25, 2010, the Department extended the time period for issuing the preliminary results of the administrative review from January 31, 2010, to May 31, 2010. *See Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 3896 (January 25, 2010). Further, as explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. *See* Memorandum to the Record regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010. Because of this extension, the preliminary results for this segment of the proceeding are now due June 7, 2010.

Period of Review

The POR covered by this review is May 1, 2008, through April 30, 2009.

Scope of the Order

The products covered by this order include circular welded non–alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, or galvanized, painted), or end finish (plain end, beveled end, threaded and coupled). Those pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load–bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes within the physical description outlined above are included in the scope of this order, except for line pipe, oil country tubular goods, boiler tubing, cold–drawn or cold–rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

The Yucel Group Companies

On June 25, 2009, the Yucel Group companies submitted timely–filed certifications indicating that they had no shipments of subject merchandise to the United States during the POR. We have not received any comments on the Yucel Group companies' submission. We confirmed that Yucel Group companies' claim of no shipments by issuing a "No Shipment Inquiry" to CBP and by reviewing electronic CBP data. *See* Memo to Melissa Skinner, through James Terpstra, from Joy Zhang and Christopher Hargett, "Welded Carbon Steel Pipe and Tube from Turkey Period of Review: May 1, 2008, through April 30, 2009: No Shipment Analysis for Yucel Group Companies," dated April 30, 2010.

With regard to the Yucel Group companies' claim of no shipments, our practice since implementation of the 1997 regulations concerning no–shipment respondents has been to rescind the administrative review if the respondent certifies that it had no shipments and we have confirmed

[3] Cayirova Boru Sanayi ve Ticaret A.S., Yucel Boru ve Profil Endustrisi A.S., and Yucelboru Ihracat Ithalat ve Pazarlama A.S. (collectively "Yucel Group Companies").

[4] The questionnaire consists of sections A (general information), B (sales in the home market or to third countries), C (sales to the United States), D (cost of production/constructed value), and E (cost of further manufacturing or assembly performed in the United States).

through our examination of CBP data that there were no shipments of subject merchandise during the POR. *See* Antidumping Duties; Countervailing Duties, 62 FR 27296, 27393 (May 19, 1997), and *Oil Country Tubular Goods from Japan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review*, 70 FR 53161, 53162 (September 7, 2005), unchanged in *Oil Country Tubular Goods from Japan: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 95 (January 3, 2006). As a result, in such circumstances, we normally instruct CBP to liquidate any entries from the no–shipment company at the deposit rate in effect on the date of entry.

In our May 6, 2003, "automatic assessment" clarification, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all–others rate applicable to the proceeding. *See* Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003).

Based on the Yucel Group companies' assertion of no shipments and confirmation of that claim by CBP data, we preliminarily determine that the Yucel Group companies had no sales to the United States during the POR.

Because "as entered" liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by the Yucel Group companies and exported by other parties at the all–others rate should we continue to find at the time of our final results that the Yucel Group companies had no shipments of subject merchandise from the Russian Federation. *See, e.g., Certain Frozen Warmwater Shrimp from India: Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 77610, 77612 (December 19, 2008). In addition, the Department finds that it is more consistent with the May 2003 clarification not to rescind the review in part in these circumstances but, rather, to complete the review with respect to the Yucel Group companies and issue appropriate instructions to CBP based on the final results of the review. *See* the Assessment Rates section of this notice below.

Product Comparisons

We compared the EP to the NV, as described in the *Export Price* and *Normal Value* sections of this notice. In accordance with section 771(16) of the Tariff Act of 1930, as amended ("the Act"), we first attempted to match contemporaneous sales of products sold in the United States and comparison market that were identical with respect to the following characteristics: (1) grade; (2) nominal pipe size; (3) wall thickness; (4) surface finish; and (5) end finish. When there were no sales of identical merchandise in the home market to compare with U.S. sales, we compared U.S. sales with the most similar merchandise based on the characteristics listed above in order of priority listed.

Export Price

Because Borusan and Toscelik sold subject merchandise directly to the first unaffiliated purchaser in the United States prior to importation, and constructed export price ("CEP") methodology was not otherwise warranted based on the record facts of this review, in accordance with section 772(a) of the Act, we used EP as the basis for all of Borusan and Toscellik's sales.

We calculated EP using, as starting price, the packed, delivered price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made the following deductions from the starting price (gross unit price), where appropriate: foreign inland freight from the mill to port, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage, U.S. duty, and other related movement charges.

In addition, Borusan reported an amount for duty drawback which represents the amount of duties on imported raw materials associated with a particular shipment of subject merchandise to the United States that is exempted upon export. Borusan requested that we add the amount to the starting price. *See* page C–34 of Borusan's August 29, 2009, original response. To determine if a duty drawback adjustment is warranted, the Department has employed a two–prong test which determines whether: (1) the rebate and import duties are dependent upon one another, or in the context of an exemption from import duties, if the exemption is linked to the exportation of the subject merchandise; and (2) the respondent has demonstrated that there are sufficient imports of the raw material to account for the duty drawback on the exports of the subject merchandise. *See Allied Tube & Conduit Corp. v. United States*, 29 C.I.T. 502, 506 (Ct. Int'l Trade 2005). *See also Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review and Notice of Intent to Revoke in Part*, 72 FR 25253, 25256 (May 4, 2007), unchanged in *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Determination To Revoke in Part*, 72 FR 62630 (November 6, 2007).

After analyzing the facts on the record of this case, we find that Borusan has adequately demonstrated that import duties for raw materials and rebates granted on exports are linked under the Government of Turkey's duty drawback scheme. Additionally, Borusan has provided evidence that the imports of hot- rolled coil are sufficient to account for the duty drawback claimed on the export of subject merchandise. At Borusan's sales verification, we reviewed and obtained copies of documents that demonstrated that Borusan has passed the Department's two–prong test: 1) The Internal Processing Permit Certificate which shows all imports covered by the program (which are sufficient to cover the volume of exports), 2) The Letter of Export Commitment which shows the actual exports covered by the program, and 3) The Duty Drawback Certificate, which demonstrates that the imports, exports, and drawback are all linked under the program. *See* Exhibit C–8 of Borusan's August 29, 2009, response, and Sales Verification Report[5] at page 15. Therefore, consistent with our determination in the 2007–2008 administrative review, we are granting Borusan a duty drawback adjustment for purposes of the preliminary results. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey*, 74 FR 6368 (February 9, 2009), unchanged in *Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Final Results of Antidumping Duty Administrative Review*, 74 FR 22883 (May 15, 2009) ("*2007–08 Administrative Review*").

[5] Memorandum to File:"Verification of the Sales Response of the Borusan Group in the Antidumping Review of Certain Welded Carbon Steel Standard Pipe from Turkey" from Christopher Hargett and Joy Zhang, analysts, through James Terpstra, Program Manager, and Melissa Skinner, Office Director, dated April 19, 2010 ("Sales Verification Report").

Normal Value

A. Selection of Comparison Market

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Borusan and Toscelik's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because Borusan and Toscelik's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. We calculated NV as noted in the "Calculation of NV Based on Comparison Market Prices" section of this notice. *See also* Borusan and Toscelik's calculation memos.

B. Cost Reporting Period

The Department's normal practice is to calculate an annual weighted–average cost for the entire period of investigation or period of review. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Certain Pasta from Italy*, 65 FR 77852 (December 13, 2000), and accompanying Issues and Decision Memorandum at Comment 18, and *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006), and accompanying Issues and Decision Memorandum at Comment 5 (explaining the Department's practice of computing a single weighted–average cost for the entire period). This methodology is predictable and generally applicable in all proceedings. However, the Department recognizes that possible distortions may result if our normal annual weighted–average cost method is used during a period of significant cost changes.

In determining whether to deviate from our normal methodology of calculating an annual weighted average cost, the Department evaluates the case–specific record evidence using two primary factors: (1) the change in the cost of manufacturing ("COM") recognized by the respondent during the POI must be significant; and (2) the record evidence must indicate that sales during the shorter averaging periods reasonably link to the cost of production ("COP") or constructed value ("CV") during the same shorter averaging periods. *See, e.g., Stainless Steel Plate in Coils From Belgium: Final Results of Administrative Review*, 73 FR 75398, 75399 (December 11, 2008) and *Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Administrative Review*, 75 FR 6627 (February 10, 2010).

a. Significance of Cost Changes

Record evidence shows that both Borusan and Toscelik experienced significant changes in the total COM during the POR and that the changes in COM are primarily attributable to the price volatility for hot–rolled coils, the main input consumed in the production of the merchandise under consideration. *See* Memorandum to Neal M. Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results Borusan," dated June 7, 2010 ("Borusan Preliminary Cost Memorandum"), and Memorandum to Neal M. Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination Toscelik" dated June 7, 2010 ("Toscelik Preliminary Cost Memorandum").

The record indicates that hot–rolled prices changed dramatically throughout the POR. *Id.* Specifically, the record data shows that the percentage difference between the high and low quarterly costs for welded carbon pipe and tube products exceeded 25 percent during the POR. *Id.* As a result, we have determined that for the preliminary results the changes in COM for Borusan and Toscelik are significant.

b. Linkage between Cost and Sales Information

The Department evaluates whether there is evidence of linkage between the cost changes and the sales prices for the given POI/POR. Our definition of linkage does not require direct traceability between specific sales and their specific production cost, but rather relies on whether there are correlative elements which would indicate a reasonable correlation between the underlying costs and the final sales prices levied by the company. These correlative elements may be measured and defined in a number of ways depending on the associated industry, and the overall production and sales processes. *See, e.g., Stainless Steel Bar from India: Preliminary Results of Antidumping Duty Administrative Review* 75 FR 12204 (March 15, 2010).

Based on record evidence we find that the cost changes and sales prices for Borusan and Toscelik appear to be reasonably correlated. Because the data on which we base our analysis contains business proprietary information, a detailed analysis is included in Borusan Preliminary Cost Memorandum and Toscelik Preliminary Cost Memorandum.

In light of the two factors discussed above, we preliminarily determined that it is appropriate to rely on a shorter cost periods with respect to Borusan and Toscelik. Thus, we used quarterly indexed annual average raw material costs and annual weighted–average fabrication costs in the COP and CV calculations. *See* Borusan Preliminary Cost Memorandum and Toscelik Preliminary Cost Memorandum.

C. Cost of Production Analysis

Because the Department disregarded sales below the COP in the last completed review of Borusan and Toscelik, we have reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below the COP as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Borusan and Toscelik in the home market. *See 2007–08 Administrative Review.*

1. Calculation of Cost of Production

Before making any comparisons to NV, we conducted a quarterly COP analysis of Borusan and Toscelik's sales pursuant to section 773(b)(3) of the Act to determine whether Borusan and Toscelik's comparison market sales were made at prices below the COP. We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for SG&A expenses and packing, in accordance with section 773(b)(3) of the Act.

The Department relied on the COP data submitted by Borusan and Toscelik and their supplemental section D questionnaire responses for the COP calculation, except for the following instances:

Borusan:

a) We excluded packing costs from Borusan's the cost of goods sold ("COGS") in the financial expense rate ratio calculation.

b) We adjusted Borusan's general administrative expense ("G&A") calculation by excluding an amount for doubtful accounts and included this amount in the calculations of indirect selling expenses.

For additional details, *see* Borusan Preliminary Cost Memorandum. No adjustments were made to Toscelik's reported cost data.

2. Test of Comparison Market Sales Prices

As required under section 773(b)(2) of the Act, we compared the quarterly weighted average COP to the per–unit price of the comparison market sales of the foreign like product to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses (also subtracted from the COP), and packing expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below–cost sales of that product because we determined that the below–cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's home market sales of a given model were at prices less than the COP, we disregarded the below–cost sales because: (1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the indexed POR weighted–average COPs, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Therefore, for Borusan and Toscelik, we disregarded below–cost sales of a given product of 20 percent or more and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. *See* Borusan and Toscelik's calculation memos.

D. Calculation of NV Based on Comparison Market Prices

For Borusan and Toscelik, for those comparison products for which there were sales at prices above the COP, we based NV on home market prices. In these preliminary results, we were able to match all U.S. sales to contemporaneous sales, made in the ordinary course of trade, of either an identical or a similar foreign like product, based on matching characteristics. We calculated NV based on free on board ("FOB") mill or delivered prices to unaffiliated customers, or prices to affiliated customers which were determined to be at arm's length (*see* discussion below regarding these sales). We made deductions, where appropriate, from the starting price for billing adjustments, discounts, rebates, and inland freight. Additionally, we added interest revenue. In accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs.

In accordance with section 773(a)(6)(C)(iii) of the Act, we adjusted for differences in the circumstances of sale. These circumstances included differences in imputed credit expenses and other direct selling expenses, such as the expense related to bank charges and factoring. We also made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

E. Calculation of Normal Value Based on Constructed Value ("CV")

When we could not determine the NV based on comparison market sales because there were no contemporaneous sales of a comparable product, we compared the EP to CV. In accordance with section 773(e) of the Act, we calculated CV based on the sum of the COM of the product sold in the United States, plus amounts for SG&A expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred by Borusan in connection with the production and sale of the foreign like product in the comparison market.

For price to CV comparisons, we made adjustments to CV for circumstances of sale ("COS") differences, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses.

F. Calculation of Arm's–Length Sales

We included in our analysis Borusan and Toscelik's home market sales to affiliated customers only where we determined that such sales were made at arm's–length prices, i.e., at prices comparable to prices at which Borusan and Toscelik sold identical merchandise to their unaffiliated customers. Borusan and Toscelik's sales to affiliates constituted less than five percent of overall home market sales. To test whether the sales to affiliates were made at arm's–length prices, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts, and packing. Where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's–length. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative: Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy, 71 FR 45017, 45020 (August 8, 2006) (unchanged in Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 72 FR 7011 (February 14, 2007)); 19 CFR 351.403(c). Conversely, where we found that the sales to an affiliated party did not pass the arm's–length test, then all sales to that affiliated party have been excluded from the NV calculation. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002).

Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act, at 829–831 (*see* H.R. Doc. No. 316, 103d Cong., 2d Sess. 829–831 (1994)), to the extent practicable, the Department calculates NV based on sales at the same level of trade ("LOT") as U.S. sales, either EP or CEP. When the Department is unable to find sale(s) in the comparison market at the same LOT as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at different LOTs. The NV LOT is that of the starting price sales in the home market. To determine whether home market sales are at a different LOT than U.S. sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. *See Honey from Argentina: Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke Order in Part*, 73 FR 79802, 79805 (December 30, 2008) ("*Honey from Argentina*"). If the comparison–market sales are at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison–market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. *See Honey from Argentina*, 73 FR at 79805.

In implementing these principles, we examined information from Borusan and Toscelik regarding the marketing stages involved in the reported home market and EP sales, including a description of the selling functions performed by Borusan and Toscelik for the channels of distribution in the home market and U.S. market. In our analysis, we grouped the reported selling functions into the following sales function category: sales process and marketing support, freight and delivery, inventory maintenance, and quality assurance/warranty service.

For home market sales, we found that Borusan's mill–direct sales comprised one LOT. Furthermore, Borusan provided similar selling functions to each type of customer (*i.e.* trading companies/distributors and industrial end–users/construction companies), with the exception of rebates grouped into the sales process and marketing category which were given to trading companies/distributors. See pages A–18 and A–21 of Borusan's September 25, 2009, response.

We found that Borusan's U.S. sales were also made at only one LOT. Borusan reports one channel of distribution, and sales are negotiated on an order–by-order basis with an unaffiliated trading company. See page A–17 of Borusan's September 25, 2009, response.

We then compared Borusan's home market LOT and with the U.S. LOT. We note the selling functions do not differ for the activities falling under inventory maintenance (*i.e.*, forward inventory maintenance and sales from warehouse), quality assurance/warranty service (*i.e.*, provide warranty service), and freight and delivery (*i.e.*, act as agent or coordinate production/delivery for customer with mill and coordinate freight and delivery arrangement). Furthermore, we note that the selling functions grouped under sales process and marketing, such as customer advice/product information, discounts, advertising, and rebates only differ somewhat between the home market LOT and U.S. LOT. *See* page A–9 of Borusan's September 25, 2009, response. Therefore, we compared all U.S. sales to an identical home market LOT and did not find it necessary to make an LOT adjustment.

In the home market, Toscelik reported that they sold through one channel of distribution; ex works. Toscelik also reported that they sold to one customer category: distributors. Toscelik reported the following selling activities in the home market: (1) Packing, (2) Order Input/Processing, (3) Direct Sales Personnel, (4) Sales/Marketing Support, and (5) Warranty Service. *See* Toscelik's section A D antidumping questionnaire response ("Toscelik QR response"), dated September 4, 2009, at page 14. We found Toscelik's home market sales constitute one level of trade.

In the U.S. market, Toscelik made direct sales on an EP basis through one channel of distribution to unaffiliated trading companies. Toscelik identified the following selling activities in the U.S. market: (1) Packing, (2) Order Input/Processing, (3) Direct Sales Personnel, (4) Sales/Marketing Support, and (5) Warranty Service. *Id.* We found that Toscelik's sales to the United States were made to one level of trade. Further, we find only minor differences between the sole home market LOT and that of Toscelik's U.S. LOT. Accordingly, we preliminarily determine that Toscelik's home market LOT and U.S. LOT were comparable, and that a LOT adjustment is not appropriate for Toscelik in this case.

Currency Conversion

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for the Turkish lira. Therefore, we made currency conversions based on the daily exchange rates from the Dow Jones Business Information Services.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from a benchmark rate by 2.25 percent. The benchmark rate is defined as the rolling average of the rates for the past 40 business days. When we determine that a fluctuation existed, we generally utilize the benchmark rate instead of the daily rate, in accordance with established practice. We did not find a fluctuation existed during the POR in this case.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margin exists for the period May 1, 2008, through April 30, 2009:

Manufacturer/Exporter	Weighted–Average Margin (percent)
Borusan	5.44
Toscelik	0.00
Yucel Group[6]	3.28
All Others	14.74

[6] No shipments or sales subject to this review. The firm has an individual rate from the last segment of the proceeding (the 2004-2005 review) in which the firm had shipments or sales.

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* section 351.224(b) of the Department's regulations. Interested parties are invited to comment on the preliminary results. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 37 days after the date of publication of this notice. Parties who submit arguments are requested to submit with each argument: (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on a diskette. Any interested party may request a hearing within 30 days of publication of this notice. *See* section 351.310(c) of the Department's regulations. If requested, a hearing will be held 44 days after the publication of this notice, or the first workday thereafter. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any written comments or hearing, within 120 days from publication of this notice.

Assessment

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(1)(B) of the Act and 19 CFR 351.212(b). The Department calculated importer–specific duty assessment rates on the basis of the ratio of the total antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68

FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the period of review produced by companies included in these preliminary results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following cash deposit rates will be effective upon publication of the final results of this administrative review for all shipments of welded pipe and tube from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the company listed above will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV investigation conducted by the Department, the cash deposit rate will be 14.74 percent, the "All Others" rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 4, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–14106 Filed 6–10–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 100407180–0225–02]

Technology Innovation Program (TIP) Notice of Availability of Funds; Amendment

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Notice of availability of funds; amendment.

SUMMARY: On April 19, 2010, the National Institute of Standards and Technology (NIST) published a notice in the **Federal Register** announcing the solicitation of proposals for the fiscal year 2010 Technology Innovation Program (TIP) competition. NIST is issuing this notice to correct the award start date, to correct the description of a nonresponsive proposal listed under Element 3 of the Manufacturing Area of Critical National Need addressed in the notice, and to clarify the function of the white paper referenced in the notice.

DATES: The due date for submission of proposals for the fiscal year 2010 TIP competition is 11:59 p.m. Eastern Time, Thursday, July 15, 2010.

ADDRESSES: Proposals must be submitted to TIP as follows:

Paper submission: Send to National Institute of Standards and Technology, Technology Innovation Program, 100 Bureau Drive, Stop 4750, Gaithersburg, MD 20899–4750.

Electronic submission: http://www.grants.gov.

FOR FURTHER INFORMATION CONTACT: Thomas Wiggins via *e-mail at thomas.wiggins@nist.gov* or telephone 301–975–5416.

SUPPLEMENTARY INFORMATION: On April 19, 2010, NIST published a notice announcing the solicitation of proposals for the fiscal year 2010 TIP competition (75 FR 20326–34). NIST is issuing this notice to make two corrections and one clarification to that notice. NIST corrects the start date for funding projects. In the April 19, 2010 notice, NIST erroneously indicated in the section entitled Funding Availability that the anticipated start date is January 1, 2010. The correct anticipated start date for funding of proposals under this solicitation is January 1, 2011. The revised Funding Availability section is stated below in its entirety for the public's convenience.

Funding Availability: Fiscal year 2010 appropriations include funds in the amount of approximately $25 million for new TIP awards. The anticipated start date is January 1, 2011. The period of performance depends on the R&D activity proposed. A single company can receive up to a total of $3 million with a project period of performance of up to 3 years. A joint venture can receive up to total of $9 million with a project period of performance of up to 5 years. Continuation of funding after the initial award is based on satisfactory performance, availability of funds, continued relevance to program objectives, and is at the sole discretion of NIST.

In addition, NIST revises the April 19, 2010 notice to correct an example of a nonresponsive proposal listed under Element 3 of the Manufacturing Area of Critical National Need. Due to a drafting error, NIST incorrectly indicated that projects with a primary focus on device development are considered nonresponsive projects. NIST's intent was to indicate that projects without a primary focus on addressing specific process bottlenecks are considered nonresponsive. This error is corrected by replacing the last bullet under the examples of proposals addressing critical process advances that will be considered nonresponsive. The language "Projects with a primary focus (people, equipment, time and/or funds) on device development." is replaced with "Projects that do not have a primary focus (people, equipment, time and/or funds) on addressing specific process bottlenecks." The entire revised bulleted list under the examples of proposals addressing critical process advances that will be considered nonresponsive is restated below for the public's convenience.

Examples of proposals addressing critical process advances that will be considered nonresponsive are:

- Any manufacturing process that offers only incremental improvement over existing processes;
- Processes that are intended primarily for military/weaponry applications (*e.g.* warhead manufacture, chemical/biological warfare materials production);
- Manufacturing processes that cannot be performed in the U.S. due to existing laws or regulations;

• Projects primarily focused on production of non-engineered cells or tissues as therapeutics;

• Projects involving straightforward scale-up of biopharmaceuticals with incremental improvements in the manufacturing processes;

• Projects that involve incremental improvements in traditional processes for biomolecule production (*e.g.* vaccine production in chicken eggs, hormones such as insulin extracted from pig tissue);

• Biomanufacturing projects that primarily focus on processes for production of non-biopharmaceutical products (*e.g.* production of biofuels or small molecule drugs);

• Projects that primarily focus on drug discovery or design of new biomaterials;

• Projects that primarily focus on discovery of new production cell systems;

• Projects that use living genetically modified vertebrate animals, invertebrate animals, or plants as bioreactors for biopharmaceutical production;

• Production or scale up of scaffolds or biomaterials used in scaffold design that are not a part of the manufacturing of engineered tissues; and

• Projects that do not have a primary focus (people, equipment, time and/or funds) on addressing specific process bottlenecks.

Finally, NIST is clarifying that the white paper "Manufacturing and Biomanufacturing: Materials Advances and Critical Processes" referenced in the description of Area of Critical National Need: Manufacturing (75 FR 20327) only provides background information related to the selection of this Critical National Need and the associated societal challenges; it does not specifically describe the scope of the Notice of Availability of Funds.

Administrative Procedure Act and Regulatory Flexibility Act: Prior notice and comment are not required under 5 U.S.C. 553, or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)). Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

E.O. 12866 (Regulatory Planning and Review): This notice has been determined to be not significant under Executive Order 12866.

Dated: June 7, 2010.

Katharine B. Gebbie,

Director, Physics Laboratory.

[FR Doc. 2010–14115 Filed 6–10–10; 8:45 am]

BILLING CODE 3510–13–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds a product and services to the Procurement List to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 7/12/2010.

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:

Additions

On 4/9/2010 (75 FR 18164–18165), the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide a product and services and impact of the addition on the current or most recent contractors, the Committee has determined that a product and services 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 product and services to the Government.

2. The action will result in authorizing small entities to provide a product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with this product and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product and services are added to the Procurement List:

Product

Wooden Trunk Locker

NSN: 8460–00–243–3234.
NPA: Employment Source, Inc., Fayetteville, NC.
Contracting Activity: Defense Logistics Agency, Defense Supply Center Philadelphia, Philadelphia, PA.
Coverage: C-List for 50% of the requirements for the Defense Supply Center Philadelphia, Philadelphia, PA.

The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee) operates pursuant to statutory and regulatory requirements. Committee regulations states that for a commodity or service to be suitable for addition to the Procurement List (PL) each of the following criteria must be satisfied: employment potential; nonprofit agency qualifications, capability, and level of impact on the current contractor for the commodity or service.

Comments were received from a commercial company that claims to have previously provided this product to the government. The company stated that they are not currently providing the product to the government; however, placing this item on the PL would impact them since they would lose the opportunity to possibly provide this product to the government in the future. Prior to placing a product or service on the PL, the Committee considers impact on the current or most recent contractor. The Committee does not consider impact on any contractor that may have ever provided a product or service to the government—only the current or most recent contractor. The Committee cannot speculate on the possibility of particular companies being selected to provide products and services to the government in the future.

The commenter also asserted that there is collusion between the nonprofit agency and another small business competitor that will result in its competitor enjoying a profitable subcontract forever if the commercial portion of the trunk locker requirement is added to the PL. Based on a review, the Committee is satisfied that the nonprofit agency complied with its

regulations requiring broad competition in selecting its small business subcontractor to supply parts and provide painting support. The nonprofit agency solicited at least three offers and made a best value selection of its subcontractor and is expected to show competition for its subcontractor every five years.

The Committee's responsibility under the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) is to promote employment opportunities for people who are blind or with other severe disabilities that have an unemployment rate far above people without severe disabilities. The Committee followed its regulatory requirements in considering this project and has determined that this project is suitable for addition to the PL. Addition of this project to the PL will result in employment for people who are blind or with other severe disabilities.

Services

Service Type/Location: Custodial Service, Basewide, Camp Bullis, TX.
NPA: Professional Contract Services, Inc., Austin, TX.
Contracting Activity: Dept. of the Army, XR W6BB ACA Sam Houston, Fort Sam Houston, TX.
Service Type/Location: Custodial Service, Boise Air Traffic Control Tower, 3001 West Harvard Street, Boise, ID.
NPA: Western Idaho Training Company, Caldwell, ID
Contracting Activity: Dept of Trans, Federal Aviation Administration, Renton, WA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–14095 Filed 6–10–10; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and to delete products previously furnished by such agencies.

DATES: Comments must be received on or before: 7/12/2010.

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: *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 procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Double Pocket Portfolios

NSN: 7510–01–316–2302.
NPA: L.C. Industries for the Blind, Inc., Durham, NC.
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/Federal Supply Service, Office Support Center—Paper Products.

Microfiber and Metallic Scrubber Sponges (3-Pack)

NSN: MR 999.
NPA: New York City Industries for the Blind, Inc., Brooklyn, NY.
Contracting Activity: Defense Commissary Agency, Military Resale, Fort Lee, VA.
Coverage: C-List for 100% of the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

Candles, Soy

NSN: MR 470—Cucumber Melon.
NSN: MR 471—Cucumber Pomegranate.
NSN: MR 472—Macintosh Apple.
NSN: MR 473—Fresh Linen.
NPA: Industries for the Blind, Inc., West Allis, WI.
Contracting Activity: Defense Commissary Agency, Military Resale, Fort Lee, VA.
Coverage: C-List for 100% of the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

Tape, Pressure Sensitive Adhesive (Crepe backing)

NSN: 7510–00–266–6694.
NSN: 7510–00–266–6709.
NPA: Cincinnati Association for the Blind, Cincinnati, OH.
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/Federal Supply Service, Office Support Center—Paper Products.

Cloth, Dish, Microfiber With Scrubber Mesh

NSN: MR 963—Blue, 3/pack.
NSN: MR 964—Green, 3/pack.
NSN: MR 965—Red, 3/pack.
NPA: New York City Industries for the Blind, Inc., Brooklyn, NY.
Contracting Activity: Defense Commissary Agency, Military Resale, Fort Lee, VA.
Coverage: C-List for 100% of the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

Slicer Aid

NSN: MR 825.
NPA: Industries for the Blind, Inc., West Allis, WI.
Contracting Activity: Defense Commissary Agency, Military Resale, Fort Lee, VA.
Coverage: C-List for 100% of the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

Box, Wood, Ammunition Packing

NSN: 8140–00–NSH–0007.
NPA: Knox County Association for Retarded Citizens, Inc., Vincennes, IN.
Contracting Activity: Dept. of the Navy, Indian Head Division Naval Surface, Indian Head, MD.

Coverage: C-List for 100% of the requirements of the Indian Head Division, Naval Surface Warfare Center as aggregated by the Indian Head Division, Naval Surface Warfare Center, Indian Head, MD.

Caddy, Bucket and Cleaning Kit

NSN: MR 1016.
NPA: Industries for the Blind, Inc., West Allis, WI.
Contracting Activity: Defense Commissary Agency, Military Resale, Fort Lee, VA.
Coverage: C-List for 100% of the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency.
NSN: MR 807—Spoon, Slotted, SS Trim.
NSN: MR 808—Spoon, Basting, SS Trim.
NSN: MR 809—Turner, Slotted, SS Trim.
NSN: MR 810—Skimmer, Kitchen, SS Trim.
NSN: MR 811—Fork, Serving, SS Trim.
NSN: MR 814—Spatula, Wide, SS Trim.
NPA: Industries for the Blind, Inc., West Allis, WI.
Contracting Activity: Defense Commissary Agency, Military Resale, Fort Lee, VA.
Coverage: C-List for 100% of the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

Services

Service Type/Location: Custodial Service, National Weather Service, 5777 S. Aviation Blvd., North Charleston, SC.
NPA: Goodwill Industries of Lower South Carolina, Inc., North Charleston, SC.
Contracting Activity: Dept. of Commmerce, National Oceanic and Atmospheric Administration, Norfolk, VA.
Service Type/Locations: Administrative Support Service, Atlanta VA Medical Center, 1670 Clairmont Road, Decatur, GA.
Atlanta VAMC HAS Office, 755 Commerce Drive, Decatur, GA.
NPA: Bobby Dodd Institute, Inc., Atlanta, GA.
Contracting Activity: Department of Veterans Affairs, VISN 7 Consolidated Contracting, Augusta, GA.
Service Type/Locations: Laundry Service, Atlanta VA Medical Center, 1670 Clairmont Road, Decatur, GA.
W.J.B. Dorn VA Medical Center, 6439 Garners Ferry Road, Columbia, SC.
Ralph H. Johnson VA Medical Center, 109 Bee Street, Charleston, SC.
Charlie Norwood VA Medical Center Downtown Division, 800 Balie Street, Augusta, GA.
Athens VA Community Based Outpatient Clinic (CBOC), 9249 Highway 29 South, Athens, GA.
Aiken Community Based Outpatient Clinic (CBOC), 951 Milbrook Avenue, Aiken, SC.
Charlie Norwood VA Medical Center Uptown Division, 1 Freedom Way, Augusta, GA.
Carl Vinson VA Medical Center, 1826 Veterans Boulevard, Dublin, GA.
NPA: GINFL Services, Inc., Jacksonville, FL.
Contracting Activity: Department of Veterans Affairs, VISN 7 Consolidated Contracting, Augusta, GA.
Service Type/Location: Custodial Service. Costa Mesa USARC, 2651 Newport Blvd., Costa Mesa, CA.
NPA: Elwyn, Inc., Aston, PA.
Contracting Activity: Dept. of The Army, XR W6BB ACA Presidio Of Monterey, Presidio Of Monterey, CA.
Service/Location: Custodial Service. Fort Leonard Wood, MO.
NPA: Challenge Unlimited, Alton, IL
Contracting Activity: U.S. Army Mission And Installation Contracting Command, Flw Directorate Of Contracting, Fort Leonard Wood, MO.
Service/Location: Grounds Maintenance Service. Great Lakes Naval Training Center, Great Lakes, IL.
NPA: Challenge Unlimited, Alton, IL.
Contracting Activity: Naval Facilities Engineering Command, Midwest, Great Lakes, IL.
Service/Location: Tier 1 Help Desk (Call Center) Service. Defense Logistics Agency, Fort Belvoir, VA.
NPA: Only one of the listed Nonprofit Agencies will be designated by the Committee to perform the Tier 1 Help Desk (Call Center) Service.
Didlake, Inc., Manassas, VA.
Goodwill Industries of North Florida, Jacksonville, FL.
Melwood Horticultural Training Center, Upper Marlboro, MD.
National Telecommuting Institute, Boston, MA.
Peckham Vocational Industries, Inc., Lansing, MI.
Project Hired, Santa Clara, CA.
ServiceSource, Inc., Alexandria, VA.
Contracting Activity: Defense Logistics Agency, Contracting Services Office, Fort Belvoir, VA.

Deletions

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 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 deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Urinal, Incontinent

NSN: 6530–01–451–7652
NSN: 6530–01–451–7653
NSN: 6530–01–451–7654
NSN: 6530–01–451–7655
NSN: 6530–01–451–7656
NSN: 6530–01–451–7657
NSN: 6530–01–451–7658
NSN: 6530–01–451–7659
NPA: Lighthouse for the Blind, St. Louis, MO.
Contracting Activity: Department of Veterans Affairs, NAC, Hines, IL.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–14096 Filed 6–10–10; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[OMB Control Number 0704–0229]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Foreign Acquisition

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through May 31, 2007. DoD proposes that OMB extend its approval for use through July 31, 2013.

DATES: DoD will consider all comments received by August 10, 2010.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0229, using any of the following methods:

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

○ *E-mail: dfars@osd.mil.* Include OMB Control Number 0704–0229 in the subject line of the message.

○ *Fax:* (703) 602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

All comments received will be posted to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 703–602–0328. The information collection requirements addressed in this notice are available electronically via the Internet at: *http://www.acq.osd.mil/dp/dars/dfars.html.*

Paper copies are available from Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Foreign Acquisition—Defense Federal Acquisition Regulation Supplement Part 225 and Related Clauses at 252.225; DD Form 2139; OMB Control Number 0704–0229.

Needs and Uses: DoD needs this information to ensure compliance with restrictions on the acquisition of foreign products imposed by statute or policy to protect the industrial base; to ensure compliance with U.S. trade agreements and memoranda of understanding that promote reciprocal trade with U.S. allies; and to prepare reports for submission to the Department of Commerce on the Balance of Payments Program.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 57,235 (57,140 reporting hours; 95 recordkeeping hours).

Number of Respondents: 20,237.

Responses per Respondent: Approximately 7.4.

Number of Responses: 149,994.

Average Burden per Response: Approximately .38 hours.

Frequency: On occasion.

Summary of Information Collection

DFARS 252.225–7000, Buy American Act—Balance of Payments Program Certificate, as prescribed in 225.1101(1), requires an offeror to identify, in its proposal, supplies that are not domestic end products, separately listing qualifying country and other foreign end products.

DFARS 252.225–7003, Report of Intended Performance Outside the United States and Canada—Submission with Offer, and 252.225–7004, Report of Intended Performance Outside the United States and Canada—Submission after Award, as prescribed in 225.7204(a) and (b) respectively, require offerors and contractors to submit a Report of Contract Performance Outside the United States for subcontracts to be performed outside the United States. The reporting threshold is $550,000 for contracts that exceed $11.5 million. The contractor may submit the report on DD Form 2139, Report of Contract Performance Outside the United States, or a computer-generated report that contains all information required by DD Form 2139.

DFARS 252.225–7005, Identification of Expenditures in the United States, as prescribed in 225.1103(1), requires contractors incorporated or located in the United States to identify, on each request for payment under contracts for supplies to be used, or for construction or services to be performed, outside the United States, that part of the requested payment representing estimated expenditures in the United States.

DFARS 252.225–7006, Quarterly Reporting of Actual Contract Performance Outside the United States, as prescribed at 252.7204(c) for use in solicitations and contracts with a value exceeding $550,000, requires reporting of subcontracts that exceed the simplified acquisition threshold.

DFARS 252.225–7010, Commercial Derivative Military Article—Specialty Metals Compliance Certificate, as prescribed at 225.7003–5(b), requires the offeror to certify that it will take certain actions with regard to specialty metals if the offeror chooses to use the alternative compliance approach when providing commercial derivative military articles to the Government.

DFARS 252.225–7013, Duty-Free Entry, as prescribed in 225.1101(4), requires the contractor to provide information on shipping documents and customs forms regarding products that are eligible for duty-free entry.

DFARS 252.225–7018, Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Ballistic Missile Defense Research, Development, Test, and Evaluation, as prescribed in 225.7017–4, gives notice of the statutory prohibition on award of a contract to a foreign government or firm, if the contract provides for the conduct of research, development, test, or evaluation in connection with the Ballistic Missile Defense Program. The provision requires an offeror to indicate whether it is or is not a U.S. firm.

DFARS 252.225–7020, Trade Agreements Certificate, as prescribed in 225.1101(5), requires an offeror to list the item number and country of origin of any nondesignated country end product that it intends to furnish under the contract. Either 252.225–7020 or 252.225–7022 is used in any solicitation for products subject to the World Trade Organization Government Procurement Agreement.

DFARS 252.225–7022, Trade Agreements Certificate—Inclusion of Iraqi End Products, as prescribed at 226.1101(7), requires an offeror to list the item number and country of origin of any nondesignated country end product, other than an Iraqi end product, that it intends to furnish under the contract.

DFARS 252.225–7023, Preference for Products or Services from Iraq or Afghanistan, as prescribed in 225.7703–5(a), requires an offeror to identify, in its proposal, products or services that are not products or services from Iraq or Afghanistan.

DFARS 252.225–7025, Restriction on Acquisition of Forgings, as prescribed in 225.7102–4, requires the contractor to retain records showing compliance with the requirement that end items and their components delivered under the contract contain forging items that are of domestic manufacture only. The contractor must retain the records for three years after final payment and must make the records available upon request of the contracting officer. The contractor may request a waiver of this requirement in accordance with DFARS 225.7102–3.

DFARS 252.225–7032, Waiver of United Kingdom Levies—Evaluation of Offers, and 252.225–7033, Waiver of United Kingdom Levies, as prescribed in 225.1101(7) and (8), require an offeror to provide information to the contracting officer regarding any United Kingdom levies included in the offered price, and require the contractor to provide information to the contracting officer regarding any United Kingdom levies to be included in a subcontract that exceeds $1 million, before award of the subcontract.

DFARS 252.225–7035, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, as prescribed in 225.1101(9), requires an offeror to list any qualifying country, NAFTA country, or other foreign end product that it intends to furnish under the contract. The Buy American Act no longer applies to

acquisitions of commercial information technology.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2010–14124 Filed 6–10–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Impact Statement (FEIS) for Disposal and Reuse of Fort Monroe, VA

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability (NOA).

SUMMARY: The Department of the Army announces the availability of the FEIS which evaluates the potential environmental and socioeconomic impacts associated with the disposal and reuse of Fort Monroe, Virginia.

DATES: The waiting period for the FEIS will end 30 days after publication of an NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: To obtain a copy of the FEIS contact Ms. Robin Mills, Chief, Directorate of Public Works, 318 Cornog Lane, Fort Monroe, VA 23651 or e-mail request to *monr.post.nepapublic@us.army.mil.*

SUPPLEMENTARY INFORMATION: The FEIS covers activities associated with the disposal and reuse of Fort Monroe. The 2005 BRAC Commission Report directed the closure of Fort Monroe and the relocation of certain tenant organizations to Fort Eustis, Virginia and Fort Knox, Kentucky. Closure is required no later than September 15, 2011.

Following closure, the property (approximately 565 acres) will be excess to Army needs and the Army proposes to dispose of its remaining real property interests. The Fort Monroe Federal Area Development Authority (FMFADA) developed the Fort Monroe Reuse Plan formally adopted in August 2008. The plan is available as an appendix of the FEIS. On July 1, 2010, the FMFADA will restructure and become the Fort Monroe Authority. After September 15, 2011, when Fort Monroe is no longer used for national defense purposes, there will be property reverting to the Commonwealth of Virginia and property disposed of by the Federal Government. For non-reverting property, there are four alternatives analyzed in the FEIS: Alternative 1, No Action Alternative, under which the Army would continue operations at Fort Monroe at levels similar to those occurring prior to the BRAC Commission's recommendation for closure; Alternative 2, Early Transfer Alternative, under which transfer and reuse of the property would occur before environmental remediation actions have been completed on all individual parcels; Alternative 3, Traditional Disposal Alternative, under which transfer and reuse of the property would occur once environmental remediation is complete on all individual parcels of the installation; and Alternative 4, Caretaker Status Alternative, which begins following the closure of the installation in the event that the Army is unable to dispose of the property, after which time the maintenance of the property would be reduced to minimal activities not inconsistent with the Programmatic Agreement necessary to ensure security, health, and safety, and to avoid physical deterioration of facilities. The Army's preferred alternative for the disposal of Fort Monroe is Alternative 2, the early transfer of non-reverting property. Under this alternative, the Army transfers the non-reverting property before completion of all environmental cleanup. Three reuse scenarios, based on lower bracket, middle bracket, and upper bracket intensity levels of reuse are also evaluated as secondary actions of disposal of Fort Monroe. The FEIS addresses reuse of all property on Fort Monroe, including property that will revert back to the Commonwealth of Virginia. These reuse scenarios encompass the level of reuse expected under the Reuse Plan, which is considered the middle bracket scenario.

For early transfer (Alternative 2) and traditional disposal alternatives (Alternative 3), significant adverse effects would be expected to occur to transportation, and moderate adverse effects would be expected to occur to noise, land use, biological resources, and cultural resources. The caretaker alternative (Alternative 4) would have moderate adverse effects on aesthetic/visual resources, cultural resources, and utilities. Of the three reuse scenarios analyzed in the FEIS, middle and upper bracket reuse would be expected to result in significant adverse effects in the area of transportation. Middle and upper bracket reuse would also be expected to result in moderate adverse effects on noise, land use, biological resources, and cultural resources. Lower bracket reuse would not have any moderate or significant adverse effects. The FEIS identifies potential mitigation and management measures that would decrease the level of adverse effects of disposal and reuse.

A Record of Decision will not be issued earlier than 30 days after this notice. An electronic version of the FEIS can be viewed or downloaded from the following Web site: *http://www.hqda.army.mil/acsim/brac/nepa_eis_docs.htm.*

Dated: May 26, 2010.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health).

[FR Doc. 2010–13494 Filed 6–10–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2010–0021]

Preferred Supplier Program (PSP); Withdrawal

AGENCY: Department of the Navy, DOD.

ACTION: Notice; withdrawal.

SUMMARY: The Department of the Navy (DoN) published a Notice in the **Federal Register** (75 FR 100) on May 25, 2010, concerning a policy that would establish a Preferred Supplier Program (PSP) with contractors that have demonstrated exemplary performance, at the corporate level; in the areas of cost, schedule, performance, quality, and business relations. DoN is formally withdrawing this Notice as of June 11, 2010.

FOR FURTHER INFORMATION CONTACT: Clarence Belton, 703–693–4006 or *clarence.belton@navy.mil.*

Dated: June 7, 2010.

A.M. Vallandingham,

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

[FR Doc. 2010–14045 Filed 6–10–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Engineering Research Centers (RERCs)—Universal Design in the Built Environment and Technologies for Children With Orthopedic Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.133E–1 and 84.133E–3.

Dates:

Applications Available: June 11, 2010.

Date of Pre-Application Meeting: July 28, 2010.

Deadline for Transmittal of Applications: August 10, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RERC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by conducting advanced engineering research and development on innovative technologies that are designed to solve particular rehabilitation problems, or to remove environmental barriers. RERCs also demonstrate and evaluate such technologies, facilitate service delivery system changes, stimulate the production and distribution of new technologies and equipment in the private sector, and provide training opportunities.

Priorities: NIDRR has established two separate priorities for the two competitions announced in this notice. The two priorities are from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2010, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), for each competition (designated by CFDA number in the following chart), we consider only applications that meet the absolute priority designated for that competition.

These priorities are:

Absolute priority	*Corresponding competition CFDA No.*
Universal Design in the Built Environment	84.133E–1
Technologies for Children with Orthopedic Disabilities	84.133E–3

Note: The full text of each of these priorities is included in the notice of final priorities published in the **Federal Register** and in the applicable application package.

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,900,000.

Estimated Average Size of Awards: See chart.

Maximum Award: See chart.

Estimated Number of Awards: See chart.

Note: The Department is not bound by any estimates in this notice.

Project Period: See chart.

REHABILITATION ENGINEERING RESEARCH CENTERS APPLICATION NOTICE FOR FISCAL YEAR 2010

CFDA No. and name	Applications available	Deadline for transmittal of applications	Date of pre-application meeting	Estimated average size of awards	Maximum award*	Estimated number of awards	Project period
84.133E–1—Universal Design in the Built Environment.	06/11/10	08/10/10	07/28/10	$950,000	$950,000	1	Up to 60 mos.
84.133E–3—Technologies for Children with Orthopedic Disabilities.	.....	.....	07/28/10	$950,000	$950,000	1	Up to 60 mos.

*We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Note: The maximum amount includes direct and indirect costs.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian Tribes and Tribal organizations.

2. *Cost Sharing or Matching:* These competitions do not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify these competitions as follows: CFDA numbers 84.133E–1 and 84.133E–3.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together

with the forms you must submit, are in the application package for these competitions.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

- A "page" is 8.5 x 11, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: June 11, 2010.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on July 28, 2010. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact Marlene Spencer, U.S. Department of Education, Potomac Center Plaza (PCP), room 5133, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7532 or by e-mail: *marlene.spencer@ed.gov.*

Deadline for Transmittal of Applications: August 10, 2010.

Applications for grants under these competitions must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, (1) you must have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN); (2) you must register both of those numbers with the Central Contractor Registry (CCR), the Government's primary registrant database; and (3) you must provide those same numbers on your application.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

7. *Other Submission Requirements:* Applications for grants under these competitions must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Rehabilitation Engineering Research Centers (RERCs)—CFDA Numbers 84.133E–1 and 84.133E–3 must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for these competitions after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that

you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for these competitions; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., room 5133, PCP, Washington, DC 20202–2700. FAX: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133E–1 or 84.133E–3), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by

hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133E–1 or 84.133E–3), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for these competitions are from 34 CFR 350.54 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

Note: NIDRR will provide information by letter to grantees on how and when to submit the final performance report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The percentage of NIDRR-supported fellows, post-doctoral trainees, and doctoral students who publish results of NIDRR-sponsored research in refereed journals.
- The number of accomplishments (*e.g.,* new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.
- The number of new or improved NIDRR-funded assistive and universally designed technologies, products, and devices transferred to industry for potential commercialization.

Each grantee must annually report on its performance through NIDRR's Annual Performance Report (APR) form. NIDRR uses APR information submitted by grantees to assess progress on these measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., room 5133, PCP, Washington, DC 20202. Telephone: (202) 245–7532 or by e-mail: *marlene.spencer@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: June 8, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–14125 Filed 6–10–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR; Disability and Rehabilitation Research Projects and Centers Program; Disability Rehabilitation Research Project (DRRP); Reducing Obesity and Obesity-Related Health Conditions Among Adolescents and Young Adults With Disabilities From Diverse Race and Ethnic Backgrounds; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–7.

Dates: Applications Available: June 11, 2010.

Date of Pre-Application Meeting: June 24, 2010.

Deadline for Transmittal of Applications: August 10, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the DRRP program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment

outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, training, demonstration, development, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Priorities: NIDRR has established two absolute priorities for this competition.

Absolute Priorities: The General DRRP Requirements priority, which applies to all DRRP competitions, is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). The Reducing Obesity and Obesity-Related Secondary Health Conditions Among Adolescents and Young Adults With Disabilities From Diverse Race and Ethnic Backgrounds priority is from the notice of final priority for the Disability and Rehabilitation Research Projects and Centers Program, published elsewhere in this issue of the **Federal Register**.

For FY 2010, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet these priorities.

These priorities are:

General Disability Rehabilitation Research Projects (DRRP) Requirements and *Reducing Obesity and Obesity-Related Secondary Health Conditions Among Adolescents and Young Adults With Disabilities From Diverse Race and Ethnic Backgrounds.*

Note: The full text of each of these priorities is included in its notice of final priorities in the **Federal Register** and in the application package for this competition.

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). (d) The notice of final priority for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $400,000.

Maximum Award: We will reject any application that proposes a budget exceeding $400,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required by 34 CFR 350.62(a) and will be negotiated at the time of the grant award.

IV. Application and Submission Information

1. *Address to Request Application Package:* ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.133A–7.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 75 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: June 11, 2010.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on June 24, 2010. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information

and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact Lynn Medley, U.S. Department of Education, Potomac Center Plaza, room 5140, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7338 or by e-mail: *lynn.medley@ed.gov.*

Deadline for Transmittal of Applications: August 10, 2010.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, (1) you must have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN); (2) you must register both of those numbers with the Central Contractor Registry (CCR), the Government's primary registrant database; and (3) you must provide those same numbers on your application.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

7. *Other Submission Requirements:*

Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Disability Rehabilitation Research Project (DRRP)—CFDA Number 84.133A–7 must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E–Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E–Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to e-Application; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., room 5140, Potomac Center Plaza, Washington, DC 20202–2700. *Fax:* (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–7) LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–7) 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 350.54 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific

requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

Note: NIDRR will provide information by letter to grantees on how and when to submit the final performance report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The number of accomplishments (*e.g.,* new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.

Each grantee must annually report on its performance through NIDRR's Annual Performance Report (APR) form. NIDRR uses APR information submitted by grantees to assess progress on these measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., room 5140, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7338 or by e-mail: *lynn.medley@ed.gov*.

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: June 8, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–14128 Filed 6–10–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Engineering Research Centers (RERCs)

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.133E–1 and 84.133E–3

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities for two RERCs.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces two priorities for the Disability and Rehabilitation Research Projects and Centers Program administered by NIDRR. Specifically, this notice announces two priorities for RERCs: Universal Design in the Built Environment and Technologies for Children with Orthopedic Disabilities. The Assistant Secretary may use these priorities for competitions in fiscal year (FY) 2010 and later years. We take this action to focus research attention on areas of national need. We intend these priorities to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: *Effective Date:* The priorities are effective July 12, 2010.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. *Telephone:* (202) 245–7532 or by *e-mail: marlene.spencer@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

This notice of final priorities (NFP) is in concert with NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings. This notice announces two priorities that NIDRR intends to use for RERC competitions in FY 2010 and possibly later years. However, nothing precludes NIDRR from publishing additional priorities, if needed. Furthermore, NIDRR is under no obligation to make awards for these priorities. The decision to make an award will be based on the quality of applications received and available funding.

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities; to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities; and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Engineering Research Centers Program (RERCs)

The purpose of the RERC program is to improve the effectiveness of services authorized under the Rehabilitation Act by conducting advanced engineering research and development on innovative technologies that are designed to solve particular rehabilitation problems, or to remove environmental barriers. RERCs also demonstrate and evaluate such technologies, facilitate service delivery system changes, stimulate the

production and distribution of new technologies and equipment in the private sector, and provide training opportunities.

General Requirements of RERCs

RERCs carry out research or demonstration activities in support of the Rehabilitation Act by—

- Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge: (a) To solve rehabilitation problems and to remove environmental barriers; and (b) to study and evaluate new or emerging technologies, products, or environments and their effectiveness and benefits; or
- Demonstrating and disseminating: (a) Innovative models for the delivery of cost-effective rehabilitation technology services to rural and urban areas; and (b) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; and
- Facilitating service delivery systems change through: (a) The development, evaluation, and dissemination of innovative, consumer-responsive, and individual- and family-centered models for the delivery to both rural and urban areas of innovative cost-effective rehabilitation technology services; and (b) other scientific research to assist in meeting the employment and independence needs of individuals with severe disabilities.

Each RERC must be operated by, or in collaboration with, one or more institutions of higher education or one or more nonprofit organizations.

Each RERC must provide training opportunities, in conjunction with institutions of higher education or nonprofit organizations, to assist individuals, including individuals with disabilities, to become rehabilitation technology researchers and practitioners.

Each RERC must emphasize the principles of universal design (UD) in its product research and development. UD is "the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design" (North Carolina State University, 1997. *http://www.design.ncsu.edu/cud/about_ud/udprinciplestext.htm).*

Additional information on the RERC program can be found at: *http://www.ed.gov/rschstat/research/pubs/index.html.*

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priorities (NPP) for NIDRR's Rehabilitation Engineering Research Centers Program in the **Federal Register** on April 9, 2010 (75 FR 18185). The NPP included two background statements that described our rationale for the priorities proposed in that notice.

There are no differences between the NPP and this NFP as discussed in the following section.

Public Comment: In response to our invitation in the NPP, five parties submitted comments on the proposed priorities. An analysis of the comments and of any changes in the priority since publication of the NPP follows.

Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the proposed priority.

Analysis of Comments and Changes

General Comment: In reference to both RERC priorities in this notice, one commenter asked whether NIDRR would allow centers to support undergraduate and graduate students as support staff and to build those students' capacity to engage in future rehabilitation research and development.

Discussion: Nothing in the priority precludes applicants from proposing to use students as support staff.

Changes: None.

Comment: One commenter asked whether NIDRR would allow knowledge transfer to a foreign company, as long as that company meets the needs of U.S. citizens with disabilities.

Discussion: Nothing in these priorities restricts the transfer of technologies to companies outside of the U.S.

Changes: None.

Proposed Priority 1—Universal Design in the Built Environment

Comment: One commenter discussed the relationship between UD and industrial design and asked whether applicants could propose activities that involve industrial design departments or schools.

Discussion: Applicants are free to propose work that involves industrial design departments or schools to meet the requirements of this priority.

Changes: None.

Comment: Two commenters suggested that NIDRR revise the second sentence of this priority to emphasize UD applications in buildings and facilities that are used by the public.

Discussion: Nothing in the priority precludes applicants from proposing projects that emphasize buildings and facilities that are used by the public. However, NIDRR does not wish to preclude applicants from proposing promising research and development projects that emphasize UD in other important areas of the built environment and therefore declines to make the change suggested by the commenter.

Changes: None.

Comment: Two commenters noted that this priority should emphasize the need for greater accessibility in single family dwellings.

Discussion: Nothing in the priority precludes applicants from proposing projects that emphasize the importance of accessibility in single family dwellings. However, NIDRR does not believe it is appropriate to require all applicants to do so because it does not wish to preclude applicants from proposing promising research and development projects that focus on other categories of housing.

Changes: None.

Comment: One commenter recommended that the RERC funded under this priority be required to utilize a large sample of end users to validate all emerging standards and guidelines for UD to help ensure that such standards and guidelines are developed with, not just for, people with disabilities.

Discussion: NIDRR agrees that it is important to involve individuals with disabilities in their research and development projects. This priority requires all RERCs to implement a plan that describes how they will include individuals with disabilities in all phases of its activities. Nothing in the priority precludes applicants from proposing to use a large sample of end users to validate UD standards and guidelines that emerge from the RERC. However, NIDRR does not believe it is appropriate to require all applicants to do so because NIDRR does not wish to preclude other valid and innovative means of fulfilling this requirement or of including individuals with disabilities in the activities of the RERC funded under this priority.

Changes: None.

Comment: One commenter suggested that NIDRR revise the priority to require the RERC to produce "environmentally, economically, and socially sustainable" UD exemplars, instead of "economically viable" UD exemplars.

Discussion: Engineers, designers, and manufacturers have argued that UD is costly and complex to implement.

NIDRR is interested in supporting the production of economically viable UD exemplars to demonstrate the feasibility of using UD applications in real-world settings to facilitate independence and social participation among end users. Nothing in the priority precludes applicants from including the concept of "environmentally, economically, and socially sustainable" UD in relation to the economically viable UD exemplars that they are required to create under this priority. However, NIDRR does not have a sufficient basis for requiring all applicants to design their exemplars with these goals in mind.

Changes: None.

Comment: One commenter suggested that NIDRR be more descriptive in requiring the development of evidence-based practices for UD. In this context, this commenter suggested that the priority require benchmarking, encourage indexing, and focus on "end user outcomes."

Discussion: Applicants are free to choose from among a variety of methodologies and approaches, including benchmarking, indexing, and focusing on a variety of end user outcomes, to create evidence-based UD practices so long as they justify how the selected approach contributes to evidence. NIDRR does not believe it is appropriate to limit the priority by specifying specific methods for developing evidence-based practices for UD. NIDRR does not wish to preclude viable and innovative methods for developing evidence-based practices in UD by requiring specific methods or approaches.

Changes: None.

Comment: One commenter recommended that the requirement for design of UD curricula be revised to more clearly distinguish between UD and other types of design, including "accessible design," "inclusive design," and "design for all."

Discussion: In fulfilling the requirement for the design of UD curricula for university-level engineering and design students, applicants are free to propose an approach that distinguishes UD from other types of design. However, NIDRR does not have a sufficient basis for requiring all applicants to follow this approach.

Changes: None.

Comment: One commenter suggested that NIDRR provide examples of the means by which the RERC must assist designers, builders, and manufacturers to incorporate UD into their buildings and communities.

Discussion: The general RERC requirements that are applicable to both RERCs in this notice include a number of examples of activities that can be used to fulfill this requirement. These activities include collaborating with relevant industry and professional associations, communicating with manufacturers and other interested parties regarding trends and evolving product concepts, and provision of technical assistance. Given this specificity in the RERC requirements, and NIDRR's wish to enhance competition by allowing a wide range of potential approaches to this requirement, we do not have a sufficient basis for further specifying the means by which the RERC must assist designers, builders, and manufacturers to incorporate UD into their buildings and communities.

Changes: None.

Proposed Priority 2—Technologies for Children With Orthopedic Disabilities

Comment: One commenter asked whether applicants can propose to include children whose disabilities resemble those mentioned in the NPP, but that are not specifically listed.

Discussion: The Department bases the term *orthopedic disability* on the definition of the term *orthopedic impairment* in 34 CFR 300.8(c)(8). Under this definition, an orthopedic impairment means a severe orthopedic impairment that adversely affects a child's performance. As noted in the background statement for this priority in the NPP, the term includes impairments caused by a congenital anomaly, impairments caused by disease (*e.g.,* poliomyelitis, bone tuberculosis), and impairments from other causes (*e.g.,* cerebral palsy, amputations, and fractures or burns that cause contractures). This list is not intended to be exhaustive. Applicants have the flexibility to specify their target population for the purposes of their proposed projects, provided that the target population has a "severe orthopedic impairment that adversely affects a child's performance."

Changes: None.

Comment: One commenter asked whether language and cognition issues can serve as the focus of this RERC if they are present in children with orthopedic disabilities. This commenter also asked whether these issues could be addressed if an applicant made the case that they were important in combination with physical impairments.

Discussion: According to the priority, the work of this RERC must focus on innovative technologies and new knowledge that will improve the lives of children with orthopedic disabilities. The priority specifies that the RERC must contribute to the improvement of mobility and manipulation functions among children with orthopedic disabilities as they perform daily tasks and activities at home, at school, and in the community. At the same time, nothing in the priority precludes applicants from proposing research and development that also addresses outcomes other than mobility and manipulation.

Changes: None.

Comment: One commenter asked whether applicants can utilize "surrogates" of children with orthopedic disabilities to serve on the RERC in an advisory capacity, because children typically do not serve on advisory committees and cannot be employed by the RERC.

Discussion: Yes, representatives of children with orthopedic disabilities may serve on the RERC in an advisory capacity. The RERC is required to propose and implement a plan for the inclusion of individuals with disabilities or their representatives in all phases of its activities, including research, development, training, dissemination, and evaluation.

Changes: None.

Comment: One commenter suggested that NIDRR remove the term "assistive devices" from the third sentence of this priority, noting that the term suggests a focus that is limited only to wheelchairs and prostheses.

Discussion: Nothing in the priority or in the term "assistive devices" limits applicants to a focus on wheelchairs or prostheses. Assistive devices, in the context of this priority, are intended to refer to a wide range of devices that can be used by children with orthopedic disabilities. For this reason, we do not believe a change to the priority is necessary.

Changes: None.

Comment: One commenter stated that this priority should focus on longer term outcomes of technology use, such as engagement and participation, instead of focusing on improving the availability and usability of assistive devices.

Discussion: Nothing in the priority precludes applicants from proposing research and development projects that measure the impact of technologies and assistive devices on the engagement and participation of children with orthopedic disabilities. However, NIDRR believes that it is first necessary to improve the availability and usability of technologies and assistive devices for this population. Such technologies and devices must be available and usable before they can be expected to have an

effect on the engagement and participation of children.

Changes: None.

Comment: One commenter suggested that NIDRR change the last sentence of this priority to require the RERC to "design, develop, implement, and evaluate" rehabilitation therapy technologies, instead of only being required to "develop, test, and implement" rehabilitation therapy technologies.

Discussion: NIDRR is interested in the development and implementation of rehabilitation therapy technologies for use with children with orthopedic disabilities. Prior to implementation, newly developed technologies must be tested for usability and effectiveness. Nothing in the priority, however, precludes applicants from proposing to add a design step prior to the development of rehabilitation technologies or from adding an evaluation step following implementation. However, NIDRR does not have a sufficient basis for further specifying the detailed requirements that the RERC must follow to reach its goal of new rehabilitation therapy technologies for use among this population.

Changes: None.

Final Priorities

This notice contains two final priorities.

Final Priority 1—Universal Design in the Built Environment

The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for a Rehabilitation Engineering Research Center (RERC) on Universal Design (UD) in the Built Environment. Under this priority, the RERC must research, develop, evaluate, and promote UD in commercial and private facilities, outdoor environments, and housing. In addition, the RERC must create measurable UD standards and guidelines to facilitate the implementation of UD principles, create economically viable UD exemplars, aid in the development of evidence-based practices for UD, and help to design curricula on UD for university-level engineering and design students. The RERC must assist designers, builders, and manufacturers to incorporate UD into their buildings and communities.

Final Priority 2—Technologies for Children With Orthopedic Disabilities

The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for a Rehabilitation Engineering Research Center (RERC) on Technologies for Children with Orthopedic Disabilities. This RERC will focus on innovative technologies and new knowledge that will improve the lives of children with orthopedic disabilities. Under this priority, the RERC must research, develop, apply, and evaluate new or existing technologies and approaches to improve the availability and usability of assistive devices for children with orthopedic disabilities. This work must contribute to the improvement of mobility and manipulation functions among children with orthopedic disabilities as they perform daily tasks and activities at home, at school, and in the community. In addition, the RERC must develop, test, and implement rehabilitation therapy technologies and strategies for use with children with orthopedic disabilities.

Requirements Applicable to Both Final Priorities

The RERC established under each of the final priorities in this notice must be designed to contribute to the following outcomes:

(1) Increased technical and scientific knowledge relevant to its designated priority research area. The RERC must contribute to this outcome by conducting high-quality, rigorous research and development projects.

(2) Increased innovation in technologies, products, environments, performance guidelines, and monitoring and assessment tools applicable to its designated priority research area. The RERC must contribute to this outcome through the development and testing of these innovations.

(3) Improved research capacity in its designated priority research area. The RERC must contribute to this outcome by collaborating with the relevant industry, professional associations, institutions of higher education, health care providers, or educators, as appropriate.

(4) Improved awareness and understanding of cutting-edge developments in technologies within its designated priority research area. The RERC must contribute to this outcome by identifying and communicating with NIDRR, individuals with disabilities, their representatives, disability organizations, service providers, professional journals, manufacturers, and other interested parties regarding trends and evolving product concepts related to its designated priority research area.

(5) Increased impact of research in the designated priority research area. The RERC must contribute to this outcome by providing technical assistance to relevant public and private organizations, individuals with disabilities, employers, and schools on policies, guidelines, and standards related to its designated priority research area.

(6) Increased transfer of RERC-developed technologies to the marketplace. The RERC must contribute to this outcome by developing and implementing a plan for ensuring that all technologies developed by the RERC are made available to the public. The technology transfer plan must be developed in the first year of the project period in consultation with the NIDRR-funded Disability Rehabilitation Research Project, Center on Knowledge Translation for Technology Transfer.

In addition, under each priority, the RERC must—

- Have the capability to design, build, and test prototype devices and assist in the technology transfer and knowledge translation of successful solutions to relevant production and service delivery settings;
- Evaluate the efficacy and safety of its new products, instrumentation, or assistive devices;
- Provide as part of its proposal, and then implement, a plan that describes how it will include, as appropriate, individuals with disabilities or their representatives in all phases of its activities, including research, development, training, dissemination, and evaluation;
- Provide as part of its proposal, and then implement, in consultation with the NIDRR-funded National Center for the Dissemination of Disability Research, a plan to disseminate its research results to individuals with disabilities, their representatives, disability organizations, service providers, professional journals, manufacturers, and other interested parties;
- Conduct a state-of-the-science conference on its designated priority research area in the fourth year of the project period, and publish a comprehensive report on the final outcomes of the conference in the fifth year of the project period; and
- Coordinate research projects of mutual interest with relevant NIDRR-funded projects, as identified through consultation with the NIDRR project officer.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register.** The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use these priorities, we invite applications through a notice in the **Federal Register.**

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits of the final priorities justify the costs.

Discussion of Costs and Benefits: The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. These final priorities will generate new knowledge through research and development. Another benefit of these final priorities is that the establishment of new RERCs will improve the lives of individuals with disabilities. The new RERCs will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to fully participate in their communities.

Intergovernmental Review: This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, Potomac Center Plaza, Washington, DC 20202–2550.

Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the *Federal Register.* Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: June 8, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–14126 Filed 6–10–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Project (DRRP)—Reducing Obesity and Obesity-Related Secondary Health Conditions Among Adolescents and Young Adults With Disabilities From Diverse Race and Ethnic Backgrounds

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–7.

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priority for a DRRP.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for the Disability and Rehabilitation Research Projects and Centers Program administered by NIDRR. Specifically, this notice announces a priority for a DRRP on Reducing Obesity and Obesity-Related Secondary Health Conditions Among Adolescents and Young Adults With Disabilities From Diverse Race and Ethnic Backgrounds. The Assistant Secretary may use this priority for a competition in fiscal year (FY) 2010 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: *Effective Date:* This priority is effective July 12, 2010.

FOR FURTHER INFORMATION CONTACT: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., room 5140, Potomac Center Plaza, Washington, DC 20202–2700. Telephone: (202) 245–7338 or by e-mail: *lynn.medley@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This notice of final priority (NFP) is in concert with NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

DRRP Program

The purpose of the DRRP program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, training, demonstration, development, dissemination, utilization, and technical assistance. An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). In addition, NIDRR intends to require all DRRP applicants to meet the requirements of the *General Disability and Rehabilitation Research Project (DRRP) Requirements* priority that it published in a notice of final priorities in the **Federal Register** on April 28, 2006 (71 FR 25472).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priority (NPP) for NIDRR's Disability and Rehabilitation Research Projects and Centers Program in the **Federal Register** on December 15, 2009 (74 FR 66307). The NPP included a background statement that described our rationale for the priority proposed in that notice.

There is one significant difference between the NPP and this NFP as discussed in the following section.

Public Comment

In response to our invitation in the NPP, five parties submitted comments on the proposed priority for the DRRP.

Generally, we do not address technical and other minor changes or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the proposed priority.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority since publication of the NPP follows.

Comment: One commenter requested that this priority address the need for youth to learn skills to maintain a healthy lifestyle. The commenter noted that these skills can be taken into adulthood, and include proper nutrition, daily exercise, and group activities.

Discussion: The priority does not preclude applicants from focusing on promising community-based and culturally competent practices for teaching youth about proper nutrition, daily exercise, or other behavioral and lifestyle changes to reduce obesity and obesity-related conditions.

Changes: None.

Comment: One commenter asked the Department to clarify whether the term "disability" includes children with mental and emotional illness, particularly children who develop obesity as a result of the effects of prescription drugs taken to treat depression and other symptoms of mental or emotional illness.

Discussion: Individuals with mental and emotional disabilities are included in the definition of individual with a disability that applies to this program (see section 7(20)(b) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 705(20)(B)). However, applicants are not required to include individuals with all types of disabilities as part of their proposal. Rather, the priority requires applicants to identify the specific sub-populations of adolescents and young adults they propose to study by type of disability. Therefore, under this priority, an applicant could focus its project on adolescents and young adults with mental or emotional disabilities.

Changes: None.

Comment: One commenter recommended that the requirements related to the translation of research findings into practice or policy (paragraph (c) of the priority) include a requirement that materials be disseminated in alternate formats.

Discussion: NIDRR agrees with the commenter that project materials must be produced in alternate formats to help ensure accessibility for individuals with disabilities.

Changes: NIDRR has amended the language in paragraph (c)(3) of the priority to provide that the DRRP must conduct dissemination activities, including the distribution of materials in alternate formats, to increase the utilization and accessibility of the DRRP's research findings by individuals with disabilities.

Comment: One commenter requested that the Department articulate the specific kinds of community-based obesity reduction strategies and programs that will be considered under paragraph (b) of the priority.

Discussion: NIDRR believes it would be too restrictive to limit the kinds of strategies and programs that will be considered under this priority and that doing so could result in the potential exclusion of innovative projects. As such, NIDRR did not specify the kinds of community-based strategies and programs that are to be considered under paragraph (b) of the priority. Applicants must specify the criteria and methods they will use to identify such strategies and programs.

Changes: None.

Comment: One commenter asked NIDRR to specify potential sources of health data for use under this priority.

Discussion: There are a wide variety of data sources that the DRRP could use to meet the requirements under paragraph (a) of the priority. NIDRR believes, however, that identifying specific data sources in the priority would be unnecessarily restrictive. As such, NIDRR did not specify the sources of health data that are to be considered under paragraph (a). Rather, applicants must specify the data sources that they propose to use under paragraph (a).

Changes: None.

Comment: One commenter stated that risk factors for obesity are best addressed in the pre-adolescent years before unhealthy habits become established. The commenter recommended that the priority focus on children younger than age 15.

Discussion: NIDRR acknowledges the current obesity epidemic among young children and the importance of addressing obesity in the pre-adolescent years. However, with this priority, NIDRR focuses on obesity for individuals between the ages of 15 and 25. This focus helps address the paucity of research regarding this population and is consistent with the Department's focus on improving outcomes for transition-age youth with disabilities.

Changes: None.

Comment: One commenter asked which operational definitions of "disability" applicants should use to address this priority.

Discussion: Section 7(20)(b) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 705(20)(B)) defines "individual with a disability," for purposes of title II of the Rehabilitation Act, as any person who "(i) has a physical or mental impairment that substantially limits one or more of such person's major life activities, (ii) has a

record of such an impairment, or (iii) is regarded as having such an impairment." Within this definition and the requirements of the priority, applicants have the flexibility to specify their target population for the purposes of their proposed projects.

Changes: None.

Comment: One commenter stated that risk factors may be categorized from an ecological perspective, including a focus on the individual, the environment, and society.

Discussion: NIDRR does not specify a particular perspective or conceptual approach that applicants must use in addressing the priority. Nothing in the priority precludes an applicant from characterizing risk factors from an ecological perspective.

Changes: None.

Comment: One commenter stated that resources should be targeted to children diagnosed with developmental disabilities at birth.

Discussion: NIDRR acknowledges the current obesity epidemic among young children and the importance of addressing obesity in the pre-adolescent years. However, with this priority NIDRR focuses on obesity for individuals between the ages of 15 and 25. This focus helps address the paucity of research regarding this population and is consistent with the Department's focus on improving outcomes for transition-age youth with disabilities. Regarding the commenter's request that resources be targeted to children diagnosed with developmental disabilities, nothing in the priority precludes an applicant from focusing on this population. However, NIDRR has no basis for requiring all applicants to do so.

Changes: None.

Comment: One commenter recommended that research funded under this priority adapt and prospectively track or evaluate high quality obesity treatment programs for children with developmental disabilities.

Discussion: Paragraph (b) of the priority requires applicants to identify promising obesity-reduction strategies and programs and to specify criteria and methods for doing so. The DRRP's work is intended to identify potential interventions that can be tested and implemented in the future in community-based settings. This systematic identification of promising practices must occur before the intensive evaluation activities suggested by the commenter. Adaptation and prospective tracking or evaluation of programs are beyond the scope of this priority.

Changes: None.

Comment: One commenter asked how community-based and culturally competent practices to reduce obesity and secondary conditions will include consideration of a medical home.

Discussion: The priority neither requires nor precludes a focus on medical homes. Applicants are required to specify the criteria and methods they will use to identify obesity-reduction strategies and programs.

Changes: None.

Comment: One commenter asked whether NIDRR will support studies of how primary and secondary disabilities vary by factors such as race/ethnicity, geography, family income, and access to health insurance.

Discussion: Paragraph (a) of the priority requires applicants to identify variations in rates of obesity and overweight status by race/ethnicity and other obesity risk factors among adolescents and young adults with disabilities. Nothing in the priority precludes applicants from examining geography, family income, and access to health insurance as additional potential obesity risk factors.

Changes: None.

Comment: One commenter stated that it is important to study potential impacts of obesity and related secondary conditions on job placement and retention.

Discussion: The priority requires the applicant to address risk factors for and health consequences of obesity for adolescents and young adults with disabilities and to identify promising community-based and culturally competent practices to reduce obesity among this population. While NIDRR acknowledges the potential importance of the impact of obesity and related secondary conditions on job placement and retention, such a focus is beyond the scope of this priority.

Changes: None.

Comment: One commenter asked if there is evidence to support the effective transfer of obesity management programs developed for individuals without disabilities to individuals with disabilities.

Discussion: The priority requires grantees to examine existing community-based obesity prevention programs such as the programs being implemented by the Centers for Disease Control and Prevention (CDC). Grantees must determine whether the practices of community-based obesity prevention programs serving the wider community hold promise for individuals with disabilities, might need modification for use by individuals with disabilities, or might incorporate individuals with disabilities. Accordingly, the grantee will examine whether there is sufficient evidence to support such a transfer.

Changes: None.

Comment: One commenter asked NIDRR to identify the best methods for communicating scientific findings to multiple stakeholder groups.

Discussion: There is a wide variety of methods that the DRRP could use to meet the requirements under paragraph (c) of the priority. NIDRR believes that specifying these methods in the priority would be unnecessarily restrictive and could result in the exclusion of projects using dissemination and knowledge translation methods that are not specified in the priority. As such, NIDRR does not identify methods for communicating scientific findings to multiple stakeholder groups. Rather, applicants must specify the methods that they will use to fulfill the requirements of paragraph (c) of the priority.

Changes: None.

Comment: One commenter recommended the identification or adaptation of behavioral and exercise programs for children with disabilities.

Discussion: The priority requires a focus on individuals between the ages of 15 and 25. Applicants may propose criteria and methods that would allow behavioral and exercise programs to be identified as promising under paragraph (b) of the priority. The peer review process will determine the merits of each proposal.

Changes: None.

Final Priority

The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for a Disability Rehabilitation Research Project (DRRP) on Reducing Obesity and Obesity-Related Secondary Conditions among Adolescents and Young Adults With Disabilities From Diverse Race and Ethnic Backgrounds. The DRRP must build upon the current research literature on obesity and secondary conditions and examine existing community-based obesity prevention programs such as the programs being implemented by the Centers for Disease Control and Prevention (CDC) in order to determine whether practices they are implementing hold promise for individuals with disabilities, what modifications to these practices may be necessary, and how individuals with disabilities might be incorporated into community-based programs serving the wider community. Applicants must identify the specific sub-populations of adolescents and young adults they propose to study by type of disability

(*e.g.,* physical, sensory, mental) and by race/ethnic background. Under this priority, NIDRR is interested in obesity as a condition that is experienced concomitantly with other disabling conditions, but not as a primary disabling condition. When identifying the specific sub-populations by race/ethnic background, the DRRP must select from three or more of the following categories: Non-Hispanic Whites, non-Hispanic Blacks, American Indians or Alaskan Natives, Asians or Pacific Islanders, and individuals of Hispanic origin.

Under this priority, the DRRP must be designed to contribute to the following outcomes:

(a) Enhanced understanding of the risk factors and health consequences of obesity and overweight status for adolescents and young adults with pre-existing disabilities from diverse race/ethnic backgrounds. The DRRP must contribute to this outcome by conducting analyses of extant data sources to identify variations in rates of obesity and overweight status by race/ethnicity and other risk factors among adolescents and young adults with disabilities approximately 15 to 25 years of age, as well as variations in obesity-related secondary conditions.

(b) New knowledge of promising community-based and culturally competent practices for reducing obesity and obesity-related secondary conditions among adolescents and young adults with pre-existing disabilities. The DRRP must contribute to this outcome by conducting research to identify the key elements of community-based and culturally competent strategies and programs that show promise toward reducing obesity and overweight status for the specific target populations selected. The DRRP's work in this area is intended to identify potential interventions that can be tested and implemented in the future in community-based settings. Applicants must propose, in their applications, the specific criteria and methods they will use to identify promising community-based and culturally competent strategies and programs.

(c) Increased translation of research findings into practice or policy. The DRRP must contribute to this outcome by:

(1) Collaborating with stakeholder groups (e.g., youth and young adults with disabilities, families, family surrogates, rehabilitation professionals, and public health professionals) to develop, evaluate, or implement strategies to increase utilization of the DRRP's research findings in programs targeted to youth with disabilities;

(2) Coordinating with existing programs such as those being implemented by the CDC to obtain and share information regarding the applicability of promising practices for individuals with disabilities; and

(3) Conducting dissemination activities, including the distribution of materials in alternate formats to increase the utilization and accessibility of the DRRP's research findings by individuals with disabilities.

This notice announces a priority that NIDRR intends to use for DRRP competitions in FY 2010 and possibly later years. However, nothing precludes NIDRR from publishing additional priorities, if needed. Furthermore, NIDRR is under no obligation to make an award for this priority. The decision to make an award will be based on the quality of applications received and available funding.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register.** The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register.**

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this final regulatory action.

The potential costs associated with this final regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this final regulatory action, we have determined that the benefits of the final priority justify the costs.

Discussion of Costs and Benefits

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. This final priority will generate new knowledge through research and development. Another benefit of this final priority is that the establishment of a new DRRP will improve the lives of individuals with disabilities. The new DRRP will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to perform regular activities in the community.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

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Dated: June 8, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–14135 Filed 6–10–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2149–131]

Public Utility District No. 1 of Douglas County (Douglas PUD); Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

June 2, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2149–131.

c. *Date Filed:* May 27, 2010.

d. *Applicant:* Public Utility District No. 1 of Douglas County (Douglas PUD).

e. *Name of Project:* Wells Hydroelectric Project.

f. *Location:* The existing project is located on the Columbia River in Douglas, Okanogan, and Chelan counties, Washington. The project occupies 15.15 acres of Federal land managed by the U.S. Department of the Interior and the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* William C. Dobbins, General Manager, Douglas PUD, 1151 Valley Mall Parkway, East Wenatchee, WA 98802; Telephone (509) 881–2220.

i. *FERC Contact:* Bob Easton, (202) 502–6045 or *robert.easton@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. *The Project Description:* The existing Wells Hydroelectric Project consists of a single development with an installed capacity of 774,300 kilowatts. Average annual generation of the project is 4,364,959 megawatt-hours. In addition to providing electric service to over 18,000 customers in Douglas County, power from the Wells Project is used to meet both daily and seasonal peaks in power demand in the Pacific Northwest region and contributes to the reliability and stability of the regional electric system.

The Wells Project consists of: (1) A 1,130-foot-long and 168-foot-wide concrete hydrocombine dam with integrated generating units, spillways, switchyard and fish passage facilities; (2) a 2,300-foot-long and 40-foot-high earth and rock-filled west embankment; (3) a 1,030-foot-long and 160-foot-high earth and rock-filled east embankment; (4) eleven 46-foot-wide and 65-foot-high ogee-designed spillway bays with 2 vertical lift gates (upper leaf is 46 feet by 30 feet and lower leaf is 46 feet by 35 feet); (5) five spillways modified to accommodate the juvenile fish bypass system; (6) 10 generating units each housed in a 95-foot-wide and 172-foot-long concrete structure with an installed capacity of 774.3 megawatts (MW) and maximum capacity of 840 MW; (7) five 14.4-kilovolts (kV) power transformers each connected to 2 generating units converting the power to 230 kV; (8) two 41-miles-long 230-kV single-circuit transmission lines running parallel to each other; and (9) appurtenant facilities. The Wells Project is operated as a run-of-river facility with daily outflows to the Wells Reservoir equaling daily inflows.

Douglas PUD is not proposing any changes to project operations or the project boundary for the Wells Project. New facilities proposed by Douglas PUD include new interpretive displays, new facilities and infrastructure at the Wells and Methow fish hatcheries, new recreation facilities, and participation in a white sturgeon hatchery and rearing facility.

l. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:*

The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/Notice of Ready for Environmental Analysis	August 2010.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	October 2010.
Commission issues Draft EA	April 2011.
Comments on Draft EA	May 2011.
Modified Terms and Conditions	June 2011.
Commission Issues Final EA	September 2011.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–14026 Filed 6–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–445–000]

Columbia Gas Transmission, LLC; Notice of Application

June 4, 2010.

Take notice that on May 28, 2010, Columbia Gas Transmission, LLC (Columbia) 5151 San Felipe, Suite 2500, Houston, Texas 77056, filed an application with the Commission in Docket No. CP10–445–000, pursuant to section 7(c) of the Natural Gas Act, as amended, for a certificate of public convenience and necessity, seeking authority to extend the test and evaluation period at Columbia's Lanham, Terra Alta, and Terra Alta South storage fields, all located in West Virginia.[1] Columbia will collect and analyze the information it obtains to

[1] Columbia previously received authorization in Docket No. CP 07–433–000 [120 FERC ¶ 62,192 (2007)] to conduct similar testing and evaluation of these storage fields.

validate using these storage fields to develop further storage services, as more fully set forth in the application which is open to public inspection. This filing may be also viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERCOnline Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to Fredric J. George, Lead Counsel, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325, telephone (304) 357–2359 or facsimile (304) 357–3206.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission's staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

Comment Date: June 25, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–14031 Filed 6–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12470–001]

City of Broken Bow, OK; Notice of Availability of Environmental Assessment

June 3, 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 an Original Major License for the Broken Bow Re-Regulation Dam Hydropower Project.

The project would be located at the United States Army Corps of Engineers' (Corps) Broken Bow Re-Regulation Dam on the Mountain Fork River in McCurtain County, Oklahoma, and would occupy federal lands administered by the Corps. Staff has prepared an environmental assessment (EA) for the project.

The EA contains staff's analysis of the potential environmental effects of the project and concludes that licensing 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. 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. 12470–001 to all comments.

For further information, please contact Sean Murphy at 202–502–6145, or at *sean.murphy@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–14027 Filed 6–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

June 04, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–74–000.

Applicants: Milford Power Company, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act and Request for Waivers and Expedited Action.

Filed Date: 06/04/2010.

Accession Number: 20100604–5068.

Comment Date: 5 p.m. Eastern Time on Friday, June 25, 2010.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10–40–000.

Applicants: Taloga Wind, LLC.

Description: Notice of Self-Certification of EWG Taloga Wind, LLC.

Filed Date: 06/02/2010.

Accession Number: 20100602–5059.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 23, 2010.

Docket Numbers: EG10–41–000.

Applicants: Beacon Power Corporation.

Description: Self-Certification of Exempt Wholesale Generator status of Beacon Power Corporation.

Filed Date: 06/03/2010.

Accession Number: 20100603–5095.

Comment Date: 5 p.m. Eastern Time on Thursday, June 24, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–107–005.

Applicants: La Paloma Generating Company, LLC.

Description: La Paloma Generating Company, LLC submits notice of non-material change in status, in compliance.

Filed Date: 06/01/2010.

Accession Number: 20100602–0235.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 22, 2010.

Docket Numbers: ER06–1280–006; ER02–556–013.

Applicants: Hess Corporation, Select Energy New York, Inc.

Description: Notice of Change in Status of Hess Corporation and Select Energy New York, Inc.

Filed Date: 06/03/2010.

Accession Number: 20100603–5089.

Comment Date: 5 p.m. Eastern Time on Thursday, June 24, 2010.

Docket Numbers: ER07–585–003.

Applicants: Niagara Generation, LLC.

Description: Niagara Generation, LLC submits letter requesting the Commission to issue an order classifying Niagara as Category 1 Seller.

Filed Date: 06/01/2010.

Accession Number: 20100603–0201.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 22, 2010.

Docket Numbers: ER09–393–002.

Applicants: West Oaks Energy, LLC.

Description: West Oaks Energy, LLC submits the revised table of assets.

Filed Date: 06/02/2010.

Accession Number: 20100603–0035.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 23, 2010.

Docket Numbers: ER10–64–001

Applicants: CPV Keenan II Renewable Energy Company.

Description: Supplement to Notification of Non-Material Change in Facts of CPV Keenan II Renewable Energy Company, LLC.

Filed Date: 05/19/2010.

Accession Number: 20100519–5059.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010.

Docket Numbers: ER10–750–001.

Applicants: ISO New England Inc.

Description: ISO New England Inc *et al.* submits a compliance filing, which clarifies the provisions in the Forward Capacity Market rule addressing the evaluation of de-list bids.

Filed Date: 06/01/2010.

Accession Number: 20100602–0234.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 22, 2010.

Docket Numbers: ER10–1368–000.

Applicants: Union Electric Company.

Description: Union Electric Company submits tariff filing per 35: UE Reactive Supply and Voltage Control to be effective 6/1/2010.

Filed Date: 06/01/2010.

Accession Number: 20100601–5054.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 22, 2010.

Docket Numbers: ER10–1370–000.

Applicants: New MATEP, Inc.

Description: New MATEP, Inc submits notice of succession to Old MATEP's market based rate authority under FERC Electric Tariff, Second Revised Volume No. 1, effective 6/1/10.

Filed Date: 06/01/2010.

Accession Number: 20100601–0248.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 22, 2010.

Docket Numbers: ER10–1371–000.

Applicants: Bangor Hydro Electric Company.

Description: Bangor Hydro Electric Co submits First Revised Sheet 1601 *et al.* to FERC Electric Tariff 3- Section II-Open Access Transmission Tariff Schedule 21- BHE of ISO New England to be effective 8/1/10.

Filed Date: 06/01/2010.

Accession Number: 20100601–0247.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 22, 2010.

Docket Numbers: ER10–1377–000.

Applicants: Xcel Energy Services Inc.

Description: Northern States Power Company submits proposed amendments to certain NSPM service agreements that incorporate Rate Schedule Transmission Service Tm-1 to be effective 8/1/10.

Filed Date: 05/28/2010.

Accession Number: 20100602–0238.

Comment Date: 5 p.m. Eastern Time on Friday, June 18, 2010.

Docket Numbers: ER10–1379–000.

Applicants: The Potomac Edison Company.

Description: The Potomac Edison Company submits an Interconnection Agreement with Old Dominion Electric Cooperative dated 6/1/10 designated as Original Service Agreement 2524.

Filed Date: 06/01/2010.

Accession Number: 20100602–0230.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 22, 2010.

Docket Numbers: ER10–1381–000.

Applicants: Monongahela Power Company.

Description: Monongahela Power Company submits an Interconnection Agreement with Old Dominion Electric Cooperative dated 6/1/10 designated as Original Service Agreement 2525 under the FERC Electric Tariff, Sixth Revised Volume 1.

Filed Date: 06/01/2010.

Accession Number: 20100602–0231.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 22, 2010.

Docket Numbers: ER10–1382–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits an executed interconnection service agreement entered into among PJM.

Filed Date: 06/01/2010.
Accession Number: 20100602–0229.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 22, 2010.

Docket Numbers: ER10–1383–000.
Applicants: Dighton Power, LLC.
Description: Dighton Power, LLC submits its notice of succession.
Filed Date: 06/01/2010.
Accession Number: 20100602–0228.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 22, 2010.

Docket Numbers: ER10–1384–000.
Applicants: ISO New England Inc., New England Power Pool.
Description: ISO New England Inc., *et al.* (NU Companies) submits Sixth Revised Sheet No. 1 *et al.* to FERC Electric Tariff No. 3.
Filed Date: 06/01/2010.
Accession Number: 20100602–0237.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 22, 2010.

Docket Numbers: ER10–1385–000.
Applicants: WEC Operating Companies.
Description: Wisconsin Energy Corporation Operating Companies submits Notice of Cancellation of the Joint Tariff for Sales of Ancillary Services.
Filed Date: 06/02/2010.
Accession Number: 20100602–0250.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 23, 2010.

Docket Numbers: ER10–1386–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits revision to the Long-Term Power Transactions Agreement between APS and PacifiCorp designated as FERC Electric Rate Schedule 182.
Filed Date: 06/02/2010.
Accession Number: 20100602–0244.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 23, 2010.

Docket Numbers: ER10–1387–000;
Applicants: Florida Power & Light Company.
Description: Florida Power & Light Company submits Second Revised Sheet No. 174 *et al.* and Correction to Transmittal Letter Regarding Revisions to Attachment C to Florida Power & Light's Open Access Transmission Tariff
Filed Date: 06/02/2010; 06/03/2010.
Accession Number: 20100602–0243; 20100603–5050.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 23, 2010.

Docket Numbers: ER10–1388–000.
Applicants: Laredo Ridge Wind LLC.
Description: Laredo Ridge Wind, LLC submits order accepting market-based rate tariff for filing and granting waivers and blanket approvals.
Filed Date: 06/02/2010.
Accession Number: 20100603–0205.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 23, 2010.

Docket Numbers: ER10–1389–000.
Applicants: Taloga Wind, LLC.
Description: Taloga Wind, LLC submits a petition for an order accepting market-based rate tariff for filing and granting waivers and blanket approvals.
Filed Date: 06/02/2010.
Accession Number: 20100603–0206.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 23, 2010.

Docket Numbers: ER10–1390–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.12: RS 55_WAPA_Baseline_060310 to be effective 6/3/2010.
Filed Date: 06/03/2010.
Accession Number: 20100603–5046.
Comment Date: 5 p.m. Eastern Time on Thursday, June 24, 2010.

Docket Numbers: ER10–1391–000.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas & Electric Company submits tariff filing per 35: San Diego Gas & Electric Company Wholesale Distribution Access Tariff Volume 6 to be effective 6/2/2010.
Filed Date: 06/03/2010.
Accession Number: 20100603–5059.
Comment Date: 5 p.m. Eastern Time on Thursday, June 24, 2010.

Docket Numbers: ER10–1392–000.
Applicants: Madison Paper Industries.
Description: Madison Paper Industries submits tariff filing per 35: Baseline Filing to be effective 3/1/2009.
Filed Date: 06/03/2010.
Accession Number: 20100603–5090.
Comment Date: 5 p.m. Eastern Time on Thursday, June 24, 2010.

Docket Numbers: ER10–1393–000.
Applicants: Beaver Ridge Wind, LLC.
Description: Beaver Ridge Wind, LLC submits tariff filing per 35: Market Based Rate Authorization to be effective 7/1/2008.
Filed Date: 06/03/2010.
Accession Number: 20100603–5091.
Comment Date: 5 p.m. Eastern Time on Thursday, June 24, 2010.

Docket Numbers: ER10–1394–000.
Applicants: Hannaford Energy LLC.
Description: Hannaford Energy LLC submits tariff filing per 35: Market Rate Baseline to be effective 3/8/2010.
Filed Date: 06/03/2010.
Accession Number: 20100603–5092.
Comment Date: 5 p.m. Eastern Time on Thursday, June 24, 2010.

Docket Numbers: ER10–1395–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.15: I&TS and IA_Pasadena_Cancellation_060410 to be effective 8/4/2010.
Filed Date: 06/04/2010.
Accession Number: 20100604–5032.
Comment Date: 5 p.m. Eastern Time on Friday, June 25, 2010.

Docket Numbers: ER10–1396–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii): IA_Pasadena_N_060410 to be effective 8/5/2010.
Filed Date: 06/04/2010.
Accession Number: 20100604–5049.
Comment Date: 5 p.m. Eastern Time on Friday, June 25, 2010.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA10–1–000.
Applicants: Order 697–C 2010 1st Qtr Site Acquisition.
Description: Niagara Generation, LLC, Quarterly Report.
Filed Date: 06/03/2010.
Accession Number: 20100603–5120.
Comment Date: 5 p.m. Eastern Time on Thursday, June 24, 2010.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–25–004.
Applicants: Avista Corporation.
Description: Attachment K Filing of Avista Corporation.
Filed Date: 06/02/2010.
Accession Number: 20100602–5101.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 23, 2010.

Docket Numbers: OA08–59–008.
Applicants: Entergy Services, Inc.
Description: Entergy Operating Companies submits an amended Attachment K to their open-access transmission tariff.
Filed Date: 06/01/2010.
Accession Number: 20100602–0227.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 22, 2010.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF10–477–000.
Applicants: PowerSecure.
Description: Self-Certification of QF of PowerSecure Inc.
Filed Date: 05/17/2010.
Accession Number: 20100517–5055.
Comment Date: Not Applicable.

Docket Numbers: QF10–485–000.

Applicants: Alabama River Group, Inc.

Description: Alabama River Group, Inc submits Self Certification of Qualifying Facility Status for the Claiborne Mill cogeneration facility for filing.

Filed Date: 05/20/2010.

Accession Number: 20100520–0209.

Comment Date: Not Applicable.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–14090 Filed 6–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

June 3, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–806–000.

Applicants: American Midstream (Midla), LLC.

Description: American Midstream (Milda), LLC submits First Revised Sheet No. to FERC Gas Tariff, Sixth Revised Volume No. 1 to be effective 6/1/2010.

Filed Date: 06/01/2010.

Accession Number: 20100602–0222.

Comment Date: 5 p.m. Eastern Time on Monday, June 14, 2010.

Docket Numbers: RP10–807–000.

Applicants: MarkWest Pioneer, L.L.C.

Description: MarkWest Pioneer, LLC submits Fourth Revised Sheet No. 5 to FERC Gas Tariff, Original Volume No. 1, to be effective 7/1/2010.

Filed Date: 06/01/2010.

Accession Number: 20100602–0221.

Comment Date: 5 p.m. Eastern Time on Monday, June 14, 2010.

Docket Numbers: RP10–808–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits Fifth Revised Sheet 1417 of its FERC Gas Tariff, Sixth Revised Volume 1, to be effective 7/1/2010.

Filed Date: 06/01/2010.

Accession Number: 20100602–0220.

Comment Date: 5 p.m. Eastern Time on Monday, June 14, 2010.

Docket Numbers: RP10–809–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits capacity release agreement containing negotiated rate provisions.

Filed Date: 06/01/2010.

Accession Number: 20100602–0219.

Comment Date: 5 p.m. Eastern Time on Monday, June 14, 2010.

Docket Numbers: RP10–810–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits capacity release agreement containing negotiated rate provisions.

Filed Date: 06/02/2010.

Accession Number: 20100602–0218.

Comment Date: 5 p.m. Eastern Time on Monday, June 14, 2010.

Docket Numbers: RP10–811–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits capacity release agreement containing negotiated rate provisions.

Filed Date: 06/01/2010.

Accession Number: 20100602–0217.

Comment Date: 5 p.m. Eastern Time on Monday, June 14, 2010.

Docket Numbers: RP10–812–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits capacity release agreement containing negotiated rate provisions.

Filed Date: 06/01/2010.

Accession Number: 20100602–0216.

Comment Date: 5 p.m. Eastern Time on Monday, June 14, 2010.

Docket Numbers: RP10–813–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Co, LP submits a capacity release agreement containing negotiated rate provisions.

Filed Date: 06/01/2010.

Accession Number: 20100602–0215.

Comment Date: 5 p.m. Eastern Time on Monday, June 14, 2010.

Docket Numbers: RP10–814–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: Algonquin Gas Transmission, LLC submits tariff filing per 154.204: Consolidated Edison negotiated rate for contract 510371 to be effective 6/2/2010.

Filed Date: 06/02/2010.

Accession Number: 20100602–5025.

Comment Date: 5 p.m. Eastern Time on Monday, June 14, 2010.

Docket Numbers: RP10–815–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits negotiated rate letter agreement by Gulf South and Total Gas & Power North America, Inc.
Filed Date: 06/01/2010.
Accession Number: 20100602–0214.
Comment Date: 5 p.m. Eastern Time on Monday, June 14, 2010.

Docket Numbers: RP10–816–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Columbia Gas Transmission, LLC submits tariff filing to FERC Gas Tariff, Fourth Revised Volume 1 per 154.203: SIT Compliance, to be effective 6/1/2010.
Filed Date: 06/02/2010.
Accession Number: 20100602–5041.
Comment Date: 5 p.m. Eastern Time on Monday, June 14, 2010.

Docket Numbers: RP10–817–000.
Applicants: Kern River Gas Transmission Company.
Description: Kern River Gas Transmission Company submits First Revised Sheet 215 *et al.* to its FERC Gas Tariff, Second Revised Volume 1 to be effective 6/28/10.
Filed Date: 05/28/2010.
Accession Number: 20100601–0246.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010.

Docket Numbers: RP10–818–000.
Applicants: North Baja Pipeline, LLC.
Description: North Baja Pipeline, LLC submits tariff filing per 154.601: Sempra F–4 to be effective 6/1/2010.
Filed Date: 06/02/2010.
Accession Number: 20100602–5053.
Comment Date: 5 p.m. Eastern Time on Monday, June 14, 2010.

Docket Numbers: RP10–819–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits a Negotiated Rate Capacity Release Agreement.
Filed Date: 06/02/2010.
Accession Number: 20100602–0247.
Comment Date: 5 p.m. Eastern Time on Monday, June 14, 2010.

Docket Numbers: RP10–820–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company LP submits a negotiated rate capacity release agreement.
Filed Date: 06/02/2010.
Accession Number: 20100602–0245.
Comment Date: 5 p.m. Eastern Time on Monday, June 14, 2010.

Docket Numbers: RP10–821–000.
Applicants: Texas Gas Transmission, LLC.
Description: Texas Gas Transmission LLC submits Third Revised Volume 1 as part of its Gas Tariff, to be effective 7/2/2010.
Filed Date: 06/02/2010.
Accession Number: 20100602–0246.
Comment Date: 5 p.m. Eastern Time on Monday, June 14, 2010.

Docket Numbers: RP10–822–000.
Applicants: Alliance Pipeline L.P.
Description: Alliance Pipeline L.P. submits tariff filing per 154.601: Calpine Capacity June 2010 to be effective 6/1/2010.
Filed Date: 06/03/2010.
Accession Number: 20100603–5002.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 15, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. 2010–14089 Filed 6–10–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

June 7, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–823–000.
Applicants: Columbia Gulf Transmission Company.
Description: Columbia Gulf Transmission Company submits tariff filing per 154.204: IFF Compliance to be effective 7/1/2010.
Filed Date: 06/03/2010.
Accession Number: 20100603–5096.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010.

Docket Numbers: RP10–824–000.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Company submits the Fifth Revised Sheet 0 *et al.* to FERC Gas Tariff, Original Volume 1, to be effective 7/5/10.
Filed Date: 06/04/2010.
Accession Number: 20100604–0206.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 16, 2010.

Docket Numbers: RP10–825–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: Midcontinent Express Pipeline LLC submits two amendments to existing negotiated rate Transportation Rate Schedule FTS Agreement with Chesapeake Energy Marketing, Inc.
Filed Date: 06/04/2010.
Accession Number: 20100604–0204.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 16, 2010.

Docket Numbers: RP10–826–000.
Applicants: Maritimes & Northeast Pipeline, L.L.C.
Description: Maritimes & Northeast Pipeline, LLC submits Original Sheet No. 9.01a *et al.* to FERC Gas Tariff, First Revised Volume No. 1, to be effective 5/1/10.
Filed Date: 06/04/2010.
Accession Number: 20100604–0210.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 16, 2010.

Docket Numbers: RP10–827–000.

Applicants: Steckman Ridge, LP.

Description: Steckman Ridge, LP submits tariff filing per 154.203: SR Baseline Filing to be effective 6/7/2010.

Filed Date: 06/07/2010.

Accession Number: 20100607–5018.

Comment Date: 5 p.m. Eastern Time on Monday, June 21, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–14088 Filed 6–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

June 7, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–809–003.

Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: Maritimes & Northeast Pipeline, LLC submits Fourteenth Revised Sheet 7 *et al.* of FERC Gas Tariff, Revised Volume 1.

Filed Date: 06/04/2010.

Accession Number: 20100604–0209.

Comment Date: 5 p.m. Eastern Time on Friday, June 11, 2010.

Docket Numbers: RP10–134–001. RP10–450–001.

Applicants: Columbia Gulf Transmission Company.

Description: Columbia Gulf Transmission Company withdraws its filing dated May 28, 2010 in dockets RP10–134, *et al.* due to the replacement filing that was made on June 3, 2010, which has been assigned docket number RP10–823.

Filed Date: 06/04/2010.

Accession Number: 20100604–5099.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 16, 2010.

Docket Numbers: RP10–595–002.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits tariff filing per 154.203: Baseline Compliance Filing to be effective 4/9/2010.

Filed Date: 06/02/2010.

Accession Number: 20100602–5069.

Comment Date: 5 p.m. Eastern Time on Monday, June 14, 2010.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–14087 Filed 6–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI10–11–000]

Clark-Wiltz Mining; Notice of Declaration of Intention and Petition for Relief Filing and Soliciting Comments

June 3, 2010.

Take notice that the following declaration of intention and petition for relief from the requirements of hydropower licensing has been filed with the Commission and is available for public inspection.

a. *Type of Filing:* Declaration of Intention and Petition for Relief.

b. *Project No.:* DI10–11–000.

c. *Date Filed:* March 26, 2010.

d. *Applicant:* Clark-Wiltz Mining.

e. *Name of Project:* Ganes Creek Hydrokinetic Pilot Project.

f. *Location:* The project would be located in Ganes Creek, in Yukon-Koyukuk, Alaska. The project would not occupy federal lands.

g. *Filed Pursuant to:* 18 CFR Part 24, § 24.1.

h. *Applicant Contact:* Mr. James Boschma, CEO Boschma Research, Inc., 138 Lawler Drive, Brownsboro, AL 35741, (256) 417–6048.

i. *FERC Contact:* Kelly Houff at (202) 502–6393, or *Kelly.Houff@ferc.gov.*

j. *Deadline for filing comments:* July 6, 2010.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "eFiling" link.

k. *Description of Project:* Clark-Wiltz Mining intends to deploy and test, for study purposes, a hydrokinetic device that would be located in Ganes Creek. The experimental hydrokinetic device would include: (1) A 1.4-meter-diameter, 9.9-meter-long, 1.4-meter-high, 15 kilowatt (kW) Cycloidal cross-flow turbine; (2) a debris guard and fish screen at the inlet; (3) a flow reduction diffuser, (4) 6 anchor pins that extend into the bedrock approximately 1 meter below the gravel riverbed; (5) anchor cables attached to a bulldozer onshore; (6) a marine cable to connect the hydrokinetic device to the distribution grid at the mining facility; and (7) appurtenant facilities. The hydrokinetic device would convert mechanical power from the river flow into electrical power without constructing a dam, reservoir, penstock, or powerhouse.

l. *Petition for Declaration of Intention:* Clark-Wiltz Mining asks that it be allowed, without a license under Part I of the Federal Power Act, to deploy, test, and study the type of facilities listed above, and use the power from the test device to supplement the diesel generators currently supplying the dozen buildings and shops at the Ganes Creek Mine. The Ganes Creek Mine is not connected to the interstate grid. Clark-Wiltz Mining would initially test the hydrokinetic device on a short-term basis during the initial 40 days after deployment, and continuously for 60 days before extracting the turbine from the creek before winter in Alaska. The deployment would provide the opportunity to evaluate turbine performance and determine the suitability of operating a hydrokinetic system in the harsh Alaskan mountain environment.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–14028 Filed 6–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–437–000]

Columbia Gulf Transmission Company; Notice of Filing

June 2, 2010.

Take notice that on May 20, 2010, Columbia Gulf Transmission Company (Columbia Gulf), 5151 San Felipe, Suite 2500, Houston, Texas 77056, filed an application, pursuant to section 7(c) of the Natural Gas Act (NGA), for a certificate of public convenience and necessity authorizing Columbia Gulf to construct and operate minor facilities required to isolate a portion of its existing transmission system to transport unprocessed gas (wet gas) near Centerville, Louisiana. The application is on file with the Commission and open for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

To minimize construction associated with transporting wet gas and there is current unsubscribed capacity in Columbia Gulf's Erath and East Lateral system, Columbia Gulf proposes modifications of these laterals to reserve capacity for receiving wet gas and delivering it to Neptune in Centerville, Louisiana. The construction consists of taps, regulating facilities, valves, launchers and receivers, and minor piping located in Columbia Gulf's existing rights-of-way. Columbia Gulf estimates the construction costs of the proposed facilities to be $4.2 million

Any questions regarding the application are to be directed to Frederic J. George, 1700 MacCorkle Ave., SE., P.O. Box 1273, Charleston, WV 25325–1273; phone number (304) 357–2359.

Any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Motions to intervene, protests and comments 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 under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: June 23, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–14025 Filed 6–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13417–001]

Western Technical College; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

June 3, 2010.

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 13417–001.

c. *Date Filed:* December 21, 2009.

d. *Submitted By:* Western Technical College (Western).

e. *Name of Project:* Angelo Dam Hydroelectric Project.

f. *Location:* On the La Crosse River, in Monroe County, Wisconsin. The project would not occupy any federal lands.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Michael Pieper, Vice President of Finance and Operations, Western Technical College, 400 Seventh Street, North, La Crosse, WI 54602–0908; (608) 785–9200.

i. *FERC Contact:* Steve Hocking at (202) 502–8753; or e-mail at *steve.hocking@ferc.gov*.

j. Western filed a request to use the Traditional Licensing Process on December 21, 2009, and provided public notice of this request on November 23, 2009. In a letter dated February 26, 2010, the Director of the Office of Energy Projects approved Western's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service (NMFS) under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; (b) NMFS under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the Illinois State Historic Preservation Officer, as required by Section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. Western filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site *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 (866) 208–3676, or for TTY, (202) 502–8659. A copy of the PAD is also available for inspection and reproduction at the address in paragraph h.

n. 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.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–14030 Filed 6–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance at North American Electric Reliability Corporation Meetings From July–December 2010

June 2, 2010.

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and Commission staff may attend the following NERC related meetings:

NERC Planning Committee Meetings and its sub-committee meetings on, but not limited to:

- Tuesday—Wednesday, September 14–15, 2010 Denver, CO (TBD).
- Tuesday—Wednesday, December 7–8, 2010 Tampa, FL (TBD).

NERC Operating Committee Meetings and its sub-committee meetings on, but not limited to:

- Tuesday—Wednesday, September 14–15, 2010 Denver, CO (TBD).
- Tuesday—Wednesday, December 7–8, 2010 Tampa, FL (TBD).

NERC Reliability Assessment Subcommittee on, but not limited to:

- Tuesday—Wednesday, August 10–11, 2010 Salt Lake City, UT (TBD).
- Tuesday—Wednesday, October 12–13, 2010 New York, NY (2).
- Tuesday, December 7, 2010 Teleconference (TBD).

NERC Reliability Metrics Working Group on, but not limited to:

- Wednesday, July 14, 2010 Teleconference (TBD).
- Wednesday, August 18, 2010 Teleconference (TBD).
- Wednesday—Thursday, September 22–23, 2010 (TBD).
- Wednesday, October 20, 2010 Teleconference (TBD).
- Wednesday, November 17, 2010 Teleconference (TBD).

NERC Resources Subcommittee Meetings on, but not limited to:

- Wednesday—Thursday, July 28–29, 2010 Pensacola, FL (3).
- Wednesday—Thursday, October 27–28, 2010 Valley Forge, PA (TBD).

NERC Standards Committee Meetings and its sub-committee meetings on, but not limited to:

- Wednesday—Thursday, July 14–15, 2010 Toronto, Ontario (TBD).
- Thursday, August 12, 2010, Teleconference (1).
- Thursday, September 9, 2010 Teleconference (1).
- Wednesday—Thursday, October 13–14, 2010 Houston, TX (TBD).
- Thursday, November 11, 2010, Teleconference (1).
- Thursday, December 9, 2010, Teleconference (1).

NERC Transmission Issues Subcommittee on, but not limited to:

- Wednesday—Thursday, July 21–22, 2010 (TBD).
- Wednesday—Thursday, October 13–14, 2010 (TBD).

NERC Board of Trustees Meetings:

- Wednesday—Thursday, August 4–5, 2010 Toronto, Ontario (4).
- Wednesday—Thursday, November 3–4, 2010 Atlanta, GA (TBD).

NERC Finance and Audit Committee Meetings:

- TBD.

Critical Infrastructure Protection Committee Quarterly Meetings and its sub-committee meetings on, but not limited to:

- Wednesday—Thursday, September 15–16, 2010 (TBD).
- Wednesday—Thursday, December 8–9, 2010 (TBD).

The meetings above will be held at the following locations:

1. North American Electric Reliability Corporation, 866.740.1260.

2. NPCC Offices, 1515 Broadway, New York, NY 10036, 917.934.7960.

3. Gulf Power Co. Headquarters, Room 596, Pensacola, FL 32502, 205.257.6209.

4. Marriott Toronto Eaton Centre, 525 Bay Street, Toronto, Ontario MSG 2L2, 416.597.9200.

Further information may be found at *http://www.nerc.com*.

The above-referenced meetings are open to the public.

For more information, contact Mary Agnes Nimis, Office of Electric

Reliability, Federal Energy Regulatory Commission at (202) 502–8235 or *maryagnes.nimis@ferc.gov* or Nicholas Snyder, Office of Electric Reliability, Federal Energy Regulatory Commission at (202) 502–6408 or *nicholas.snyder@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–14033 Filed 6–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

June 4, 2010.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
1. ER08–386–000 ER08–386–001	5–24–10	James Roberts. [1]
2. ER09–1063–000	5–25–10	Matthew White. [2]
Exempt:		
1. P–2232–516	5–18–10	Hon. Patrick T. McHenry.

[1] (1) of 504 form comments on index cards, addressed to the Chairman, concerning the PATH project.
[2] Record of telephone call received by Matthew White from Dr. Joe Bowring and Dr. Howard Hass, the IMM for PJM.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–14029 Filed 6–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–439–000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization

June 4, 2010.

Take notice that on May 20, 2010 Columbia Gas Transmission, LLC (Columbia), 5151 San Felipe, Suite 2500, Houston, TX 77056, filed in the above Docket, a prior notice request pursuant to sections 157.205, 157.208 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA) and Columbia's authorization in Docket No. CP83–76–000, for authorization to construct and abandon certain natural gas facilities located in Marshall County, West Virginia and Greene and Washington Counties, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Fredic J. George, Senior Counsel, Columbia Gas Transmission, LLC, P.O. Box 1273, Charleston, West Virginia 25314–1273 at (304) 357–2359.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the

Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–14024 Filed 6–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–446–000]

Florida Gas Transmission Company, LLC; Notice of Request Under Blanket Authorization

June 4, 2010.

Take notice that on May 28, 2010, Florida Gas Transmission Company, LLC (FGT), 5444 Westheimer Road, Houston, Texas 77056, filed a prior notice request pursuant to sections 157.205, 157.208, and 157.211 of the Commission's regulations under the Natural Gas Act (NGA) for authorization to construct, own, and operate approximately 5.37 miles of 12-inch diameter natural gas pipeline looping of FGT's existing 18-inch Mainline Pipeline (Mainline), all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, FGT proposes to construct, own, and operate approximately 5.37 miles of 12-inch diameter natural gas pipeline, associated metering and regulating facilities, and auxiliary facilities, all of which are located in Miami-Dade County, Florida. FGT states the pipeline modifications are required to accommodate the hydrostatic testing of a portion of its Mainline as part of its integrity management program to ensure the continued safe operation of the pipeline, and to ensure continued deliverability of natural gas. FGT estimates the total cost of the subject facilities is $20.4 million.

Any questions regarding the application should be directed to Stephen Veatch, Senior Director of Certificates & Tariffs, Florida Gas Transmission Company, LLC, 5444 Westheimer Road, Houston, Texas 77056, by telephone at (713) 989–2024, or by facsimile at (713) 989–1158, or by e-mail at *stephen.veatch@SUG.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–14032 Filed 6–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP10–690–002]

Guardian Pipeline, L.L.C.; Notice of Revised Filing

June 4, 2010.

Take notice that on May 14, 2010, Guardian Pipeline, L.L.C. submitted a revised filing to its filing made on May 14, 2010, in the above referenced proceeding.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comments: 5 p.m. Eastern Time on Tuesday, June 8, 2010.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–14086 Filed 6–10–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8990–8]

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 05/31/2010 Through 06/04/2010 Pursuant to 40 CFR 1506.9

Notice: In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public.

Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has been including its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site 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. 20100208, Draft EIS, USA, VA, Fort Monroe U.S. Army Garrison Base Realignment and Closure (BRAC) 2005 Disposal and Reuse of Surplus Non-reverting Property, Fort Monroe, VA, Comment Period Ends: 07/12/2010, Contact: Bob Ross 703–602–2878.

EIS No. 20100209, Final EIS, FHWA, NC, Monroe Connector/Bypass Project, Construction from Near I–485 at US 74 to US 74 between the Tons of Wingate and Marshville, Funding and U.S. COE 404 Permit, North Carolina Turnpike Authority, Meckleburg and Union Counties, NC, Wait Period Ends: 07/12/2010, Contact: Jennifer Harris 919–571–3004.

EIS No. 20100210, Draft EIS, USACE, 00, Fargo-Moorhead Metropolitan Area Flood Risk Management, Proposed Construction of Flood Protection Measures, Red River of the North Basin, ND and MN, Comment Period Ends: 07/26/2010, Contact: Aaron Snyder 651–290–5489.

EIS No. 20100211, Final EIS, FHWA, NV, I–15 Corridor Improvement and Local Arterial Improvements Project, Collectively Known as Project NEON, To Improve the Safety and Travel Efficiency in the I–15 Corridor, City of Las Vegas, Clark County, NV, Wait Period Ends: 07/16/2010, Contact: Abdelmoez Abdalla 775–687–1204.

EIS No. 20100212, Draft EIS, BLM, NM, Taos Resource Management Plan, To Provide Broad-Scale Guidance for the Management of Public Lands and Resource Administered by Taos Field Office, Colfax, Harding, Los Alamos, Mora, Rio Arriba, Santa Fe, Taos and Union Counties, NM, Comment Period Ends: 09/08/2010, Contact: Brad Higdon 575–751–4725.

EIS No. 20100213, Final EIS, FRA, PA, Pennsylvania High-Speed Maglev Project, Construction between Pittsburgh International Airport (PIA) and Greensburg Area, The Pennsylvania Project of Magnetic Levitation Transportation Technology Deployment Program, Allegheny and Westmoreland Counties, PA, Wait Period Ends: 07/16/2010, Contact: John Winkle 202–493–6067.

EIS No. 20100214, Draft EIS, FHWA, UT, Provo Westside Connector Project, Improvements to Interstate 15/University Avenue/1860 South Interchange to 3110 West Street in Provo, UT, Comment Period Ends: 08/10/2010, Contact: Edward Woolford 801–963–0182.

EIS No. 20100215, Final EIS, USFS, CO, Hermosa Park/Mitchell Lakes Land Exchange Project, Proposed Land Exchange between Federal and Non-Federal Lands, Implementation, Federal Land in LaPlata County and Non-Federal Land in San Juan County, CO, Wait Period Ends: 07/12/2010, Contact: Cindy Hockelberg 970–884–1418.

EIS No. 20100216, Draft Supplemental EIS, USACE, LA, Louisiana Coastal Area (LCA)—Louisiana, Terrebonne Basin Barrier Shoreline Restoration, Feasibility Study, Implementation. Terrebonne Parish, LA Comment Period Ends: 07/26/2010, Contact: Dr. William P. Klein, Jr., 504–862–2540.

Amended Notices

EIS No. 20100205, Draft Supplement, USFS, CA, Beaverslide Timber Sale and Fuel Treatment Project, Additional Analysis and New Information, Six Rivers National Forest, Mad River Range District, Trinity County, CA, Comment Period Ends: 07/26/2010, Contact: Thomas Hudson 707–574–6233.

Revision to FR Notice Published 06/04/2010: Due to Non-Distribution of EIS the Comment Period is being Recalculated from 07/19/2010 to 07/26/2010.

Dated: June 8, 2010.

Ken Mittelholtz,

Deputy Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–14080 Filed 6–10–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0481; FRL–8829–5]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 4–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review a set of scientific issues related to the Re-Evaluation of Human Health Effects of Atrazine: Review of Non-Cancer Effects and Drinking Water Monitoring Frequency.

DATES: The meeting will be held on September 14 – 17, 2010, from approximately 8:30 a.m. to 5 p.m.

Comments. The Agency encourages that written comments be submitted by August 31, 2010, and requests for oral comments be submitted by September 7, 2010. However, written comments and requests to make oral comments may be submitted until the date of the meeting, but anyone submitting written comments after August 31, 2010, should contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**. For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

Nominations. Nominations of candidates to serve as ad hoc members of FIFRA SAP for this meeting should be provided on or June 25, 2010.

Webcast. This meeting may be webcasted. Please refer to the FIFRA SAP's website, *http://www.epa.gov/scipoly/SAP* for information on how to access the webcast. Please note that the webcast is a supplementary public process provided only for convenience. If difficulties arise resulting in webcasting outages, the meeting will continue as planned.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation for a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

Comments. Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0481, 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's telephone number is (703) 305–5805.

Instructions. Direct your comments to docket ID number EPA–HQ–OPP–2010–0481. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

Nominations, requests to present oral comments, and requests for special accommodations. Submit nominations to serve as ad hoc members of FIFRA SAP, requests for special seating accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Joseph E. Bailey, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–2045; fax number: (202) 564–8382; e-mail address: *bailey.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

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

When submitting comments, remember to:

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

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

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

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

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

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

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

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

C. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2010–0481 in the subject line on the first page of your request.

1. *Written comments.* The Agency encourages that written comments be submitted, using the instructions in **ADDRESSES**, no later than August 31, 2010, to provide FIFRA SAP the time necessary to consider and review the written comments. Written comments are accepted until the date of the meeting, but anyone submitting written comments after August 31, 2010, should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**. Anyone submitting written comments at the meeting should bring 30 copies for distribution to FIFRA SAP.

2. *Oral comments.* The Agency encourages that each individual or group wishing to make brief oral comments to FIFRA SAP submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than September 7, 2010, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the meeting and, to the extent that time permits, the Chair of FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to the FIFRA SAP at the meeting.

3. *Seating at the meeting.* Seating at the meeting will be open and on a first-come basis.

4. *Request for nominations to serve as ad hoc members of FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates for each meeting, FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as ad hoc members of FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: Risk assessment, environmental epidemiology, mammary gland development, mixtures study design and risk assessment, mode of action analysis (particularly those with mode of action (MOA) framework experience), frameworks to evaluate human relevance, pharmacokinetics, neuroendocrinology (hormone-mediated effects), HPA axis (corticosterone), reproductive/developmental biology, and environmental sampling and statistical modeling. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before June 25, 2010. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency except the EPA. Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Although financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 15 ad hoc scientists.

FIFRA SAP members are subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on the FIFRA SAP will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. The EPA will evaluate the candidates financial disclosure form to assess whether there are financial conflicts of interest, appearance of a lack of impartiality or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP website at *http://epa.gov/scipoly/sap* or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov*.

II. Background

A. Purpose of FIFRA SAP

FIFRA SAP serves as the primary scientific peer review mechanism of EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) and is structured to provide scientific advice, information, and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. FIFRA SAP is a Federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act. FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. FIFRA, as amended by FQPA, established a Science Review Board consisting of at least 60 scientists who are available to the SAP on an ad hoc basis to assist in reviews conducted by the SAP. As a peer review mechanism, FIFRA SAP provides comments, evaluations, and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendations to the Agency.

B. Public Meeting

EPA is undertaking a re-evaluation of the human health effects of atrazine. The re-evaluation involves three SAP meetings in 2010 and one in 2011. The first was held in February 2010 where the Agency presented its preliminary reviews of several atrazine epidemiology studies on birth outcomes and described a project plan to evaluate atrazine epidemiology data from the Agricultural Health Study *http://aghealth.nci.nih.gov/)*. The April 2010 SAP meeting focused on:

1. A preliminary review of experimental toxicology studies from laboratory mammals and *in vitro* studies and recent advancements in understanding atrazine's mode of action.

2. Statistical approaches for evaluating monitoring frequency in community water systems (CWS).

In 2011, the Agency will solicit comments from the SAP on atrazine cancer epidemiology studies. The Agency will consider the SAP feedback from the April meeting to help guide the preparation for the September meeting which will focus on the non-cancer effects of atrazine. The Agency will include studies available up through July 15, 2010. At this meeting OPP will integrate data from *in vitro* and *in vivo* experimental toxicology studies along with preliminary review of non-cancer epidemiology studies in a draft weight of the evidence (WOE) analysis. This draft WOE analysis will follow the Draft Framework for Incorporating Epidemiologic and Human Incident Data in Health Risk Assessment, which was reviewed by the SAP in February 2010. This draft framework employs the modified Bradford Hill Criteria, like that in the MOA and Human Relevance Frameworks, and the source to effects

paradigm described in the 2007 National Research Council Report, as tools to organize and review data from multiple sources and from multiple levels of biological organization. The Agency will develop a draft MOA analysis of the animal data describing key events for the hypothalamic-pituitary-adrenal and hypothalamic-pituitary-gonadal axes along with a description of temporal and dose-response concordance, and the strengths and remaining uncertainties in the data. The animal MOA will be integrated with epidemiology studies on atrazine into a draft WOE analysis.

The Agency will also discuss alternative dose metrics for use in risk assessment and the strengths and limitations of each. The Agency will solicit feedback from the SAP on the implications of alternative dose metrics for performing dose response assessment in deriving points of departure, evaluating potential for differential lifestage susceptibility, and in determining the appropriate frequency of monitoring CWS.

As a condition of reregistration of atrazine, EPA required the registrants to implement a monitoring program in selected CWS in the corn and sorghum growing area of the U.S. Midwest. Generally, longer durations of concern (e.g., annual average concentration for a long-term chronic effect) require a less frequent sampling design to approximate longer term exposures. However, as the duration of the exposure of concern shortens, the frequency and timing of sampling become more important in determining how accurately the sample data capture these short-duration exposures. Depending on the aquatic resource being sampled, the likelihood increases that a spike in exposure may be missed by less frequent sampling. In light of the feedback received at the April SAP, the Agency will update proposed statistical approaches to determine the appropriate monitoring frequency for different toxicological durations of interest.

The Agency will consider feedback received from the SAP at the September 2010 meeting as it completes the non-cancer WOE analysis integrating experimental toxicology and epidemiology studies with statistical analysis for determining whether or not adjustments are necessary in the sampling frequency of CWS water monitoring.

C. FIFRA SAP Documents and Meeting Minutes

EPA's background paper, related supporting materials, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and ad hoc members for this meeting), and the meeting agenda will be available by mid-August. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, at *http://www.regulations.gov* and the FIFRA SAP homepage at *http://www.epa.gov/scipoly/sap*.

FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days after the meeting. The meeting minutes will be posted on the FIFRA SAP website or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov*.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 3, 2010

Steven M. Knott,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. 2010–14092 Filed 6–10–10; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 09–158; CG Docket No. 98–170; WC Docket No. 04–36; DA 10–988]

Comment Sought on Measurement of Mobile Broadband Network Performance and Coverage

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Consumer and Governmental Affairs Bureau (Bureau) seeks to gather additional information on the performance of mobile broadband services. The Bureau seeks comment on whether and how to pursue a measurement program for mobile broadband services given the growing significance of mobile internet access. Additionally, the Bureau seeks comment on how providers can improve voluntary self-reporting of network performance and coverage.

DATES: Comments are due on or before July 1, 2010.

ADDRESSES: Interested parties may submit comments and reply comments identified by [CG Docket No. 09–158], by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic comment Filing System (ECFS), through the Commission's Web site: *http://www.fcc.gov/cgb/ecfs/,* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number, which in this instance is [CG Docket No. 09–158, CC Docket No. 98–170, WC Docket No. 04–36]. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jordan Usdan, Spectrum & Competition Policy Division, Wireless Telecommunications Bureau, at (202) 418–2035 (Voice) or e-mail *Jordan.Usdan@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Consumer and Governmental Affairs Bureau (Bureau) Public Notice CG Docket No. 09–158, CC Docket No. 98–170, WC Docket No.

04–36 and DA 10–988, released June 1, 2010. In the *2009 Consumer Information and Disclosure Notice of Inquiry (NOI),* 24 FCC Rcd 14120 (2009); the Commission sought comment on ways to protect and empower American consumers by ensuring sufficient access to relevant information about communications services. Subsequent to release of the *2009 Consumer Information and Disclosure NOI,* the Commission released the National Broadband Plan, which recommends that the Commission develop broadband performance standards for mobile services, maintain and expand on current initiatives to capture user-generated data on network performance and coverage, and continue to work with measurement companies, application designers, device manufacturers, and service providers to create an online database to help consumers make better choices for mobile broadband. Further, the Plan suggests that the Commission encourage industry to create more transparent and standard disclosure of network performance and coverage for mobile broadband.

As part of the National Broadband Plan proceeding, the Commission issued Public Notice # 24 to gather additional information on fixed residential and small business Internet broadband services. With that public notice, the Commission began its effort to measure and publish data on actual performance of fixed broadband services, as ultimately recommended in the National Broadband Plan. The Commission recently contracted with a third-party, SamKnows Limited, to embark on this initiative, and has released a public notice seeking comment on the proposed methodology.

As detailed below, the Bureau now seeks comment on whether and how to pursue a similar measurement program for mobile broadband services given the growing significance of mobile internet access. Additionally, the Bureau seeks comment on how providers can improve voluntary self-reporting of network performance and coverage.

Because some of the questions below may be related to issues raised in the *2009 Consumer Information and Disclosure NOI,* the Bureau encourages parties who have provided responses on related issues in other proceedings to respond to this Public Notice by citing previous filings and expanding on previous comments as appropriate, to ensure that all relevant information is included within the record we are developing.

Measurement metrics for mobile broadband services: The Bureau seeks to understand the best metrics to measure the performance of mobile broadband services. Performance of mobile broadband networks is becoming more important as mobile broadband plays an increasingly important role in our lives and in our economy.

1. What are the best measurement metrics for mobile broadband services?

a. What performance characteristics should be tracked for mobile broadband networks (*e.g.,* typical data throughput, signal strength, accessibility, retainability, latency, other quality of service parameters)? At what level of temporal and geographic granularity?

b. What parts of the network should be measured? What starting and ending points (*e.g.,* radio access network, middle mile) are most useful and actionable for consumers, regulators and providers?

c. Should measurement processes and standards for mobile broadband services be different than those for fixed broadband connections?

User-generated and other data gathering methods: The Bureau seeks comment on methods to gather better data for mobile broadband network performance and coverage.

2. What are the best methods for collecting data on mobile broadband performance and coverage for end-users?

a. What are the best available tools in the market today for measuring mobile broadband performance and service coverage?

b. Are there current data sets already available that could be useful for facilitating better consumer disclosures on mobile broadband performance and coverage?

c. Are there existing technologies that can measure actual end-user experience on mobile broadband networks? If so where could the measurements take place (*e.g.,* on the device, inside the network)?

3. How can user generated data (*i.e.,* 'crowdsourcing') on mobile broadband network performance and coverage be utilized to assist in collecting data and improving transparency?

a. What efforts and technologies currently exist that can enable device level data collection on performance and coverage of mobile broadband networks? What metrics could a device level software application collect that could measure mobile broadband performance and coverage (*e.g.,* signal strength, data throughput rate)? What other data points would be valuable to collect in association with that data (*e.g.,* location, tower ID, handset type)?

b. For collecting device level data, what impact does the type of device (*e.g.,* smartphone, feature phones, laptop, wireless modem) itself have on end-user experienced network performance? How, if at all, could a measurement methodology take variations resulting from device type into consideration?

c. How could measurement methodology account for variations in performance due to the location (*e.g.,* basement of house vs. above ground) or movement (*e.g.,* user on a train) of the end-user? How can we account for differences in location determination methods (*e.g.,* GPS) across handsets and providers, if any? How should buildings, topography, weather, continued network build-outs, and other service availability variables be accounted for in the methodology?

d. Can a statistically robust sampling method correct for the variables described above, such as the impact on performance and coverage measurements of movement, device and location variability?

e. How can the Commission measure performance with minimal impact on the network itself? For example, how can active measurement techniques that generate additional network traffic mitigate potential increases in congestion?

4. What are the benefits and costs of measurement for providers, regulators, customers and others?

a. What are the benefits (*e.g.,* transparency, better data, network and international comparability, benefits for researchers, verification of National Broadband Map grantee data)?

b. What are the costs (*e.g.,* hardware costs, usage of the network, consumer hassle, accurate information already exists)?

c. Are there any legal, security, privacy or data sensitivity issues with collecting device level data? If so, how can these issues be addressed?

Publication and communication: The Bureau seeks comment on the best methods for publishing and communicating mobile broadband network performance metrics to consumers to help them make informed choices about mobile broadband services.

5. How could information on mobile broadband performance and coverage be better communicated to consumers?

a. What are the current best practices for displaying or communicating mobile broadband performance and coverage to consumers today?

b. Are consumers currently being provided with enough accurate and detailed information about performance and service coverage to make informed

choices between different mobile broadband network providers?

Current mobile broadband network performance and coverage disclosures: Existing voluntary disclosures related to mobile broadband performance and coverage have proven valuable for consumers. Providers of mobile broadband services usually provide coverage maps and 'up-to' or 'typical' data throughput rates. Third-parties also provide and compile coverage maps for providers (American Roamer) and consumers (Root Wireless). While existing data on mobile broadband services are helpful, gaps remain. For example, the currently provided 'up-to' or 'typical' data throughput rates are rough estimations of actual performance and some coverage maps provide a binary 'yes' or 'no' reading without accounting for signal strength at particular locations, whereas other maps provide more layered readings (such as indoor/outdoor or 'good'/'better'/'best'). Additional voluntary performance measurements and standards could provide better information enabling consumers to make informed choices about mobile broadband services.

6. What measurements are typically performed by service providers today to track mobile broadband network performance and service availability?

a. What tools are currently available for consumers to check coverage and performance at a specific geographic location by mobile broadband network (*e.g.,* coverage maps), and how accurate are the data for typical outdoor and indoor consumer use?

b. How are data for coverage and service area maps collected, verified and displayed (how compiled, how accurate, how granular)? How are data on mobile broadband performance (*i.e.,* data throughput rates) measured and displayed?

c. What technologies are used to collect such data (*e.g.,* RF modeled coverage, drive tests, network reporting, handset data collections)?

d. Are there any voluntary industry standards that are being used in disclosing mobile broadband network performance and coverage to consumers? How could these be improved (*e.g.,* signal strength or throughput bands to map different levels of service quality)?

In addition to written responses, the Bureau encourages submission of any data, charts or proposed plans that can be entered into the public record for purposes of building a record on this subject. All parties with knowledge and interest are encouraged to file.

Federal Communications Commission.

Mark Stone,

Deputy Bureau Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2010–14102 Filed 6–10–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 10–1032]

Consumer Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission announces the next meeting date and agenda of its Consumer Advisory Committee ("Committee"). The purpose of the Committee is to make recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of all consumers in proceedings before the Commission.

DATES: The meeting of the Committee will take place on Wednesday June 30, 2010, 9 a.m. to 4 p.m., at the Commission's Headquarters Building, Room TW–C305.

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

FOR FURTHER INFORMATION CONTACT: Scott Marshall, Consumer and Governmental Affairs Bureau, (202) 418–2809 (voice), (202) 418–0179 (TTY), or e-mail *Scott.Marshal@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 10–1032 released, June 4, 2010, announcing the agenda, date and time of the Committee's next meeting. At its June 30, 2010 meeting, the Committee is expected to consider a further recommendation regarding consumer information disclosures to be filed in CG Docket 09–158, CC Docket 98–170 and WC Docket 04–36 (In the Matter of Consumer Information and Disclosure, Truth-in-billing and Billing Format, IP-enabled Services, Notice of Inquiry). The Committee is also expected to consider recommendations regarding National Broadband Plan implementation, Universal Access and Adoption and the Universal Service Fund. The Committee may also consider reports or recommendations regarding closed captioning, video description, hearing aid compatibility, telecommunications relay services, public safety, and sections 508 and 255. The Committee will receive reports from its working groups and may also consider other matters within the jurisdiction of the Commission. A limited amount of time on the agenda will be available for oral comments from the public attending at the meeting site. Meetings are open to the public and are broadcast live with open captioning over the Internet from the FCC Live Web page at *http://www.fcc.gov/live/.*

The Committee is organized under, and operates in accordance with, the provisions of the Federal Advisory Committee Act, 5 U.S.C., App. 2 (1988). A notice of each meeting will be published in the **Federal Register** at least fifteen (15) days in advance of the meeting. Records will be maintained of each meeting and made available for public inspection. Members of the public may send written comments to: Scott Marshall, Designated Federal Officer of the Committee at *scott.marshall@fcc.gov.*

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, assistive listening devices, and Braille copies of the agenda and handouts will be provided on site.

Simultaneous with the Webcast, the meeting will be available through Accessible Event, a service that works with your Web browser to make presentations accessible to people with disabilities. You can listen to the audio and use a screen reader to read displayed documents. You can also watch the video with open captioning. The Web site to access Accessible Event is *http://accessibleevent.com.* The web page prompts for an Event Code which is, 005202376. To learn about the features of Accessible Event, consult its User's Guide at: *http://accessibleevent.com/doc/user_guide/.* Other reasonable accommodations for people with disabilities are available upon request. The request should include a detailed description of the accommodation needed and contact information. Please provide as much advance notice as possible; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Federal Communications Commission.

Mark Stone,

Deputy Bureau Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2010–14100 Filed 6–10–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Meeting Location Change and Joint Meeting of FASAB and GASB

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in April, 2004, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) will meet on Wednesday, June 23rd, 2010, from 9 a.m. to 4 p.m. in room 6N30, 441 G St., NW., Washington, DC. On Thursday, June 24th, 2010, the Federal Accounting Standards Advisory Board (FASAB) will meet jointly with the Governmental Accounting Standards Board (GASB) from 8:30 a.m. to 3 p.m. at the GASB Offices, 401 Merritt 7, Fifth Floor, Norwalk, CT.

The purpose of the meeting is to discuss:

—Measurement Attributes,
—Reporting Model,
—Cost Accounting, and
—Governance Issues.

A more detailed agenda can be obtained from the FASAB Web site *http://www.fasab.gov*.

Any interested person may attend the meeting as an observer. Board discussion and reviews are open to the public. GAO Building security requires advance notice of your attendance. Please notify FASAB by June 21, 2010 of your planned attendance by calling 202–512–7350.

FOR FURTHER INFORMATION CONTACT: Wendy Payne, Executive Director, at (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: June 8, 2010.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. 2010–14129 Filed 6–10–10; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, June 10, 2010, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: this meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2010–08: Citizens United, by its counsel, Theodore B. Olson, Esq., of Gibson, Dunn & Crutcher LLP.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Darlene Harris, Acting Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Darlene Harris,

Acting Secretary of the Commission.

[FR Doc. 2010–13980 Filed 6–10–10; 8:45 am]

BILLING CODE 6715–01–M

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 25, 2010.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. ACMO–HR, L.L.C., New York, New York; Anchorage Capital Master Offshore, Ltd.; ACPO Master, L.P.; Anchorage Capital Partners Offshore, Ltd.; and ACPO Master, Ltd., all of Grand Cayman, Cayman Islands; Anchorage Capital Partners, L.P.; Anchorage Advisors, L.L.C.; Anchorage Capital Group, L.L.C.; Anchorage Capital Management, L.L.C.; and Anchorage Advisors Management, L.L.C., all of Wilmington, Delaware; Kevin Ulrich and Anthony Davis, both of New York, New York, to acquire voting shares of Hampton Roads Bankshares, Inc., Norfolk, Virginia, and thereby indirectly acquire voting shares of Shore Bank, Onley, Virginia, and Bank of Hampton Roads, Norfolk, Virginia.

B. Federal Reserve Bank of Atlanta (Clifford Stanford, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. AG Advisors Private Equity Participation Partners, L.P.; AG Funds GP, L.P.; AG Funds, L.P.; AG Private Equity IV LLC; AG Private Equity Partners IV(R) L.P.; AG Private Equity Partners IV, L.P.; AG Super LLC; AG Super Fund, L.P.; JM Funds LLC; John M. Angelo, and Michael L. Gordon, all of New York, New York, to acquire voting shares of Hamilton State Bancshares, Inc., and thereby indirectly acquire voting shares of Hamilton State Bank, both of Hoschton, Georgia.

2. Tailwind Capital Partners (AI), L.P., a Delaware limited partnership; Tailwind Capital Partners (PP), L.P., a Delaware limited partnership; Tailwind Capital Partners, L.P., a Delaware limited partnership; Tailwind Capital Partners (ERISA), L.P., a Delaware limited partnership; Tailwind HSB Holdings, LLC, a Delaware limited liability company; Tailwind Capital Partners (Cayman), L.P., a Cayman Islands limited partnership; Tailwind Holdings (Cayman), L.P., a Cayman Islands limited partnership; Tailwind Capital Partners (GP) LP, a Delaware limited partnership; Tailwind Management LP, a Delaware limited partnership; Tailwind Capital Group LLC, a Delaware limited liability company; James Stevenson Hoch; Douglas Mark Karp; Frank Vincent Sica; and Lawrence Brian Sorrel, c/o Tailwind Capital; New York, New York, to acquire voting shares of Hamilton State Bancshares, Inc., and thereby indirectly acquire voting shares of Hamilton State Bank, both of Hoschton, Georgia.

C. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Richard Earl Williams, Jr., Cameron, Texas, and Debora Evans, Belton, Texas, individually; to retain voting shares of Cameron Financial Corporation, and thereby indirectly retain voting shares of Classic Bank, N.A., both of Cameron, Texas.

Board of Governors of the Federal Reserve System, June 7, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–13997 Filed 6–10–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 6, 2010.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. 2009 TCRT; Ford Daughters Financial Trust; Ford Financial Fund, L.P.; Ford Management, LP; Ford Ultimate Management, LLC; Ford Sons Financial Trust; Diamond A Financial Fund, L.P.; SB Acquisition Company, LLC; and GJF Financial Management, LLC; all of Dallas, Texas; to become bank holding companies by acquiring 91 percent of the voting shares of Pacific Capital Bancorp, Santa Barbara, California, and indirectly acquire voting shares of Pacific Capital Bank, National Association, Santa Barbara California.

In connection with this application, Applicant also has applied to acquire voting shares of PCB Service Corporation, Santa Barbara, California; Morton CapitalManagement, Calabasas, California; and R. E. Wacker Associates, Inc., San Luis Obispo, California, and thereby engage in activities related to extending credit, trust company functions, and investment advisory activities, pursuant to section 225.28 (b)(1), (5) and (b)(6)(vi) of Regulation Y.

Board of Governors of the Federal Reserve System, June 7, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–13999 Filed 6–10–10; 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 25, 2010.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Danske Bank A/S, Copenhagen, Denmark; to engage *de novo* through its subsidiary, Danske Markets Inc., both of New York, New York, in securities brokerage activities, pursuant to section 225.28(b)(7)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, June 7, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–13998 Filed 6–10–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council Meeting; Sunshine Act; Notice of Meeting

TIME AND DATE: 10 a.m. (Eastern Time), June 24, 2010.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC 20005.

STATUS: All parts open to the public.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the October 19, 2009 meeting.
2. Report of the Executive Director.
3. Discussion of legislative proposals.
4. New business.

CONTACT PERSON FOR MORE INFORMATION: Thomas K. Emswiler, Committee Management Officer, (202) 942–1660.

Dated: June 8, 2010.

Thomas K. Emswiler,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2010–14172 Filed 6–9–10; 4:15 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on HIV/AIDS

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Service (DHHS) is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA) will hold a meeting. The meeting will be conducted as a telephone conference call. The meeting will be open to the public through a conference call phone number.

DATES: The meeting will be on June 29, 2010 from 4 p.m. to approximately 5 p.m. EST.

ADDRESSES: No in-person meeting; conference call only.

Conference Call: Domestic: 888–455–2653. International: 1–210–839–8485. Access code: 158777.

FOR FURTHER INFORMATION CONTACT: Mr. Melvin Joppy, Committee Manager, Presidential Advisory Council on HIV/AIDS, Department of Health and Human Services, 200 Independence Avenue, SW., Room 443H, Washington, DC 20201; (202) 690–5560. More detailed information about PACHA can be obtained by accessing the Council's Web site at *http://www.pacha.gov*.

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995 as amended by Executive Order 13009, dated June 14, 1996. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to (a) Promote effective prevention of HIV disease, (b) advance research on HIV and AIDS, and (c) promote quality services to persons living with HIV disease and AIDS. PACHA was established to serve solely as an advisory body to the Secretary of Health and Human Services.

The meeting will be open to the public through a conference call phone number provided above. There will be a limited amount of open lines for the public; early registration is highly recommended. Individuals who participate using this service and who need special assistance or other reasonable accommodations, should submit a request at least five days prior to the meeting. Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard until the public comment period. Information about the Presidential Advisory Council on HIV/AIDS is available on the PACHA Web site *http://www.pacha.gov.*

Members of the public will have the opportunity to provide comments. Pre-registration is required for public comment. Individuals who wish to participate in the public comment session must send a copy of public comment to Melvin Joppy, Committee Manager, at *melvin.joppy@hhs.gov* by close of business Friday, June 25, 2010. Registration for public comment will not be accepted by telephone. Public comment will be limited to the first eight individuals who pre-register. Public comment will be limited to two minutes per speaker. Individuals not providing public comment during conference call meeting may submit comments to Melvin Joppy, Committee Manager, at *melvin.joppy@hhs.gov* by close of business Wednesday, June 30, 2010.

Dated: June 7, 2010.

Christopher H. Bates,

Executive Director, Presidential Advisory Council on HIV/AIDS.

[FR Doc. 2010–14079 Filed 6–10–10; 8:45 am]

BILLING CODE 4150–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10137 and CMS–10237]

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:* Revision of a currently approved collection; *Title of Information Collection:* Application for Prescription Drug Plans (PDP); Application for Medicare Advantage Prescription Drug (MA–PD)—CY 2012; Application for Cost Plans to Offer Qualified Prescription Drug Coverage; Application for Employer Group Waiver Plans to Offer Prescription Drug Coverage; Service Area Expansion Application for Prescription Drug Coverage; *Use:* Collection of this information is mandated under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). The application requirements are codified in Subpart K 42 CFR Part 423 of entitled "Application Procedures and Contracts with PDP Sponsors."

Coverage for the prescription drug benefit is provided through contracted prescription drug plans (PDPs) or through Medicare Advantage (MA) plans that offer integrated prescription drug and health care coverage (MA–PD plans). Cost Plans that are regulated under Section 1876 of the Social Security Act, and Employer Group Waiver Plans (EGWP) may also provide a Part D benefit. Organizations wishing to provide services under the Prescription Drug Benefit Program must complete an application, negotiate rates, and receive final approval from CMS. Existing Part D Sponsors may also expand their contracted service area by completing the Service Area Expansion (SAE) application. The collected information will be used by CMS to: (1) Ensure that applicants meet CMS requirements, (2) support the determination of contract awards. *Form Number:* CMS–10137 (OMB#: 0938–0936); *Frequency:* Once; *Affected Public:* Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 295; *Total Annual Responses:* 295; *Total Annual Hours:* 3,576 (For policy questions regarding this collection contact Marla Rothouse at 410–786–8063. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Part C Medicare Advantage Application and 1876 Cost Plan Expansion Application—CY 2012; *Use:* The Balanced Budget Act of 1997 (BBA) established a new "Part C" in the Medicare statute (sections 1851 through 1859 of the Social Security Act (the Act)) which provided for a Medicare+Choice (M+C) program. Under section 1851(a)(1) of the Act, every individual entitled to Medicare Part A and enrolled under Part B, except for most individuals with end-stage renal disease (ESRD), could elect to receive benefits either through the Original Medicare Program or an M+C plan, if one was offered where he or she lived. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) established the Medicare Prescription Drug Benefit Program (Part D) and made revisions to the provisions of Medicare Part C, governing what is now called the Medicare Advantage (MA) program (formerly Medicare+Choice). Organizations wishing to provide healthcare services under MA and/or MA–PD plans must complete an application, file a bid, and receive final approval from CMS. Existing MA plans may expand their contracted area by completing the Service Area Expansion (SAE) application. Any current Cost Plan

Contractor that wants to expand its Medicare cost-based contract with CMS under Section 1876 of the Social Security Act, as amended by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and subsequent legislation can complete the application. *Form Number:* CMS–10237 (OMB#: 0938–0935); *Frequency:* Yearly; *Affected Public:* Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 355; *Total Annual Responses:* 355; *Total Annual Hours:* 11,831 (For policy questions regarding this collection contact Letticia Ramsey at 410–786–5262. 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 August 10, 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: *June 4, 2010.*

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–13898 Filed 6–10–10; 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: Developmental Disabilities Program Independent Evaluation Project.

OMB No.: 0970–0372.

Description: The National Independent Study of the State Developmental Disabilities Programs (National Study) is an independent (non-biased) study to examine through rigorous and comprehensive research procedures the three programs funded under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act): (1) State Councils on Developmental Disabilities (SCDDs); (2) State Protection and Advocacy Systems for Individuals with developmental disabilities (P&As); and (3) University Centers for Excellence in Developmental Disabilities (UCEDDs). The purpose of the study is to assess program effectiveness and achievements, including collaborative efforts among these state developmental disabilities (DD) network programs. A component of the study will be an examination of the Administration on Developmental Disabilities' efficiency and effectiveness to support these DD Network programs. The results of this evaluation will provide a report to the Administration on Developmental Disabilities (ADD) (the agency that administers these programs) with information on the effectiveness of its programs and policies and serve as a way for ADD to promote accountability to the public.

The independent study is a response to accountability requirements for ADD as identified in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act), the Government Performance and Results Act (GPRA) of 1993, and the Program Assessment Rating Tool (PART), previously administered by the Office of Management and Budget (OMB).

ADD has OMB approval for all the evaluation tools (*e.g.,* data collection instruments) for this study, except a new one being proposed. The new evaluation tool would be an on-line survey tool designed to collect data for an assessment of ADD.

Respondents: For the ADD assessment survey being added, the respondents would be Staff of State Councils on Developmental Disabilities, State Protection and Advocacy Systems for Individuals with developmental disabilities, and University Centers for Excellence in Developmental Disabilities, Education, Research, and Service.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
DD Council: Executive Director Interview	20	1	4	80
DD Council: Interview with Council Chair/Council Members	60	1	0.75	45
DD Council: Group Interview with Policymakers, Collaborators, and Grantees	160	1	2	320
UCEDD: Telephone Interview with Current and Graduated Students	100	1	0.75	75
UCEDD: Interview with the Consumer Advisory Committee	60	1	0.75	45
UCEDD: Interview with Peer Researchers and Colleagues	100	1	0.75	75
UCEDD: Interview with Recipients of Community Services or Members of Organizations/Agencies that are Trained to Provide Community Services	100	1	0.75	75
UCEDD: Self-administered Form	20	1	8	160
P&A: Executive Director Interview	20	1	4	80
P&A: Staff Interview	60	1	0.75	45
P&A: Board of Directors (Commissioners)-Chair and Members	60	1	0.75	45
P&A: Group Interview with Policymakers and Collaborators	160	1	2	320
P&A: Interview with Recipient of Community Education	100	1	0.75	75
P&A: Interview with Clients	100	1	0.75	75
P&A: Self-administered Form	20	1	8	160
UCEDD: Interview with Director	20	1	4	80

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
DD Council: Group Interview with Recipients of Self-Advocacy and Leadership Education and Training	100	1	0.75	75
DD Council: Group Interview with Recipients of Education and Training to Improve Community Capacity	100	1	0.75	75
DD Council: Self-administered Form	20	1	8	160
DD Council Estimate of Total Burden Hours for Activities to Support Administration of Proposed Information Collection Instruments	20	1	33.50	670
P&A Estimate of Total Burden Hours for Activities to Support Administration of Proposed Information Collection Instruments	20	1	33.50	670
UCEDD Estimate of Total Burden Hours for Activities to Support Administration of Proposed Information Collection Instruments	20	1	33.50	670
ADD Assessment Survey	60	1	0.75	45

Estimated Total Annual Burden Hours: 4,120.

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: June 7, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–14002 Filed 6–10–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Federally Qualified Health Centers (FQHC) Application Forms: (OMB No. 0915–0285)—Revisions

HRSA's Bureau of Primary Health Care administers grants to Health Centers receiving funding under section 330 of the Public Health Service Act and has an approval process for organizations seeking to qualify as Federally Qualified Health Center (FQHC) Look Alikes. These Health Centers and FQHC Look Alikes provide preventive and primary health care services to low-income and other vulnerable populations, regardless of their ability to pay and whether or not they have health insurance. Many Health Centers and FQHC Look-Alikes offer dental, mental health and substance abuse care.

HRSA uses the following application forms to administer Section 330 Health Centers grants and the FQHC Look Alike application process. These application forms are used by new and existing Health Centers and FQHC Look-Alikes to apply for grant and non-grant opportunities, renew their grant or non-grant opportunities or change their scope of project.

Estimates of annualized reporting burden are as follows:

Type of application form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
General Information Worksheet	1,034	1	1,034	2.0	2,068
Planning Grant: General Information Worksheet	250	1	250	2.5	625
BPHC Funding Request Summary	1,034	1	1,034	2.0	2,068
Documents on File	1,034	1	1,034	1.0	1,034
Proposed Staff Profile	1,034	1	1,034	2.0	2,068
Income Analysis Form	1,034	1	1,034	5.0	5,170
Community Characteristics	1,034	1	1,034	1.0	1,034
Health Care Plan (Competing)	800	1	1,034	4.0	4,136
Health Care Plan (Non-Competing)	1,034	1	1,034	2.0	2,068
Business Plan (Competing)	800	1	1,034	4.0	4,136

Type of application form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Business Plan (Non-Competing)	1,034	1	1,034	2.0	2,068
Services Provided	1,034	1	1,034	1.0	1,034
Sites Listing	1,034	1	1,034	1.0	1,034
Other Site Activities	700	1	700	0.5	350
Change In Scope (CIS) Site Add Checklist	300	1	300	1.0	300
CIS Site Delete Checklist	200	1	200	1.0	200
CIS Relocation Checklist	200	1	200	1.5	300
CIS Service Add Checklist	100	1	200	1.0	200
CIS Service Delete Checklist	100	1	100	1.0	100
Board Member Characteristics	1,034	1	1,034	1.0	1,034
Request for Waiver of Governance Requirements	150	1	150	1.0	150
Health Center Affiliation Certification	250	1	250	1.0	250
Need for Assistance	900	1	900	3.0	2,700
Emergency Preparedness Form	1,034	1	1,034	1.0	1,034
Points of Contact	800	1	800	0.5	400
EHR Readiness Checklist	250	1	250	1.0	250
Environmental Information and Documentation (EID)	400	1	400	2.0	800
Capital Improvement/Investment Proposal Cover Page	700	1	700	1.0	700
Assurances	900	1	900	.5	450
Capital Improvement/Investment Project Cover	700	1	700	1.0	700
Capital Improvement/Investment Project Impact	700	1	700	.5	350
Equipment List	900	1	900	1.0	900
Other Requirements for Sites	900	1	900	.5	450
Total	1,138	1	23,976		40,161

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the "attention of the desk officer for HRSA."

Dated: June 7, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–14108 Filed 6–10–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0433] (formerly Docket No. 2007D–0169)

Guidance for Industry on Bioequivalence Recommendations for Specific Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Bioequivalence Recommendations for Specific Products." This guidance describes a new process for making available recommendations on how to design product-specific bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs). Under this process, applicants planning to carry out such studies in support of their ANDAs are able to access BE study guidance on the FDA Web site. FDA believes that making this information available on the Internet will streamline the guidance process and will provide a meaningful opportunity for the public to consider and comment on product-specific BE study recommendations.

DATES: Submit either electronic or written comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Doan T. Nguyen, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9314.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Bioequivalence Recommendations for Specific Products." This guidance describes a new process for making available recommendations on how to design product-specific BE studies to support ANDAs. Under this process, draft and final BE recommendations are posted on FDA's Web site (*http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, Individual Product Bioequivalence Recommendations) and announced periodically in the **Federal Register**. For draft BE recommendations, the **Federal Register** notice will identify a comment period. The public is encouraged to submit comments on the draft BE recommendations, and the agency will consider received comments in developing final BE recommendations. FDA adopted this process as a means to develop and disseminate product-specific BE recommendations and provide an opportunity for the public to consider and comment on those recommendations.

In the **Federal Register** of May 31, 2007 (72 FR 30388), FDA announced the availability of a draft version of this guidance entitled "Bioequivalence Recommendations for Specific

Products." The May 2007 draft guidance gave interested persons an opportunity to submit comments through August 29, 2007. The agency is finalizing the guidance after considering comments received on the draft guidance. Minor changes were made to the draft guidance to update FDA Web site information.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on a new process for making available to sponsors FDA guidance on how to design product-specific bioequivalence studies to support ANDAs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding the guidance. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: June 3, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–14036 Filed 6–10–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0256]

Indexing Structured Product Labeling for Human Prescription Drug and Biological Products; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration's (FDA's) Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research (CBER) are indexing certain categories of information in product labeling for use as terms to search repositories of approved prescription medical product structured product labeling (SPL). FDA has previously identified pharmacologic class as a top priority for indexing of product labeling information. FDA is now announcing that medical product indications is another category of product labeling information that the agency has identified as a high priority for indexing. CDER and CBER are announcing the establishment of a public docket to provide an opportunity for interested parties to share information, research, and ideas on the FDA indexing process.

DATES: Submit either electronic or written comments by August 10, 2010.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in the brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Colleen E. Brennan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6439, Silver Spring, MD 20993–0002, 301–796–2316; or Denise Sánchez, Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

As part of the effort to advance medical informatics to support the safe use of medical products, CDER and CBER are using the SPL format to index labeling information for human prescription drug and biological products. SPL is a document markup standard approved by Health Level Seven adopted by FDA as a mechanism for exchanging product information by using extensible markup language. Indexing refers to the insertion of machine-readable tags that do not appear in actual printed labeling, but enable users with clinical decision support tools and electronic prescribing systems to rapidly search and sort product information. This is an important step toward the creation of a fully automated health information exchange system.

Indexed labeling can help prevent prescription errors and enhance the safe use of medical products. For example, among other benefits, the SPL indexing can enable a hospital's computer system to help detect that products prescribed by the hospital to treat a patient's injury do not adversely interact with other products that the patient is taking. It is important that this indexing be done consistently to enable comprehensive searches to find all relevant information, including appropriate synonyms.

In recent years, FDA pilot-tested the addition of SPL indexing to human prescription drug and biological product labeling. Based on that experience, feedback from industry, and feedback from other SPL users, FDA's approach will be to index product labeling information and link an indexed SPL file to the content of labeling SPL file available in the official SPL public access repository. Considering FDA's available resources, we have instituted a phased implementation of indexing for certain categories for all human prescription drug and biological product labeling. Indexing information on the pharmacologic class and indications categories of product labeling is being undertaken by the agency, as resources permit (see more information below). As the phased implementation proceeds, all human prescription drug and biological product labeling may be linked to certain key indexing.

For additional information, including the guidance for industry "Indexing Structured Product Labeling," refer to the FDA Data Standards Council Web page on SPL at *http://www.fda.gov/ForIndustry/DataStandards/StructuredProductLabeling/default.htm*. FDA will update the Data Standards Council Web site to include all SPL indexing and their related terminologies as they are developed.

When the indexing of pharmacologic class and indications is complete, FDA intends to index other categories of product labeling information using a phased implementation process. The types and priority order of indexing of subsequent categories will be determined based on public input and agency priorities.

II. Indexing Pharmacologic Class

In June 2008, FDA issued the guidance for industry "Indexing Structured Product Labeling." This guidance states the agency's intention to index product labeling information, as resources permit, and identifies pharmacologic class as a top indexing priority. As part of its review and label

approval process, FDA identifies the established pharmacologic class for each approved medical product if appropriate. An established pharmacologic class is one that FDA has determined is scientifically valid and clinically meaningful according to the principles outlined in the guidance for industry and review staff "Labeling for Human Prescription Drugs and Biological Products—Determining Established Pharmacologic Class for Use in the Highlights of Prescribing Information," published in October 2009.

For SPL indexing, the established pharmacologic class is represented by an established pharmacologic class term or phrase. FDA also uses the Department of Veterans Affairs National Drug File Reference Terminology to identify other scientifically valid and clinically meaningful SPL indexing terms for each active ingredient that are representative of mechanism of action, physiologic effect, and chemical structure.

On the FDA Data Standards Council Web site, FDA has posted a Microsoft Excel spreadsheet containing a list of proposed established pharmacologic classes and indexing concepts completed to date for each active ingredient associated with approved human prescription drug and biological products.[1]

III. Indexing Indications Information

FDA has determined that another high priority for indexing of product labeling information, as resources permit, is the medical product indications category.

With indexing of indications, the goal is to determine terms or phrases that represent the recognized disease or condition, manifestation of a recognized disease or condition, or symptoms associated with a recognized disease or condition that accurately capture the approved indication appearing in the Indications section of labeling. The current intent is to index the basic indication concepts without the more specific usage and limitations of use information. Criteria are under development to determine the appropriate level of granularity and consistency in the choice of concepts indexed.

After consideration of existing alternatives including the National Library of Medicine's Clinical Observations Recording and Encoding (CORE) subset of Systematized Nomenclature of Medicine Clinical Terms (SNOMED CT), FDA chose the Veterans Health Administration and Kaiser Permanente (VA/KP) Problem List subset of SNOMED CT as the terminology for SPL indexing of product labeling information on indication.[2]

SNOMED CT is a comprehensive clinical terminology that includes expressions for body structures, clinical findings, procedures, and hundreds of thousands of other clinical concepts. More information on SNOMED CT is available at *http://www.nlm.nih.gov/research/umls/Snomed/snomed_main.html*.

IV. Request for Comments

FDA is establishing an open docket for comments to obtain public input on the indexing process. Representatives of the human prescription drug and biological product industries, health care providers, and other health care professionals are particularly encouraged to participate and submit comments.

FDA is asking for comment on all aspects of indexing the content of labeling. In particular, FDA is asking for comments on the following:

1. FDA is currently indexing pharmacologic class and indications. When indexing of these categories is complete, FDA plans to index additional labeling information categories. For example, warnings and precautions, other adverse reactions, drug interactions, pediatric, or pregnancy information may be useful categories of information for future indexing. Other categories may also be identified. Please comment on the subsequent labeling categories that should be indexed by FDA as well as the priority order for indexing these categories.

2. For each indexing category, FDA will develop a series of principles to ensure the consistent assignment of indexing concepts. Please comment on the type of principles that may be useful for this task.

3. FDA chose the VA/KP Problem List subset of SNOMED CT as the indexing terminology for indications for the following reasons:

- The VA/KP Problem List is the named SPL data standard terminology for indexing the medical condition.[3]
- The subset represents conditions at a level of discreteness that are clinically relevant.

Please comment on the use of the VA/KP Problem List for the indexing of indications.

4. For indications, the degree of complexity indexed is limited by FDA's intention to first capture the main focus of the indication as a single existing concept using the 01312010 version of the SNOMED CT VA/KP Problem List subset. Additional indication modifiers found in approved product labeling such as disease severity or chronicity will not always be indexed. Please comment on this approach.

5. FDA will use the SPL standard to disseminate indexing information. Once entered into the SPL file, the indexed elements will be available for uploading into computer systems for sorting and other data manipulations. We believe this approach is more user friendly than the Microsoft Excel spreadsheet format we are currently using to showcase pharmacologic class on the Data Standards Web site. Please comment on this approach to make SPL indexing information available to interested parties.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 7, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–14047 Filed 6–10–10; 8:45 am]

BILLING CODE 4160–01–S

[1] See *http://www.fda.gov/ForIndustry/DataStandards/StructuredProductfxsp0;Labeling/ucm162549.htm*.

[2] FDA News: *http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2006/ucm108642.htm*

[3] SNOMED CT VA/KP subset: *http://www.nlm.nih.gov/research/umls/Snomed/snomed_problem_list.html*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1576–N]

Medicare and Medicaid Programs; Procedure for Hospitals Seeking To Enter Into an Agreement With a Different Organ Procurement Organization Following an 1138(a)(2) Waiver

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the procedures that will be used when a hospital, that has previously been granted a waiver under sections 1138(a)(2) of the Social Security Act (the Act), seeks to enter into an agreement with a different Organ Procurement Organization (OPO). The procedures are modeled after the public process required by 1138(a)(2) of the Act. The process affords the public an opportunity to comment on the proposed change and to submit information and material with respect to whether the change is likely to increase organ donation and will assure equitable treatment for patients in both affected OPO service areas.

DATES: *Effective Date:* This notice is effective June 11, 2010.

FOR FURTHER INFORMATION CONTACT: Mark A. Horney, (410) 786–4554.

SUPPLEMENTARY INFORMATION:

I. Background

Organ Procurement Organizations (OPOs) are not-for-profit organizations that are responsible for the procurement, preservation, and transport of transplantable organs to transplant centers throughout the country. Qualified OPOs are designated by the Centers for Medicare & Medicaid Services (CMS) to recover or procure organs in CMS-defined exclusive geographic service areas, pursuant to section 371(b)(1) of the Public Health Service Act (42 U.S.C. 273(b)(1)) and our regulations at 42 CFR 486.306. Once an OPO has been designated for an area, hospitals in that area that participate in Medicare and Medicaid are required to work with that OPO in providing organs for transplant, pursuant to section 1138(a)(1)(C) of the Social Security Act (the Act), and our regulations at § 482.45.

Section 1138(a)(1)(A)(iii) of the Act provides that a hospital must notify the designated OPO (for the service area in which it is located) of potential organ donors. Under section 1138(a)(1)(C) of the Act, every participating hospital must have an agreement to identify potential donors only with its designated OPO.

However, section 1138(a)(2)(A) of the Act provides that a hospital may obtain a waiver of the above requirements from the Secretary under certain specified conditions. A waiver allows the hospital to have an agreement with an OPO other than the one initially designated by CMS, if the hospital meets certain conditions specified in section 1138(a)(2)(A) of the Act. In addition, the Secretary may review additional criteria described in section 1138(a)(2)(B) of the Act to evaluate the hospital's request for a waiver.

Section 1138(a)(2)(A) of the Act states that in granting a waiver, the Secretary must determine that the waiver: (1) Is expected to increase organ donations; and (2) will ensure equitable treatment of patients referred for transplants within the service area served by the designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement under the waiver. In making a waiver determination, section 1138(a)(2)(B) of the Act provides that the Secretary may consider, among other factors: (1) Cost-effectiveness; (2) improvements in quality; (3) whether there has been any change in a hospital's designated OPO due to the changes made in definitions for metropolitan statistical areas; and (4) the length and continuity of a hospital's relationship with an OPO other than the hospital's designated OPO. Under section 1138(a)(2)(D) of the Act, the Secretary is required to publish a notice of any waiver application received from a hospital within 30 days of receiving the application, and to offer interested parties an opportunity to comment in writing during the 60-day period beginning on the publication date in the **Federal Register**.

Several hospitals have asked for and been granted waivers to work with a hospital other than the designated OPO. The statute does not expressly establish procedures for the situation where a hospital that had previously been granted a waiver, desires to enter into an agreement with a different OPO or return to work with the OPO that has been designated for the relevant geographic area. Given the importance of the hospital-OPO relationship for all potential transplant patients in the affected service areas, we are establishing an open and transparent process for addressing these situations. Specifically, using the same framework provided in section 1138(a)(2), the Secretary will enable hospitals that had been granted a waiver to apply to enter into an agreement with a different OPO. A specific notice will be published in the Federal Register within 30 days of the agency's receipt of such a request. We will provide the public an opportunity to submit information and material with respect to whether the proposed change would be expected to increase organ donation and would ensure the equitable treatment for transplant patients in both of the affected OPO service areas.

II. Request Procedures

A hospital that has previously been granted a waiver under section 1138(a)(2) but desiring to enter into an agreement with a different OPO, may file a request by submitting it to CMS at the following address: Director, Centers for Medicare and Medicaid Services, Division of Technical Payment Policy, 7500 Security Blvd, C4–25–02, Baltimore, MD 21244–1850.

The letter should supply sufficient information and data to address how changing OPOs:

1. Is expected to increase organ donation; and

2. Will assure equitable treatment of patients referred for transplant within the existing OPO service area, within the service area of the OPO with which the hospital wishes to enter an agreement.

In making a change in OPO determination, the Secretary may consider, among other factors:

1. Cost effectiveness;

2. Improvements in quality;

3. Whether there has been a change in a hospital's service due to a change in definition of metropolitan statistical area (MSA); and

4. The length and continuity of a hospital relationship with the OPO with which the hospital wants to align.

Upon receipt of such a request, we would publish a **Federal Register** notice to solicit public comments, consistent with the procedures set forth in section 1138(a)(2)(D) of the Act.

Under these procedures, we will review the request and comments received. During the review process, we may consult on an as-needed basis with the Health Resources Services Administration's Division of Transplantation, the United Network for Organ Sharing, and our regional offices. If necessary, we may request additional clarifying information from the applying hospital or others. We will then make a final determination on the request and notify the hospital and the designated and requested OPOs.

By providing an open and transparent public process with an opportunity to consider public comments, information and materials, the Secretary will be able to make better decisions concerning whether the proposed change in the OPO will be expected to increase organ donation and will assure equitable treatment for patients in both affected OPO service areas.

III. Collection of Information Requirements

We anticipate receiving less than 10 hospital requests in a 12-month period.

Therefore, in accordance with 5 CFR 1320.3(c), the reporting requirements in this notice are not defined as information collection requirements.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance, and Program No. 93.778, Medical Assistance Program)

Dated: June 3, 2010.

Marilyn Tavenner,

Acting Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–14098 Filed 6–10–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AF[RQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for the OS ARRA: Clinically-Enhanced State Data for Analysis for CE Impact (R01) applications are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: OS ARRA: Clinically-Enhanced State Data for Analysis for CE Impact (R01).

Date: July 2, 2010. (Open on July 2 from 8 a.m. to 8:15 a.m. and closed for the remainder of the meeting.)

Place: Hyatt Regency Bethesda Hotel, 7400 Wisconsin Avenue, 1 Bethesda Metro Center, Conference Room TBD, Bethesda, MD 20814.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the non-confidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: May 27, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–13982 Filed 6–10–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Research 2 Practice and Construction Research Application, Request for Application (RFA) OH09–001, 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: 3 a.m.–5 p.m., July 7, 2010 (Closed).

Place: National Institute for Occupational Safety and Health (NIOSH), 2400 Century Parkway, NE., Fourth Floor, Atlanta, Georgia 30345, *Telephone:* (404) 498–2530.

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 Section 10(d) of Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Research 2 Practice and Construction Research Application, RFA OH09–001".

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Chris Langub, PhD, Scientific Review Officer, NIOSH, CDC, 2400 Century Center, Atlanta, GA 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: June 4, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–14074 Filed 6–10–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0268]

Dental Products Panel of the Medical Devices 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: Dental Products Panel of the Medical Devices 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 December 14 and 15, 2010, from 8 a.m. to 6 p.m.

Location: Holiday Inn-Gaithersburg, Main Ballroom, 2 Montgomery Village Ave., Gaithersburg, MD 20879.

Contact Person: Olga I. Claudio, Food and Drug Administration, Center for Devices and Radiological Health, WO 66, rm. 1553, Silver Spring, MD 20993–0002, 301–796–7608 or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 301–451–2518. 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.

Comments: FDA is opening a docket for public comment on this document.

The docket number is FDA–2010–N–0268. The docket will be open for public comment on June 11, 2010. The docket will close on December 3, 2010. Interested persons are encouraged to use the docket to submit either electronic or written comments regarding this meeting. Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management, Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Agenda: On December 14 and 15, 2010, the committee will discuss and make recommendations on scientific issues raised in petitions received by FDA concerning the final rule on the classification of dental amalgam, which published in the **Federal Register** on August 4, 2009 (74 FR 38686). These petitions (docket numbers FDA–2008–N–0163 and FDA–2009–P–0357) can be viewed at *http://www.regulations.gov/search/Regs/home.html#documentDetail?R=09000064809fbe3f*; *http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a1d1bc*; *http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a24048*; and *http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a80ae5*. Issues raised in the petitions include the adequacy of the risk assessment performed by FDA in classifying dental amalgam in light of a new report on risk assessments issued by the National Academy of Sciences, entitled "Science and Decisions: Advancing Risk Assessment," NAP, 2009.

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 December 6, 2010. Oral presentations from the public will be scheduled at 1 p.m. on December 14, 2010 and at 8 a.m. on December 15, 2010. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 29, 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 December 1, 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 AnnMarie Williams, Conference Management Staff, 301–796–5966, 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: June 8, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–14084 Filed 6–10–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis Meeting (ACET)

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 council:

Times and Dates: 8:30 a.m.–5:30 p.m., June 29, 2010. 8:30 a.m.–2:30 p.m., June 30, 2010.

Place: Corporate Square, Building 8, 1st Floor Conference Room, Atlanta, Georgia 30333, telephone (404) 639–8317.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters To Be Discussed: Agenda items include: Issues pertaining to pediatric tuberculosis; modernizing tuberculosis control; foreign born guidelines update; the affordable care act and public health; STOP TB USA report update; and other related tuberculosis issues.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Margie Scott-Cseh, CDC, 1600 Clifton Road, NE., M/S E–07, Atlanta, Georgia 30333, telephone (404) 639–8317. The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 4, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–14076 Filed 6–10–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Antibacterial Resistance and Diagnostic Device and Drug Development Research for Bacterial Diseases; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop jointly sponsored by the National Institute of Allergy and Infectious Diseases and the Infectious Diseases Society of America (IDSA) regarding scientific and potential research issues in antibacterial drug resistance, rapid diagnostic device development for bacterial diseases, and antibacterial drug development. The workshop will address antibacterial drug resistance, mechanisms of resistance, epidemiology of resistance, and issues in the development of rapid diagnostic devices and antibacterial drugs for the diagnosis and treatment of bacterial diseases. The input from this public workshop will help in developing topics for further discussion.

Dates and Times: The public workshop will be held on July 26, 2010, from 8 a.m. to 5:30 p.m. and on July 27, 2010, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at the Crowne Plaza Hotel, 8777 Georgia Ave., Silver Spring, MD 20910. Seating is limited and available only on a first-come, first-served basis.

Contact Persons: Chris Moser or Lori Benner, Center for Drug Evaluation and Research, Food and Drug Administration, Office of Antimicrobial Products, 10903 New Hampshire Ave., Bldg. 22, rm. 6209, Silver Spring, MD 20993–0002, 301–796–1300.

Registration: Registration is free for the public workshop. Interested parties are encouraged to register early because space is limited. Seating will be available on a first-come, first-served basis. To register electronically, e-mail registration information (including name, title, firm name, address, telephone, and fax number) to *arworkshop@fda.hhs.gov*. Persons without access to the Internet can call Chris Moser or Lori Benner at 301–796–1300 to register. Persons needing a sign language interpreter or other special accommodations should notify Christine Moser or Lori Benner (see *Contact Persons*) at least 7 days in advance.

SUPPLEMENTARY INFORMATION: FDA is announcing a public workshop, jointly sponsored by the National Institute of Allergy and Infectious Diseases and the Infectious Diseases Society of America, regarding scientific issues in antibacterial drug resistance and product development for bacterial diseases. Topics for discussion include the following: (1) An overview and discussion of the scale of the current bacterial resistance problem, (2) current understanding of the science and mechanisms of bacterial resistance, (3) the use of rapid diagnostics in the diagnosis and management of bacterial infections, and (4) the science of antibacterial drug development. The input from this workshop will help in the further consideration of potential areas of research in antibacterial resistance and help in developing topics in antibacterial drug development and rapid diagnostic development for further discussion.

The agency encourages individuals, patient advocates, industry, consumer groups, health care professionals, researchers, and other interested persons to attend this public workshop.

Webcasting: The workshop will be simultaneously webcast. The public may view the live webcast free by registering through IDSA's Web site at *http://www.idsociety.org* until 24 hours prior to the workshop. IDSA will do its best to accommodate members of the public who register after this time. Videotaped workshop presentations will also be available free on IDSA's Web site following the workshop.

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov*. It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857. Transcripts will also be available on the Internet at *http://www.fda.gov/FDAgov/Drugs/NewsEvents/ucm211146.htm* approximately 45 days after the workshop.

Dated: June 7, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–14048 Filed 6–10–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Information (RFI) on the National Institutes of Health Plan To Develop the Genetic Testing Registry

ACTION: Notice.

SUMMARY: The National Institutes of Health, an agency within the Department of Health and Human Services (HHS), is seeking input and feedback on its plan to develop the Genetic Testing Registry (GTR); a centralized public resource that will provide information about the availability, scientific basis, and usefulness of genetic tests. Submission of test information to the GTR will be voluntary, and the NIH expects to receive wide interest and participation from researchers, test developers, and manufacturers.

SUPPLEMENTARY INFORMATION:

I. Background

The last decade has seen tremendous advances in our knowledge of the genomic and genetic factors involved in health and disease. This increased knowledge has been accompanied by a rapid rise in the availability of genetic tests. Although more than 2,000 genetic tests are available, there is no single public resource that provides information about the validity and usefulness of these tests. The NIH believes that transparent access to such information is vital to facilitate research and to enable informed decision making by patients, caregivers, health care providers, clinical laboratory professionals, payers, and policymakers. Therefore, the NIH is initiating the development of the GTR, an online resource that will provide a centralized location for researchers, test developers, and manufacturers to submit information voluntarily about genetic tests, such as their intended use, validity, and utility. The Registry will serve as a resource for health care providers and patients interested in learning about the tests and easily locating laboratories offering particular genetic tests. By using standard identifiers for genetic tests, GTR can facilitate Health Information Technology (HIT) exchange. The GTR will be a repository of information about genetic tests, not a repository of test results.

On March 18, 2010, the NIH announced that it would be creating the GTR (*see http://www.nih.gov/news/health/mar2010/od-18.htm*). This RFI

notice is part of the public consultation process referenced in that announcement and described on the NIH GTR Web site: *http://www.ncbi.nlm.nih.gov/gtr/*.

II. Data Elements

The NIH anticipates that the GTR will contain information on a wide range of genetic tests for inherited and somatic genetic variations, including tests ordered through health care providers and those available directly to consumers. The NIH is interested in comments on the types of tests to include within the GTR, as well as on appropriate data elements to collect about each test. The NIH's working definition of a genetic test, for purposes of the Registry, is a test that involves an analysis of human chromosomes, deoxyribonucleic acid, ribonucleic acid, genes and/or gene products (*e.g.,* enzymes, other types of proteins, and selected metabolites), which is predominantly used to detect heritable or somatic mutations, genotypes, or chromosomal variations in structure or number related to disease, health, and/or personalized medicine.

The NIH expects that the GTR will be most useful to health care providers, patients and consumers, clinical laboratory professionals, policymakers, and researchers if it includes information on the validity and utility of genetic tests. This expectation is consistent with recommendations of the HHS Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS).[i] Validity includes both analytical validity (a test's ability to measure the analyte or genotype of interest accurately and reliably) and clinical validity (the relationship between a test result and health outcome or phenotype). Utility is the net balance of risks and benefits associated with using a test[i] and includes both clinical utility and personal utility.

To assist researchers, consumers, and providers in fully understanding a test, it will be important to include information about its molecular basis, including, for example, information about what the test detects and what methods the test employs. Supporting evidence for a test's clinical validity and/or utility may include published data, systematic reviews, and practice guidelines.

The NIH is particularly interested in receiving comments on the type of data elements that should be included in the GTR and the level of information that would adequately address these data elements.

III. Request for Comments

The NIH is seeking input and advice on the following items:

1. Are there any types of genetic tests that should not be included in the GTR?

2. What are the potential uses of the GTR for (1) researchers, (2) patients/consumers, (3) health care providers, (4) clinical laboratory professionals, (5) payers, (6) genetic testing entities/data submitters, (7) policymakers, and (8) electronic health records?

3. What data elements are critical to include for use by (1) researchers, (2) patients/consumers, (3) health care providers, (4) clinical laboratory professionals, (5) payers, (6) genetic testing entities/data submitters, (7) policymakers, and (8) electronic health records?

4. What are the potential benefits and risks associated with facilitating public access to information about the:

a. Availability and accessibility of genetic tests?

b. Scientific basis and validity of genetic tests?

c. Utility of genetic tests?

5. What is the best way to distinguish between data fields left blank because of an absence of data/evidence and those left blank for other reasons? How important is this distinction for enhancing transparency, including for the purpose of identifying research opportunities?

6. To describe adequately and accurately a genetic test, which of the following data elements should be included in the GTR? Are there other data elements that should be added? What information is necessary to represent adequately each data element?

a. Contact information (*e.g.,* location, name of the laboratory director, and contact information for the laboratory performing the test)

b. Laboratory certifications (*e.g.,* Federal or State certification of the laboratory that performs the test)

c. Name of the test (*e.g.,* common test name, commercial name, marketing materials about the test and/or genetic testing entity, standard identifier (*e.g.,* CPT codes, LOINC[ii]))

d. Regulatory clearances (*e.g.,* for tests reviewed by the Food and Drug Administration, the 510(k) or premarket approval (PMA) number)

e. Intended use of the test (*e.g.,* diagnosis, screening, drug response)

f. Recommended patient population

g. Limitations of the test (*e.g.,* is the test validated only for certain subpopulations or limited to particular uses such as screening but not diagnostic testing?)

h. Test methodology

i. Analyte(s)—What is being measured in the test (*e.g.,* genetic sequence)

j. Specimen requirements (*e.g.,* blood, saliva, tissue samples, amniotic fluid)

k. Availability (*e.g.,* is the submitter the sole provider of the test or are there multiple providers?)

l. Accessibility (*e.g.,* accessible through a health provider, public health mandate, and/or direct-to-consumer)

m. Performance characteristics[i]

i. Analytical sensitivity

ii. Analytical specificity

iii. Accuracy

iv. Precision

v. Reportable range of test results

vi. Reference range

vii. Method used for proficiency testing (*e.g.,* formal PT program, alternative assessment) and score

n. Clinical validity[i]

i. Clinical sensitivity

ii. Clinical specificity

iii. Positive and negative predictive value

iv. Prevalence

v. Penetrance

vi. Modifiers

o. Utility (*e.g.,* clinical and/or personal utility) or outcomes

i. Benefits

ii. Harms

iii. Added value, compared with current management without genetic testing

p. Cost (*e.g.,* price of the test, health insurance coverage)

7. What types of information might be difficult for test providers to submit and why?

8. What are the advantages and disadvantages of collecting and providing information on the molecular basis of genetic tests, such as detailed information about what the test detects and the specific methods employed?

9. In addition to the data elements, would it be helpful to reference other resources, and if so, which ones (*e.g.,* published studies, recommendations from expert panels such as the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children, U.S. Preventive Services Task Force, or Evaluation of Genomic Applications in Practice and Prevention Working Group)?

10. As the GTR is being designed, what are the important processes to consider to make the submission of data as easy as possible for the data provider (*e.g.,* the capability of linking to information that has been submitted to other agencies, such as the Food and Drug Administration and the Centers for Medicare and Medicaid Services, or a master file of data common to particular tests)?

11. Which potential benefits and risks would be most likely to affect the

decisions of researchers, test developers, and manufacturers on whether to submit data to the GTR, and what factors will best encourage submission of complete and accurate data?

12. What are the most effective methods to ensure continued stakeholder input into the maintenance of the GTR?

13. For what purpose(s) would you use the Registry to support your professional efforts?

14. Are there any other issues that NIH should consider in the development of the GTR?

DATES: To assure consideration, comments must be received by July 12, 2010.

ADDRESSES: Individuals, groups, and organizations interested in commenting on the NIH plan to develop the GTR, as outlined in this RFI, may submit comments by e-mail to *GTR@od.nih.gov* or by mail to the following address: NIH GTR RFI Comments, National Institutes of Health, Office of Science Policy, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892. Comments will be made publicly available, including any personally identifiable or confidential business information that they contain. Trade secrets should not be submitted.

FOR FURTHER INFORMATION CONTACT: Dr. Cathy Fomous, NIH Office of Biotechnology Activities, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892; telephone 301–496–9838; fax 301–496–9839; e-mail *CFomous@od.nih.gov.*

Dated: June 4, 2010.

Francis S. Collins,

Director, National Institutes of Health.

Footnotes

[i] From the HHS Secretary's Advisory Committee on Genetics, Health and Society 2008 Report, *U.S. System of Oversight of Genetic Testing: A Response to the Charge of the Secretary of Health and Human Services,* available at *http://oba.od.nih.gov/oba/SACGHS/reports/SACGHS_oversight_report.pdf.*

[ii] Logical Observation Identifiers Names Codes (LOINC), a standard for unambiguous identification of tests and other measurements in health information exchange. Available at *http://loinc.org.* LOINC is a required standard in the certification criteria for electronic health records issued by the National Coordinator for Health Information Technology, HHS *(http://edocket.access.gpo.gov/2010/E9–31216.htm),* to facilitate health information exchange.

[FR Doc. 2010–14021 Filed 6–10–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: New Information Collection; Comment Request

ACTION: 60-Day Notice of New Information Collection; ICE Mutual Agreement Between Government and Employers (IMAGE).

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), is submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 10, 2010.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), Joseph M. Gerhart, Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Room 3138, Washington, DC 20536; (202) 732–6337.

Comments are encouraged and will be accepted for sixty days until August 10, 2010. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* ICE Mutual Agreement between Government and Employers (IMAGE) Information Request and Membership Application.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form 73–028, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Businesses or other for-profit and not-for-profit institutions. The Immigration and Customs Enforcement Mutual Agreement between Government and Employers (IMAGE) program is the outreach and education component of the Office of Investigations (OI) Worksite Enforcement (WSE) program. IMAGE is designed to build cooperative relationships with the private sector to enhance compliance with immigration laws and reduce the number of unauthorized aliens within the American workforce. Under this program ICE will partner with businesses representing a cross-section of industries. A business will initially complete and prepare an IMAGE membership application so that ICE can properly evaluate the company for inclusion in the IMAGE program. The information provided by the company plays a vital role in determining it suitability for the program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 90 minutes (1.5 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 150 annual burden hours.

Requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be requested via e-mail to: *forms.ice@dhs.gov* with "IMAGE Program Application" in the subject line.

Dated: June 3, 2010.

Joseph M. Gerhart,

Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2010–14042 Filed 6–10–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1912–DR; Docket ID FEMA–2010–0002]

Kentucky; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–1912–DR), dated May 11, 2010, and related determinations.

DATES: *Effective Date:* June 1, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 1, 2010.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–14001 Filed 6–10–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning a Lift Unit for an Overhead Patient Lift System; Correction

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination; correction.

SUMMARY: U.S. Customs and Border Protection (CBP) published a document in the **Federal Register** on Friday, June 4, 2010, providing notice that it had issued a final determination concerning the country of origin of a lift unit for an overhead patient lift system. The document contained two errors that this document corrects.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Valuation and Special Programs Branch, (202) 325–0034.

SUPPLEMENTARY INFORMATION:

Background

CBP published a document in the **Federal Register** (75 FR 31803) on June 4, 2010, providing notice that it had issued a final determination under Subpart B of part 177 of title 19 of the Code of Federal Regulations (CFR) concerning the country of origin of a lift unit for an overhead patient lift system. This document corrects in the **DATES** section of the notice the misuse of a word and in the **SUPPLEMENTARY INFORMATION** section an inadvertent omission of the date that CBP issued the final determination.

Corrections of Publication

In the **Federal Register** of June 4, 2010, in FR Doc 2010–13497:

On page 31803, column 3, in the **DATES** section, first paragraph, the third sentence is corrected to read as follows: "Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination by July 6, 2010."

On page 31804, column 1, in the **SUPPLEMENTARY INFORMATION** section, the first paragraph, the first sentence is corrected to read as follows: "Notice is hereby given that on May 28, 2010, pursuant to subpart B of part 177 of the CBP regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of the lift unit which may be offered to the U.S. Government under an undesignated government procurement package."

Dated: June 7, 2010.

Harold M. Singer,

Director, Regulations and Disclosure Law Division, Office of International Trade.

[FR Doc. 2010–14019 Filed 6–10–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5380–N–25]

Notice of Proposed Information Collection: Comment Request; FHA—Application for Insurance of Advance of Mortgage Proceeds

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:* August 10, 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: Joyce Allen, Director, Office of Multifamily Housing Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1142 (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: Application for Insurance of Advance of Mortgage Proceeds.

OMB Control Number, if applicable: 2502–0097.

Description of the need for the information and proposed use: To indicate to the mortgagee amounts approved for advance and mortgage insurance.

Agency form numbers, if applicable: Form HUD–92403.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 41,220. The number of respondents is 458, the number of responses is 13,740, the frequency of response is as needed, and the burden hours per response is 2.

Status of the proposed information collection: This is a continuation of an existing collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 4, 2010.

Ronald Y. Spraker,

Associate General Deputy Assistant Secretary for Housing.

[FR Doc. 2010–14104 Filed 6–10–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5332–C–03]

Notice of Availability: Notice of Funding Availability (NOFA) for HUD's Fiscal Year (FY) 2009 Rental Assistance for Non-Elderly Persons With Disabilities; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: On April 7, 2010, HUD posted to its Web site and to *http://www.grants.gov*, its FY2009 Rental Assistance for Non-Elderly Persons with Disabilities NOFA. The NOFA makes available $30 million for incremental Section 8 Housing Choice Vouchers (HCV) for non-elderly disabled families served by entities (which this NOFA will limit to public housing agencies (PHAs)) with demonstrated experience and resources for supportive services). This assistance was made available by the Omnibus Appropriations Act, 2009 (Pub. L. 111–8, approved March 11, 2009). Through this document, HUD announces that it has corrected the NOFA posted on April 7, 2010, and that it has posted the correction on its website. The NOFA is corrected by (1) Clarifying the period of time during which PHAs must meet the PIH Information Center (PIC) reporting requirements; (2) clarifying the requirement that PHAs have achieved as least 15 points under the Section 8 Management Assessment Program (SEMAP); and (3) defining which PHAs "operate a non-HCV program that serves non-elderly disabled families." The notice correcting these program requirements is available on the HUD Web site at: *http://www.hud.gov. http://www.hud.gov/offices/pih/programs/ph/capfund/ocir.cfm*).

FOR FURTHER INFORMATION CONTACT: Questions regarding specific HCV program requirements should be directed to Phyllis Smelkinson by phone at 202–402–4138 or via email at *Phyllis.A.Smelkinson@hud.gov* or to the NOFA Information Center at 800–HUD–8929 (a toll-free number). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at 800–877–8339. The NOFA Information Center is open between the hours of 10 a.m. and 6:30 p.m. eastern time, Monday through Friday, except federal holidays.

Dated: June 7, 2010.

Deborah Hernandez,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 2010–14103 Filed 6–10–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–22]

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.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, 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 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the

processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Army: Ms. Veronica Rines, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, DAIM–ZS, Room 8536, 2511 Jefferson Davis Hwy, Arlington, VA 22202; (703) 601–2545; (These are not toll-free numbers).

Dated: June 3, 2010.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

Title V, Federal Surplus Property Program Federal Register Report For 06/11/2010

Unsuitable Properties

Building

Alabama

Bldg. 00071
Anniston Army Depot
Calhoun AL 36201
Landholding Agency: Army
Property Number: 21201020001
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 03645
Redstone Arsenal
Madison AL 35898
Landholding Agency: Army
Property Number: 21201020002
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. C1304, C1329, C1387
Army Tng Center
Ft. McClellan AL 36205
Landholding Agency: Army
Property Number: 21201020003
Status: Unutilized
Reasons: Extensive deterioration

Colorado

Bldgs. 814, 1919
Fort Carson
El Paso CO 80913
Landholding Agency: Army
Property Number: 21201020004
Status: Unutilized
Reasons: Secured Area

District of Columbia

Bldg. 51
Fort McNair
Washington, DC
Landholding Agency: Army
Property Number: 21201020005
Status: Unutilized
Reasons: Secured Area and Extensive deterioration

Georgia

Bldg. 8511
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21201020006
Status: Unutilized
Reasons: Extensive deterioration

Hawaii

Bldg. A1535
Fort Shafter
Honolulu HI
Landholding Agency: Army
Property Number: 21201020007
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 646, 2105, 2106
Schofield Barracks
Honolulu HI 96786
Landholding Agency: Army
Property Number: 21201020010
Status: Unutilized
Reasons: Secured Area

Indiana

Bldg. 481
Jefferson Proving Ground
Madison IN 47250
Landholding Agency: Army
Property Number: 21201020008
Status: Excess
Reasons: Extensive deterioration

Bldg. 7719
Fort Knox
Ft. Knox IN 40121
Landholding Agency: Army
Property Number: 21201020009
Status: Unutilized
Reasons: Extensive deterioration

Kentucky

Bldgs. 624, 1166, 1168
Blue Grass Army Depot
Richmond KY 40475
Landholding Agency: Army
Property Number: 21201020011
Status: Unutilized
Reasons: Extensive deterioration

Maryland

5 Bldgs.
Aberdeen Proving Ground
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21201020012
Status: Unutilized
Directions: E4082, E4083, E4084, E4085, E6834
Reasons: Secured Area

Missouri

13 Bldgs.
Fort Leonard Wood
Pulaski MO 65473
Landholding Agency: Army
Property Number: 21201020013
Status: Unutilized
Directions: 182, 701 702, 703, 704, 705, 705A, 706, 707, 708, 709, 710, 2101
Reasons: Secured Area

New Jersey

Bldgs. 166, 167, 197
Picatinny Arsenal
Morris NJ 07806
Landholding Agency: Army
Property Number: 21201020014
Status: Unutilized
Reasons: Secured Area

New York

9 Bldgs.
Fort Drum
Jefferson NY 13602
Landholding Agency: Army
Property Number: 21201020015
Status: Unutilized
Directions: 539, 1123, 1124, 1125, 1131, 1132, 1141, 1142, 1143
Reasons: Extensive deterioration

6 Bldgs.
Fort Drum
Jefferson NY 13602
Landholding Agency: Army
Property Number: 21201020016
Status: Unutilized
Directions: 1151, 1152, 1162, 1163, 1185, 1199
Reasons: Extensive deterioration

6 Bldgs.
Fort Drum
Jefferson NY 13602
Landholding Agency: Army
Property Number: 21201020017
Status: Unutilized
Directions: 1235, 1249, 1252, 1293, 2160, 2161
Reasons: Extensive deterioration

4 Bldgs.
Fort Hamilton
Brooklyn NY 11252
Landholding Agency: Army
Property Number: 21201020018
Status: Unutilized
Directions: FENCC, 214, 215, 228
Reasons: Secured Area

North Carolina

12 Bldgs.
Fort Bragg
Ft. Bragg NC 28310

Landholding Agency: Army
Property Number: 21201020019
Status: Unutilized
Directions: 661A, M2146, C2629, F2630, A3527, C3609, A3726, A3728, C3731, A3732, A3734, A3736
Reasons: Secured Area

8 Bldgs.
Fort Bragg
Ft. Bragg NC 28310
Landholding Agency: Army
Property Number: 21201020020
Status: Unutilized
Directions: E4169, C4229, E4269, C4329, N5338, N5535, A5621, N5733
Reasons: Extensive deterioration and Secured Area

11 Bldgs.
Fort Bragg
Ft. Bragg NC 28310
Landholding Agency: Army
Property Number: 21201020021
Status: Unutilized
Directions: A6133, C7017, C7018, C7116, C7118, C7244, C7342, C7444, C7549, C7842, C7943
Reasons: Extensive deterioration and Secured Area

9 Bldgs.
Fort Bragg
Ft. Bragg NC 28310
Landholding Agency: Army
Property Number: 21201020022
Status: Unutilized
Directions: C8142, C8241, C8339, C8438, 21248, 22014, 42128, 82714, 09039
Reasons: Extensive deterioration and Secured Area

Pennsylvania

Bldg. 891
Carlisle Barracks
Cumberland PA 17013
Landholding Agency: Army
Property Number: 21201020023
Status: Excess
Reasons: Secured Area

Bldgs. 241, 2011
Defense Distri. Depot
New Cumberland PA 17070
Landholding Agency: Army
Property Number: 21201020024
Status: Underutilized
Reasons: Secured Area

Tennessee

Bldgs. ZZ001, ZZ002
Milan AAP
Milan TN 38358
Landholding Agency: Army
Property Number: 21201020025
Status: Excess
Reasons: Extensive deterioration, Secured Area and Within 2000 ft. of flammable or explosive material

Texas

Bldg. 25
Brownwood
Brown TX 76801
Landholding Agency: Army
Property Number: 21201020033
Status: Unutilized
Reasons: Extensive deterioration

Utah

5 Bldgs.
Tooele Army Depot
Tooele UT 84074
Landholding Agency: Army
Property Number: 21201020032
Status: Unutilized
Directions: 26, A, B; 27, A, B; 28, A, B; 29, A, B; 520
Reasons: Secured Area

Virginia

8 Bldgs.
Hampton Readiness Center
Hampton VA 23666
Landholding Agency: Army
Property Number: 21201020026
Status: Unutilized
Directions: 8, 9, 10, 12, 13, 14, 15, 23
Reasons: Extensive deterioration

Bldg. T1207
Fort A.P. Hill
Bowling Green VA 22427
Landholding Agency: Army
Property Number: 21201020027
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. P0837, T1138
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21201020028
Status: Unutilized
Reasons: Extensive deterioration

Washington

6 Bldgs.
Joint Base Lewis/McChord
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21201020029
Status: Unutilized
Directions: 2202, 2204, 2205, 2206, 2260, 2265
Reasons: Secured Area

Bldgs. 3423, 3442, 3444 Fort Lewis
Pierce WA 98433
Landholding Agency: Army
Property Number: 21201020030
Status: Unutilized
Reasons: Extensive deterioration and Secured Area

Wisconsin

Bldg. 1306 Fort McCoy
Monroe WI 54656
Landholding Agency: Army
Property Number: 21201020031
Status: Unutilized
Reasons: Secured Area

Land

Texas

Land 1
Brownwood
Brown TX 76801
Landholding Agency: Army
Property Number: 21201020034
Status: Unutilized
Reasons: Contamination

[FR Doc. 2010–13692 Filed 6–10–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–N–01]

Notice of Availability: Notice of HUD's Fiscal Year (FY) 2010 Notice of Funding Availability (NOFA); Policy Requirements and General Section to HUD's FY2010 NOFAs for Discretionary Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: Through this notice, HUD announces the availability on its Web site of its FY2010 Notice of Funding Availability (NOFA) Policy Requirements and General Section to HUD's FY2010 NOFAs for Discretionary Programs (General Section). The General Section provides prospective applicants for HUD's FY2010 competitive funding the opportunity to become familiar with the policies and requirements applicable to all of the NOFAs that HUD will publish in FY2010. The General Section also describes HUD's FY2010 policy priorities. HUD's FY2010 policy priorities are based on its new Strategic Plan for FY2010–2015, and support: (1) Job Creation/Employment; (2) Sustainability; (3) Affirmatively Furthering Fair Housing; (4) Capacity Building and Knowledge Sharing; (5) Using Housing as a Platform for Improving Other Outcomes; and (6) Expanding Cross-Cutting Policy Knowledge. Detailed information on HUD's Strategic Plan for FY2010–2015 is available at: *http://portal.hud.gov/portal/page/portal/HUD/program_offices/cfo/stratplan.*

HUD's General Section also provides prospective applicants information regarding submission requirements for FY2010. All of this information is provided to assist prospective applicants in planning successful applications.

The General Section notice is available on the HUD Web site at *http://portal.hud.gov/portal/page/portal/HUD/program_offices/administration/grants/fundsavail* and on the Grants.gov Web site at *http://www.grants.gov/search/.*

FOR FURTHER INFORMATION CONTACT: For further information on HUD's FY2010 Policy Requirements and General Section, contact the Office of Departmental Grants Management and Oversight, Office of Administration, Department of Housing and Urban Development, 451 7th Street, SW., Room 3156, Washington, DC 20410–5000; telephone number 202–708–0667. This is not a toll-free number. Persons

with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

Dated: June 4, 2010.

Ron Sims,

Deputy Secretary.

[FR Doc. 2010–14004 Filed 6–10–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5419–N–01]

Notice of Availability: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 2009; Brownfields Economic Development Initiative (BEDI) Second Competition

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice announces that HUD is conducting a second competition for assistance under its FY2009 Brownfields Economic Development Initiative (BEDI) NOFA, and that it has posted the BEDI NOFA on its Web site and on *Grants.gov.* This second round of competition makes approximately $8.1 million in assistance available under the Department of Housing and Urban Development Appropriations Act, 2009 (Pub. L. 111–8, approved March 11, 2009). All BEDI grants must be used in conjunction with a new Section 108-guaranteed loan commitment. Applicants for BEDI assistance must address the requirements established by HUD's Fiscal Year 2009 Notice of Funding Availability (NOFA) Policy Requirements and General Section to the NOFA published on December 29, 2008 (73 FR 79548), as amended on April 16, 2009 (74 FR 17685).

The BEDI NOFA providing information regarding the application process, funding criteria and eligibility requirements is available on the *Grants.gov* Web site at *https://apply07.grants.gov/apply/forms_apps_idx.html.* A link to *Grants.gov* is also available on the HUD Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.* The Catalogue of Federal Domestic Assistance (CFDA) number for the BEDI Program is 14.246. Applications must be submitted electronically through *Grants.gov.*

FOR FURTHER INFORMATION CONTACT: David Kaminsky, Office of Economic Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7140, Washington, DC 20410; telephone 202–402–4612 or Robert Duncan, telephone 202–402–4681 (these are not toll-free numbers). Persons with speech or hearing impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service during working hours at 800–877–8339.

Dated: May 27, 2010.

Jeanne Van Vlandren,

Acting General Deputy Assistant Secretary for Community Planning & Development.

[FR Doc. 2010–14003 Filed 6–10–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2010–OMM–0001]

MMS Information Collection Activity: 1010—NEW, Study of Sharing To Assess Community Resilience, New Collection; Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a new information collection (1010—NEW).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) for approval of the paperwork requirements in the study being conducted in Alaska, Study of Sharing to Assess Community Resilience. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by July 12, 2010.

ADDRESSES: Submit comments by either fax (202) 395–5806 or e-mail (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010—NEW). Please also submit a copy of your comments to MMS by any of the means below.

- *Electronically:* go to *http://www.regulations.gov.* In the entry titled "Enter Keyword or ID," enter docket ID MMS–2010–OMM–0001 then click search. Follow the instructions to submit public comments and view supporting and related materials available for this collection. The MMS will post all comments.
- E-mail, mail, or hand-carry comments to *cheryl.blundon@mms.gov;* Department of the Interior; Minerals Management Service; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ICR 1010–NEW in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the survey that requires the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: Study of Sharing to Assess Community Resilience.

OMB Control Number: 1010—NEW.

Abstract: The United States Congress, through the 1953 Outer Continental Shelf Lands Act (OCSLA) [Pub. L. 95–372, section 20] and its subsequent amendments, requires the Secretary of the U.S. Department of the Interior (USDOI) to monitor and assess the impacts of resource development activities in Federal waters on human, marine, and coastal environments. The OCSLA amendments authorize the Secretary of the Interior to conduct studies in areas or regions of sales to ascertain the "environmental impacts on the marine and coastal environments of the outer Continental shelf and the coastal areas which may be affected by oil and gas development" (43 U.S.C. 1346).

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321–4347) requires that all Federal Agencies use a systematic, interdisciplinary approach to ensure the integrated use of the natural and social sciences in any planning and decision making that may have an effect on the human environment. The Council on Environmental Quality's Regulations for Implementing Procedural Provisions of NEPA (40 CFR 1500–1508) state that the "human environment" is to be "interpreted comprehensively" to include "the natural and physical environment and the relationship of people with that environment" (40 CFR 1508.14). An action's "aesthetic, historic, cultural, economic, social or health" effects must be assessed, "whether direct, indirect, or cumulative" (40 CFR 1508.8).

The USDOI/Minerals Management Service (MMS) is the Federal administrative agency created both to conduct OCS lease sales and to monitor and mitigate adverse impacts that might be associated with offshore resource development. Within the MMS, the

Environmental Studies Program functions to implement and manage the responsibilities of research. This study will facilitate the meeting of USDOI/MMS information needs on subsistence food harvest and sharing activities in coastal Alaska, with specific focus on the Beaufort Sea Planning Area.

Many previous MMS studies have documented aspects of subsistence harvest throughout coastal Alaska, including information about household subsistence harvests by quantity, location, species, and month of harvest. However, most of these studies are limited to representing the importance of subsistence to livelihoods in measures of pounds per capita harvested or average per capita harvest. The study departs from this standard approach by systematically examining the complex social dynamics of sharing and consuming resources after resources have been harvested. In Alaska Native communities, the distribution and exchange of subsistence resources operate under traditional institutions (informal rules; codes of conduct) for reciprocity in exchanging harvested resources and the cultural obligation to share. Changes in ecosystem services, which may result from industrial development and climate change, could affect subsistence activities with related effects on community sharing networks. This research will make an important contribution to the study of northern subsistence by providing baseline quantitative data on the structure of sharing networks and by identifying the characteristics of system components and key nodes of networks. From the findings of the empirical data, we will model thresholds of change in community food distribution networks to assess communities' vulnerabilities and resilience.

The 36-month study involves assessing the vulnerabilities of two North Slope and one interior Alaska village to the potential effects of offshore oil and gas development on subsistence food harvest and sharing activities. We will investigate the resilience of local sharing networks that structure contemporary subsistence-cash economies, using survey research methods that involve residents of the three Alaskan communities.

Potential number of households is approximately 349 from the three partner communities. We seek to interview the "head" of each household, and in some cases that may be two people. This study will be conducted in a face-to-face setting. The questionnaires will be administered under the guidelines of 45 CFR part 46. The introduction that will be covered with each participant stresses that participation is voluntary and anonymity will be maintained. Procedures designed to protect the confidentiality of the information provided will include the use of coded selection and identification numbers to protect the identities of respondents.

The information to be gathered is intended to inform regulatory agencies, academic researchers, and partner communities about local social systems in a way that can shape development strategies and serve as an interim baseline for impact monitoring to compare against future conditions. Without this data, MMS will not have sufficient information to make informed leasing and development decisions for these areas.

Frequency: Voluntary, one-time event, per study.

Estimated Number and Description of Respondents: Potential number of households is approximately 349 from the three partner communities. We seek to interview the "head" of each household, and in some cases that may be two people.

Estimated Reporting and Recordkeeping Hour Burden: The MMS estimates the total annual burden hours to be 524 rounded hours (349 respondents × 1.5 hours per questionnaire = 523.5 burden hours).

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified no paperwork non-hour cost burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency " * * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * * " Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on January 12, 2010, we published a **Federal Register** notice (75 FR 1648) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. This notice also informed the public that they may comment at any time on the collection of information and provided the address to which they should send comments. We received three comments from the same person, but none of the comments were germane to the paperwork burden of the collection. To view the comments that were submitted to MMS, follow the instructions under "Electronically" in the **ADDRESSES** section.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by July 12, 2010.

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

MMS Information Collection Clearance Officer: Arlene Bajusz, (202) 208–7744.

Dated: June 5, 2010.

William S. Hauser,

Acting Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2010–14122 Filed 6–10–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Notice of Availability of the Draft Environmental Assessment of a Marine Geophysical Survey by the U.S. Geological Survey in the Arctic Ocean, August–September 2010

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, the U.S. Geological Survey (USGS) has prepared a Draft Environmental Assessment (EA) of a Marine Geophysical Survey by the U.S. Geological Survey in the Arctic Ocean, August–September 2010 and by this notice is announcing the opening of the comment period.

DATES: To ensure comments will be considered, the USGS must receive written comments on the Draft EA of a Marine Geophysical Survey by the U.S. Geological Survey in the Arctic Ocean, August–September 2010 within 30 days following the date this Notice of Availability is published in the **Federal Register**.

ADDRESSES: You may submit comments related to the Draft Environmental Assessment of a Marine Geophysical Survey by the U.S. Geological Survey in the Arctic Ocean, August–September 2010 by any of the following methods:

- Web site: *http://walrus.wr.usgs.gov/EA/ECS_EA*
- E-mail: *jchilds@usgs.gov.*
- *Fax:* 650–329–5190.
- *Mail:* Jonathan R. Childs, U.S. Geological Survey, Mail Stop 999, 345 Middlefield Rd., Menlo Park, CA 94025.

Copies of the Draft EA are available in the USGS Menlo Park Earth Science Information Center, Building 3, Room 3128, 345 Middlefield Rd., Menlo Park, CA 94025, Telephone: (650) 329–4309; the USGS Anchorage Earth Science Information Center, Room 208, 4210 University Dr. Anchorage, AK 99508, Telephone: (907) 786–7011; and at the North Slope Borough Department of Wildlife Management, Barrow, Alaska, Telephone: (907) 852–0350.

FOR FURTHER INFORMATION CONTACT: For further information contact Jonathan R. Childs, geophysicist, at the above address.

SUPPLEMENTARY INFORMATION: The objective of the proposed Geophysical Survey is to provide information relevant to determining the outer limits of the U.S. Extended Continental Shelf under the provisions of Article 76 of the UN Convention on the Law of the Sea. Further information is available at: *http://www.continentalshelf.gov.*

Prior public input included requests for comment and information early in the project from agencies with potential interest or jurisdiction, and from local North Slope organizations with a potential interest in the proposed project. Survey plans were presented at the Alaskan Eskimo Whaling Captain's meeting on February 11, 2010. A public meeting was held March 23, 2010 in Anchorage, Alaska. Minor issues and concerns were addressed during the public meeting.

Please note that public comments and information submitted including names, street addresses, and email addresses of persons who submit comments will be available for public review and disclosure at the USGS Menlo Park address above during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Authority: 40 CFR 1506.6, 40 CFR 1506.10.

James F. Devine,

Senior Advisor for Science Applications.

[FR Doc. 2010–14038 Filed 6–10–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–10–L19100000–BJ0000–LRCS44020800]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, thirty (30) days from the date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Program Manager, Bureau of Reclamation, Great Plains Region, Montana Area Office, Billings, Montana, and was necessary to determine the boundaries of Federal Interest lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 36 N., R. 14 E.

The plat, in 3 sheets, representing the dependent resurvey of dependent resurvey of portions of the Ninth Standard Parallel North, through Range 14 West, the subdivisional lines, the subdivision of certain sections, and certain rights-of-way of the United States Reclamation Service (U.S.R.S.) Reserve, St. Mary Storage Unit (Canal), through sections 3, 16, and 27, Township 36 North, Range 14 West, Principal Meridian, Montana, was accepted June 3, 2010.

We will place a copy of the plat, in 3 sheets, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in 3 sheets, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in 3 sheets, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap 3.

Dated: June 4, 2010.

James D. Claflin,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2010–14081 Filed 6–10–10; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO200–LLCOF00000–L16520000–XX0000]

Notice of Intent To Establish and Call for Nominations for the Rio Grande Natural Area Commission, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The BLM is publishing this notice in accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act (FACA). The Bureau of Land Management (BLM) gives notice that the Secretary of the Interior (Secretary) is establishing the Rio Grande Natural Area Commission (Commission) in the State of Colorado. This notice is also to solicit public nominations for the Commission. The Commission will advise the Secretary with respect to the Rio Grande Natural Area (Natural Area) and prepare a management plan relating to non-Federal land in the Natural Area.

DATES: All nominations must be received no later than July 12, 2010.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for the address of the BLM Colorado Office accepting nominations.

FOR FURTHER INFORMATION CONTACT: James Sample, Public Information Officer, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215, telephone (303) 239–3861; or e-mail *James_Sample@blm.gov.*

SUPPLEMENTARY INFORMATION: The Commission is a statutory advisory committee established under Section 4 of the Rio Grande Natural Area Act (Act)

of 2006 (16 U.S.C. 460rrr–2). The Commission shall be composed of nine members appointed by the Secretary, of whom:

- One member shall represent the Colorado State Director of the BLM;
- One member shall be the manager of the Alamosa National Wildlife Refuge, ex officio;
- Three members shall be appointed based on the recommendation of the Governor of Colorado, among whom:
- One member shall represent the Colorado Division of Wildlife;
- One member shall represent the Colorado Division of Water Resources; and
- One member shall represent the Rio Grande Water Conservation District.
- Four members shall:
- Represent the general public;
- Be citizens of the local region in which the Natural Area is established; and
- Have knowledge and experience in fields of interest relating to the preservation, restoration, and use of the Natural Area.

Individuals may nominate themselves or others. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographical area the Commission serves. Nominees should demonstrate a commitment to collaborative resource decision-making. The Obama Administration prohibits individuals who are currently federally registered lobbyists to serve on all FACA and non-FACA boards, committees, or councils. The following must accompany all nominations:

—Letters of reference from represented interests or organizations;

—A completed background information nomination form; and

—Any other information that addresses the nominee's qualifications.

Simultaneous with this notice, the San Luis Valley Public Lands Center will issue press releases providing additional information for submitting nominations. Nominations for the Commission should be sent to: Harold Dyer, Environmental Coordinator, Public Lands Center, Rio Grande National Forest, 1803 West Highway 160, Monte Vista, Colorado 81140, (719) 852–6215.

Certification Statement: I hereby certify that the BLM Rio Grande Natural Area Commission is necessary and in the public interest in connection with the Secretary's responsibilities to manage the lands, resources, and facilities administered by the BLM.

Dated: June 4, 2010.

Ken Salazar,

Secretary.

[FR Doc. 2010–14091 Filed 6–10–10; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: New York University College of Dentistry, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession and control of the New York University College of Dentistry, New York, NY. The human remains were removed from the Allred Bluff and Salts Bluff Rockshelters, Benton County, AR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the New York University College of Dentistry professional staff in consultation with representatives of the Caddo Nation of Oklahoma and Osage Nation, Oklahoma.

In 1923, human remains representing a minimum of two individuals were removed from the Allred Bluff Rockshelter, Benton County, AR, by M.R. Harrington. The remains were discovered during an expedition sponsored by the Museum of the American Indian, Heye Foundation. The remains were catalogued into the collections of the Museum of the American Indian in 1923. In 1956, the Museum of the American Indian transferred the remains to Dr. Theodore Kazamiroff, New York University College of Dentistry. No known individuals were identified. No associated funerary objects are present.

In 1922, human remains representing a minimum of one individual were removed from the Salts Bluff Rockshelter Shelter 1, Benton County, AR, by M.R. Harrington. The remains were discovered during an expedition sponsored by the Museum of the American Indian, Heye Foundation. The remains were catalogued into the collections of the Museum of the American Indian in 1922. In 1956, the Museum of the American Indian transferred the remains to Dr. Theodore Kazamiroff, New York University College of Dentistry. No known individual was identified. No associated funerary objects are present.

Harrington identified all of the archeological material associated with the human remains at both rockshelters as part of the Bluff Dweller culture. The "Bluff Dweller" material dates to the Late Archaic and Early Woodland periods. The distinction between these two time periods is not well-defined. Both components are part of the James River complex, which lasted from approximately 2000 B.C. to A.D. 100. The James River complex was spread throughout the Ozarks, a broad geographic area that includes several subtraditions, although no subtradition has yet been defined for the region that includes the rockshelters. The shelters in the region were likely used by small groups of people from multiple adjacent, culturally discrete regions for specific subsistence or other resource procurement activities. The morphology of the remains is consistent with an individual of Native American ancestry.

At the time of European contact, the areas of the Allred Bluff Rockshelter and Salts Bluff Rockshelter were inhabited by the Osage people. Osage tradition identifies the area of Benton County as part of the ancestral territory of the Osage. The Osage ceded their land in Arkansas, Missouri, and Oklahoma between 1808 and 1825. For a while, they retained hunting rights in the region and their use of the Ozarks is documented in early 19th century records. The Osage were ultimately relocated to Oklahoma, where their reservation was established in 1872.

Officials of the New York University College of Dentistry have determined that, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of three individuals of Native American ancestry. Officials of the New York University College of Dentistry also have determined that, pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot reasonably be traced between the Native American human remains and any present-day Indian tribe.

The Native American Graves Protection and Repatriation Review Committee (Review Committee) is responsible for recommending specific actions for disposition of culturally unidentifiable human remains. In July

2009, the New York University College of Dentistry requested that the Review Committee recommend disposition of the culturally unidentifiable human remains of three individuals to the Osage Nation, Oklahoma. The Review Committee considered the proposal at its October 30–31, 2009, meeting and recommended disposition of the human remains to the Osage Nation, Oklahoma.

A March 4, 2010, letter from the Designated Federal Official, writing on behalf of the Secretary of the Interior, transmitted the authorization for the College to effect disposition of the physical remains to the Osage Nation, Oklahoma, contingent on the publication of a Notice of Inventory Completion in the **Federal Register**. This notice fulfills that requirement.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Louis Terracio, New York University College of Dentistry, 345 East 24th St., New York, NY 10010, telephone (212) 998–9917, before July 12, 2010. Disposition of the human remains to the Osage Nation, Oklahoma, may proceed after that date if no additional claimants come forward.

The New York University College of Dentistry is responsible for notifying the Caddo Nation of Oklahoma and Osage Nation, Oklahoma, that this notice has been published.

Dated: May 27, 2010

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2010–14040 Filed 6–10–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains and associated funerary objects were removed from Barnstable, Bristol, Dukes, and Plymouth Counties, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals, the list of culturally affiliated groups, and the name of a donor reported in a previous Notice of Inventory Completion published in the **Federal Register** (68 FR 48626–48634, August 14, 2003) and a published correction Notice of Inventory Completion (71 FR 70979–70980, December 7, 2006). The correction Notice of December 7, 2006, changed the number of associated funerary objects listed in the original Notice of August 14, 2003. Some of the human remains and associated funerary objects described in the above notices have since been repatriated. However, the human remains from the site described in this correction are still in the possession of the Peabody Museum.

Since the publication of the original and correction Notice, one of the nonfederally recognized Indian groups has become a Federally-recognized Indian tribe. Therefore, throughout the Notices of August 14, 2003 and December 7, 2006 in the **Federal Register**, "Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group)" is corrected by substituting "Mashpee Wampanoag Tribe, Massachusetts." In addition, throughout each Notice the "cultural relationship" between the human remains and associated funerary objects and the Mashpee Wampanoag Tribe stated in the previous notices is replaced by a "relationship of shared group identity."

Through a reassessment of human remains from Hingham, Plymouth County, MA, museum osteologists were able to re-associate elements of human remains and the current minimum number of individuals has decreased from the previously reported eight to five. In addition, the donor's name is more accurately stated below as the Hingham Board of Health rather than Mayo Tolman as listed in the original notice of August 14, 2003.

In the **Federal Register** of August 14, 2003, page number 48631, paragraph numbers 3 and 4 are corrected by substituting the following paragraphs:

In 1932, human remains representing five individuals were removed from a construction site in Hingham, Plymouth County, MA, by an unknown collector and were donated to the Peabody Museum of Archaeology and Ethnology by the Hingham Board of Health through Secretary Mayo Tolman in the same year. No known individuals were identified. No associated funerary objects are present.

Contextual information suggests that these individuals are likely Native American. The interment most likely dates to the Historic/Contact period (post-A.D. 1500). The pattern of copper stains on the human remains suggests that the human remains were interred some time after contact. Oral tradition and historical documentation indicates that Hingham, MA, is within the aboriginal and historic homeland of the Wampanoag Nation. The present-day tribes that are most closely affiliated with members of the Wampanoag Nation are the Mashpee Wampanoag Tribe, Massachusetts; Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts; and the Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

In the **Federal Register** of December 7, 2006, page number 70980, paragraph number 2 is corrected by substituting the following paragraphs:

Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of 235 individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 25 U.S.C. 3001(3)(A), the 113 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Mashpee Wampanoag Tribe, Massachusetts; and the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts; and that there is a cultural relationship between the human remains and associated funerary objects and the Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard

University, 11 Divinity Ave., Cambridge, MA 02138, telephone (617) 496–3702, before July 12, 2010. Repatriation of the human remains and associated funerary objects to the Mashpee Wampanoag Tribe, Massachusetts; Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts; and the Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group) may proceed after that date if no additional claimants come forward.

Peabody Museum of Archaeology and Ethnology is responsible for notifying the Mashpee Wampanoag Tribe, Massachusetts; Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts; and the Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group) that this notice has been published.

Dated: May 4, 2010

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–14043 Filed 6–10–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: New York University College of Dentistry, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession and control of the New York University College of Dentistry, New York, NY. The human remains were removed from Lovelock Cave, Churchill County, NV.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the New York University College of Dentistry professional staff in consultation with representatives of the Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Walker River Paiute Tribe of the Walker River Reservation, Nevada; and Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada.

In 1924, human remains representing a minimum of one individual were removed from Lovelock Cave, Churchill County, NV. The remains were removed by M.R. Harrington during excavations jointly conducted by the Museum of the American Indian, Heye Foundation, and the University of California, Berkeley. In 1956, the remains were transferred to Dr. Theodore Kazamiroff, New York University College of Dentistry. No known individual was identified. No associated funerary objects are present.

The remains date to the Early Lovelock I Phase occupation of the cave, circa 2500–1500 B.C. The morphology of the remains is consistent with an individual of Native American ancestry. Archeological, linguistic, and oral tradition evidence indicate that different groups of people occupied the region over time. By at least A.D. 1500, Lovelock Cave was part of the territory of the Northern Paiute. The Lovelock Paiute Tribe of the Lovelock Indian Colony, Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, and Walker River Paiute Tribe of the Walker River Reservation, identify the region surrounding Lovelock Cave as part of their traditional homeland.

Officials of the New York University College of Dentistry have determined that, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the New York University College of Dentistry also have determined that, pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot reasonably be traced between the Native American human remains and any present-day Indian tribe.

The Native American Graves Protection and Repatriation Review Committee (Review Committee) is responsible for recommending specific actions for disposition of culturally unidentifiable human remains. In July 2009, the New York University College of Dentistry requested that the Review Committee recommend disposition of the culturally unidentifiable human remains of one individual to the Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada, on behalf of a coalition of tribes in the Great Basin region. The Review Committee considered the proposal at its October 30–31, 2009, meeting and recommended disposition of the human remains to the Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada.

A March 4, 2010, letter from the Designated Federal Official, writing on behalf of the Secretary of the Interior, transmitted the authorization for the College to effect disposition of the human remains to the Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada, contingent on the publication of a Notice of Inventory Completion in the **Federal Register**. This notice fulfills that requirement.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Louis Terracio, New York University College of Dentistry, 345 East 24th St., New York, NY 10010, telephone (212) 998–9917, before July 12, 2010. Disposition of the human remains to the Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada, may proceed after that date if no additional claimants come forward.

The New York University College of Dentistry is responsible for notifying the Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Walker River Paiute Tribe of the Walker River Reservation, Nevada; and Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada, that this notice has been published.

Dated: April 27, 2010

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2010–14041 Filed 6–10–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: New York University College of Dentistry, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act

(NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession and control of the New York University College of Dentistry, New York, NY. The human remains were removed from the cemetery at Kienuka, Niagara County, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the New York University College of Dentistry professional staff in consultation with representatives of the Tuscarora Nation of New York.

In 1903, human remains representing a minimum of two individuals were removed from the cemetery at Kienuka in Niagara County, NY, by John MacKay. The remains were subsequently added to the collection of William MacKay, John MacKay's brother. The Museum of the American Indian, Heye Foundation, purchased William MacKay's collection in 1918. In 1956, the Museum of the American Indian transferred the remains to Dr. Theodore Kazamiroff, New York University College of Dentistry. No known individuals were identified. No associated funerary objects are present.

Kienuka is located within the boundaries of the Tuscarora Reservation, which was established in 1797. The removal occurred prior to the Antiquities Act, and, therefore, the U.S. Department of the Interior, Bureau of Indian Affairs, is not asserting control. Archival and historical records suggest that the removal of the remains was not authorized by the Tuscarora Nation and that a law enforcement official from the Tuscarora Nation investigated the desecration of the cemetery but was unable to arrest anyone.

Kienuka was a Neutral village of the early 17th century, and the morphology of the remains is consistent with individuals of Native American ancestry. The Neutral were a confederacy of Iroquoian speakers who lived to the south and north of the eastern half of Lake Erie. Their name was derived from the neutral position they occupied geographically and sociopolitically between the Huron and Iroquois Confederacies. Between 1647 and 1651, the Neutral coalition was fractured and its people were decimated as a result of warfare with the Iroquois nations. The Neutral ceased to be identified as a distinct group by 1660.

In 1713, the Tuscarora migrated to New York from North Carolina. The Tuscarora were adopted as the sixth nation of the Iroquois Confederacy in 1722 and 1723. After the Revolutionary War, the Tuscarora settled on the east side of the Niagara River. The Tuscarora Nation received their land grant, which includes portions of Niagara County, in 1797. Their reservation was subsequently expanded and continues to include the site of Kienuka.

Officials of the New York University College of Dentistry have determined that, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the New York University College of Dentistry also have determined that, pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.

The Native American Graves Protection and Repatriation Review Committee (Review Committee) is responsible for recommending specific actions for disposition of culturally unidentifiable human remains. In July 2009, the New York University College of Dentistry requested that the Review Committee recommend disposition of the culturally unidentifiable human remains of two individuals to the Tuscarora Nation of New York. The Review Committee considered the proposal at its October 30–31, 2009, meeting and recommended disposition of the human remains to the Tuscarora Nation of New York.

A March 4, 2010, letter from the Designated Federal Official, writing on behalf of the Secretary of the Interior, transmitted the authorization for the College to effect disposition of the physical remains to the Tuscarora Nation of New York, contingent on the publication of a Notice of Inventory Completion in the **Federal Register**. This notice fulfills that requirement.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Louis Terracio, New York University College of Dentistry, 345 East 24th St., New York, NY 10010, telephone (212) 998–9917, before July 12, 2010. Disposition of the human remains to the Tuscarora Nation of New York may proceed after that date if no additional claimants come forward.

The New York University College of Dentistry is responsible for notifying the Tuscarora Nation of New York that this notice has been published.

Dated: May 27, 2010

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2010–14039 Filed 6–10–10; 8:45 am]

BILLING CODE 4312–50–S

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1174–1175 (Final)]

Seamless Refined Copper Pipe and Tube From China and Mexico

AGENCY: International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation Nos. 731–TA–1174–1175 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China and Mexico of seamless refined copper pipe and tube, provided for in subheadings 7411.10.10 and 8415.90.80 of the Harmonized Tariff Schedule of the United States.[1]

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as "all seamless circular refined copper pipe 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 innergrooves 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 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–B359, ASTM–B743, ASTM–B819, and ASTM–B903 specifications and meeting the physical parameters described therein. Also included within the scope of these investigations 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.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: *Effective Date:* May 5, 2010.

FOR FURTHER INFORMATION CONTACT: Edward Petronzio (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The final phase of these investigations are being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of seamless refined copper pipe and tube from China and Mexico are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). These investigations were requested in a petition filed on September 30, 2009, by Cerro Flow Products, Inc., St. Louis, MO; Kobe Wieland Copper Products, LLC, Pine Hall, NC; Mueller Copper Tube Products, Inc. and Mueller Copper Tube Company, Inc., Memphis, TN.

Participation in the investigations and public service list: Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list: Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report: The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on September 9, 2010, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing: The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on September 23, 2010, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 17, 2010. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 21, 2010, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions: Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is September 16, 2010. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is September 30, 2010; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before September 30, 2010. On October 20, 2010, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before October 22, 2010, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR. 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to § 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

"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: 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 these investigations are all seamless circular hollows of refined copper less than 12 inches in length whose OD (actual) exceeds its length. The products subject to these investigations are currently classifiable under subheadings 7411.10.1030 and 7411.10.1090, of the Harmonized Tariff Schedule of the United States (HTS). Products subject to these investigations may also enter under HTSUS subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

Issued: June 7, 2010.

By order of the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2010–14035 Filed 6–10–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

[OMB Number 1121–0219]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review; (Reinstatement, without change, of a previously approved collection for which approval has expired) Juvenile Residential Facility Census.

The Department of Justice (DOJ), Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 67, page 17956 on April 8, 2010, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 12, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension of previously approved collection.

(2) *The title of the form/collection:* Juvenile Residential Facility Census.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is CJ–15, Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal Government, State, Local or Tribal.

Other: Not-for-profit institutions; Business or other for-profit.

This collection will gather information necessary to routinely monitor the types of facilities into which the juvenile justice system places young persons and the services available in these facilities.

(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 3,500 respondents will complete a 2-hour questionnaire.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the nominations is 7,000 annual burden hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 7, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. 2010–14000 Filed 6–10–10; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0015]

Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Extension of current collection. Hate Crime Incident Report; Quarterly Hate Crime Report.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until August 10, 2010. This process is conducted in accordance with 5 CFR 1320.10.

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Gregory E. Scarbro, Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services Division (CJIS), Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, or facsimile to (304) 625–3566.

Written comments and suggestions from the public and affected agencies concerning them proposed collection of information are encouraged. Comments

should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Hate Crime Incident Report and the Quarterly Hate Crime Report.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Forms 1–699 and 1–700; Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, state, federal, and tribal law enforcement agencies. This collection is needed to collect information on hate crime incidents committed throughout the United States. Data are tabulated and published in the annual Crime in the United States and Hate Crime Statistics.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 13,242 law enforcement agency respondents with an estimated response time of 9 minutes.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 7,945 hours, annual burden, associated with this information collection.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 7, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. 2010–13996 Filed 6–10–10; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemptions 2010–16, 2010–17, and 2010–18; Grant of Individual Exemptions involving: D–11521, Morgan Stanley & Co., Inc., and Its Current and Future Affiliates and Subsidiaries (Morgan Stanley) and Union Bank, N.A., and Its Affiliates (Union Bank), PTE 2010–16; D–11584, The Bank of New York Mellon (BNY Mellon), PTE 2010–17; L–11558, Boston Carpenters Apprenticeship and Training Fund, PTE 2010–18

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Morgan Stanley & Co., Inc., and Its Current and Future Affiliates and Subsidiaries (Morgan Stanley) and Union Bank, N.A., and Its Affiliates (Union Bank), Located in New York, NY and San Francisco, CA

Exemption

Section I—Transactions

Effective October 1, 2008, the restrictions of section 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to:

(a) The lending of securities to:

(1) Morgan Stanley & Co. Incorporated, and its successors (MS&Co.) and Union Bank, N.A., and its successors (UB);

(2) Any current or future affiliate of MS&Co. or UB,[1] that is a bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940, that is supervised by the U.S. or a state, any broker-dealer registered under the Securities Exchange Act of 1934 (the "1934 Act"), or any foreign affiliate that is a bank or broker-dealer that is supervised by (i) the Securities and Futures Authority ("SFA") in the United Kingdom; (ii) the Bundesanstalt fur Finanzdienstleistungsaufsicht (the "BAFin") in Germany; (iii) the Ministry of Finance ("MOF") and/or the Tokyo Stock Exchange in Japan; (iv) the Ontario Securities Commission, the Investment Dealers Association and/or the Office of Superintendent of Financial Institutions in Canada; (v) the Swiss Federal Banking Commission in

[1] Any reference to MS&Co. or UB shall be deemed to include any successors thereto.

Switzerland; (vi) the Reserve Bank of Australia or the Australian Securities and Investments Commission and/or Australian Stock Exchange Limited in Australia; (vii) the Commission Bancaire ("CB"), the Comite des Establissements de Credit et des Enterprises d'Investissement (CECEI) and the Autorite des Marches Financiers ("AMF") in France; and (viii) the Swedish Financial Supervisory Authority ("SFSA") in Sweden (the branches and/or affiliates in the enumerated foreign countries hereinafter referred to as the "Foreign Affiliates") and together with their U.S. branches or U.S. affiliates (individually, "Affiliated Borrower" and collectively, "Affiliated Borrowers"), by employee benefit plans, including commingled investment funds holding plan assets (the Client Plans or Plans),[2] for which MS&Co., UB or an affiliate of either acts as securities lending agent or subagent (the "Lending Agent"),[3] and also may serve as directed trustee or custodian of securities being lent, or for which a subagent is appointed by the Lending Agent, which subagent is either (I) a bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940 or a broker-dealer registered under the 1934 Act, (i) which has, as of the last day of its most recent fiscal year, equity capital in excess of $100 million and (ii) which annually exercises discretionary authority to lend securities on behalf of clients equal to at least $1 billion; or (II) an investment adviser registered under the Investment Advisers Act of 1940, (i) which has, as of the last day of its most recent fiscal year, equity capital in excess of $1 million and (ii) which annually exercises discretionary authority to lend securities on behalf of clients equal to at least $1 billion (each, a "Lending Subagent"); and

(b) The receipt of compensation by the Lending Agent and the Lending Subagent in connection with these transactions.

Section II—Conditions

Section I of this exemption applies only if the conditions of Section II are satisfied. For purposes of this exemption, any requirement that the approving fiduciary be independent of MS&Co., UB, and their affiliates shall not apply in the case of an employee benefit plan sponsored and maintained by the Lending Agent and/or an affiliate for its own employees (an Affiliated Plan) invested in a Commingled Fund, provided that at all times the holdings of all Affiliated Plans in the aggregate comprise less than 10% of the assets of the Commingled Fund.

(a) For each Client Plan, neither MS&Co., UB, nor any of their affiliates has or exercises discretionary authority or control with respect to the investment of the assets of Client Plans involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to such assets, including decisions concerning a Client Plan's acquisition or disposition of securities available for loan.

(b) Any arrangement for the Lending Agent to lend securities is approved in advance by a Plan fiduciary who is independent of MS&Co., UB, and their affiliates (the Independent Fiduciary).

Notwithstanding the foregoing, section II(b) shall be deemed satisfied with respect to loans of securities by Client Plans to MS&Co. or a U.S. affiliate (Morgan Stanley Affiliated Borrower) by UB as Lending Agent or Lending Subagent that were outstanding as of October 1, 2008 (the Existing Loans), provided (i) no later than April 1, 2009, UB provided to Client Plans with Existing Loans a description of the general terms of the securities loan agreements between such Client Plans and the Morgan Stanley Affiliated Borrowers, and (ii) at the time of providing such information, UB notified each such Client Plan that if the Client Plan did not approve the continued lending of securities to Morgan Stanley by May 11, 2009, UB would terminate the loans and cease to make any new securities loans on behalf of that Client Plan to Morgan Stanley.

(c) The specific terms of the securities loan agreement (the Loan Agreement) are negotiated by the Lending Agent which acts as a liaison between the Lender and the Affiliated Borrower to facilitate the securities lending transaction. In the case of a Separate Account, the Independent Fiduciary of a Client Plan approves the general terms of the Loan Agreement between the Client Plan and the Affiliated Borrower as well as any material change in such Loan Agreement. In the case of a Commingled Fund, approval is pursuant to the procedure described in paragraph (i), below.

(d) The terms of each loan of securities by a Lender to an Affiliated Borrower are at least as favorable to such Separate Account or Commingled Fund as those of a comparable arm's-length transaction between unrelated parties.

(e) A Client Plan, in the case of a Separate Account, may terminate the lending agency or sub-agency arrangement at any time, without penalty, on five business days notice. A Client Plan in the case of a Commingled Fund may terminate its participation in the lending arrangement by terminating its investment in the Commingled Fund no later than 35 days after the notice of termination of participation is received, without penalty to the Plan, in accordance with the terms of the Commingled Fund. Upon termination, the Affiliated Borrowers will transfer securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Separate Account or, if the Plan's withdrawal necessitates a return of securities, to the Commingled Fund within:

(1) The customary delivery period for such securities;

(2) Five business days; or

(3) The time negotiated for such delivery by the Client Plan, in a Separate Account, or by the Lending Agent, as lending agent to a Commingled Fund, and the Affiliated Borrowers, whichever is least.

(f) The Separate Account, Commingled Fund or another custodian designated to act on behalf of the Client Plan, receives from each Affiliated Borrower (either by physical delivery, book entry in a securities depository located in the United States, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to the Affiliated Borrower, collateral consisting of U.S. currency, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, irrevocable bank letters of credit issued by a U.S. bank, other than Morgan Stanley or Union Bank (or any subsequent parent corporation of the Lending Agent) or an

[2] The common and collective trust funds maintained by MS&Co., UB or an affiliate, and in which Client Plans invest, are referred to herein as "Commingled Funds." The Client Plan separate accounts for which MS&Co., UB or an affiliate act as directed trustee or custodian are referred to herein as "Separate Accounts." Commingled Funds and Separate Accounts are collectively referred to herein as "Lender" or "Lenders."

[3] MS&Co., UB or an affiliate may be retained by primary securities lending agents to provide securities lending services in a sub-agent capacity with respect to portfolio securities of clients of such primary securities lending agents. As a securities lending sub-agent, MS&Co.'s or UB's role parallels that under the lending transactions for which MS&Co., UB or an affiliate acts as a primary securities lending agent on behalf of its clients. References to MS&Co.'s or UB's performance of services as securities lending agent should be deemed to include its parallel performance as a securities lending sub-agent and references to the Client Plans should be deemed to include those plans for which the Lending Agent is acting as a sub-agent with respect to securities lending, unless otherwise specifically indicated or by the context of the reference.

affiliate thereof, or any combination thereof, or other collateral permitted under Prohibited Transaction Exemption (PTE) 2006–16 (71 FR 63786, October 31, 2006) (as it may be amended or superseded) (collectively, the Collateral).[4] The Collateral will be held on behalf of a Client Plan in a depository account separate from the Affiliated Borrower.

(g) The market value (or in the case of a letter of credit, a stated amount) of the Collateral on the close of business on the day preceding the day of the loan is initially equal at least to the percentage required by PTE 2006–16 (as amended or superseded) but in no case less than 102 percent of the market value of the loaned securities. The applicable Loan Agreement gives the Separate Account or the Commingled Fund in which the Client Plan has invested a continuing security interest in, and a lien on or title to, the Collateral. The level of the Collateral is monitored daily by the Lending Agent. If the market value of the Collateral, on the close of trading on a business day, is less than 100 percent of the market value of the loaned securities at the close of business on that day, the Affiliated Borrower is required to deliver, by the close of business on the next day, sufficient additional Collateral such that the market value of the Collateral will again equal 102 percent or the percentage otherwise required by PTE 2006–16 (as amended or superseded).

(h)(1) For a Lender that is a Separate Account, prior to entering into a Loan Agreement, the applicable Affiliated Borrower furnishes its most recently available audited and unaudited financial statements to the Lending Agent which will, in turn, provide such statements to the Client Plan before the Client Plan approves the terms of the Loan Agreement. The Loan Agreement contains a requirement that the applicable Affiliated Borrower must give prompt notice at the time of a loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements. If any such changes have taken place, the Lending Agent will not make any further loans to the Affiliated Borrower unless an Independent Fiduciary of the Client Plan in a Separate Account is provided notice of any material change and approves the continuation of the lending arrangement in view of the changed financial condition.

Notwithstanding the foregoing, section II(h)(1) shall be deemed satisfied with respect to the Existing Loans provided (i) UB provided to such Client Plans no later than April 1, 2009, the most recently available audited and unaudited financial statements of the Morgan Stanley Affiliated Borrower and notice of any material adverse change in financial condition since the date of the most recent financial statement being furnished to the Client Plans, and (ii) at the time of providing such information, UB notified each Client Plan that if the Client Plan did not approve the continued lending of securities to Morgan Stanley by May 11, 2009, UB would terminate the loans and cease to make any new securities loans on behalf of that Client Plan to Morgan Stanley.

(h)(2) For a Lender that is a Commingled Fund, the Lending Agent will furnish upon reasonable request to an Independent Fiduciary of each Client Plan invested in the Commingled Fund the most recently available audited and unaudited financial statements of the applicable Affiliated Borrower prior to authorization of lending, and annually thereafter.

(i) In the case of Commingled Funds, the information described in paragraph (c) (including any information with respect to any material change in the arrangement) shall be furnished by the Lending Agent as lending fiduciary to the Independent Fiduciary of each Client Plan whose assets are invested in the Commingled Fund, not less than 30 days prior to implementation of the arrangement or material change to the lending arrangement as previously described to the Client Plan, and thereafter, upon the reasonable request of the Client Plan's Independent Fiduciary. In the event of a material adverse change in the financial condition of an Affiliated Borrower, the Lending Agent will make a decision, using the same standards of credit analysis the Lending Agent would use in evaluating unrelated borrowers, whether to terminate existing loans and whether to continue making additional loans to the Affiliated Borrower.

In the event any such Independent Fiduciary submits a notice in writing within the 30-day period provided in the preceding paragraph to the Lending Agent, as lending fiduciary, objecting to the implementation of, material change in, or continuation of the arrangement, the Plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the Commingled Fund, without penalty to the Plan, no later than 35 days after the notice of withdrawal is received. In the case of a Plan that elects to withdraw pursuant to the foregoing, such withdrawal shall be effected prior to the implementation of, or material change in, the arrangement; but an existing arrangement need not be discontinued by reason of a Plan electing to withdraw. In the case of a Plan whose assets are proposed to be invested in the Commingled Fund subsequent to the implementation of the arrangement, the Plan's investment in the Commingled Fund shall be authorized in the manner described in paragraph (c).

(j) In return for lending securities, the Lender either—(1) Receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan; or

(2) Has the opportunity to derive compensation through the investment of cash Collateral. (Under such circumstances, the Lender may pay a loan rebate or similar fee to the Affiliated Borrowers, if such fee is not greater than the fee the Lender would pay in a comparable arm's-length transaction with an unrelated party.)

(k) Except as otherwise expressly provided herein, all procedures regarding the securities lending activities will, at a minimum, conform to the applicable provisions of PTE 2006–16, as amended or superseded, as well as to applicable securities laws of the United States, the United Kingdom, Canada, Australia, Switzerland, Japan, France, Sweden and Germany.

(l) If any event of default occurs, to the extent that (i) liquidation of the pledged Collateral or (ii) additional cash received from the Affiliated Borrower does not provide sufficient funds on a timely basis, the Client Plan will have the right to purchase securities identical to the borrowed securities (or their equivalent as discussed in paragraph (e) above) and apply the Collateral to the payment of the purchase price. If the Collateral is insufficient to accomplish such purchase, the Affiliated Borrower will indemnify the Client Plan invested in a Separate Account or Commingled Fund in the United States with respect to the difference between the replacement cost of the borrowed securities and the market value of the Collateral on the date the loan is declared in default, together with expenses incurred by the Client Plan plus applicable interest at a reasonable

[4] PTE 2006–16 permits the use of certain types of foreign collateral if the lending fiduciary is a U.S. Bank or U.S. Broker-Dealer (as defined in the exemption) and such fiduciary indemnifies the plan with respect to the difference, if any, between the replacement cost of the borrowed securities and the market value of the collateral on the date of a borrower default plus interest and any transaction costs which a plan may incur or suffer directly arising out of a borrower default. See PTE 2006–16, Section V(f)(5). The Department notes that the requirements of Section V(f)(5) of PTE 2006–16 must be satisfied in order for those types of collateral to be used in connection with this exemption.

rate, including reasonable attorney's fees incurred by the Client Plan for legal action arising out of default on the loans, or failure by the Affiliated Borrower to properly indemnify the Client Plan. The Affiliated Borrower's indemnification will enable the Client Plan to collect on any indemnification from a U.S.-domiciled affiliate of the Affiliated Borrower.

(m) The Lender receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including but not limited to all interest and dividends on the loaned securities, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions.

(n) Prior to any Client Plan's approval of the lending of its securities to any Affiliated Borrower, a copy of this final exemption and the notice of proposed exemption is provided to the Client Plan.

Notwithstanding the foregoing, effective October 1, 2008, through June 11, 2010, section II(n) shall be deemed satisfied with respect to the Existing Loans, provided (i) UB provides to such Client Plans that have consented to securities lending prior to June 11, 2010, a copy of the requested exemption and (ii) UB advises each such Client Plan that unless the Client Plan notifies UB to the contrary within 30 days, its consent to make loans to Morgan Stanley will be presumed.

(o) The Independent Fiduciary of each Client Plan that is invested in a Separate Account is provided with (including by electronic means) quarterly reports with respect to the securities lending transactions, including, but not limited to, the information described in Representation 40 of the Summary of Facts and Representations of the Notice of Proposed Exemption (75 FR 3078, January 19, 2010) ("Notice"), so that the Independent Fiduciary may monitor such transactions with the Affiliated Borrower. The Independent Fiduciary invested in a Commingled Fund is provided with (including by electronic means) quarterly reports with respect to the securities lending transactions, including, but not limited to, the information described in Representation 40 of the Summary of Facts and Representations of the Notice, so that the Independent Fiduciary may monitor such transactions with the Affiliated Borrower. The Lending Agent may, in lieu of providing the quarterly reports described in this paragraph (o) to each Independent Fiduciary of a Client Plan invested in a Commingled Fund, provide such Independent Fiduciary with the certification of an auditor selected by the Lending Agent who is independent of MS&Co, UB and their affiliates (but who may or may not be independent of the Client Plan) that the loans appear no less favorable to the Lender than the pricing established in the schedule described in paragraph 29 of the Summary of Facts and Representations of the Notice. Where the Independent Fiduciary of a Client Plan invested in a Commingled Fund is provided the certification of an auditor, such Independent Fiduciary shall be entitled to receive the quarterly reports upon request.

Notwithstanding the foregoing, section II(o) shall be deemed satisfied with respect to the Existing Loans provided UB provides to such Client Plans no later than July 31, 2009, the material described in section II(o) with respect to the period from October 1, 2008, through June 30, 2009.

(p) Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the Affiliated Borrowers; provided, however, that—

(1) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangement with the Lending Agent, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the Lending Agent, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Client Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(A) Has full investment responsibility with respect to plan assets invested therein; and

(B) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

In addition, none of the entities described above are formed for the sole purpose of making loans of securities.

(q) With respect to any calendar quarter, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Lenders will be to borrowers unrelated to MS&Co., UB and their affiliates.

(r) In addition to the above, all loans involving foreign Affiliated Borrowers have the following requirements:

(1) The foreign Affiliated Borrower is a bank, supervised either by a state or the United States, a broker-dealer registered under the Securities Exchange Act of 1934 or a bank or broker-dealer that is supervised by (i) the SFA in the United Kingdom; (ii) the BAFin in Germany; (iii) the MOF and/or the Tokyo Stock Exchange in Japan; (iv) the Ontario Securities Commission, the Investment Dealers Association and/or the Office of Superintendent of Financial Institutions in Canada; (v) the Swiss Federal Banking Commission in Switzerland; and (vi) the Reserve Bank of Australia or the Australian Securities and Investments Commission and/or Australian Stock Exchange Limited in Australia; (vii) the CB, the CECEI, and the AMF in France; and (viii) the SFSA in Sweden;

(2) The foreign Affiliated Borrower is in compliance with all applicable provisions of Rule 15a–6 under the Securities Exchange Act of 1934 (17 CFR 240.15a–6) (Rule 15a–6) which provides foreign broker-dealers a limited exemption from United States registration requirements;

(3) All Collateral is maintained in United States dollars or U.S. dollar-denominated securities or letters of credit (unless an applicable exemption provides otherwise);

(4) All Collateral is held in the United States and the situs of the securities

lending agreements is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1 related to the lending of securities; and

(5) Prior to a transaction involving a foreign Affiliated Borrower, the foreign Affiliated Borrower—

(A) Agrees to submit to the jurisdiction of the United States;

(B) Agrees to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(C) Consents to service of process on the Process Agent; and

(D) Agrees that enforcement by a Client Plan of the indemnity provided by the Affiliated Borrower will, at the option of the Client Plan, occur exclusively in the United States courts.

(s) The Lending Agent maintains, or causes to be maintained, within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (t)(1) to determine whether the conditions of the exemption have been met, except that—(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Lending Agent and/or its affiliates, the records are lost or destroyed prior to the end of the six-year period; and (2) No party in interest other than the Lending Agent or its affiliates shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (t)(1).

(t)(1) Except as provided in subparagraph (t)(2) of this paragraph and notwithstanding any provisions of sections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (s) are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission;

(B) Any fiduciary of a participating Client Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Client Plan or any duly authorized employee or representative of such employer; and

(D) Any participant or beneficiary of any participating Client Plan, or any duly authorized representative of such participant or beneficiary.

(t)(2) None of the persons described above in paragraphs (t)(1)(B)–(t)(1)(D) are authorized to examine the trade secrets of the Lending Agent or its affiliates or commercial or financial information which is privileged or confidential.

(t)(3) Should the Lending Agent refuse to disclose information on the basis that such information is exempt from disclosure, the Lender shall, by the close of the thirtieth (30th) day following the request, provide written notice advising that person of the reason for the refusal and that the Department may request such information.

The Department received two comments with respect to the Notice of Proposed Exemption (75 FR 3078, January 19, 2010) ("Notice"), one from Union Bank and one from Morgan Stanley. A discussion of the comments and the Department's views follows.

Union Bank commented on the first sentence of footnote 42 of the Notice, which states: "The common and collective trust funds for which MS&Co., UB or an affiliate act as directed trustee or custodian, and in which Client Plans invest, are referred to herein as 'Commingled Funds.'" According to Union Bank, "[c]onsistent with federal securities law exceptions and exemptions and banking regulations applicable to the Commingled Funds, Union Bank has and exercises 'exclusive management' of the Commingled Funds it maintains." Union Bank further stated that it understood the same was the case with respect to banking affiliates of MS&Co. and their Commingled Funds.[5] Therefore, Union Bank requested that the first sentence of footnote 42 be revised to read as follows: "The common and collective trust funds maintained by MS&Co., UB or an affiliate, and in which Client Plans invest, are referred to herein as 'Commingled Funds.'"

In order to accurately describe the relationship between these entities, the Department has revised the sentence as requested. In this regard, however, the Department notes that Section II(a) of the exemption provides that neither MS&Co., UB nor any of their affiliates may have or exercise discretionary authority or control with respect to the investment of the assets of Client Plans involved in transactions covered by the exemption, nor may these entities render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to such assets, including decisions concerning a Client Plan's acquisition or disposition of securities available for loan.

Section II(a) applies equally to Commingled Funds, which are included in the definition in Section I of the term "Client Plans" or "Plans." The prohibition in Section II(a) remains a condition of the exemption regardless of the revised language in the footnote. The exemption does not provide relief for lending from Commingled Funds for which MS&Co., UB, or any affiliate, has or exercises discretionary authority or control with respect to the investment of the assets involved in the transaction, or for which MS&Co., UB, or any affiliate renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to such assets, including decisions concerning a Client Plan's acquisition or disposition of securities available for loan. For purposes of clarity the Department states that the exemption does not provide relief for securities lending from index funds and model-driven funds.

Morgan Stanley, as noted above, provided the same comment as Union Bank with respect to footnote 42 of the Notice. Additionally, Morgan Stanley wished to clarify a statement in paragraph 27 of the Summary of Facts and Representations of the Notice. Paragraph 27 stated:

> In return for lending securities, the Lender either will receive a reasonable fee which is related to the value of the borrowed securities and the duration of the loan, or will have the opportunity to derive compensation through the investment of cash collateral or a combination of both. In the case of a Lender investing the cash collateral, the Lender may pay a loan rebate or similar fee to the Affiliated Borrowers, if such fee is not greater than the fee the Lender would pay in a comparable arm's-length transaction with an unrelated party.

Morgan Stanley wished to clarify that where collateral for a loan consists of both securities and cash, the Lender would receive a fee from the Affiliated Borrower in respect of the portion of the loan collateralized by securities and the Lender would have the opportunity to derive compensation from the investment of cash collateral (less the rebate paid to the Affiliated Borrower and any fees to the Lending Agent) in respect of the portion of the loan collateralized with cash.

Finally, Morgan Stanley informed the Department of a typographical error in footnote 48 of the Notice. The Department has reproduced the footnote in its entirety as it should have appeared in the Notice:

[5] In its comment, Morgan Stanley echoes Union Bank's comment on this point.

Separate maximum daily rebate rates will be established with respect to loans of securities within the designated classes identified above. Such rebate rates will be based upon an objective methodology which takes into account several factors, including potential demand for loaned securities, the applicable benchmark cost of fund indices, and anticipated investment return on overnight investments permitted by the Client Plan's independent fiduciary. The Lending Agent will submit the method for determining such maximum daily rebate rates to such fiduciary before initially lending any securities to an Affiliated Borrower on behalf of the Client Plan.

After giving full consideration to the entire record, including the written comments, the Department has determined to grant the exemption. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice, 75 FR 3078 (January 19, 2010).

FOR FURTHER INFORMATION CONTACT: Karen E. Lloyd of the Department, 202–693–8554. (This is not a toll free number.)

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2)[6] of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) through (E) of the Code, shall not apply as of July 10, 2009, to the cash sale of certain medium term notes (the Notes) issued by Stanfield Victoria Finance Ltd. (Victoria Finance or the Issuer) for an aggregate purchase price of $26,997,049.52 by the BNY Mellon's Short Term Investment Fund (the Fund) to The Bank of New York Mellon Corporation (BNYMC), a party in interest with respect to employee benefit plans (the Plans) invested, directly or indirectly, in the Fund, provided that the following conditions are met:

(a) The sale was a one-time transaction for cash;

(b) The Fund received an amount which was equal to the sum of (1) the total current amortized cost of the Notes as of the date of the sale plus (2) interest for the period beginning on January 1, 2008 to July 12, 2009, calculated at a rate equal to the earnings rate of the Fund during such period;

(c) The Fund did not bear any commissions, fees, transaction costs, or other expenses in connection with the sale;

(d) BNY Mellon, as trustee of the Fund, determined that the sale of the Notes was appropriate for and in the best interests of the Fund, and the Plans invested, directly or indirectly, in the Fund, at the time of the transaction;

(e) BNY Mellon took all appropriate actions necessary to safeguard the interests of the Fund, and the Plans invested, directly or indirectly, in the Fund, in connection with the transaction;

(f) If the exercise of any of BNYMC's rights, claims or causes of action in connection with its ownership of the Notes results in BNYMC recovering from Victoria Finance, the Issuer of the Notes, or from any third party, an aggregate amount that is more than the sum of: (1) The purchase price paid for the Notes by BNYMC and (2) interest on the purchase price paid for the Notes at the interest rate specified in the Notes, then BNYMC will refund such excess amount promptly to the Fund (after deducting all reasonable expenses incurred in connection with the recovery);

(g) BNY Mellon and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the person described below in paragraph (h)(1), to determine whether the conditions of this exemption have been met, except that:

(1) No party in interest with respect to a Plan which engages in the covered transaction, other than BNY Mellon and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by sections 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (h)(1); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of BNY Mellon or its affiliates, as applicable, such records are lost or destroyed prior to the end of the six-year period.

(h)(1) Except as provided in paragraph (h)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in paragraph (g) are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission;

(B) Any fiduciary of any Plan that engages in the covered transaction, or any duly authorized employee or representative of such fiduciary;

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the covered transaction, or any authorized employee or representative of these entities; or

(D) Any participant or beneficiary of a Plan that engages in the covered transaction, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraphs (h)(1)(B)–(D) shall be authorized to examine trade secrets of BNY Mellon or its affiliates, or commercial or financial information which is privileged or confidential; and

(3) Should BNY Mellon refuse to disclose information on the basis that such information is exempt from disclosure, BNY Mellon shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

DATES: *Effective Date:* This exemption is effective as of July 10, 2009.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 23, 2010 at 75 FR 8134.

FOR FURTHER INFORMATION CONTACT: Brian Shiker of the Department, telephone (202) 693–8552. (This is not a toll-free number.)

Exemption

I. The restrictions of sections 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) of the Act shall not apply to the purchase by the Fund from the NERCC, LLC (the Building Corporation), a party in interest with respect to the Fund, of a condominium unit (the Condo) in a building (the Building) owned by the New England Regional Council of Carpenters (the Union), also a party in interest with respect to the Fund, where the Union will own the only other condominium unit in the Building; provided that, at the time the transaction is entered into, the following conditions are satisfied:

(1) An independent, qualified fiduciary (the I/F), acting on behalf of the Fund, is responsible for analyzing the relevant terms of the transaction and deciding whether the Board of Trustees (the Trustees) should proceed with the transaction;

[6] For purposes of this proposed exemption, references to section 406 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

(2) The Fund may not purchase the Condo, unless and until the I/F approves such purchase;

(3) Acting as the independent fiduciary on behalf of the Fund, the I/F is responsible for: (a) Establishing the purchase price of the Condo, (b) reviewing the financing terms, (c) determining that such financing terms are the product of arm's length negotiations, and (d) ensuring that the Fund will not close on the Condo until the I/F has determined that proceeding with the transaction is feasible, in the interest of, and protective of the participants and beneficiaries of the Fund;

(4) The purchase price paid by the Fund for the Condo, as documented in writing and approved by the I/F, acting on behalf of the Fund, is the lesser of:

(a) The fair market value of the Condo, as of the date of the closing on the transaction, as determined by an independent, qualified appraiser selected by the I/F; or

(b) 58.3 percent (58.3%) of the amount actually expended by the Building Corporation in the construction of the Condo under the guaranteed maximum price contract (the GMP), plus the following amounts:

(i) 58.3 percent (58.3%) of the additional construction soft costs incurred outside the GMP contract (*i.e.,* the amount expended on furniture, fixtures, and equipment, and the amount expended for materials for minor work);

(ii) 54.4 percent (54.4%) of the amount expended on construction soft costs (*i.e.* architect, legal, zoning, permits, and other fees); and

(iii) 54.4 percent (54.4%) of the cost of the land underlying the Building;

(5) Acting as the independent fiduciary on behalf of the Fund, the I/F is responsible, prior to entering into the transaction, for: (a) Reviewing an appraisal of the fully completed Condo, which has been prepared by an independent, qualified appraiser, and updated, as of the date of the closing on the transaction, (b) evaluating the sufficiency of the methodology of such appraisal, and (c) determining the reasonableness of the conclusions reached in such appraisal;

(6) The terms of the transaction are no less favorable to the Fund than terms negotiated under similar circumstances at arm's length with unrelated third parties;

(7) The Fund does not purchase the Condo or take possession of the Condo until such Condo is completed;

(8) The Fund has not been, is not, and will not be a party to the construction financing loan or the permanent financing loan obtained by the Building Corporation and/or by the Union;

(9) The Fund does not pay any commissions, sales fees, or other similar payments to any party as a result of the transaction, and the costs incurred in connection with the purchase of the Condo by the Fund at closing do not include, directly or indirectly, any developer's profit, any premium received by the developer, nor any interest charges incurred on the construction financing loan or the permanent financing loan obtained by the Building Corporation and/or by the Union;

(10) Under the terms of the current collective bargaining agreement(s) and any future collective bargaining agreement(s), the Union must have the ability, unilaterally, to increase the contribution rate to the Fund at any time by diverting money to the Fund from wages and contributions within the total wage and benefit package, and under the terms of the financing that the Fund obtains to purchase the Condo, the Union must be obligated to increase the contribution rate to the Fund at any time in order to prevent a default by the Fund;

(11) In the event the Building Corporation and/or the Union defaults on the construction financing loan or the permanent financing loan obtained by the Building Corporation and/or the Union, the creditors under the terms of such construction financing loan or such permanent financing loan shall have no recourse against the Condo or any of the assets of the Fund;

(12) Acting as the independent fiduciary with respect to the Fund, the I/F is responsible for reviewing and approving the allocation between funding the purchase of the Condo from the Fund's existing assets or financing; and

(13) Acting as the independent fiduciary with respect to the Fund, the I/F is responsible for determining whether the transaction satisfies the criteria, as set forth in section 404 and section 408(a) of the Act.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within 45 days of the date of the publication of the Notice in the **Federal Register** on December 22, 2009. All comments and requests for hearing were due by February 5, 2010.

During the comment period, the Department received no requests for hearing. However, the Department did receive a comment via an e-mail, dated January 28, 2010, from the applicant. In the e-mail, the applicant requested certain changes in the facts and circumstances reflected in the Summary of Facts and Representations (SFR), as published in the Notice in the **Federal Register**, and also requested a modification to the language of one of the conditions of the exemption, as set forth in the Notice. The applicant's comments are discussed in paragraphs 1–8, below, in an order that corresponds to the appearance of the relevant language in the Notice.

1. The applicant has requested a modification to the language of condition 10 of the exemption, as set forth on page 68120, column 3, line 3 of the Notice. Condition 10 in the Notice reads, as follows:

> (10) Under the terms of the current collective bargaining agreement(s) and any future collective bargaining agreement(s), the Union has the ability, unilaterally, to increase the contribution rate to the Fund at any time by diverting money from wages and contributions to other benefit funds within the total wage and benefit package, and the Union is obligated to do so in order to prevent a default by the Fund under the terms of the financing (emphasis added) obtained by the Fund to purchase the Condo.

The applicant requests that the phrase, "under the terms of the financing," in bold in the quotation, above, be deleted from Condition 10 in the final exemption. In support of this request, the applicant argues that, as the terms of the financing for the Fund to purchase the Condo have not yet been negotiated and cannot be finalized until after the publication of the exemption, that it is not accurate to say that the Union is presently obligated by the financing terms to divert money from wages and contributions to other benefit funds within the total wage and benefit package in order to increase the contribution rate to the Fund and prevent default. Rather than say that the Union is obligated by the terms of the financing, the applicant suggests that the language of Condition 10 state that the Union is committed to divert money from wages and contributions to other benefit funds within the total wage and benefit package in order to increase the contribution rate to the Fund.

Further, the applicant argues that, as set forth in representation 19, in the SFR on page 68124, column 2, lines 20–22 in the Notice, the Union has represented its willingness to make such a commitment and, as set forth on page 68124, column 2, lines 9–20 in the Notice, it is represented that the Union anticipates having to make such a commitment as a pre-condition of the

Fund's obtaining tax exempt bond financing. In addition, the applicant points out that, as set forth in representation 33 in the SFR on page 68127, column 3, lines 38–45 in the Notice, Independent Fiduciary Services (IFS), as part of its review and possible approval of the proposed transaction, "will require that the Union pledge to increase contributions to the Fund by diversion from other aspects of the wage and benefit package to cover the Fund's cash flow needs." Accordingly, the applicant believes that the deletion of the phrase, "under the terms of the financing," from Condition 10 of the exemption does not lessen the Union's commitment.

While the Department acknowledges that the terms of the financing for the Fund to purchase the Condo have not yet been negotiated and cannot be finalized until after the publication of the final exemption in the **Federal Register**, the Department believes that the financing terms that the Fund obtains to purchase the Condo should obligate the Union to increase the contribution rate to the Fund at any time by diverting money from the wage and benefit package in order to prevent default by the Fund. Accordingly, the language of Condition 10 has been amended, as follows:

(10) Under the terms of the current collective bargaining agreement(s) and any future collective bargaining agreement(s), the Union must have the ability, unilaterally, to increase the contribution rate to the Fund at any time by diverting money to the Fund from wages and contributions within the total wage and benefit package, and under the terms of the financing that the Fund obtains to purchase the Condo, the Union must be obligated to increase the contribution rate to the Fund at any time in order to prevent a default by the Fund.

2. The applicant has requested a change to the language in representation 4, as set forth in the SFR on page 68121, column 1, line 6 and line 16 in the Notice. In this regard, in March 2009, Richard Scaramozza replaced Neal O'Brien, as one of the labor representatives serving as Trustees of the Fund, and in July 2009, Tom Gunning, III, replaced Steven Affanato, as one of the representatives of management serving as Trustees of the Fund. Further, on March 19, 2010, John Estano, one of the labor representative serving as Trustee of the Fund, retired and was replaced by Thomas Flynn.

The Department concurs with the applicant's requested change.

3. The applicant has requested a change to the language in representation 10, as set forth in the SFR on page 68122, column 1, line 18 in the Notice. In this regard, the applicant has informed the Department that the amount of the Union's construction loan is $8.48 million dollars and not the $10 million dollars estimated at the time the application was filed with the Department.

The Department concurs with the applicant's requested change.

4. The applicant has requested that one sentence in representation 10, as set forth in the SFR on page 68122, column 1, lines 47–50 in the Notice, should be stated differently. In this regard, the applicant suggests replacing this sentence, "These loans will bear a very low annual interest charge, estimated at one percent (1%) or below, to cover annual accounting expenses," with the following sentence, "The New Market Tax Credit (NMTC) benefits are provided through a low interest loan with an effective rate of two percent (2%) to cover the annual fee to Bank of America, the entity providing the NMTC benefits to the Union." The applicant represents that this replacement sentence describes the Union's actual NMTC transaction, as opposed to the estimated version reflected in the application as filed with the Department.

The Department concurs with the applicant's requested replacement.

5. The applicant has requested a change to one of the sentences in representation 12, as set forth in the SFR on page 68122, column 2, lines 22–29 in the Notice. In this regard, the applicant suggests adding the phrase, "and journeyman upgrade," after the word, "apprentice," such that the sentence reads, as follows:

The first floor of the Building intended for the Fund will have approximately 21,406 square feet of training space with fifteen (15) foot ceilings which are necessary for erecting and working off scaffolding, a major component of apprentice *and journeyman upgrade training* (emphasis added).

The Department concurs with the applicant's requested change.

6. The applicant has requested a change to the last sentence in representation 14, as set forth in the SFR on page 68122, column 3, line 46 in the Notice. In this regard, the last sentence in representation 14, as set forth in the Notice reads as follows: "It is represented that the intended retail lessees, include *an eye care center* (emphasis added), a banking area, and an ATM." The applicant requests that the phrase, "an eye care center," in bold, above, should be deleted from this sentence, because the eye care center office is not a separate retail tenant, as stated in the SFR. Further, in its comment letter, the applicant informed the Department that the eye care center is the employee benefit fund tenant, referred to in the SFR on page 68122, column 3, line 39 in the Notice, to which the Union may lease office space and to which the Union is a party in interest. As set forth in the SFR on page 68122, column 3, lines 40–42 in the Notice, if the Union leases offices space to such employee benefit fund, the Union intends to do so, pursuant to section 408(b)(2) of the Act.[7]

The Department concurs with the applicant's requested change.

7. The applicant has requested a change to footnote 24, as set forth in the SFR on page 68124, column 1, in the Notice. In this regard, footnote 24, as set forth in the Notice reads as follows:

It is represented that ownership interests in FTUB are as follows: New England Carpenters Pension Fund—36.5%, New England Carpenters Guaranteed Annuity Fund—18.2%, Empire State Carpenters Pension Fund—45%, and Bank Senior Management (through rabbi trust)—.3%.

In its comment, the applicant informed the Department that the ownership interests in First Trade Union Bank should read, as follows:

It is represented that ownership interests in FTUB are as follows: New England Carpenters Pension Fund—32.0%, New England Carpenters Guaranteed Annuity Fund—17.9%, Empire State Carpenters Pension Fund—49.9%, and Bank Senior Management (through rabbi trust)—.2%.

The Department concurs with the applicant's requested change.

8. The applicant has requested a change to representation 28(c), as set forth in the SFR on page 68125, column 3, lines 6–12 in the Notice. In this regard, subparagraph (c) in representation 28, as set forth in the Notice, reads as follows:

(c) a review of the Fund's independently prepared financial statements and projections of future cash flow in order to evaluate the Fund's ability to financially support the purchase of the Condo and the future operating costs associated with it.

The applicant represents that IFS will be reviewing the Fund's financial statements which are independently prepared, but that the projections of future cash flow are internally prepared by the Fund office and not by an outside accountant. Accordingly, the applicant

[7] The Department is offering no view, herein, as to whether the leasing of office space to any employee benefit fund to which the Union is a party in interest is covered by the statutory exemption provided in sections 408(b)(2) of the Act and the Department's regulations, pursuant to 29 CFR 2550.408b–2. Further, the Department is not providing, herein, any relief with respect to the leasing of office space to any such employee benefit fund by the Union.

suggests that the phrase, "the Fund office's internally prepared," be inserted before the word, "projections," such that sub-paragraph (c) in representation 28, should read as follows,

(c) a review of the Fund's independently prepared financial statements and the Fund office's internally prepared projections of future cash flow in order to evaluate the Fund's ability to financially support the purchase of the Condo and the future operating costs associated with it.

The Department concurs with the applicant's requested change.

9. In addition to the applicant's comments, discussed in paragraphs 1–8, above, the Department also received a comment via facsimile, dated February 4, 2010, from a commentator. In this comment, the commentator raised various issues regarding labor management relations under other statutory and regulatory programs beyond the scope of the Department's authority. It is the applicant's view that these issues are not relevant to the requested exemption. Accordingly, the applicant has chosen not to respond to those sections of the commentator's comment.

However, the applicant has responded to the following four (4) issues raised by the commentator which in the applicant's view are relevant to the requested exemption: (a) the sufficiency of the notification provided to interested persons of the publication of the Notice in the **Federal Register**; (b) the leasing of space in the Building by the Fund prior to the purchase of the Condo by the Fund; (c) the decline in work hours for carpenters in 2009; (d) the fact that the cost of the Building will likely exceed the fair market value of the Building upon completion. These issues raised by the commentator and the applicant's responses thereto are discussed in paragraphs 10–13, below.

10. The commentator maintains that the notification to interested persons of the publication of the Notice in the **Federal Register** was defective, because the mailing in booklet form could have been mistaken by interested persons as a progress report on the Building and/or a solicitation to register for classes. In this regard, it is the commentator's position that interested persons were denied the opportunity to comment and/or request a hearing on the proposed exemption.

In response, the applicant maintains that the booklet mailed to interested persons did not resemble the Union's quarterly magazine, recent course registration notices, or other notifications that promoted the Building or monitored its progress. It is the applicant's position that anyone who opened the booklet would have known that the booklet was not an ordinary mailing and that it contained a copy of the Notice. Further, the applicant sought and obtained approval from the Department for the inclusion of a one or two page insert of course offerings to be mailed to interested persons with the Notice. Accordingly, the applicant maintains that the notification to all interested persons was effectively served and was consistent with the Department's practices.

11. The commentator informed the Department that the Fund is already occupying space in the Building and is paying to the Building Corporation $60,000 to $80,000 a month in rent, on a square footage basis, pending the Department's approval of the sale of the Condo by the Building Corporation to the Fund. Further, the commentator states that the rent money paid by the Fund to occupy the Condo is not to be offset against the sale price of the Condo to be paid by the Fund. Accordingly, the commentator maintains that the Fund is expending money on renting space in the Building, when the existing training facility is suitable, and the Fund owns such facility outright.

In response, the applicant maintains that the leasing transaction between the Building Corporation and the Fund is covered by Prohibited Transaction Exemption 78–6 (PTE 78–6).[8] It is represented that in order to conduct classes in March 2010, the Building needed to be ready for occupancy in February 2010. By late fall 2009, the applicant represents that it was apparent that construction on the Building was likely to be completed by February 2010, but that the final exemption and the financing for the Fund to purchase the Condo were not likely to be in place before the beginning of the March 2010 semester.

Rather than remaining for another semester in the existing training facility which the applicant maintains is overcrowded and inadequate, the Trustees began considering the option of renting space in the Building on a short-term basis. To this end, the Union and the Fund each designated subcommittees to meet and negotiate the actual terms of the leasing arrangement. The Fund subcommittee consisted of two (2) members: (a) Richard Pedi, a Union Trustee, an employee of the Union, and a member of Local 218; and (b) George Allen, a principal of a subcontractor on the Building which is also a contributing employer to the Fund. The Union subcommittee consisted of four (4) members: (a) Jack Donahue, a member of the Union Executive Board in central Massachusetts; (b) Dave Palmisciano, a member of the Union Executive Board from Rhode Island; (c) Beth Conway, the Union's comptroller; and (d) Mark Erlich, the Executive Secretary/Treasurer and chief executive officer of the Union. It is represented that the Fund retained its management co-counsel, James Grosso (Mr. Grosso) of O'Reilly, Grosso & Gross to represent it in the leasing transaction. In this regard, it is represented that Mr. Grosso's responsibilities included: (a) Assistance in the negotiations to ensure that the terms of the lease were at least as favorable to the Fund as terms negotiated at arms length; (b) the review and approval of any written agreement that the Fund would sign; and (c) the responsibility of obtaining an appraisal

[8] Among other transactions, PTE 78–6 provides relief from section 406(a) of the Act for the leasing of real property (other than office space within the contemplation of section 408(b)(2) of the Act) by an apprenticeship plan from an employee organization any of whose members' work results in contributions being made to the apprenticeship plan, provided certain conditions are satisfied. Section 408(b)(2) of the Act provides relief from section 406(a) of the Act for a plan to contract or make reasonable arrangements with a party in interest for office space, provided certain conditions are satisfied.

The relief provided by PTE 78–6 and the relief provided by 408(b)(2) of the Act do not extend to transactions prohibited under section 406(b) of the Act. Section 406(b) of the Act prohibits a fiduciary from: (i) Dealing with the assets of a plan in his own interest or for his own account; (ii) acting, in his individual or any other capacity, in a transaction involving a plan on behalf of a party or representing a party whose interest are adverse to the interests of such plan or its participants or beneficiaries; or (iii) receiving any consideration for his own personal account from any party dealing with a plan in connection with a transaction involving the assets of such plan.

The Department has explained in regulations 29 CFR § 2550.408b–2(e) that the prohibitions of section 406(b) are imposed upon fiduciaries to deter them from exercising the authority, control, or responsibility that makes them fiduciaries when they have interests that may conflict with the interests of the plans for which they act. Thus, a fiduciary may not use the authority, control, or responsibility that makes him a fiduciary to cause a plan to pay an additional fee to such fiduciary, or to a person in which he has an interest that may affect the exercise of his best judgment as a fiduciary, to provide a service. However, regulation 29 CFR 2550.408b408b–2(e)(2) provides that a fiduciary does not engage in an act described in section 406(b)(1) of the Act if the fiduciary does not use any of the authority, control, or responsibility that makes him a fiduciary to cause a plan to pay additional fees for a service furnished by such fiduciary or to pay a fee for a service furnished by a person in which the fiduciary has an interest that may affect the exercise of his judgment as a fiduciary. Accordingly, if any trustee had an interest in the leasing transaction that may have affected his best judgment as a fiduciary regarding the decision whether to engage in the transaction on behalf of the Fund, the trustee would have engaged in a violation of section 406(b)(1) and 406(b)(2) for which no relief was available under either PTE 78–6 or section 408(b)(2) of the Act.

of the fair market rental value of the Condo. On January 15, 2010, Mr. Grosso obtained an appraisal of the fair market rental value of the Condo from CBRE/CB Richard Ellis (CBRE), an independent, qualified appraiser. With regard to the Fund's proposed leasing, CBRE established the fair market rental value of 35,122 square feet of space in the Building at $30 per square foot, triple net.

It is represented that the terms of the lease were presented to the full Board of Trustees of the Fund (the Board). The Board consisted of the following management representatives: George Allen, Donald MacKinnon, Thomas Gunning, III, Christopher Pennie, William Fitzgerald, and Mark DeNapoli. The labor representatives on the Board are Joseph Power, Richard Pedi, John Estano, Steven Tewksbury, Charles MacFarlane, and Richard Scaramozza. All of the labor representatives on the Board are Union employees and members of various locals affiliated with the Union. In addition, Board members, Richard Pedi and George Allen, are also members of the Fund subcommittee that negotiated the terms of the lease.

With two (2) abstentions, the Board voted unanimously to accept the terms of the lease. The two (2) abstaining members of the Board were Joseph Power, a Union Trustee who is also a member of the Union Executive Board, and Mark DeNapoli, an Employer Trustee who is also the Executive Vice President of the construction manager of the Building retained by the Union.

Accordingly, on January 29, 2010, the Building Corporation and the Fund entered into an occupancy agreement for a month to month lease of 34,112 rentable square feet of space in the Building at a monthly rental rate of $73,150 (based on an annual rental of $25 per rentable square foot) for total rent of $877,800 per annum. Under the terms of the occupancy agreement, the Fund is responsible for a *pro rata* share of taxes, insurance, and operating expenses (including repairs) incurred by the Building Corporation with respect to the Building. The occupancy agreement can be terminated by either party giving not less than thirty (30) days prior written notice. Under the terms of the occupancy agreement, in the event that the Fund purchases the Condo, the lesser of: (a) $52,668, or (b) the product of (ii) 12 percent (12%), times (ii) the aggregate rental payments paid by the Fund though the purchase date will be credited to the Fund toward the purchase price of the Condo.

It is represented that the rent under the terms of the occupancy agreement is below market value, that the month to month term is favorable to the Fund, and that such month to month term is not commonly found in commercial leases. Furthermore, the applicant maintains that by moving into the Building prior to purchasing the Condo, the Fund was able to market the existing training facility for sale. In this regard, it is represented that a tentative agreement on the purchase of the existing training facility has been reached with an unrelated third party. It is expected that the sale of the existing training facility will net the Fund $1.4 million after commission and fees.

The Department, herein, is not providing any relief with respect to the leasing of space in the Building to the Fund by the Building Corporation. In this regard, the applicant has applied for a separate retroactive exemption (L–11624) with respect to the leasing of training space and office space in the Building to the Fund by the Building Corporation. By notice appearing elsewhere in this issue of the **Federal Register**, the Department is publishing a Notice of Proposed Exemption. If the proposed exemption is granted, the restrictions of sections 406(b)(1), and 406(b)(2) of the Act shall not apply, effective January 29, 2010 through June 30, 2010, to the leasing of training space and office space in the Building to the Fund by the Building Corporation. It is anticipated that the existing occupancy agreement between the Fund and the Building Corporation will be terminated, effective June 30, 2010. In reliance on the relief provided by Prohibited Transaction 78–6 (PTE 78–6)) and the statutory relief provided by 408(b)(2) of the Act, the terms of the leasing agreement between the Building Corporation and the Fund for training space and office space will be renegotiated, effective July 1, 2010.[9]

12. The commentator questions: (a) Why the Fund should take on an $11 million dollar mortgage for the purchase of the Condo when the existing training facility is suitable and owned outright; (b) why the Fund should move to the larger Condo when work hours for carpenters are down 40 percent and the curriculum and the staff of the Fund must be cut from the training program; and (c) why fiduciaries of the Fund pursued the option of building the Condo to suit the Fund, rather than modifying the existing facility at half the cost?

With regard to the amount of the Fund's mortgage, the applicant states that the Fund will seek financing in the amount of approximately $8 million, not $11 million dollars.

With regard to the amount of work hours for carpenters, the applicant does not dispute that there has been a decline in work hours for carpenters since the beginning of 2009 when the building project was started. In this regard, it is represented that carpenter work hours for calendar year 2009 declined 29 percent (29%) from 6.8 million to 4.8 million over calendar year 2008. The applicant points out that while 29 percent (29%) in carpenter work hours is a significant decline, it is far less than the 40 percent (40%) claimed by the commentator.

It is further represented by the applicant that IFS anticipated the possibility of a decline in carpenter work hours and performed a "stress test" based on different projected declines in such hours over the course of a number of years. In this regard, the applicant points out that IFS has represented that even under the scenario of a 16 percent (16%) decline in carpenter work hours in each year from 2013 through 2022, the Fund would still have adequate revenues to support the purchase and financing of the Condo.

The Department asked IFS to confirm that the work hours for carpenters for calendar year 2009 declined 29 percent (29%) from 6.8 million to 4.8 million over calendar year 2008, and to confirm that the 29 percent (29%) decline in work hours for carpenters within one year is within the parameters of the worst case "stress test" suggested by IFS that is based on an assumed 16 percent (16%) decline each year from 2013 until 2022. Further, the Department asked IFS to respond to the following question: Given that the work hours for carpenters for calendar year 2009 declined 29 percent (29%) in one year, is the worst case "stress test" with an assumed 16 percent (16%) in any one year still valid?

In response, IFS indicates that: (a) The Fund provided the statistics indicating that the hours worked by Union carpenters during the calendar year 2009 were 4.8 million, and that this represented a 29 percent (29%)

[9] The Department is offering no view, herein, as to whether PTE 78–6 covers the future leasing agreement between the Building Corporation and the Fund for training space. Further, the Department is not opining as to whether the conditions of PTE 78–6 in connection with such leasing of training space to the Fund by the Building Corporation are satisfied.

In addition, the Department is offering no view, herein, as to whether the future leasing agreement between the Building Corporation and the Fund for office space is covered by the statutory exemption provided in section 408(b)(2) of the Act and the Department's regulations, pursuant to 29 CFR 2550.408b–2. Further, the Department is not opining as to whether the conditions of 408(b)(2) in connection with such leasing of office space to the Fund by the Building Corporation are satisfied.

reduction from the 6.7 million hours worked in the prior calendar year; and (b) that IFS has no independent source for this data. IFS represents that the "worst case" scenario IFS developed was based on a decrease in hours from 6.7 million in 2008 to 1.1 million in 2022, which is a reduction of 84 percent (84%). IFS considers the 1.1 million level to be a sufficiently "worst case" economic scenario for this test. IFS represents that this scenario anticipated a significant decrease in hours for the 2009 period already, albeit somewhat less than the actual 1.9 million hours. A 29 percent (29%) decline in any one year is within the range of possibility for the aggregate worst case result modeled by IFS. In the model, IFS developed, maintaining the overall 5.6 million hour reduction after substituting the actual reduction in calendar year 2009 merely requires that the average declining rate over the final ten (10) years to average 14.5 percent (14.5%), rather than 16 percent (16%). IFS concludes that a 29 percent (29%) reduction in work hours in one year is within the reasonable limits of volatility for the overall 84 percent (84%) decline that IFS modeled between 2008 and 2022. Accordingly, IFS considers the worst case scenario to remain valid.

With regard to the feasibility of the subject transaction, the applicant points out that the structure of the exemption is more important than the actual number of carpenter work hours in any month. In this regard, the applicant states that IFS, acting as the independent fiduciary on behalf of the Fund, is responsible for reviewing the financing terms, the Fund's cash flow, and the amount of projected employer contributions to the Fund. Further, the applicant states that IFS will determine whether the transaction is feasible, in the interest of, and protective of the participants. If the transaction does not satisfy those requirements, the applicant states that IFS will not approve the transaction.

In conclusion, it is the applicant's view that the Fund's purchase of a new facility is in furtherance of its long-term commitment to its core mission of training apprentices and carpenters in the Boston area. The decision by the Trustees to purchase the Condo and the decision of how much to pay for the Condo are not based on the number of carpenter work hours in a peak period or during a recession, but on an analysis of the training needs of participants and the projected revenues and expenses of the Fund over the long term. Furthermore, the applicant points out that while the economic downturn has caused a decline in carpenter work hours and contributions to the Fund, it has also resulted in lower interest rate financing, and lower construction costs for the renovation of the Building. In addition, because of the decline in real estate value, the Fund is likely to experience a savings in the purchase price of the Condo, as the fair market value is expected to be less than the Fund's *pro rata* share of the construction costs for the renovation of the Building. The applicant maintains that IFS will analyze all of these factors before making its final decision on whether to proceed with the subject transaction.

13. The commentator states that the construction costs for the renovation of the Building were approximately $26 million dollars but that the fair market of such Building will be approximately $11 million upon completion.

In response, the applicant maintains that the comment concerning the decline in the value of the Building is erroneous and misleading. In this regard, it is represented that while the purchase price and construction costs of renovating the Building totaled over $26 million, the pro-rata allocation of those costs to the Union's condominium unit is in the $11 million range, so the Union did not suffer a $15 million loss, as implied by the commentator.

After full consideration and review of the entire record, including the written comments filed by the applicant and by the commentator, the Department has determined to grant the exemption, as amended, corrected, and clarified above. Comments and responses submitted to the Department by the applicant and comments submitted by the commentator have been included as part of the public record of the exemption application. Copies of these comments and the responses thereto are posted on the Department's Web site at *http://www.dol.gov/ebsa*. The complete application file (L–11558), including all supplemental submissions received by the Department, is available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on December 22, 2009, at 74 FR 68120.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of June 2010.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2010–14022 Filed 6–10–10; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Application Nos. and Proposed Exemptions; D–11573, Citigroup Global Markets, Inc. and Its Affiliates (Together, CGMI or the Applicant); and L–11624, Boston Carpenters Apprenticeship and Training Fund (the Fund), et al.

AGENCY: Employee Benefits Security Administration, Labor

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffitt.betty@dol.gov,* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Warning: If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to the comments or hearing requests received, as they are public records.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Citigroup Global Markets, Inc. and Its Affiliates (Together, CGMI or the Applicant) Located in New York, New York

[Application No. D–11573]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).

Section I. Covered Transactions

A. If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective May 31, 2009, to the purchase or redemption of shares by an employee benefit plan, an individual retirement account (an IRA), a retirement plan for self-employed individuals (a Keogh Plan), or an individual account pension plan that is subject to the provisions of Title I of the Act and established under section 403(b) of the Code (the Section 403(b) Plan) (collectively, the Plans) in the Trust for Consulting Group Capital Markets Funds (the Trust), sponsored by MSSB in connection with such Plans' participation in the TRAK Personalized Investment Advisory Service (the TRAK Program).

B. If the exemption is granted, the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, shall not apply, effective May 31, 2009, with respect to the provision of (i) investment advisory services by the Adviser or (ii) an automatic reallocation option as described below (the Automatic Reallocation Option) to an independent fiduciary of a participating Plan (the Independent Plan Fiduciary), which may result in such fiduciary's selection of a portfolio (the Portfolio) [1] in the TRAK Program for the investment of Plan assets.

This exemption is subject to the following conditions set forth below in Section II.

Section II. General Conditions

(a) The participation of Plans in the TRAK Program is

(b) approved by an Independent Plan Fiduciary. For purposes of this requirement, an employee, officer or director of the Adviser and/or its affiliates covered by an IRA not subject to Title I of the Act will be considered an Independent Plan Fiduciary with respect to such IRA.

(c) The total fees paid to the Adviser and its affiliates will constitute no more than reasonable compensation.

(d) No Plan pays a fee or commission by reason of the acquisition or redemption of shares in the Trust.

(e) The terms of each purchase or redemption of Trust shares remain at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party.

(f) The Adviser provides written documentation to an Independent Plan Fiduciary of its recommendations or evaluations based upon objective criteria.

(g) Any recommendation or evaluation made by the Adviser to an

[1] For the avoidance of doubt, unless the context suggests otherwise, the term "Portfolio" includes the Stable Value Investments Fund, a collective trust fund established and maintained by First State Trust Company, formerly a wholly-owned subsidiary of Citigroup.

Independent Plan Fiduciary is implemented only at the express direction of such Independent Plan Fiduciary, provided, however, that—

(1) If such Independent Plan Fiduciary elects in writing (the Election), on a form designated by the Adviser from time to time for such purpose, to participate in the Automatic Reallocation Option under the TRAK Program, the affected Plan or participant account is automatically reallocated whenever the Adviser modifies the particular asset allocation recommendation which the Independent Plan Fiduciary has chosen. Such Election continues in effect until revoked or terminated by the Independent Plan Fiduciary in writing.

(2) Except as set forth below in paragraph II(f)(3), at the time of a change in the Adviser's asset allocation recommendation, each account based upon the asset allocation model (the Allocation Model) affected by such change is adjusted on the business day of the release of the new Allocation Model by the Adviser, except to the extent that market conditions, and order purchase and redemption procedures, may delay such processing through a series of purchase and redemption transactions to shift assets among the affected Portfolios.

(3) If the change in the Adviser's asset allocation recommendation exceeds an increase or decrease of more than 10 percent in the absolute percentage allocated to any one investment medium (*e.g.,* a suggested increase in a 15 percent allocation to greater than 25 percent, or a decrease of such 15 percent allocation to less than 5 percent), the Adviser sends out a written notice (the Notice) to all Independent Plan Fiduciaries whose current investment allocation may be affected, describing the proposed reallocation and the date on which such allocation is to be instituted (the Effective Date). If the Independent Plan Fiduciary notifies the Adviser, in writing, at any time within the period of 30 calendar days prior to the proposed Effective Date that such fiduciary does not wish to follow such revised asset allocation recommendation, the Allocation Model remains at the current level, or at such other level as the Independent Plan Fiduciary then expressly designated, in writing. If the Independent Plan Fiduciary does not affirmatively 'opt out' of the new Adviser recommendation, in writing, prior to the proposed Effective Date, such new recommendation is automatically effected by a dollar-for-dollar liquidation and purchase of the required amounts in the respective account.

(4) An Independent Plan Fiduciary will receive a trade confirmation of each reallocation transaction. In this regard, for all Plan investors other than Section 404(c) Plan accounts (*i.e.,* 401(k) Plan accounts), CGMI or MSSB, as applicable, mails trade confirmations on the next business day after the reallocation trades are executed. In the case of Section 404(c) Plan participants, notification depends upon the notification provisions agreed to by the Plan recordkeeper.

(h) The Adviser generally gives investment advice in writing to an Independent Plan Fiduciary with respect to all available Portfolios. However, in the case of a Plan providing for participant-directed investments (the Section 404(c) Plan), the Adviser provides investment advice that is limited to the Portfolios made available under the Plan.

(i) Any sub-adviser (the Sub-Adviser) that acts for the Trust to exercise investment discretion over a Portfolio is independent of Morgan Stanley, Inc. (Morgan Stanley), CGMI, MSSB and their respective affiliates (collectively, the Affiliated Entities).

(j) Immediately following the acquisition by a Portfolio of any securities that are issued by any Affiliated Entity, such as Citigroup or Morgan Stanley common stock (the Adviser Common Stock), the percentage of that Portfolio's net assets invested in such securities will not exceed one percent. However, this percentage limitation may be exceeded if—

(1) The amount held by a Sub-Adviser in managing a Portfolio is held in order to replicate an established third-party index (the Index).

(2) The Index represents the investment performance of a specific segment of the public market for equity securities in the United States and/or foreign countries. The organization creating the Index is:

(i) Engaged in the business of providing financial information;

(ii) A publisher of financial news information; or

(iii) A public stock exchange or association of securities dealers.

The Index is created and maintained by an organization independent of the Affiliated Entities and is a generally-accepted standardized Index of securities which is not specifically tailored for use by the Affiliated Entities.

(3) The acquisition or disposition of Adviser Common Stock does not include any agreement, arrangement or understanding regarding the design or operation of the Portfolio acquiring such Adviser Common Stock, which is intended to benefit the Affiliated Entities or any party in which any of the Affiliated Entities may have an interest.

(4) The Independent Plan Fiduciary authorizes the investment of a Plan's assets in an Index Fund which purchases and/or holds the Adviser Common Stock and the Sub-Adviser is responsible for voting any shares of Adviser Common Stock that are held by an Index Fund on any matter in which shareholders of Adviser Common Stock are required or permitted to vote.

(k) The quarterly investment advisory fee that is paid by a Plan to the Adviser for investment advisory services rendered to such Plan is offset by any amount in excess of 20 basis points that MSSB retains from any Portfolio (with the exception of the Money Market Investments Portfolio and the Stable Value Investments Portfolio for which neither MSSB nor the Trust will retain any investment management fee) which contains investments attributable to the Plan investor.

(l) With respect to its participation in the TRAK Program prior to purchasing Trust shares,

(1) Each Plan receives the following written or oral disclosures from the Adviser:

(A) A copy of the Prospectus for the Trust discussing the investment objectives of the Portfolios comprising the Trust, the policies employed to achieve these objectives, the corporate affiliation existing among the Adviser and its affiliates, and the compensation paid to such entities.[2]

(B) Upon written or oral request to the Adviser, a Statement of Additional Information supplementing the Prospectus which describes the types of securities and other instruments in which the Portfolios may invest, the investment policies and strategies that the Portfolios may utilize and certain risks attendant to those investments, policies and strategies.

(C) A copy of the investment advisory agreement between the Adviser and such Plan which relates to participation in the TRAK Program and describes the Automatic Reallocation Option.

(D) Upon written request of the Adviser, a copy of the respective investment advisory agreement between MSSB and the Sub-Advisers.

[2] The fact that certain transactions and fee arrangements are the subject of an administrative exemption does not relieve the Independent Plan Fiduciary from the general fiduciary responsibility provisions of section 404 of the Act. In this regard, the Department expects the Independent Plan Fiduciary to consider carefully the totality of the fees and expenses to be paid by the Plan, including any fees paid directly to MSSB, CGMI or to other third parties.

(E) In the case of a Section 404(c) Plan, if required by the arrangement negotiated between the Adviser and the Plan, an explanation by an Adviser representative (the Financial Advisor) to eligible participants in such Plan, of the services offered under the TRAK Program and the operation and objectives of the Portfolios.

(F) A copy of the proposed exemption and the final exemption pertaining to the exemptive relief described herein.

(2) If accepted as an investor in the TRAK Program, an Independent Plan Fiduciary of an IRA or Keogh Plan is required to acknowledge, in writing, prior to purchasing Trust shares that such fiduciary has received copies of the documents described above in subparagraph (k)(1) of this section.

(3) With respect to a Section 404(c) Plan, written acknowledgement of the receipt of such documents is provided by the Independent Plan Fiduciary (*i.e.,* the Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares). Such Independent Plan Fiduciary is required to represent in writing to the Adviser that such fiduciary is (a) independent of the Affiliated Entities and (b) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the TRAK Program.

(4) With respect to a Plan that is covered under Title I of the Act, where investment decisions are made by a trustee, investment manager or a named fiduciary, such Independent Plan Fiduciary is required to acknowledge, in writing, receipt of such documents and represent to the Adviser that such fiduciary is (a) independent of the Affiliated Entities, (b) capable of making an independent decision regarding the investment of Plan assets and (c) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the TRAK Program.

(m) Subsequent to its participation in the TRAK Program, each Plan receives the following written or oral disclosures with respect to its ongoing participation in the TRAK Program:

(1) The Trust's semi-annual and annual report including a financial statement for the Trust and investment management fees paid by each Portfolio.

(2) A written quarterly monitoring statement containing an analysis and an evaluation of a Plan investor's account to ascertain whether the Plan's investment objectives have been met and recommending, if required, changes in Portfolio allocations.

(3) If required by the arrangement negotiated between the Adviser and a Section 404(c) Plan, a quarterly, detailed investment performance monitoring report, in writing, provided to an Independent Plan Fiduciary of such Plan showing Plan level asset allocations, Plan cash flow analysis and annualized risk adjusted rates of return for Plan investments. In addition, if required by such arrangement, Financial Advisors meet periodically with Independent Plan Fiduciaries of Section 404(c) Plans to discuss the report as well as with eligible participants to review their accounts' performance.

(4) If required by the arrangement negotiated between the Adviser and a Section 404(c) Plan, a quarterly participant performance monitoring report provided to a Plan participant which accompanies the participant's benefit statement and describes the investment performance of the Portfolios, the investment performance of the participant's individual investment in the TRAK Program, and gives market commentary and toll-free numbers that enable the participant to obtain more information about the TRAK Program or to amend his or her investment allocations.

(5) On a quarterly and annual basis, written disclosures to all Plans of (a) the percentage of each Portfolio's brokerage commissions that are paid to the Affiliated Entities and (b) the average brokerage commission per share paid by each Portfolio to the Affiliated Entities, as compared to the average brokerage commission per share paid by the Trust to brokers other than the Affiliated Entities, both expressed as cents per share.

(n) The Adviser maintains or causes to be maintained, for a period of (6) six years, the records necessary to enable the persons described in paragraph (m)(1) of this section to determine whether the applicable conditions of this exemption have been met. Such records are readily available to assure accessibility by the persons identified in paragraph (1) of this section.

(1) Notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in the first paragraph of this section are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(2) A prohibited transaction is not deemed to have occurred if, due to circumstances beyond the control of the Adviser, the records are lost or destroyed prior to the end of the six-year period, and no party in interest other than the Adviser is subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by sections 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (1) of this section.

(3) None of the persons described in subparagraphs (ii)–(iv) of this section (m)(1) is authorized to examine the trade secrets of the Adviser or commercial or financial information which is privileged or confidential.

(4) Should the Adviser refuse to disclose information on the basis that such information is exempt from disclosure, the Adviser shall, by the close of the thirtieth (30th) day following the request, provide written notice advising that person of the reason for the refusal and that the Department may request such information.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term "Adviser" means CGMI or MSSB as investment adviser to Plans.

(b) The term "Affiliated Entities" means Morgan Stanley, CGMI, MSSB and their respective affiliates.

(c) The term "CGMI" means Citigroup Global Markets Inc. and any affiliate of Citigroup Global Markets Inc.

(d) An "affiliate" of any of the Affiliated Entities includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Affiliated Entity. (For purposes of this subparagraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual);

(2) Any individual who is an officer (as defined in Section III(g) hereof), director or partner in the Affiliated Entity or a person described in subparagraph (d)(1);

(3) Any corporation or partnership of which the Affiliated Entity, or an affiliate described in subparagraph (d)(1), is a 10 percent or more partner or owner; and

(4) Any corporation or partnership of which any individual which is an officer or director of the Affiliated Entity is a 10 percent or more partner or owner.

(e) An "Independent Plan Fiduciary" is a Plan fiduciary which is independent of the Affiliated Entities and is either:

(1) A Plan administrator, sponsor, trustee or named fiduciary, as the recordholder of Trust shares under a Section 404(c) Plan;

(2) A participant in a Keogh Plan;

(3) An individual covered under (i) a self-directed IRA or (ii) a Section 403(b) Plan, which invests in Trust shares;

(4) A trustee, investment manager or named fiduciary responsible for investment decisions in the case of a Title I Plan that does not permit individual direction as contemplated by Section 404(c) of the Act; or

(5) A participant in a Plan, such as a Section 404(c) Plan, who is permitted under the terms of such Plan to direct, and who elects to direct, the investment of assets of his or her account in such Plan.

(f) The term "MSSB" means Morgan Stanley Smith Barney Holdings LLC, together with its subsidiaries.

(g) The term "officer" means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policymaking function for the entity.

Section IV. Effective Date

If granted, this proposed exemption will be effective as of May 31, 2009 with respect to the Covered Transactions, the General Conditions and the Definitions that are described in Sections I, II and III.

Summary of Facts and Representations

1. If granted, the proposed individual exemption described herein would replace Prohibited Transaction Exemption (PTE) 2009–12 (74 FR 13231, March 26, 2009), an exemption previously granted to CGMI. PTE 2009–12 relates to the operation of the TRAK Personalized Investment Advisory Service (the TRAK Program) and the Trust for Consulting Group Capital Markets Funds (the Trust).

PTE 2009–12 provides exemptive relief from section 406(a) of the Act and section 4975(c)(1)(A) through (D) of the Code, for the purchase or redemption of shares by various types of Plans, such as ERISA Title I Plans, IRAs, Keogh Plans, and Section 403(b) Plans, whose assets are invested in the Trust that was previously established by Citigroup in connection with such Plans' participation in the TRAK Program.

PTE 2009–12 also provides exemptive relief from section 406(b) of the Act and section 4975(c)(1)(E) and (F) of the Code, with respect to the provision, by Citigroup's Consulting Group, of (i) investment advisory services or (ii) an Automatic Reallocation Option to an independent fiduciary of a participating Plan (*i.e.,* the Independent Plan Fiduciary), which may result in such fiduciary's selection of a Portfolio [3] in the TRAK Program for the investment of Plan assets.

2. The Department originally granted to Shearson Lehman Brothers, Inc. PTE 92–77, which relates to a less evolved form of the TRAK Program.[4] PTE 92–77 was superseded by PTE 94–50, which allowed Smith, Barney Inc. (Smith Barney), the predecessor to Salomon Smith Barney Inc. (Salomon Smith Barney), to add a daily-traded collective investment fund (the GIC Fund) to the existing fund Portfolios, describe the various entities operating the GIC Fund, and replace references to Shearson Lehman with Smith Barney.[5] PTE 99–15, which superseded PTE 94–50, allowed Salomon Smith Barney to create a broader distribution of TRAK-related products, implement a record-keeping reimbursement offset procedure under the TRAK Program, adopt the Automated Reallocation Option under the TRAK Program that would reduce the asset allocation fee paid to Salomon Smith Barney by a Plan investor, and expand the scope of the exemption to include Section 403(b) Plans.[6]

3. Thereafter, PTE 99–15 was replaced by PTE 2000–45, which primarily modified the definition of an "affiliate" of Salomon Smith Barney so that it only covered persons or entities that had a significant role in the decisions made by, or which were managed or influenced by, Salomon Smith Barney, or included any corporation or partnership of which Salomon Smith Barney or an affiliate was a 10 percent or more partner or owner.[7]

4. Finally, on March 26, 2009, the Department granted PTE 2009–12. As the result of a merger transaction (the Merger Transaction) between Citigroup and Legg Mason, Inc. (Legg Mason), on December 1, 2005, an affiliate of Citigroup acquired an approximately 14% equity ownership interest in Legg Mason common and preferred stock. This meant that two investment adviser subsidiaries of Legg Mason (Brandywine Asset Management LLC and Western Asset Management Company), which were sub-advisers (the Sub-Advisers) to three Trust Portfolios under the TRAK Program, were no longer considered "independent" of Citigroup and its affiliates in violation of Section II(h) of the General Conditions.[8] Also, the Sub-Advisers were considered "affiliates" of Citigroup under Section III(b)(3) of the General Definitions of PTE 2000–45 inasmuch as Citigroup became a 10% or more indirect owner of each Sub-Adviser following the Merger Transaction.

5. Although Citigroup reduced its ownership interest in Legg Mason to under the 10% ownership threshold on March 10, 2006, the Department decided that PTE 2000–45 was no longer effective for the transactions described therein, because Section II(h) of the General Conditions and Section III(b) of the Definitions were not met. Therefore, the Department granted PTE 2009–12, a new exemption, which replaced PTE 2000–45. Unless otherwise noted, PTE 2009–12 incorporates by reference the facts, representations, operative language and definitions of PTE 2000–45. In addition, PTE 2009–12 updates the operative language of PTE 2000–45. Further, PTE 2009–12 provides a temporary and limited exception to the definition of the term "affiliate," so that during the three month period of time within which Citigroup held a 10% or greater economic ownership interest in Legg Mason, the Sub-Advisers would continue to be considered "independent" of CGMI and its affiliates for purposes of Section II(h) and not "affiliated" with CGMI and its affiliates for purposes of Section III(b) of the exemption. Finally, PTE 2009–12 provides exemptive relief for a new method to compute fee offsets that are required under the exemption to mitigate past anomalies.

PTE 2009–12 is effective from December 1, 2005 until March 10, 2006, with respect to the limited exception. It is also effective as of December 1, 2005 with respect to the transactions covered by the exemption, the General Conditions, and the Definitions. Further, PTE 2009–12 is effective as of

[3] For the avoidance of doubt, unless the context suggests otherwise, the term "Portfolio" includes the Stable Value Investments Fund, a collective trust fund established and maintained by First State Trust Company (First State), formerly a wholly-owned subsidiary of Citigroup.

[4] 57 FR 45833 (October 5, 1992).

[5] 59 FR 32024 (June 21, 1994).

[6] 64 FR 1648 (April 5, 1999).

[7] 65 FR 54315 (September 7, 2000).

[8] In PTE 2000–45, Section II(h) of the General Conditions provided that "Any sub-adviser (the Sub-Adviser) that acts for the Trust to exercise investment discretion over a Portfolio will be independent of Salomon Smith Barney and its affiliates."

January 1, 2008, with respect to the new fee offset procedure.

Replacement of PTE 2009–12

6. CGMI and its predecessors and current and future affiliates and Morgan Stanley Smith Barney LLC and its current and future affiliates (collectively, the Applicants) have requested a new exemption that would replace PTE 2009–12 to reflect the terms of a joint venture transaction (the Joint Venture Transaction) between Citigroup and Morgan Stanley, Inc. (Morgan Stanley) that occurred on May 31, 2009. As a result of the Joint Venture Transaction, which is described in detail below, the Applicants state that the exemptive relief provided under PTE 2009–12 is no longer effective due to a change in the parties and the ownership structure of the TRAK Program. Therefore, the Applicants request a new exemption that would replace PTE 2009–12. If granted, the new exemption would be made retroactive to May 31, 2009 and it would provide the same relief with respect to the transactions covered under PTE 2009–12. In addition, the General Conditions and Definitions of the new exemption would be similar to those as set forth in PTE 2009–12.

The Joint Venture Transaction

7. The Applicants represent that on January 13, 2009, Citigroup and Morgan Stanley entered into a "Joint Venture Contribution and Formation Agreement" (the Joint Venture Agreement), which established the terms of a new joint venture (the Joint Venture) between Citigroup and Morgan Stanley. Citigroup and Morgan Stanley are global financial services providers, each headquartered in New York, New York. As of the end of 2008, Citigroup reported total client assets under management as approximately $1.3 trillion. Citigroup's current employee workforce consists of approximately 300,000 individuals in approximately 16,000 offices in 140 countries around the world. As of the end of 2008, Morgan Stanley reported total client assets under management as approximately $546 billion. Its current employee workforce of approximately 60,000 serves a diversified group of corporations, governments, financial institutions, and individuals, and operates from over 1,200 offices in over 36 countries around the world.

8. Under the Joint Venture Agreement, each of Citigroup and Morgan Stanley (including their respective subsidiaries) agreed to contribute specified businesses into the Joint Venture, together with all contracts, employees, property licenses and other assets (as well as liabilities) used primarily in the contributed businesses. Generally, in the case of Citigroup, the contributed businesses included Citigroup's retail brokerage and futures business operated under the name "Smith Barney" in the United States and Australia and operated under the name "Quilter" in the United Kingdom, Ireland and Channel Islands. Certain investment advisory and other businesses of Citigroup were also contributed, including Citigroup's Consulting Group and the sponsorship of the TRAK Program. In the case of Morgan Stanley, the contributed businesses consisted generally of Morgan Stanley's global wealth management (retail brokerage) and private wealth management businesses. According to the Applicants, no valuations for the contributed businesses were agreed upon between the parties. It was agreed, however, that the value of the Smith Barney business plus $2.75 billion would equal an ownership percentage of 49% of the Joint Venture entity, Morgan Stanley Smith Barney Holdings LLC (Holdings), a Delaware limited liability company (together with its subsidiaries, MSSB). The closing date of the Joint Venture Transaction occurred on May 31, 2009 (the Closing).

Prior to the Closing, Morgan Stanley had formed Holdings, the sole member of Morgan Stanley Smith Barney LLC, which conducts most of the Joint Venture's domestic operations as a dual-registered broker-dealer and investment adviser. Holdings presently generates about $14 billion in net revenues. It has 18,500 financial advisers, 1,000 locations worldwide and services about 6.8 million households.

Immediately following the Closing, Morgan Stanley owned indirectly through subsidiaries 51% of Holdings, and Citigroup owned 49% of Holdings, through CGMI. Morgan Stanley has call rights to purchase from Citigroup (a) an additional 14% of Holdings after the third anniversary of Closing, (b) an additional 15% of Holdings after the fourth anniversary and (c) the balance of Citigroup's interest in Holdings after the fifth anniversary.[9]

9. The Joint Venture Agreement was amended and restated on May 29, 2009 (the Amended Contribution Agreement). Under the Amended Contribution Agreement, Citigroup transferred its managed futures business and its proprietary investments to MSSB on July 31, 2009, in exchange for a cash payment of $299.778 million paid by Morgan Stanley, and Morgan Stanley purchased additional interests in MSSB worth approximately $2.7 billion on August 1, 2009, in order to maintain its total percentage of ownership interests in MSSB at 51%. The Amended Contribution Agreement also provided for an "introducing broker" structure for a period of time after the Closing. Under the "introducing broker" structure, clients of Morgan Stanley's legacy businesses continue to have their brokerage transactions cleared through, and their accounts custodied and carried by, Morgan Stanley.[10] Similarly, customers of the Citigroup legacy businesses continue to have their brokerage transactions cleared through, and have their accounts custodied and carried by, CGMI.[11] Over time, it is expected that the contributed businesses and operations of Morgan Stanley and Citigroup will be integrated into one operation and that ultimately, MSSB will become a fully self-clearing and self-custody service firm and will carry its own customer accounts.

Current Status of Operations

10. Since the Closing, MSSB's advisory services are being provided through two distribution channels. One distribution channel generally sponsors the advisory programs, including the TRAK Program, previously sponsored by Smith Barney and/or CGMI (the SB Channel). Therefore, since the Closing, the TRAK Program has continued to be made available to customers of the SB Channel. The other distribution channel generally sponsors the advisory programs previously sponsored by Morgan Stanley's Global Wealth Management Group (the MS Channel). As stated previously, the parties' ultimate goal is for the businesses, operations and systems of the MS Channel and the SB Channel to be integrated. However, decisions as to which programs will be offered to

[9] The Applicants believe that Citgroup's ownership interest in MSSB will reach a point where it will no longer have an interest in MSSB or the Trust that could affect its best judgment as a fiduciary. The Applicants explain that at such point in time, it will no longer be necessary for Citigroup to rely on this exemption for the TRAK Program. The Department expresses no opinion on when it will no longer be necessary for Citigroup to rely on this exemption, given that this will be a facts and circumstances determination.

[10] Morgan Stanley continues to provide an array of services for these accounts which include clearing and settling securities transactions, providing trade confirmations and customer statements and performing certain cashiering functions, custody services and other related services.

[11] CGMI clears and settles securities transactions, provides trade confirmations and customer statements and performs certain cashiering functions, custody services and other related services for these accounts.

whom or which programs will survive over the long-term have not been made.

11. Also, since the Closing, CGMI has continued to offer the TRAK Program to its retained clients. As of August 31, 2009, the TRAK Program had assets in excess of $6.13 billion, over $3.74 billion of which is held in Plan accounts. At present, the investments under the TRAK Program encompass the Trust, which consists of eleven Portfolios, as well as the Stable Value Investments Fund, a collective trust fund established and maintained by First State. The Trust and the Stable Value Investment Fund are advised by one or more unaffiliated Sub-Advisers selected by MSSB and First State, respectively. In addition to the TRAK Program, CGMI offers other investment advisory programs to its retained clients under an advisory services agreement between Citigroup and Holdings dated as of the Closing. Under the agreement, Holdings provides a wide range of investment advisory services to Citigroup advisory programs pursuant to a delegation by Citigroup to Holdings of certain of Citigroup's obligations to provide such services. Citigroup retained clients were provided notice of this arrangement.

Descriptions of Revisions to the Operative Language of PTE 2009–12

12. The proposed exemption generally modifies the operative language of PTE 2009–12 to take into account the new ownership structure of the TRAK Program formed as a result of the Joint Venture Transaction. Section I of PTE 2009–12 has been modified to conform the effective date of the proposal with the closing of the Joint Venture Transaction, May 31, 2009. In addition, the operative language in Section I(A) and I(B) has been revised to provide that, as a result of the Joint Venture, MSSB rather than Citigroup is now the sponsor of the Trust in connection with Plans' investment in the TRAK Program, and that investment advisory services may be provided by MSSB in addition to CGMI, respectively.

13. Section II of PTE 2009–12, General Conditions, has been modified throughout by replacing the terms "CGMI," "Consulting Group," or "Citigroup," with the term "Adviser," which has been added as a new defined term in Section III to mean "CGMI or MSSB as investment adviser to Plans." The changes were made to these terms in order to reflect the addition of MSSB as a sponsor of the TRAK Program resulting from the Joint Venture Transaction. In addition, in Section II(h), the term "Affiliated Entities," which has been added as a new defined term in Section III to mean "Morgan Stanley, CGMI, MSSB, and their respective affiliates," has been added to take into account the addition of MSSB as a sponsor of the TRAK Program.

14. Section II(j) of PTE 2009–12 has been modified to reflect the fact that CGMI has been removed from the reallocation formula because it no longer manages and supervises the Trust and the Portfolios. Prior to the Closing, Citigroup Investment Advisory Services LLC (CIAS), an affiliate of CGMI, managed and supervised the Trust and Portfolios. In connection with the Joint Venture Transactions, CIAS was contributed to MSSB and as an affiliate of MSSB, it manages and supervises the Trust and the Portfolios. Thus, the modifications to the language in Section II(j) seek to clarify the parties to the covered transactions, but do not change the formula for the calculation of the quarterly investment advisory fee that is paid by the Plan to the Adviser. Furthermore, Section II(j) has been amended to correct the names of the Portfolios that are excluded from the calculation of the quarterly investment advisory fee, namely by substituting the term "Money Markets Investment Portfolio" for "Government Money Investments Portfolio," and the term "Stable Value Investments Portfolio" for "GIC Fund."

15. Section III of PTE 2009–12, which sets forth the Definitions, has been modified by: (i) Adding Section III(a), Adviser, to mean "CGMI or MSSB as investment adviser to Plans" to reflect the new sponsorship of the TRAK Program by MSSB, in addition to the previous sponsorship by CGMI; (ii) adding Section III(b), Affiliated Entities, to mean "Morgan Stanley, CGMI, MSSB and their respective affiliates" to reflect the addition of MSSB as a sponsor of the TRAK Program resulting from the Joint Venture Transaction; (iii) substituting the term "Affiliated Entities" for "CGMI" throughout Section III(d) in order to broaden the scope of the term "affiliate" to capture the current affiliates of the Applicants; (iv) amending the sectional references in Sections III(d)(2) and (3) to conform to the corresponding modifications to Section III; (v) amending the definition of "Independent Plan Fiduciary" in Section III(e) so that the Independent Plan Fiduciary is independent of MSSB in addition to CGMI and their respective affiliates, thereby preserving the purpose of the provisions in PTE 2009–12 that provide that only a party independent of the Applicants is exercising discretion with respect to, among other things, Plans' decisions to invest in the TRAK Program; and (vi) adding a new definition of "MSSB" in Section III(f) to mean "Morgan Stanley Smith Barney Holdings LLC, together with its affiliates."

16. Section IV of PTE 2009–12, pertaining to exemptive relief for the temporary and limited exception to the definition of the term "affiliate," has been stricken since it is no longer applicable. Previously, Section IV provided that, during the three month period of time within which Citigroup held a 10% or greater economic ownership interest in Legg Mason, the Sub-Advisers would continue to be considered "independent" of CGMI and its affiliates for purposes of Section II(h) and not "affiliated" with CGMI and its affiliates for purposes of Section III(b) of the exemption. Because the time period has expired, Section IV is no longer relevant to the exemption.

Finally, the Effective Date in new Section IV is modified to provide that the exemption, if granted, will be effective as of May 31, 2009, which is the closing date of the Joint Venture Transaction.

Summary

17. In summary, the Applicant represents that the transactions described herein have satisfied or will satisfy the statutory criteria for an exemption set forth in section 408(a) of the Act because:

(a) The participation of Plans in the TRAK Program has been approved or will be approved by an Independent Plan Fiduciary;

(b) The total fees paid to the Adviser and its affiliates has constituted or will constitute no more than reasonable compensation;

(c) No Plan has paid or will pay a fee or commission by reason of the acquisition or redemption of shares in the Trust;

(d) The terms of each purchase or redemption of Trust shares have remained or will remain at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party;

(e) The Adviser has provided or will provide written documentation to an Independent Plan Fiduciary of its recommendations or evaluations based upon objective criteria, and such recommendation or evaluation has been implemented or will be implemented only at the express direction of such Independent Plan Fiduciary.

(f) The Adviser has given or will give investment advice in writing to an Independent Plan Fiduciary with respect to all available Portfolios (with respect to participant directed plans,

such advice is limited to the Portfolios made available under the Plan);

(g) Any Sub-Adviser that acts for the Trust to exercise investment discretion over a Portfolio has been independent or will be independent of Morgan Stanley, CGMI, MSSB and their respective affiliates;

(h) Immediately following the acquisition by a Portfolio of Adviser Common Stock, the percentage of that Portfolio's net assets invested in such securities generally has not exceeded or will not exceed one percent;

(i) The quarterly investment advisory fee that is paid by a Plan to the Adviser for investment advisory services rendered to such Plan has been offset or will be offset by any amount in excess of 20 basis points that MSSB retains from any Portfolio (with the exception of the Money Market Investments Portfolio and the Stable Value Investments Portfolio for which neither MSSB nor the Trust will retain any investment management fee) which contains investments attributable to the Plan investor;

(j) With respect to its participation in the TRAK Program, prior to purchasing Trust shares, each Plan has received or will receive written or oral disclosures and offering materials from the Adviser which generally disclose all material facts concerning the purpose, structure, operation, and investment in the TRAK Program, and describe the Adviser's recommendations or evaluations, including the reasons and objective criteria forming the basis for such recommendations or evaluations;

(k) Subsequent to its participation in the TRAK Program, each Plan has received or will receive periodic written disclosures from the Adviser with respect to the financial condition of the TRAK Program, the total fees that it and its affiliates will receive from such Plans and the value of the Plan's interest in the TRAK Program, and on a quarterly and annual basis, written disclosures to all Plans of (a) the percentage of each Portfolio's brokerage commissions that are paid to the Affiliated Entities and (b) the average brokerage commission per share paid by each Portfolio to the Affiliated Entities, as compared to the average brokerage commission per share paid by the Trust to brokers other than the Affiliated Entities, both expressed as cents per share; and

(l) The Adviser has complied with, and will continue to comply with, the recordkeeping requirements provided in Section II(m) of the proposed exemption, for so long as such records are required to be maintained.

Notice to Interested Persons

Notice of the proposed exemption will be mailed by first class mail to the Independent Plan Fiduciary of each Plan currently participating in the TRAK Program, or, in the case of a Plan covered by Section 404(c) of the Act, to the recordholder of the Trust shares. Such notice will be given within 45 days of the publication of the notice of pendency in the **Federal Register**. The notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 75 days of the publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Warren Blinder of the Department, telephone (202) 693–8553. (This is not a toll-free number.)

Boston Carpenters Apprenticeship and Training Fund (the Fund) Located in Boston, Massachusetts

[Exemption Application No: L–11624]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the proposed exemption is granted, the restrictions of 406(b)(1), and 406(b)(2) of the Act shall not apply effective for the period from January 29, 2010, through June 30, 2010, to the lease (the Lease) by the Fund from the NERCC, LLC (the Building Corporation), a party in interest with respect to the Fund, of a condominium unit (the Condo) in a building (the Building) owned by the Building Corporation, where the New England Regional Council of Carpenters (the Union), also a party in interest with respect to the Fund, indirectly owns the only other condominium unit in the Building; provided that, at the time the transaction was entered into, the following conditions were satisfied:

(a) The proposed exemption is conditioned upon satisfaction at all times of the terms and conditions of this exemption, and upon adherence to the material facts and representations, as described in this proposed exemption, and, as set forth in application D–11624, and in application D–11558, including those representations that are required by 29 CFR 2570.34 and 29 CFR 2570.35 of the Department's regulations;

(b) prior to entering into the Lease, the Fund sought legal advice from Aaron D. Krakow, Esq. (Mr. Krakow), acting as legal counsel on behalf of the Fund, who advised the Fund that it was permissible for the Fund to enter into a short term lease with the Building Corporation, and the Board of Trustees of the Fund (the Board) relied on Mr. Krakow's advice;

(c) the Lease which is the subject of this exemption and any other leasing arrangement of the Condo between the Fund and the Building Corporation and/or the Union, if not terminated sooner, shall terminate on the date that the Fund closes on the purchase of the Condo from the Building Corporation; and the Fund shall have no obligation to pay rent to the Union or to the Building Corporation after the date of such termination;

(d) before the Fund entered into the Lease of the Condo, James F. Grosso, Esq. (Mr. Grosso), of O'Reilly, Grosso & Gross, PC, acting as attorney for the Fund, assisted in the negotiation of the terms of the Lease, reviewed and approved the terms of such Lease to ensure that such terms are at least as favorable to the Fund as an arm's length transaction with an unrelated party, determined that such terms are fair and reasonable, and selected an independent, qualified appraiser to determine the fair market rental value of the Condo;

(e) Mr. Grosso is responsible throughout the duration of the Lease for: (i) Monitoring the rent payments made by the Fund to ensure that such payments are consistent with the amount of rental specified under the terms of such Lease, (ii) monitoring the payments of the Fund's share of the expenses for taxes, insurance, and operating expenses (including repairs) to ensure that such payments represent a fair apportionment of such expenses; and (iii) determining that the Fund has sufficient assets to pay the rental amount and its portion of taxes, insurance, and operating expenses (including repairs);

(f) throughout the duration of the Lease, the terms of the Lease of the Condo between the Fund and the Building Corporation are at all times satisfied;

(g) the rent paid by the Fund for the Condo under the terms of the Lease is at no time greater than the fair market rental value of the Condo, as determined by an independent, qualified appraiser selected by Mr. Grosso;

(h) under the provisions of the Lease, the subject transaction is on terms and at all times remains on terms that are at least as favorable to the Fund as those that would have been negotiated under similar circumstances at arm's length with an unrelated third party;

(i) the transaction is appropriate and helpful in carrying out the purposes for which the Fund is established or maintained;

(j) the Board maintains, or causes to be maintained within the United States for a period of six (6) years in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described, below, in paragraph (k)(1) of this exemption to determine whether the conditions of this exemption have been met; except that—

(1) if the records necessary to enable the persons described, below, in paragraph (k)(1) of this exemption to determine whether the conditions of this exemption have been met are lost or destroyed, due to circumstances beyond the control of the Board, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(2) No party in interest, other than the Board shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (j) of this exemption; and

(k)(1) Except as provided, below, in paragraph (k)(2) of this exemption and notwithstanding any provisions of sections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (j) of this exemption are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or any other applicable federal or state regulatory agency;

(B) Any fiduciary of the Fund, or any duly authorized representative of such fiduciary;

(C) Any contributing employer to the Fund and any employee organization whose members are covered by the Fund, or any duly authorized employee or representative of these entities; or

(D) Any participant or beneficiary of the Fund, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described, above, in paragraph (k)(1)(B)–(D) of this exemption are authorized to examine trade secrets or commercial or financial information that is privileged or confidential.

Summary of Facts and Representations

1. The Union is a labor organization made up of thirty (30) local carpenter unions in six (6) New England states. The local unions that are affiliated with the Union include local union nos. 33, 40, 67, 218, and 723 (the Locals). Members of the Union are covered by the Fund. The Union and the Locals are parties in interest with respect to the Fund, pursuant to section 3(14)(D) of the Act, as employee organizations any of whose members are covered by such Fund.

2. The Fund is an employee welfare benefit plan, as that term is defined in the Act. Further, the Fund is a multiemployer apprenticeship and training fund. The Fund is a Massachusetts nonprofit organization, and is exempt from income taxes under the provisions of Section 501(c)(3) of the Internal Revenue Code.

3. The Fund provides training and education to carpenter apprentices in the greater Boston area. The Fund also provides training and education to journeymen carpenters in the greater Boston area.

4. The Fund is maintained under collective bargaining agreements negotiated between the Union of the United Brotherhood of Carpenters and Joiners of America (the UBCJA) and the following multiemployer bargaining organizations: (a) The Labor Relations Division of the Associated General Contractors of Massachusetts, Inc.; (b) The Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc.; and (c) The Labor Relations Division of the Construction Industry of Massachusetts (collectively, the Employer Associations). Employers any of whose employees are covered by the Fund, are parties in interest with respect to the Fund, pursuant to section 3(14)(C) of the Act. The UBCJA is a party in interest with respect to the Fund, pursuant to section 3(14)(D) of the Act, as an employee organization any of whose members are covered by such Fund.

5. The Board has the authority to invest the assets of the Fund. The Board and the members of the Board, as persons who have investment discretion over the assets of the Fund, are fiduciaries with respect to the Fund, pursuant to section 3(21)(A) of the Act. As a fiduciaries of the Fund, the Board and the members of the Board are also parties in interest with respect to such Fund, pursuant to section 3(14)(A) of the Act.

The Board consists of six (6) labor representatives and six (6) management representatives. Among the labor representatives serving on the Board are Joseph Power (Mr. Power), Thomas Flynn, Steve Tewksbury, Charles MacFarlane, Richard Pedi (Mr. Pedi), and Richard Scaramozza. All of the labor representatives on the Board are Union employees and members of various locals affiliated with the Union. Mr. Power, one of the labor representatives on the Board, also serves on the Executive Board of the Union.

The representatives of management serving on the Board are Donald MacKinnon (Mr. MacKinnon), Tom Gunning, III, George Allen (Mr. Allen), William Fitzgerald, Christopher Pennie, and Mark DeNapoli (Mr. DeNapoli).

It is represented that the Board, and more specifically the Finance Committee of the Board, each meet monthly, and at those meetings review the Fund's finances for the month, including the Fund's payments to the Union for rent and for the Fund's share of taxes, insurance, and operating expenses (including repairs) in connection with the Lease of the Condo to the Fund.

6. In the fiscal year ending September 30, 2008, the Fund received employer contributions of $2,584,069, based on approximately 6.7 million hours of work. In addition, the Fund received other income of approximately $189,000. As of September 30, 2008, the Fund had expenses of $2,254,078 and total assets of $5,910,043. Included in the Fund's total assets is a parcel of improved real property (the Existing Facility) located at 385 Market Street in the Brighton section of Boston, Massachusetts.

7. Until February 2010 when construction on the Condo was completed, the Fund provided all of its classes and training in the Existing Facility. Purchased in 1975, from an unrelated third party, the Fund owns the Existing Facility free and clear of any mortgages. In February of 2010, the Fund entered into a purchase and sale agreement for the Existing Facility with Eli Jammal of Brookline Development, an unrelated party, for $1.5 million. It is represented that the sales price of the Existing Facility is $210,000 more than the net book value of the Existing Facility carried on the 2008 audited financial statement of the Fund.

8. On February 1, 2008, the Union purchased for cash in the amount of $5.8 million, a parcel of improved real property (the Original Property) from an unrelated third party. The Original

Property is described as a 48,000 square foot two-story building on a 64,000 square foot lot located at 750 Dorchester Avenue, in Boston, Massachusetts. When purchased, the Union planned to renovate and expand the Original Property.

9. The Union established the Building Corporation as a limited liability company for the purpose of developing the Original Property. In this regard, the Union contributed the Original Property to the Building Corporation in exchange for sole interest in the Building Corporation. The Building Corporation is a party in interest with respect to the Fund, pursuant to section 3(14)(G) of the Act, as 50 percent (50%) or more of the interests in the Building Corporation are owned by the Union.

10. Construction on the renovation and expansion of the Original Property began in January 2009. As of February 2010, the Union had completed the renovation and expansion of the Original Property and had separated the Building into two (2) condominium units. The Union owns one of the condominium units through its ownership of the Building Corporation, and the Building Corporation intends to sell the other condominium unit to the Fund.

On February 24, 2009, the Fund filed an application (L–11558) with the Department seeking an administrative exemption to permit the Fund to purchase the Condo. The Department published a Notice of Proposed Exemption (the Notice) in the **Federal Register** on December 22, 2009.[12] In this regard, appearing elsewhere in this issue of the **Federal Register**, the Department is publishing a final exemption for the purchase of the Condo by the Fund.

11. In order that the Fund could hold its spring 2010 classes in the Condo and in order to establish a closing date with the prospective purchaser of the Existing Facility, the Board decided to pursue the option of renting the Condo to the Fund for a short term until the Fund could obtain financing to close on the purchase of the Condo and could obtain a final exemption from the Department to permit the Fund to purchase the Condo from the Building Corporation.

12. It is represented that the Board retained its management co-counsel, Mr. Grosso of O'Reilly, Grosso & Gross, PC to represent the Fund in the leasing transaction. It is represented that Mr. Grosso is independent in that he has never represented the Building Corporation and does not provide legal services to the Union. Mr. Grosso is qualified in that he is an attorney representing employers and management in labor relations matters, primarily in the construction industry.

It is represented that the responsibilities of Mr. Grosso, acting as attorney on behalf of the Fund, included obtaining an appraisal of the fair market rental value of the Condo.

13. On January 15, 2010, Mr. Grosso obtained an appraisal of the fair market rental value of the Condo from CBRE/CB Richard Ellis (CBRE). James T. Moore (Mr. Moore), Senior Vice President/Partner of CBRE and Harris E. Collins (Mr. Collins), Senior Vice President/Partner of CBRE prepared an appraisal of the fair market rental value of the Condo.

Mr. Moore is qualified in that he is an Associate Member of the Appraisal Institute, a member of the Real Estate Finance Association, Greater Boston Real Estate Board, and is a Massachusetts Certified General Appraiser. Mr. Collins is qualified in that, among other qualifications, he is a member of the Appraisal Institute (MAI), a member of the Counselors of Real Estate (CRE), a member of the Real Estate Finance Association-Greater Boston Real Estate Board, and is a Massachusetts Certified General Appraiser.

Both Mr. Moore and Mr. Collins are independent in that neither has a present or prospective interest in or bias with respect to the property that is the subject of the appraisal and neither have a business or personal interest in or bias with respect to the parties involved. It is further represented that the engagement of Mr. Moore and Mr. Collins and the compensation for completing the appraisal assignment was not contingent upon the development or reporting of predetermined results.

With regard to the Fund's proposed leasing, CBRE established the fair market rental value of 35,112 square feet of space in the Building at $30 per square foot, triple net, as of January 15, 2010, based on market rent comparables and on the return of cost approach.

14. On January 22, 2010, the Board appointed a subcommittee to act on behalf of the Fund for the purpose of negotiating the terms of the Lease. The Fund subcommittee consisted of two (2) members: (a) Mr. Pedi, a labor representative on the Board, an employee of the Union, and a member of Local 218; and (b) Mr. Allen, a management representative on the Board, and a principal of Archer Corporation, a contributing employer to the Fund and a subcontractor of a subcontractor on the renovation and expansion of the Building. It is represented that the Fund subcommittee did not have authority to enter into the Lease but only to negotiate terms which were to be brought back to the full Board for approval.

The Union also appointed a subcommittee to negotiate the terms of the Lease. The Union subcommittee consisted of four (4) members: (a) Jack Donahue, a member of the Union Executive Board in central Massachusetts; (b) Dave Palmisciano, a member of the Union Executive Board from Rhode Island; (c) Beth Conway, the Union's comptroller; and (d) Mark Erlich (Mr. Erlich), the Executive Secretary/Treasurer and chief executive officer of the Union.

15. It is represented that the responsibilities of Mr. Grosso, acting as attorney on behalf of the Fund, also included assisting in the negotiations of the Lease in order to ensure that the terms of the Lease were at least as favorable to the Fund as terms negotiated at arm's length. Accordingly, on January 29, 2010, the Union subcommittee, the Fund subcommittee, and Mr. Grosso met to negotiate the terms of the Lease.

16. The terms of the Lease negotiated by the Union subcommittee, the Fund subcommittee, and Mr. Grosso provide for a month-to-month leasing by the Fund from the Building Corporation of 35,112 rentable square feet of space in the Building at a monthly rental rate of $73,150 (based on an annual rental of $25 per rentable square foot) for total rent of $877,800 per annum. Under the terms of the Lease, the Fund is responsible for a *pro rata* share of taxes, insurance, and operating expenses (including repairs) incurred by the Building Corporation with respect to the Building. The Lease can be terminated by either party giving not less than thirty (30) days prior written notice. The Lease which is the subject of this exemption and any other leasing arrangement of the Condo between the Fund and the Building Corporation and/or the Union, if not terminated sooner, shall terminate on the date that the Fund closes on the purchase of the Condo from the Building Corporation; and the Fund shall have no obligation to pay rent to the Union or to the Building Corporation after the date of such termination. Under the terms of the Lease, in the event that the Fund purchases the Condo, the lesser of (a) $52,668 or (b) the product of (ii) 12 percent (12%), times (ii) the aggregate rental payments paid by the Fund though the purchase date will be

[12] 74 FR 68120.

credited to the Fund toward the purchase price of the Condo.

17. The Building Corporation and the Fund entered into the Lease dated January 29, 2010. The Lease was signed by Mr. Erlich, on behalf of the Union, and Mr. MacKinnon on behalf of the Fund.

18. It is represented that on February 26, 2010, the terms of the Lease were presented to the full Board, including Mr. Pedi and Mr. Allen, who were also members of the Fund subcommittee that negotiated the terms of the Lease. With two (2) abstentions, the Board voted unanimously to accept the terms of the Lease. The two (2) abstaining members of the Board were Mr. Power, a labor representative on the Board who is also a member of the Union Executive Board, and Mr. DeNapoli, a management representative on the Board who is also the Executive Vice President and General Manager of Suffolk Construction, the construction manager responsible for the renovation and expansion of the Building, that was retained by the Union. It is represented that Mr. Power and Mr. DeNapoli recused themselves from all votes and matters before the Board relating to the Lease by the Fund of the Condo from the Building Corporation.

19. As Mr. Grosso's responsibilities, on behalf of the Fund, also included reviewing and approving any written agreement that the Fund would sign with respect to the leasing arrangement, it is represented that the Fund not deliver the February 2010 rent until March 1, 2010, after Mr. Grosso had reviewed and approved the terms of the Lease.

20. Mr. Grosso is also responsible throughout the duration of the Lease for: (a) Monitoring the rent payments made by the Fund to ensure that such payments are consistent with the amount of rental specified under the terms of such Lease, (b) monitoring the payments of the Fund's share of the expenses for taxes, insurance, and operating expenses (including repairs) to ensure that such payments represent a fair apportionment of such expenses; and (c) determining that the Fund has sufficient assets to pay the rental amount and its portion of taxes, insurance, and operating expenses (including repairs). In this regard, it is represented that Mr. Grosso reviewed the rent invoices, check register, and balance sheet of the Fund. Mr. Grosso also reviewed the preparation of the invoices and the allocation of expenses at the Building Corporation office. Mr. Grosso states that the monthly rent invoiced by the Building Corporation and paid by the Fund for each month—February through May 2010—was $73,150, the same amount as set forth in the Lease. The expenses allocated and billed to the Fund for February, March, and April 2010, pursuant to the triple net provision of the Lease were figured each month based on the fact that the Condo represents a 58 percent (58%) interest in the Building. Mr. Grosso states that this percentage interest is the same as described in the Condominium Deed. In the opinion of Mr. Grosso, this percentage is fair and reasonable. It is represented that the balance sheet of the Fund shows cash in the amount of $4,245,412.39 which to Mr. Grosso appears more than adequate for the Fund to be able to afford the rent, taking into consideration the training expenses of the Fund. It is represented that Mr. Grosso will continue to review the rent payments made by the Fund until the Lease is terminated.

21. The applicant represents that in entering into the Lease with the Building Corporation, the Fund relied on the relief from the prohibitions of section 406(a) of the Act which is provided by PTE 78–6.[13] It is further represented that at the time the Building Corporation and the Fund entered into the Lease of the Condo, all of the conditions specified in PTCE 78–6 were satisfied.[14]

In this regard, Mr. Krakow, acting as legal counsel for the Board, advised the Board that it was permissible for the Fund to enter into a short term lease with the Union for the Condo; provided that: (a) The transaction was on terms at least as favorable to the fund as an arm's length transaction with an unrelated party would be; (b) the transaction was appropriate and helpful in carrying out the purposes for which the Fund was established and maintained; and (c) the Fund maintained records of the transaction for six (6) years from the termination of the transaction. Mr. Krakow further represents that in entering into the Lease, the Board, acting in good faith, relied on Mr. Krakow's advice.

Although PTE 78–6 provides relief from section 406(a) of the Act for the leasing of real property (other than office space within the contemplation of section 408(b)(2) of the Act), it is the view of the Department that PTE 78–6 does not provide relief for the leasing of office space by an apprenticeship plan from a contributing employer, a wholly owned subsidiary of such employer, or from an employee organization any of whose members' work results in contributions being made to such apprenticeship plan.

The statutory exemption, pursuant to section 408(b)(2) of the Act, does provide relief from section 406(a) of the Act for contracting or making reasonable arrangements with a party in interest for office space, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefore. The Department is offering no view, herein, as to whether the leasing of office space between the Fund and the Building Corporation and/or the Union would be exempt from section 406(a) of the Act, pursuant to the statutory exemption.

Neither the class exemption, PTE 78–6, nor the statutory exemption, as set forth in section 408(b)(2) of the Act, provide relief from the prohibitions of section 406(b) of the Act. Accordingly, the applicant has requested an administrative exemption from section 406(b)(1) and (b)(2) of the Act. In addition, as a result of the Fund's occupancy of the Condo for the period starting on January 29, 2010, and ending on June 30, 2010, the applicant has requested retroactive relief to encompass that period.

22. It is represented that the transaction which is the subject of this proposed exemption is feasible in that the Fund will maintain records for review by the Department and others to insure that the conditions of the exemption are satisfied. Further, it is represented that all the terms of the proposed transaction are known and have been disclosed in the Lease.

23. The proposed exemption contains conditions which are designed to ensure the presence of adequate safeguards to protect the interests of the Fund regarding the subject transaction. In this regard, the fair market rental value of

[13] PTE 78–6 provides relief from section 406(a) of the Act for the leasing of real property (other than office space within the contemplation of section 408(b)(2) of the Act) by an apprenticeship plan from an employee organization any of whose members' work results in contributions being made to such apprenticeship plan. The Department is offering no view, herein, as to whether the Lease between the Fund and the Building Corporation and/or the Union was exempt from section 406(a) of the Act under the provisions of the class exemption PTE 78–6. Further, the Department, herein, is not providing relief for any leasing between the Fund and the Building Corporation or the Union beyond that which is proposed herein.

[14] The conditions of PTE 78–6 require that the terms of a leasing arrangement by an apprenticeship plan from an employee organization any of whose members' work results in contributions being made to such apprenticeship plan must be arm's length, the transaction must be appropriate and helpful in carrying out the purposes of such apprenticeship plan, and certain records must be maintained for a period of six years from the termination of such leasing arrangement. The Department is not offering any opinion, herein, as to whether the applicant has satisfied the conditions of PTE 78–6 with regard to the Lease between the Fund and the Building Corporation and/or the Union.

the Condo was determined by an independent, qualified appraiser. Further, Mr. Grosso, acting as attorney, for the Fund, assisted in the negotiation of the terms of the Lease, reviewed and approved the terms of such Lease to ensure that such terms are at least as favorable to the Fund as an arm's length transaction with an unrelated party, and determined that such terms are fair and reasonable. In addition, Mr. Grosso has determined that the rent paid by the Fund for the period between February and May 2010 was the amount specified under the Lease, that the expenses for taxes, insurance, and operating expense (including repairs) have been fairly apportioned to the Fund, and that the Fund has sufficient assets to pay such rent and expenses. It is represented that Mr. Grosso will continue to review the payments made by the Fund in connection with the Lease which is the subject of this proposed exemption, until such Lease is terminated.

24. The applicant maintains that the proposed transaction is in the interest of the participants and beneficiaries of the Fund, because the rent under the terms of the Lease is below the fair market rental value, as determined by CBRE. Further, it is represented that the month to month term of the Lease is favorable to the Fund, and that such month to month term is not commonly found in commercial leases. The applicant also maintains that by leasing and moving into the Condo prior to purchasing the Condo, the Fund was able to market the existing training facility for sale.

25. With respect to the June 30, 2010, ending date for the Lease, it is represented that the Fund will send the Building Corporation a notice of termination of the Lease, effective June 30, 2010. In addition, the Fund will request that the Building Corporation renegotiate the terms and enter into a new leasing arrangement of the Condo, starting on July 1, 2010, and continuing, until the Fund closes on the purchase of the Condo from the Building Corporation. In entering into the new leasing arrangement, the Fund will rely on the relief provided by the class exemption, PTE 78–6, for the leasing of training space by a plan from a party in interest and will rely on the relief provided by the statutory exemption, pursuant to 408(b)(2) of the Act, for the leasing of office space by a plan from a party in interest.[15] It is represented that all of the labor representatives on the Board will recuse themselves from the discussions, negotiations, and approval of the new leasing arrangement. Further, Mr. DeNapoli and Mr. Allen, both of whom are management representatives on the Board, because of their involvement in the renovation and expansion of the Building, will recuse themselves from the discussions, negotiations and approval of the new leasing arrangement.

25. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) Prior to entering into the Lease, the Fund sought legal advice from Mr. Krakow, acting as legal counsel on behalf of the Fund, who advised the Fund that it was permissible for the Fund to enter into a short term lease with the Building Corporation, and the Board relied on Mr. Krakow's advice;

(b) The Lease which is the subject of this exemption and any other leasing arrangement of the Condo between the Fund and the Building Corporation, if not terminated sooner, shall terminate on the date that the Fund closes on the purchase of the Condo from the Building Corporation; and the Fund shall have no obligation to pay rent to the Union or to the Building Corporation after the date of such termination;

(c) before the Fund entered into the Lease of the Condo, Mr. Grosso, acting as attorney for the Fund, assisted in the negotiation of the terms of the Lease, reviewed and approved the terms of such Lease to ensure that such terms are at least as favorable to the Fund as an arm's length transaction with an unrelated party, determined that such terms are fair and reasonable, and selected an independent, qualified appraiser to determine the fair market rental value of the Condo;

(d) Mr. Grosso is also responsible throughout the duration of the Lease for: (1) Monitoring the rent payments made by the Fund to ensure that such payments are consistent with the amount of rental specified under the terms of such Lease, (2) monitoring the payments of the Fund's share of the expenses for taxes, insurance, and operating expenses (including repairs) to ensure that such payments represent a fair apportionment of such expenses; (3) determining that the Fund has sufficient assets to pay the rental amount and its portion of taxes, insurance, and operating expenses (including repairs); and (4) monitoring, throughout the duration of the Lease, the terms of the Lease of the Condo between the Fund and the Building Corporation to ensure that the terms of the Lease are at all times satisfied;

(e) the rent paid by the Fund for the Condo under the terms of the Lease is at no time greater than the fair market rental value of the Condo, as determined by an independent, qualified appraiser selected by Mr. Grosso;

(f) under the provisions of the Lease, the subject transaction is on terms and at all times remains on terms that are at least as favorable to the Fund as those that would have been negotiated under similar circumstances at arm's length with an unrelated third party;

(g) the transaction is appropriate and helpful in carrying out the purposes for which the Fund is established or maintained; and

(h) the Board maintains, or causes to be maintained within the United States for a period of six (6) years in a manner that is convenient and accessible for audit and examination, such records as are necessary to determine whether the conditions of this exemption have been met.

Notice to Interested Persons

Those persons who may be interested in the publication in the **Federal Register** of the Notice include all members of the Locals in the Boston area and all of the Employer Associations.

It is represented that notification will be provided to all such interested persons by first class mail within fifteen (15) calendar days of the date of publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2) of the Department's regulations, which will advise all interested persons of the right to comment and to request a hearing.

The Department must receive all written comments and requests for a hearing no later than forty-five (45) days from the date of the publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department,

[15] The Department is offering no view, herein, as to whether PTE 78–6 covers the new leasing agreement between the Building Corporation and the Fund for training space. Further, the Department is not opining as to whether the conditions of PTE 78–6 in connection with such leasing of training space to the Fund by the Building Corporation have been and will be satisfied.

In addition, the Department is offering no view, herein, as to whether the leasing agreement between the Building Corporation and the Fund for office space is covered by the statutory exemption provided in section 408(b)(2) of the Act and the Department's regulations, pursuant to 29 CFR 2550.408b–2. Further, the Department is not opining as to whether the conditions of 408(b)(2) in connection with such leasing of office space to the Fund by the Building Corporation have been and will be satisfied.

telephone (202) 693–8551. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of June, 2010.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2010–14023 Filed 6–10–10; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet by telephone on June 15, 2010. The meeting will begin at 12 p.m., e.s.t., and continue until conclusion of the Board's agenda.

LOCATION: Legal Services Corporation, 3333 K Street, NW., 3rd Floor Conference Center, Washington, DC, 20007.

PUBLIC OBSERVATION: For all meetings and portions thereof open to public observation, members of the public that wish to listen to the proceedings may do so by following the telephone call-in directions given below. You are asked to keep your telephone muted to eliminate background noises. From time to time the Chairman may solicit comments from the public.

CALL-IN DIRECTIONS FOR OPEN SESSION(S):

- Call toll-free number: 1- (866) 451–4981;
- When prompted, enter the following numeric pass code: 5907707348;
- When connected to the call, please "Mute" your telephone immediately.

STATUS OF MEETING: Open.

Matters To Be Considered

Open Session

1. Approval of agenda.
2. Consider and act on revisions to the LSC Accounting Guide for LSC Recipients.
3. Public comment.
4. Consider and act on other business.
5. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President for Legal Affairs, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Katherine Ward at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov.*

Dated: June 8, 2010.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 2010–14171 Filed 6–9–10; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before July 12, 2010. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: request.schedule@nara.gov.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road,

College Park, MD 20740–6001. *Telephone:* 301–837–1539. *E-mail: records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (*See* 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Animal and Plant Health Inspection Service (N1–463–10–3, 3 items, 3 temporary items). Web site records, including web management and operations files, logs, and web content that is not unique. Unique web content will be managed in accordance with previously approved schedules or schedules that will be submitted in the future.

2. Department of Agriculture, Food and Nutrition Service (N1–462–09–7, 3 items, 3 temporary items). Web site records, including web management and operations files, logs, and web content that is not unique. Unique web content will be managed in accordance with previously approved schedules or schedules that will be submitted in the future.

3. Department of Education, Agency-wide (N1–441–09–4, 6 items, 5 temporary items). Background files relating to the development and issuance of rules and regulations. Included are such records as internal memorandums, files relating to the agency's semi-annual regulatory agenda, and electronic master data files containing proposed rules, supporting analyses, and comments on agency rules that are included in the government-wide Federal Docket Management System. Proposed for permanent retention are final rules and related decision memorandums signed by senior officials.

4. Department of Education, Agency-wide (N1–441–09–12, 6 items, 6 temporary items). Grant files and other records relating to the construction, maintenance, and renovation of facilities at education institutions. Included are master files of an electronic information system that contains data concerning the application process and financial transactions.

5. Department of Health and Human Services, Administration on Aging (N1–439–09–6, 12 items, 6 temporary items). Records relating to communications matters, included such records as photographs that are not mission-related, media advisories, daily news summaries, fact sheets, and response to public inquiries. Proposed for permanent retention are such records as mission-related photographs, annual reports of agency accomplishments, press releases, and files relating to educational campaigns.

6. Department of the Interior, Office of the Secretary (N1–48–10–2, 15 items, 13 temporary items). Records accumulated by the Office of Budget, including such records as background files relating to the presentation of the President's budget to Congress, budget formulation records, budget execution files, subject files, files relating to congressional travel coordinated or funded by the agency, and files related to investment in information technology. Also included are master files of an electronic information system which supports budget formulation and execution. Proposed for permanent retention are budget publications and press releases as well as the annual payment book, which documents compensation provided to local governments whose jurisdiction includes Federal lands that are exempt from taxation.

7. Department of Justice, Civil Division (N1–60–10–16, 1 item, 1 temporary item). Documents that are attorney-client privileged that are included in case files relating to cases where the agency provides legal representation to Federal employees or former employees who are sued, subpoenaed, or charged in an individual capacity based on actions they took in connection with their official position.

8. Department of Justice, Justice Management Division (N1–60–10–5, 2 items, 1 temporary item). Records relating to the formulation of agency strategic plans. Final versions of plans are proposed for permanent retention.

9. Department of Justice, Justice Management Division (N1–60–10–7, 2 items, 1 temporary item). Background files for management improvement studies relating to agency policies, procedures, and organizational structure. Final versions of the resulting reports are proposed for permanent retention.

10. Department of Justice, Office of the Inspector General (N1–60–09–67, 1 item, 1 temporary item). Master files of an electronic information used to track workflow and the status of inspection and evaluation recommendations.

11. Department of Justice, Bureau of Prisons (N1–129–09–36, 2 items, 2 temporary items). Content records maintained on the agency's internal web site, such as memorandums, newsletters, and other records relating to agency initiatives, programs, and procedures. Included are copies of documents maintained elsewhere as well as materials that are unique.

12. Department of Justice, Bureau of Prisons (N1–129–09–37, 9 items, 9

temporary items). Records included in an electronic information system used by the Office of General Counsel's Commercial Law Branch. Records relate to contracting issues, including such matters as use of the Bureau seal, allegations of fraud, contract advice, policy reviews, contract protest cases, contract appeals cases, and other litigation.

13. Department of State, Bureau of Administration (N1–59–10–13, 1 item, 1 temporary item). Master files of an electronic information system that contains emergency contact information for agency employees and contractors.

14. Department of State, Bureau of International Information Programs (N1–59–09–11, 4 items, 3 temporary items). Records of the Office of U.S. Speaker and Specialist Programs, including administrative records and chronological files. Policy and program records are proposed for permanent retention.

15. Department of State, Bureau of International Information Programs (N1–59–09–20, 2 items, 1 temporary item). Subject/project files of the Office of Current Issues. Proposed for permanent retention are electronic records output from a system used to compile content for a web site on U.S. foreign policy and related matters that is geared to foreign audiences.

16. Department of Transportation, Federal Railroad Administration (N1–399–07–17, 9 items, 5 temporary items). Records relating to Federal advisory committees, boards, and councils and to inter- and intra-agency bodies as well as rulemaking committees. Included are such records as drafts of minutes, agendas, and files relating to rules that were never published. Proposed for permanent retention are such records as files relating to rules that were published and minutes, agendas, reports, and other records accumulated by bodies for which the agency serves as chair or secretariat.

17. Department of Transportation, Federal Railroad Administration (N1–399–07–23, 7 items, 7 temporary records). Records of the Office of Civil Rights, including such records as files relating to programs for the disabled, employee alternative dispute resolution files, diversity program files, and programs aimed at groups who are under-represented in the Federal workforce.

18. Department of Transportation, Federal Railroad Administration (N1–399–10–2, 1 item, 1 temporary item). Master files of an electronic information system that contains data concerning the agency's investments in information technology.

19. Department of the Treasury, Office of Inspector General (N1–56–09–22, 4 items, 4 temporary items). Master files and outputs, including statistical reports, of an electronic information system that contains data on hotline allegations that were not forwarded to the investigative division for action.

20. Department of the Treasury, Special Inspector General for the Troubled Asset Relief Program (N1–56–10–1, 13 items, 8 temporary items). Legal opinions that lack historical significance, routine correspondence files, litigation case files that lack historical significance, allegations and related documents that pertain to matters that do not result in a formal investigation, routine audit files, and audit planning and tracking records. Proposed for permanent retention are such records as historically significant legal opinions and litigation cases, substantive correspondence, and significant audit case files.

21. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (N1–564–09–4, 1 item, 1 temporary item). Master files of an electronic information system used to track submissions of specially denatured alcohol and non-beverage drawback alcohol sent for laboratory analysis.

22. Department of the Treasury, Internal Revenue Service (N1–58–09–95, 8 items, 8 temporary items). Master files, outputs, and system documentation associated with an electronic information system used to exchange information with Federal Reserve Banks.

23. Department of the Treasury, U.S. Mint (N1–104–09–5, 7 items, 7 temporary items). Records relating to the agency's public and internal web sites, including web content records, records relating to web site development, and web site administration and operation files.

24. Abraham Lincoln Bicentennial Commission, Agency-wide (N1–220–10–1, 17 items, 6 temporary items). Records relating to such matters as fundraising, contracts granting permission to use the Commission logo, and the design and management of the Commission's web site. Also included are background materials relating to Commission programs, such as reference files and logistical records. Proposed for permanent retention are such records as reports to Congress, the Commission web site, the Executive Director's correspondence, and files relating to programs and events.

25. Office of the Director of National Intelligence, Office of the Chief of Protocol (N1–576–09–4, 8 items, 6 temporary items). Office copies of agency policy files, non-substantive working papers, and records relating to such matters as travel arrangements for foreign visitors and the award of the National Security Medal. Proposed for permanent retention are case files relating to visits made by foreign dignitaries and senior U.S. Government officials.

Dated: June 7, 2010.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 2010–14227 Filed 6–10–10; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2010–0063]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on March 2, 2010.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities."

3. *Current OMB approval number:* 3150–0011.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* As necessary in order for NRC to meet its responsibilities to conduct a detailed review of applications for licenses and amendments thereto to construct and operate nuclear power plants, preliminary or final design approvals, design certifications, research and test facilities, reprocessing plants and other utilization and

production facilities, licensed pursuant to the Atomic Energy Act of 1954, as amended (the Act) and to monitor their activities.

6. *Who will be required or asked to report:* Licensees and applicants for nuclear power plants and research and test facilities.

7. *An estimate of the number of annual responses:* 45,353.

8. *The estimated number of annual respondents:* 154.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 4,353.9M [1,727.6M hours reporting (33 hours per response) + 2,842.5M hours recordkeeping (18.4K hours per recordkeeper)].

10. *Abstract:* 10 CFR Part 50 of the NRC's regulations "Domestic Licensing of Production and Utilization Facilities," specifies technical information and data to be provided to the NRC or maintained by applicants and licensees so that the NRC may take determinations necessary to protect the health and safety of the public, in accordance with the Act. The reporting and recordkeeping requirements contained in 10 CFR part 50 are mandatory for the affected licensees and applicants.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by July 12, 2010. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Christine J. Kymn, Office of Information and Regulatory Affairs (3150–0011), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

The NRC Clearance Officer is Tremaine Donnell, (301) 415–6258.

Dated at Rockville, Maryland, this 4th day of June 2010.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2010–14061 Filed 6–10–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No.: 50–369 and 50–370; License No.: NPF–9, NPF–17; EA–09–252; NRC–2010–0196]

Duke Energy Carolinas, LLC; McGuire Nuclear Station; Confirmatory Order (Effective Immediately)

I

Duke Energy Carolinas, LLC's (Duke Energy or Licensee) is the holder of License Nos. NPF–9 and NPF–17, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50, on June 12, 1981, and March 3, 1983, respectively. The license authorizes the operation of the McGuire Nuclear Station (MNS or facility) in accordance with the conditions specified therein. The facility is located at the Licensee's site in Huntersville, North Carolina.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on March 29, 2010.

II

On November 26, 2008, the NRC's Office of Investigations (OI) initiated an investigation (OI Case No. 2–2009–009) regarding activities at the MNS located in Huntersville, NC. Based on the evidence developed during the investigation, the NRC staff preliminarily concluded that on approximately October 20, 2008, a contract employee introduced and used marijuana inside the Protected Area at MNS, and a second contract employee was aware of the potential use of the illegal drug but failed to report this to the appropriate site personnel as required by site procedure. The NRC's letter to Duke Energy of January 27, 2010, documented the NRC's conclusions and the following two apparent violations:

1. 10 CFR 26.10, states in part, that a licensee's Fitness For Duty (FFD) program must provide reasonable measures for the early detection of individuals who are not fit to perform activities within the scope of 10 CFR Part 26. Section 26.20 states, in relevant part, that each licensee subject to this part shall establish and implement written policies and procedures designed to meet the general performance objectives and specific requirements of this part. Section 26.23(a) states, in part, that contractor personnel performing activities within the scope of this part for a licensee must be subject to the licensee's program relating to fitness-for-duty. The Duke Energy Nuclear Policy Manual, NSD 218.10.1, Revision 9, states in relevant part, that where unusual behavior, lack of trustworthiness and reliability, or evidence that an individual is not fit for duty is observed, it shall be reported to the manager of Access Services. On approximately October 20, 2008, a contract employee observed the use of marijuana inside of the Protected Area but failed to immediately report the event as required by MNS's continuing behavior observation program.

2. 10 CFR 26.10(c), states in part, that a licensee's FFD program must have a goal of achieving a drug-free workplace and a workplace free of the effects of such substances. 10 CFR 26.20 states, in relevant part, that each licensee subject to this part shall establish and implement written policies and procedures designed to meet the general performance objectives and specific requirements of this part. Section 26.23(a) states, in part, that contractor personnel performing activities within the scope of this part for a licensee must be subject to the licensee's program relating to fitness-for-duty. The Duke Energy Nuclear Policy Manual, NSD 217.8, Revision 14, states, in relevant part, that illegal drugs are prohibited by company or departmental policy from actual or attempted introduction into the site Protected Area. On approximately October 20, 2008, a contract employee introduced and used marijuana inside of the Protected Area at the MNS.

III

On March 29, 2010, the NRC and Duke Energy met in an ADR session mediated by a professional mediator, which was arranged through Cornell University's Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement or resolving any differences regarding their dispute. This confirmatory order is issued pursuant to the agreement reached during the ADR process. The elements of the agreement consist of the following:

1. Regarding the apparent violation discussed in Section II.1 above, Duke Energy's internal investigation could not substantiate the observed use of marijuana inside of the Protected Area. Regarding the second apparent violation discussed in Section II.2 above, Duke Energy's internal investigation could not substantiate the introduction and use of marijuana inside the Protected Area at the McGuire Nuclear Station. Nonetheless, in the context of the ADR mediation, Duke Energy agrees not to

contest the NRC's characterization of the first or second apparent violation. The NRC concluded that both violations were due to deliberate misconduct.

2. The NRC acknowledged that Duke Energy, prior to the ADR session, already took certain actions that address the issues underlying the apparent violations. These actions included:

a. Revision of the Duke Energy FFD Policy to more clearly communicate the obligation to report suspicious behavior;

b. Performance of an independent investigation through its Employee Concerns Program to assess the response and actions arising out of the facts and circumstances surrounding the apparent violation.

c. Reviewed access determinations for involved individuals, implemented targeted searches of individuals and certain areas within the McGuire Protected Area, and denied unescorted access for the individuals involved. Duke Energy also reviewed the work activities performed by the contractor individual at the McGuire site. No issues were identified.

d. Coaching and mentoring session with nuclear site Human Resources directors and General Office staff Human Resources consultants to emphasize the importance of prompt reporting of FFD/BOP concerns.

3. In addition to the actions completed by Duke Energy as discussed above, Duke Energy agreed to additional corrective actions and enhancements, as fully delineated below in Section V of this Confirmatory Order.

4. The NRC and Duke Energy agree that the above elements will be incorporated into a Confirmatory Order. The resulting Confirmatory Order will be considered by the NRC for any assessment of Duke Energy, as appropriate.

5. The NRC normally considers characterization of the significance of the apparent violations discussed above at Severity Level III. However, in consideration of the commitments delineated in Paragraphs 4 and 5 above, the NRC and Duke Energy agree that the above non-compliances will be characterized as one violation of 10 CFR Part 26, with a significance of Severity Level IV. The violation will be cited as an attachment to the Confirmatory Order, with no response to the violation required from Duke Energy. This completes the Agency's enforcement action with respect to Duke Energy regarding all matters discussed in the NRC's letter to Duke Energy of January 27, 2010 (EA–09–252).

6. This agreement is binding upon successors and assigns of Duke Energy.

On May 24, 2010, Duke Energy consented to issuance of this Confirmatory Order with the commitments, as described in Section V below. Duke Energy further agrees that this Confirmatory Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since Duke Energy has completed the actions as delineated in Section III.2, and agreed to take the actions as set forth in Section V, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order.

I find that Duke Energy's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments, the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Duke Energy's commitments be confirmed by this Confirmatory Order. Based on the above and Duke Energy's consent, this Confirmatory Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 51, 53, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 70, *it is hereby ordered, effective immediately, that license no. NPF–9 and NPF–17 be modified as follows:*

a. Within ninety (90) days of the effective date of this Confirmatory Order, Duke Energy will develop a summary of lessons learned from the facts and circumstances surrounding the apparent violations and communicate this summary:

i. To Duke Energy nuclear generation employees;

ii. In the Duke Energy-specific Plant Access Training for a period of one (1) year following the communication set forth in 5.a.i. above;

iii. To Nuclear Human Resources personnel; and

iv. To Duke Energy's approved screening contractor organizations.

b. Within one hundred and eighty (180) days of the effective date of this Confirmatory Order, perform a self-assessment of the adequacy of the programs and processes in place to detect and deter the introduction of illegal drugs and alcohol into the Protected Area of Duke Energy's nuclear stations and implement appropriate enhancements in accordance with Duke Energy's corrective action program. Such assessment will include benchmarking with at least three nuclear fleets to identify best practices; evaluation of processes and procedures utilized to guide responses to identification of potential introduction of illegal drugs or alcohol into the Protected Area of a nuclear station; and associated oversight of contractor workforce.

c. Prior to December 31, 2011, perform an effectiveness review of the corrective actions identified in V.a. and V.b. above.

The Regional Administrator, NRC Region II, may relax or rescind, in writing, any of the above conditions upon a showing by Duke Energy of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of the date of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for

hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange (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. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

VII

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date this Confirmatory Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. A request for hearing shall not stay the immediate effectiveness of this confirmatory order.

Dated this 2nd day of June 2010.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Regional Administrator.

Notice of Violation

Duke Energy Carolinas, LLC,
McGuire Nuclear Station,
Units 1 and 2.

Docket No. 50–369 and 50–370.

License No.: NPF–9, NPF–17.

EA–09–252.

During an investigation completed by the NRC on September 3, 2009, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 26.10 states, in part, that a licensee's FFD program must provide reasonable measures for the early detection of individuals who are not fit to perform activities within the scope of 10 CFR Part 26. Section 26.20 states, in

relevant part, that each licensee subject to this part shall establish and implement written policies and procedures designed to meet the general performance objectives and specific requirements of this part. Section 26.23(a) states, in part, that contractor personnel performing activities within the scope of this part for a licensee must be subject to the licensee's program relating to fitness-for-duty.

10 CFR 26.10(c), states in part, that a licensee's FFD program must have a goal of achieving a drug-free workplace and a workplace free of the effects of such substances. 10 CFR 26.20 states, in relevant part, that each licensee subject to this part shall establish and implement written policies and procedures designed to meet the general performance objectives and specific requirements of this part. Section 26.23(a) states, in part, that contractor personnel performing activities within the scope of this part for a licensee must be subject to the licensee's program relating to fitness-for-duty.

The Duke Energy Nuclear Policy Manual, NSD 217.8, Revision 14, states, in relevant part, that illegal drugs are prohibited by company or departmental policy from actual or attempted introduction into the site Protected Area.

The Duke Energy Nuclear Policy Manual, NSD 218.10.1, Revision 9, states in relevant part, that where unusual behavior, lack of trustworthiness and reliability, or evidence that an individual is not fit for duty is observed, it shall be reported to the manager of Access Services.

Contrary to the above, on approximately October 20, 2008, a contract employee introduced and used marijuana inside of the Protected Area at the McGuire Nuclear Station. In addition, a second contract employee became aware of the potential use of marijuana inside of the Protected Area but failed to immediately report the event as required by McGuire Nuclear Station's continuing behavior observation program.

This is a Severity Level IV violation (Supplement III).

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence and the date when full compliance will be achieved is already adequately addressed on the docket in the enclosed Confirmatory Order. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, EA–09–252," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555–0001 with a copy to the Regional Administrator, Region II, and a copy to the NRC Resident Inspector at the facility that is the subject of this Notice, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (*e.g.,* explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you may be required to post this Notice within 2 working days of receipt.

Dated this 2nd day of June 2010.

[FR Doc. 2010–14059 Filed 6–10–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0308]

Notice of Issuance of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide 1.28, Revision 4, "Quality Assurance Program Criteria (Design and Construction)."

FOR FURTHER INFORMATION CONTACT: R. A. Jervey, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 251–7404 or e-mail *Richard.Jervey@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to an existing guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 4 of Regulatory Guide 1.28, "Quality Assurance Program Criteria (Design and Construction)," was issued with a temporary identification as Draft Regulatory Guide, DG–1215. DG–1215 was titled "Quality Assurance Program Requirements (Design and Construction)." Proposed RG 1.28, Revision 4, extends the scope of the NRC's endorsement to include NQA–1, Part II, which contains amplifying quality assurance (QA) requirements for certain specific work activities that occur at various stages of a facility's life. The work activities include, but are not limited to, management, planning, site investigation, design, computer software use, commercial-grade dedication, procurement, fabrication, installation, inspection, and testing. Appendix A, "Evolution of Quality Assurance Standards and the Endorsing Regulatory Guides," to RG 1.28 gives an overview and continuation of the history and consolidation of NRC-endorsed standards.

II. Further Information

In July 2009, DG–1215 was published with a public comment period of 60

days from the issuance of the guide. Staff Response to Public Comments on DG–1215 are located in the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML100160005. The regulatory analysis may be found in ADAMS under Accession No. ML101390560. Electronic copies of Regulatory Guide 1.28, Revision 4 are available through the NRC's public Web site under "Regulatory Guides" at *http://www.nrc.gov/reading-rm/doc-collections/*.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4209, by fax at (301) 415–3548, and by e-mail to *pdr.resources@nrc.gov*.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 3rd day of June, 2010.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2010–14062 Filed 6–10–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos.: 70–27, 70–143, and 70–3085; NRC–2010–0199]

Notice of Opportunity To Request a Hearing and Provide Written Comments on Order Approving Indirect License Transfers

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of license transfer application and opportunity to request a hearing.

DATES: A request for a hearing must be filed by July 1, 2010. Comments must be received by July 10, 2010. Comments received after 30 days will be considered if practicable to do so, but only the comments received on or before the due date can be assured consideration.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2010–0199 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0199. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at (301) 492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Federal Rulemaking Web site: Public comments related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–NRC–2010–0199.

FOR FURTHER INFORMATION CONTACT: Merritt N. Baker, Senior Project Manager, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, 6003 Executive Boulevard, Mail Stop EBB–2C40, Rockville, MD 20850, Telephone: (301) 492–3128, Fax: (301) 492–5539, E-mail: *Merritt.Baker@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

As set forth below in an Order issued on June 4, 2010, the U.S. Nuclear Regulatory Commission (NRC) has approved a request submitted by its licensee, Babcock & Wilcox Nuclear Operations Group, Inc. (B&W NOG), pertaining to a proposed corporate restructuring involving several companies related to B&W NOG. The NRC treated the request as one seeking approval of an indirect license transfer.

B&W NOG is a major fuel cycle facility located in Lynchburg, Virginia, which is licensed to possess and use special nuclear material (SNM) under 10 CFR Part 70; and the NRC is thus providing this notice in accordance with 10 CFR 2.1301(b).

Pursuant to 10 CFR 70.36, no license, or any right thereunder, shall be transferred, assigned, or in any manner disposed of—either voluntarily or involuntarily, directly or indirectly—through the transfer of control of the license, to any person, unless the Commission, after securing full information, finds that the transfer is in accordance with the provisions of the Atomic Energy Act of 1954, as amended, and gives its consent in writing.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding regarding the issuance of the Order set forth below. In addition to authorizing the indirect transfer of control over License No. SNM–42 held by B&W NOG, the Order authorizes the indirect transfer of control over NRC License SNM–124 held by Nuclear Fuel Services for its operations at Erwin, Tennessee; and authorizes the indirect transfer of control over NRC License SNM–2001 held by BWX Technologies, which pertains to the remediation of the former Shallow Land Disposal Area near Parks Township, Pennsylvania. In accordance with the general requirements in Subpart C of 10 CFR Part 2, as amended on January 14, 2004 (69 FR 2182), any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification

of the contentions that the person seeks to have litigated in the hearing.

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 July 1, 2010. 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.

Non-timely requests and/or petitions and contentions will not be entertained, absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in the 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 by the Commission, an Atomic Safety and Licensing Board, or a presiding officer.

Participants are requested not to include social security numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The formal requirements for documents contained in 10 CFR 2.304(c)–(e) must be met. If the NRC grants an electronic document exemption in accordance with 10 CFR 2.302(g)(3), then the requirements for paper documents, set forth in 10 CFR 2.304(b) must be met.

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 requester;

2. The nature of the requester's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding;

3. The nature and extent of the requester'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 in the requester'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 that support the requester's/petitioner's position on the issue and on which the requester/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 that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the Application fails to contain information on a relevant matter as required by law, the ID of each failure and the supporting reasons for the requester's/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 petition is to be filed, such as the Application, or other supporting documents filed by the licensee or otherwise available to the petitioner. Contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Requesters/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 requesters/petitioners is designated as the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so, in accordance with the E-Filing rule, within ten (10) days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

III. Written Comments

In accordance with 10 CFR 2.1305(a), as an alternative to requests for hearings and petitions to intervene, persons may submit written comments regarding this action. These comments must be submitted by July 10, 2010, in accordance with 10 CFR 2.1305(b). The Commission will address the comments received in accordance with 10 CFR 2.1305(c). Comments should be submitted as described in the **ADDREESES** Caption.

IV. Further Information

Documents related to this action, including the Application for the proposed license transfer and supporting documentation, are available electronically through 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 Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the publicly available documents related to this notice are:

Document	ADAMS Accession Number
April 1, 2010: Request to Amend License	ML100990164
May 27, 2010: Response to RAI Request III	ML101480006
June 10, 2010: Safety Evaluation Report	ML101540125

If you do not have access to ADAMS, or if there are problems 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.

The Order set forth below provides additional details.

Order Approving Indirect Transfer of Control of License

I

Pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 70 Babcock & Wilcox Nuclear Operations Group (B&W NOG or the licensee) is the holder of materials license number SNM–42, which authorizes the possession and use of special nuclear material (SNM) and irradiated fuel (spent nuclear fuel) at the B&W NOG facility and the Lynchburg Technology Center, and in packages approved pursuant to 10 CFR Part 71 at other U. S. Nuclear Regulatory Commission (NRC or the Commission) licensed facilities, and in private carriage between NRC licensed facilities within the United States.

II

By letter dated April 1, 2010, as supplemented by information provided in letters dated May 4, 2010, May 14, 2010, and May 27, 2010, and by information presented during a May 12 meeting (collectively the Application), the licensee explained and documented a proposed corporate restructuring (referred to below as a spinoff). As relevant here, The Babcock & Wilcox Company (B&W) and its various subsidiaries—including the licensee—will be separated from the ultimate corporate parent—McDermott International, Inc. (MII). The NRC is treating the Application as a request for approval of an indirect transfer of control over the licensee's activities.

BHI is an intermediate parent company of the licensee. BHI's subsidiaries include B&W NOG; Nuclear Fuel Services (NFS), which holds NRC license SNM–127 for its operations at Erwin, Tennessee; and BWX Technologies, which holds NRC license SNM–2001 for remediation of the former Shallow Land Disposal Area near Parks Township, Pennsylvania. B&W NOG is the primary holder for transportation packages under dockets 71–5086, 71–6357, 71–9250, 71–9280, and 71–9281. NFS is the primary holder for transportation packages under docket 71–0249. This Order applies to each of the above-referenced licenses.

In its Application, B&W NOG requested approval of a conforming license amendment that would replace references to MII and McDermott Incorporated in chapter 1 of the license with references to Babcock & Wilcox Technologies, B&W, and Babcock & Wilcox Investment Company to reflect the corporate spinoff and related actions that do not require NRC approval. No physical changes to the NRC-licensed facilities, and no operational changes in licensed activities will occur as a result of this Order.

Approval of the conforming license amendment will immediately follow the planned corporate spinoff.

Pursuant to 10 CFR 70.36, no right to possess or utilize SNM granted by any license, issued pursuant to the regulations in 10 CFR Part 70, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license, to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Atomic Energy Act of 1954, as amended (the Act), and shall give its consent in writing. After review of the information in the Application, and relying on the representations contained in the Application, the NRC staff has determined that B&W is qualified to hold the ownership interests previously held by BHI, and that the transfers of ownership and operating interests to B&W described in the Application, are consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the Application complies with the standards and requirements of the Act, as amended, and the Commission's rules and regulations set forth in Title 10 Chapter I. The license transfer and issuance of the conforming license amendment will not be inimical to the common defense and security or to the health and safety of the public, or the environment, and all applicable requirements have been satisfied.

The findings set forth above are supported by NRC's Safety Evaluation Report, which is available for review ML101540125.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Act; 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 70.36, *it is hereby ordered* that the Application described above related to the proposed corporate restructuring is approved, subject to the following condition:

Should the proposed corporate restructuring not be completed within one year from the date of this Order, this Order shall become null and void, provided, however, upon written application and good cause shown, such date may be extended by Order.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated May 4, 2010, May 14, 2010, and May 27, 2010, as well as the Safety Evaluation Report supporting the decision, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible, electronically, from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room, on the Internet, at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.*

Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff, by telephone, at 1–800–397–4209, 301–415–4737, or via e-mail, to *pdr@nrc.gov.*

Dated this 4th day of June, 2010.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Office of Nuclear Material Safety and Safeguards.

Charles Miller,

Director, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2010–14202 Filed 6–10–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255; NRC–2010–0198]

Entergy Nuclear Operations, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Nuclear Operations, Inc. (ENO) (the licensee) to withdraw its August 28, 2008, application for proposed amendment to Facility Operating License No. DPR–20 for the Palisades Nuclear Plant, located in Van Buren County, Michigan. The proposed amendment would have revised the facility Technical Specifications as they apply to Administrative Controls Section 5.3 Plant Staff Qualifications, and Section 5.6.5 Core Operating Limits Report (COLR). ENO supplemented the License Amendment Request by letter dated May 14, 2009.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 4, 2008 (73 FR 65691). However, by letter dated May 6, 2010, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 28, 2008, supplemented by letter dated May 14, 2009, and the licensee's letter dated May 6, 2010, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 2nd day of June, 2010.

For the Nuclear Regulatory Commission.

Mahesh Chawla,

Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–14050 Filed 6–10–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219; NRC–2010–0197]

Exelon Generation Company, LLC; Oyster Creek Nuclear Generating Station; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Exelon Generation Company, LLC, (Exelon), to withdraw its November 2, 2007, application for amendment to Facility Operating License No. DPR–16 for the Oyster Creek Nuclear Generating Station (Oyster Creek), located in Ocean County, New Jersey.

The proposed amendment would have revised the Technical Specifications to eliminate the requirement for secondary containment integrity under certain conditions during refueling.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on June 3, 2008 (73 FR 31719). However, by letter dated April 21, 2010, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated November 2, 2007, associated supplements dated May 5, July 3, September 22, 2008, October 20, November 13, 2009, and the licensee's letter dated April 21, 2010, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to pdr.resource@nrc.gov.

Dated at Rockville, Maryland, this 4th day of June 2010.

For the Nuclear Regulatory Commission.

G. Edward Miller,

Project Manager, Plant Licensing Branch I–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–14053 Filed 6–10–10; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: (OMB Control No. 3206–0218; Form RI 94–7)

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. This information collection, "Death Benefit Payment Rollover Election" (OMB Control No. 3206–0218; Form RI 94–7), provides Federal Employees Retirement System (FERS) surviving spouses and former spouses with the means to elect payment of FERS rollover-eligible benefits directly or to an Individual Retirement Arrangement.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection or other forms of information technology.

Approximately 3,444 RI 94–7 forms will be completed annually. The form takes approximately 60 minutes to complete. The annual burden is 3,444 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via E-mail to *Cyrus.Benson@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

James K. Freiert (Acting), Deputy Associate Director, Retirement Operations, Retirement and Benefits, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

For information regarding administrative coordination contact:

Cyrus S. Benson, Team Leader, Publications Team, RB/RM/Administrative Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415, (202) 606–4808.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–14114 Filed 6–10–10; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Request for Comments on a Revised Information Collection: (OMB Control No. 3206–0170; Standard Forms 3106 and 3106A)

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. This information collection, "Application for Refund of Retirement Deductions, Federal Employees Retirement System (FERS)," (OMB Control No. 3206–0170; Standard Form 3106), is used by former Federal employees under FERS, to apply for a refund of retirement deductions withheld during Federal employment, plus any interest provided by law. "Current/Former Spouse(s) Notification of Application for Refund of Retirement Deductions Under FERS," (OMB Control No. 3206–0170; Standard Form 3106A) is used by refund applicants to notify their current/former spouse(s) that they are applying for a refund of retirement deductions, which is required by law.

Approximately 8,000 SF 3106 forms will be processed annually. The SF 3106 takes approximately 30 minutes to complete for a total of 4,000 hours

annually. Approximately 6,400 SF 3106A forms will be processed annually. The SF 3106A takes approximately 5 minutes to complete for a total of 534 hours. The total annual estimated burden is 4,534 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via E-mail to *Cyrus.Benson@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

James K. Freiert (Acting), Deputy Associate Director, Retirement Operations, Retirement and Benefits, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500, and

OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503.

For information regarding administrative coordination contact: Cyrus S. Benson, Team Leader, Publications Team, RB/RM/ Administrative Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415; (202) 606–4808.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–14113 Filed 6–10–10; 8:45 am]

BILLING CODE 6325–38–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

TIMES AND DATES: 4 p.m., Monday, June 21, 2010; and 10 a.m., Tuesday, June 22, 2010.

PLACE: Louisville, Kentucky, at the Brown Hotel, 335 West Broadway.

STATUS: (Closed).

MATTERS TO BE CONSIDERED:

Monday, June 21, at 4 p.m. (Closed)

1. Strategic Issues.
2. Financial Matters.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

Tuesday, June 22, at 10 a.m. (Closed)

1. Continuation of Monday's agenda.

CONTACT PERSON FOR MORE INFORMATION: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. 2010–14226 Filed 6–9–10; 4:15 pm]

BILLING CODE 7710–12–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before July 12, 2010. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Training Program Evaluation.
Frequency: On Occasion.
SBA Form Number: 20.
Description of Respondents: Small Business Resource Partners.
Responses: 200,000.
Annual Burden: 40,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 2010–14071 Filed 6–10–10; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12170 and #12171]

Kentucky Disaster Number KY–00033

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Kentucky (FEMA–1912–DR), dated 05/11/2010.

Incident: Severe storms, flooding, mudslides, and tornadoes.

Incident Period: 05/01/2010 through 06/01/2010.

Effective Date: 06/01/2010.

Physical Loan Application Deadline Date: 07/12/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 02/11/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Kentucky, dated 05/11/2010, is hereby amended to establish the incident period for this disaster as beginning 05/01/2010 and continuing through 06/01/2010.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–14072 Filed 6–10–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12168 and #12169]

Kentucky Disaster Number KY–00032

AGENCY: Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–1912–DR), dated 05/11/2010.

Incident: Severe storms, flooding, mudslides, and tornadoes.

Incident Period: 05/01/2010 and continuing through 06/01/2010.

Effective Date: 06/01/2010.

Physical Loan Application Deadline Date: 07/12/2010.

EIDL Loan Application Deadline Date: 02/11/2011.

ADDRESSES: *Submit completed loan applications to:* U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the Commonwealth of Kentucky, dated 05/11/2010 is hereby amended to establish the incident period for this disaster as beginning 05/01/2010 and continuing through 06/01/2010.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator, for Disaster Assistance.

[FR Doc. 2010–14073 Filed 6–10–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Form S–8; OMB Control No. 3235–0066; SEC File No. 270–66.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form S–8 (17 CFR 239.16b) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) is the primary registration statement used by eligible registrants to register securities to be issuers in connection with employee benefit plans. Form S–8 provides verification of compliance with securities law requirements and assures the public availability and dissemination of such information. The likely respondents will be companies. The information must be filed with the Commission on occasion. Form S–8 is a public document. All information provided is mandatory. We estimate that Form S–8 takes approximately 24 hours per response to prepare and is filed by approximately 2,680 respondents. In addition, we estimate that 50% of the 24 hours per response (12 hours per response) is prepared by the filer for a total annual reporting burden of 32,160 hours (12 hours per response × 2,680 responses).

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 7, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14056 Filed 6–10–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request,copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Form 15, OMB Control No. 3235–0167, SEC File No. 270–170.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 15 (17 CFR 249.323) is a certification of termination of a class of security under section 12(g) or notice of suspension of duty to file reports pursuant to sections 13 and 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). We estimate that approximately 3,000 issuers file Form 15 annually and it takes approximately 1.5 hours per response to prepare for a total of 4,500 annual burden hours.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: June 7, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14057 Filed 6–10–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rules 7a–15 thru 7a–37; OMB Control No. 3235–0132; SEC File No. 270–115.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously

approved collection of information discussed below.

Rules 7a–15 through 7a–37 (17 CFR 260.7a–15–260.7a–37) under the Trust Indenture Act of 1939 set forth the general requirements relating to applications, statements and reports that must be filed under the Act by issuers of, and trustees to, qualified indentures under the Act. The respondents are persons and entities subject to the requirements of the Trust Indenture Act. Rules 7a–15 through 7a–37 are disclosure guidelines and do not directly result in any collection of information. The Rules are assigned only one burden hour for administrative convenience.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; or send an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 7, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14055 Filed 6–10–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29294; File No. 812–13706]

EQ Advisors Trust, et al.; Notice of Application

June 4, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act and under section 6(c) of the Act for an exemption from rule 12d1–2 under the Act.

SUMMARY: *Summary of the Application:* Applicants request an order that would (a) permit certain series of registered open-end management investment companies to acquire shares of other registered open-end management investment companies and unit investment trusts ("UITs") that are within or outside the same group of investment companies, and (b) permit certain series of registered open-end management investment companies relying on rule 12d1–2 under the Act to invest in certain financial instruments.

Applicants: EQ Advisors Trust, AXA Premier VIP Trust (together with EQ Advisors Trust, the "Trusts") and AXA Equitable Life Insurance Company (the "Manager").

DATES: *Filing Dates:* The application was filed on September 29, 2009 and amended on March 17, 2010 and June 3, 2010.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 29, 2010, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: c/o Steven M. Joenk, AXA Equitable Life Insurance Company, 1290 Avenue of the Americas, New York, New York 10104.

FOR FURTHER INFORMATION CONTACT: John Yoder, Senior Counsel, at (202) 551–6878, or Michael W. Mundt, Assistant Director, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each Trust is organized as a Delaware statutory trust. Each Trust is registered under the Act as an open-end management investment company and offers multiple series ("Funds").[1] Each Trust is offered to (a) insurance company separate accounts registered under the Act ("Registered Separate Accounts") and insurance company separate accounts exempt from registration under the Act ("Unregistered Separate Accounts," and together with the Registered Separate Accounts, "Separate Accounts") in connection with the variable life insurance contracts and variable annuity certificates and contracts ("Variable Contracts") issued by the Manager and other affiliated or unaffiliated insurance companies, (b) retirement plans, including the 401(k) plan sponsored by the Manager and (c) series of each Trust. Certain Funds pursue their investment objectives through a master-feeder arrangement in reliance on section 12(d)(1)(E) of the Act.[2]

2. The Manager is a New York stock life insurance company registered under the Investment Advisers Act of 1940 ("Advisers Act") and serves as investment adviser to the Trusts. The Manager is a wholly owned subsidiary of AXA Financial, Inc., a holding company. AXA Financial, Inc., is a wholly owned subsidiary of AXA, a French holding company for an international group of insurance and related financial services companies.

3. Applicants request relief to permit: (a) A Fund (a "Fund of Funds") to acquire shares of registered open-end management investment companies or their series (the "Unaffiliated Investment Companies") and UITs that are not part of the "same group of investment companies" (as defined in section 12(d)(1)(G)(ii) of the Act) as the Fund of Funds ("Unaffiliated Trusts," and

[1] Applicants request that the order extend to any future series of the Trusts, and any other existing or future registered open-end management investment companies and their series that are part of the same group of investment companies, as defined in section 12(d)(1)(G)(ii) of the Act, as the Trusts and are, or may in the future be, advised by the Manager or any other investment adviser controlling, controlled by, or under common control with the Manager (included in the term, "Funds"). All entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

[2] A Fund of Funds may not invest in an Underlying Fund that operates as a feeder fund unless the feeder fund is part of the same group of investment companies (as defined in section 12(d)(1)(G)(ii) of the Act) as its corresponding master fund.

together with the Unaffiliated Investment Companies, the "Unaffiliated Funds");[3] (b) the Unaffiliated Funds, their principal underwriters and any broker or dealer registered under the Securities Exchange Act of 1934 ("Broker") to sell shares of the Unaffiliated Funds to the Fund of Funds; (c) the Funds of Funds to acquire shares of other Funds in the "same group of investment companies" (as defined in section 12(d)(1)(G)(ii) of the Act) as the Fund of Funds (collectively, the "Affiliated Funds," and together with the Unaffiliated Funds, the "Underlying Funds"); and (d) the Affiliated Funds, their principal underwriters and any Broker to sell shares of the Affiliated Funds to the Fund of Funds. Applicants also request an order under sections 6(c) and 17(b) of the Act to exempt applicants from section 17(a) to the extent necessary to permit Underlying Funds to sell their shares to Funds of Funds and redeem their shares from Funds of Funds.

4. Applicants also request an exemption to the extent necessary to permit Funds that invest in Underlying Funds in reliance on section 12(d)(1)(G) of the Act, and that are eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act ("Same Group Funds of Funds"), to also invest, to the extent consistent with their investment objective, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act ("Other Investments").

5. Consistent with its fiduciary obligations under the Act, each Same Group Fund of Fund's board of trustees will review the advisory fees charged by the Same Group Fund of Fund's investment adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Same Group Fund of Funds may invest.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any Broker from selling the shares of the investment company to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) of the Act from the limitations of sections 12(d)(1)(A) and (B) to the extent necessary to permit the Funds of Funds to acquire shares of the Underlying Funds in excess of the limits set forth in section 12(d)(1)(A) of the Act and to permit the Underlying Funds, their principal underwriters and any Broker to sell shares to the Funds of Funds in excess of the limits set forth in section 12(d)(1)(B) of the Act.

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds or its affiliated persons over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by a Fund of Funds or its affiliated persons over the Underlying Funds. The concern about undue influence does not arise in connection with a Fund of Funds' investment in the Affiliated Funds, since they are part of the same group of investment companies. To limit the control that a Fund of Funds or its affiliated persons may have over an Unaffiliated Fund, applicants propose a condition prohibiting: (a) The Manager and any person controlling, controlled by or under common control with the Manager, any investment company and any issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the Act advised or sponsored by the Manager or any person controlling, controlled by or under common control with the Manager (collectively, the "Group"), and (b) any investment adviser within the meaning of section 2(a)(20)(B) of the Act to a Fund of Funds ("Subadviser"), any person controlling, controlled by or under common control with the Subadviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Subadviser or any person controlling, controlled by or under common control with the Subadviser (collectively, the "Subadviser Group") from controlling (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act.

5. Applicants further state that condition 2 precludes a Fund of Funds, the Manager, any Subadviser, promoter or principal underwriter of a Fund of Funds, and any person controlling, controlled by or under common control with any of those entities (each, a "Fund of Funds Affiliate") from taking advantage of an Unaffiliated Fund, with respect to transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or the Unaffiliated Fund's investment adviser(s), sponsor, promoter, principal underwriter or any person controlling, controlled by or under common control with any of these entities (each, an "Unaffiliated Fund Affiliate"). Condition 5 precludes a Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) from causing an Unaffiliated Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an officer, director, trustee, member of an advisory board, investment adviser, Subadviser, or employee of the Fund of Funds, or a person of which any such officer, director, trustee, investment adviser, Subadviser, member of an advisory board, or employee is an affiliated person (each, an "Underwriting Affiliate," except any person whose relationship to the Unaffiliated Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an

[3] Certain of the Unaffiliated Funds may be registered under the Act as either UITs or open-end management investment companies and have obtained exemptions from the Commission necessary to permit their shares to be listed and traded on a national securities exchange at negotiated prices ("ETFs").

Underwriting Affiliate is an "Affiliated Underwriting."

6. As an additional assurance that an Unaffiliated Investment Company understands the implications of an investment by a Fund of Funds under the requested order, prior to a Fund of Funds' investment in the Unaffiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i), condition 8 requires that the Fund of Funds and Unaffiliated Investment Company execute an agreement stating, without limitation, that their boards of directors or trustees ("Boards") and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order ("Participation Agreement"). Applicants note that an Unaffiliated Investment Company (other than an ETF whose shares are purchased by a Fund of Funds in the secondary market) will retain the right to reject an investment by a Fund of Funds.[4]

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. With respect to investment advisory fees, applicants state that, in connection with the approval of any investment advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), will find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract(s). Applicants further state that the Manager will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company pursuant to rule 12b–1 under the Act) received from an Unaffiliated Fund by the Manager, or an affiliated person of the Manager, other than any advisory fees paid to the Manager or an affiliated person of the Manager by an Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund.

8. Applicants state that with respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in Rule 2830 of the Conduct Rules of the NASD ("NASD Conduct Rule 2830"), if any, will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of the Fund of Funds will not exceed the limits applicable to funds of funds as set forth in NASD Conduct Rule 2830.

9. Applicants represent that each Fund of Funds will represent in the Participation Agreement that no insurance company sponsoring a Registered Separate Account funding Variable Contracts will be permitted to invest in the Fund of Funds unless the insurance company has certified to the Fund of Funds that the aggregate of all fees and charges associated with each contract that invests in the Fund of Funds, including fees and charges at the Separate Account, Fund of Funds, and Underlying Fund levels, are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company.

10. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that an Underlying Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A), except to the extent that such Underlying Fund: (a) acquires such securities in compliance with section 12(d)(1)(E) of the Act; (b) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (c) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and its affiliated persons or affiliated persons of such persons. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that the Funds of Funds and the Affiliated Funds may be deemed to be under common control and therefore affiliated persons of one another. Applicants also state that the Funds of Funds and the Underlying Funds may be deemed to be affiliated persons of one another if a Fund of Funds acquires 5% or more of an Underlying Fund's outstanding voting securities. In light of these possible affiliations, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from a Fund of Funds.[5]

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act, as the terms are fair and reasonable and do not involve overreaching. Applicants state that the terms upon which an Underlying Fund will sell its shares to or purchase its shares from a Fund of Funds will be based on the net asset value of each

[4] An Unaffiliated Investment Company, including an ETF, would retain its right to reject any initial investment by a Fund of Funds in excess of the limit in section 12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement with the Fund of Funds.

[5] Applicants acknowledge that receipt of any compensation by (a) an affiliated person of a Funds of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a Fund of Funds may be prohibited by section 17(e)(1) of the Act. The Participation Agreement also will include this acknowledgement.

Underlying Fund.[6] Applicants also state that the proposed transactions will be consistent with the policies of each Fund of Funds and Underlying Fund, and with the general purposes of the Act.

C. Other Investments by Same Group Funds of Funds

1. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

2. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, "securities" means any security as defined in section 2(a)(36) of the Act.

3. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that the Same Group Funds of Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Same Group Funds of Funds to invest in Other Investments. Applicants assert that permitting the Same Group Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

Investments in Underlying Funds by Funds of Funds

1. The members of the Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. The members of a Subadviser Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Fund, the Group or a Subadviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Fund, then the Group or the Subadviser Group (except for any member of the Group or the Subadviser Group that is a Separate Account) will vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares. This condition will not apply to a Subadviser Group with respect to an Unaffiliated Fund for which the Subadviser or a person controlling, controlled by, or under common control with the Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Investment Company) or the sponsor (in the case of an Unaffiliated Trust). A Registered Separate Account will seek voting instructions from its Variable Contract holders and will vote its shares of an Unaffiliated Fund in accordance with the instructions received and will vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. An Unregistered Separate Account will either (i) vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares; or (ii) seek voting instructions from its Variable Contract holders and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in an Unaffiliated Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or an Unaffiliated Fund Affiliate.

3. The Board of each Fund of Funds, including a majority of the Independent Trustees, will adopt procedures reasonably designed to assure that the Manager and any Subadviser are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or a Fund of Funds Affiliate from an Unaffiliated Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, the Board of the Unaffiliated Investment Company, including a majority of the Independent Trustees, will determine that any consideration paid by the Unaffiliated Investment Company to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Investment Company; (b) is within the range of consideration that the Unaffiliated Investment Company would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition will not apply with respect to any services or transactions between an Unaffiliated Investment Company and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund

[6] Applicants note that a Fund of Funds generally would purchase and sell shares of an Underlying Fund that operates as an ETF through secondary market transactions at market prices rather than through principal transactions with the Underlying Fund at net asset value. Applicants would not rely on the requested relief from section 17(a) for such secondary market transactions. To the extent that a Fund of Funds purchases or redeems shares from an ETF that is an affiliated person of the Fund of Funds in exchange for a basket of specified securities as described in the application for the exemptive order upon which the ETF relies, applicants also request relief from section 17(a) of the Act for those in-kind transactions.

to purchase a security in any Affiliated Underwriting.

6. The Board of an Unaffiliated Investment Company, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Investment Company in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of the Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Unaffiliated Investment Company will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Unaffiliated Investment Company. The Board of the Unaffiliated Investment Company will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Investment Company; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Investment Company in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of an Unaffiliated Investment Company will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. Each Unaffiliated Investment Company will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth (a) the party from whom the securities were acquired, (b) the identity of the underwriting syndicate's members, (c) the terms of the purchase, and (d) the information or materials upon which the determinations of the Board of the Unaffiliated Investment Company were made.

8. Prior to its investment in shares of an Unaffiliated Investment Company in excess of the limit of section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Investment Company will execute a Participation Agreement stating, without limitation, that their Boards and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Investment Company in excess of the limit set forth in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Investment Company of the investment. At such time, the Fund of Funds will also transmit to the Unaffiliated Investment Company a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Investment Company of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Investment Company and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Independent Trustees, shall find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Fund of Funds.

10. The Manager will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company pursuant to rule 12b–1 under the Act) received from an Unaffiliated Fund by the Manager, or an affiliated person of the Manager, other than any advisory fees paid to the Manager or its affiliated person by an Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received by the Subadviser, or an affiliated person of the Subadviser, from an Unaffiliated Fund, other than any advisory fees paid to the Subadviser or an affiliated person of the Subadviser by an Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund made at the direction of the Subadviser. In the event that the Subadviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. With respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in NASD Conduct Rule 2830, if any, will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in NASD Conduct Rule 2830.

12. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) Acquires such securities in compliance with section 12(d)(1)(E) of the Act; (b) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (c) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) Acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

Other Investments by Same Group Funds of Funds

13. The Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Same Group Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14052 Filed 6–10–10; 8:45 am]

BILLING CODE 8010–01–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 an Open Meeting on June 16, 2010 at 10 a.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting will be: The Commission will consider whether to propose amendments to rules 156 and 482 under the Securities Act of 1933 and rule 34b–1 under the Investment Company Act of 1940 to address concerns that have been raised about target date retirement fund names and marketing materials.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: June 8, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–14148 Filed 6–9–10; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62227; File No. SR–CBOE–2010–050]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fees Schedule

June 4, 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 21, 2010, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by CBOE under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule to establish fees for transactions in all S&P 500 Dividend Index options, regardless of the specified accrual period. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), on the Commission's Web site at *http://www.sec.gov,* at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange previously received approval to list options on the S&P 500 Dividend Index, which represents the accumulated ex-dividend amounts of all S&P 500 Index component securities over a specified accrual period (*e.g.,* quarterly, semi-annually, annually), and recently approval to list options on the S&P 500 Annual Dividend Index with an applied scaling factor of 1.[5] The Exchange currently lists S&P 500 Dividend Index ("DVS") options with a specified quarterly accrual period and will begin listing options on the S&P 500 Annual Dividend Index on May 25, 2010.

The purposes [sic] of this filing is to amend the CBOE Fees Schedule to extend the existing fees for transactions in DVS options to all options on the S&P 500 Dividend Index, regardless of the specified accrual period.[6] Currently the established transaction fees for DVS options are as follows:

- $0.20 per contract for Market-Maker and Designated Primary Market-Maker transactions;[7]
- $0.20 per contract for member firm proprietary transactions;
- $0.40 per contract for manually executed broker-dealer transactions;
- $0.40 per contract for electronically executed broker-dealer transactions;
- $0.40 per contract for voluntary professional transactions;
- $0.40 per contract for professional transactions;
- $0.40 per contract for customer transactions; and
- $0.10 per contract CFLEX surcharge fee.

The Exchange also assesses a $.10 per contract surcharge fee on all non-public customer transactions in DVS options to help the Exchange recoup license fees the Exchange pays to the reporting authority. Further, the Exchange's Liquidity Provider Sliding Scale applies to transaction fees in DVS options, but the Exchange's marketing fee[8] does not apply.

To affect the current proposal, the Exchange proposes to replace all references to "DVS" in the CBOE Fees Schedule with a reference to "S&P 500 Dividend Index." The transaction fees for options on the "S&P 500 Dividend Index" will apply to all options on the S&P 500 Dividend Index regardless of the specified accrual period (*e.g.,* quarterly, semi-annually, annually).

The Exchange believes the rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.[9] Also, the Exchange states that the surcharge fee on all non-public customer transactions in options on the S&P 500 Dividend Index is to help the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release Nos. 61136 (December 10, 2009), 74 FR 66711 (December 16, 2009) (SR–CBOE–2009–022) and 62023 (May 3, 2010), 75 FR 25899 (May 10, 2010) (SR–CBOE–2010–039).

[6] *See* Securities Exchange Act Release No. 61295 (January 6, 2010), 75 FR 2166 (January 14, 2010) (SR–CBOE–2009–098) (filing establishing transaction fees for DVS options).

[7] This is the standard rate that is subject to the Liquidity Provider Sliding Scale as set forth in Footnote 10 to the Fees Schedule.

[8] *See* Footnote 6 of the Fees Schedule.

[9] Linkage order fees are inapplicable for options on CBOE's proprietary products.

Exchange recoup license fees the Exchange pays to Standard & Poor's Financial Services LLC to list options on the S&P 500 Dividend Index.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(4)[11] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities. The Exchange believes the fee changes proposed by this filing are equitable and reasonable in that [sic] will further the Exchange's goal of introducing new products to the marketplace that are competitively priced and will help the Exchange recoup license fees that the Exchange pays to the reporting authority.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and subparagraph (f)(2) of Rule 19b–4[13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2010–050 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–CBOE–2010–050. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2010–050 and should be submitted on or before July 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14054 Filed 6–10–10; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 7044]

30-Day Notice of Proposed Information Collection: DS–2031, Shrimp Exporter's/Importer's Declaration, OMB Control Number 1405–0095

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Shrimp Exporter's/Importer's Declaration.
- *OMB Control Number:* 1405–0095.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Oceans and International Environmental and Scientific Affairs, Office of Marine Conservation (OES/OMC).
- *Form Number:* DS–2031.
- *Respondents:* Business or other for-profit.
- *Estimated Number of Respondents:* 3,000.
- *Estimated Number of Responses:* 10,000.
- *Average Hours per Response:* 10 min.
- *Total Estimated Burden:* 1,666.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Mandatory.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from June 11, 2010.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *E-mail:* *oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from David Hogan, Office of Marine Conservation, 2201 C Street, NW., Room 2758, Washington, DC who may be reached on 202–647–2337 or *HoganDF@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary to properly perform our functions.

• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond,

Abstract of proposed collection:

The Form DS–2031 is necessary to document imports of shrimp pursuant to the State Department's implementation of Section 609 of Public Law 101–162, which prohibits the entry into the United States of shrimp harvested in ways which are harmful to sea turtles. Respondents are shrimp exporters and government officials in countries which export shrimp to the United States. The DS 2031 Form is to be retained by the importer for a period of three years subsequent to entry, and during that time is to be made available to U.S. Customs and Border Protection or the Department of State upon request.

Methodology:

The DS–2031 form is completed by the exporter, the importer, and under certain conditions a government official of the exporting country. The DS–2031 Form accompanies shipment of shrimp and shrimp products to the United States and is to be made available to U.S. Customs and Border Protection at the time of entry.

Dated: June 1, 2010.

David A. Balton,

Deputy Assistant Secretary for Oceans and Fisheries, Department of State.

[FR Doc. 2010–14132 Filed 6–10–10; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice: 7045]

Determination Related to Serbia Under Section 7072(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Div. F, Pub. L. 111–117)

Pursuant to the authority vested in me as Secretary of State, including under section 7072(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Div. F, Pub. L. 111–117), and the President's Delegation of Responsibilities Related to the Federal Republic of Yugoslavia, dated March 22, 2001, I hereby determine and certify that the Government of Serbia is:

(1) Cooperating with the International Criminal Tribunal for the former Yugoslavia, including access for investigators, the provision of documents, timely information on the location, movement, and sources of financial support of indictees, and the surrender and transfer of indictees or assistance in their apprehension, including Ratko Mladic;

(2) Taking steps that are consistent with the Dayton Accords to end Serbian financial, political, security and other support which has served to maintain separate Republika Srpska institutions; and

(3) Taking steps to implement policies, which reflect a respect for minority rights and the rule of law.

This Determination and related Memorandum of Justification shall be provided to the appropriate committees of the Congress. This Determination shall be published in the **Federal Register**.

Dated: May 27, 2010.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2010–14130 Filed 6–10–10; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In May 2010, there were seven applications approved. Additionally, 22 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 1A158.29.

PFC Applications Approved

Public Agency: City of Los Angeles, California.

Application Number: 10–07–C–00–LAX.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $855,000,000.

Earliest Charge Effective Date: June 1, 2012.

Estimated Charge Expiration Date: March 1, 2019.

Classes of Air Carriers Not Required To Collect PFC'S:

(1) Air taxi/commercial operators—nonscheduled/on-demand air carriers, filing FAA Form 1800–31; and (2) large certificated air carriers, filing Department of Transportation Form T–100, and enpianing less than 2,500 passengers annually at Los Angeles International Airport (LAX).

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at LAX.

Brief Description of Project Partially Approved for Collection and Use:

Bradley West project.

Determination: The FAA determined that approximately 6,628 square feet of space identified by the public agency as being totally or partially eligible was totally ineligible for PFC funding. In addition, the proration of utility space must be recalculated to account for the additional ineligible space.

Decision Date: May 10, 2010.

For Further Information Contact: Darlene Williams, Los Angeles Airports District Office, (310) 725–3625.

Public Agency: County of Campbell/Gillette—Campbell County Airport Board, Gillette, Wyoming.

Application Number: 10–08–C–00–GCC.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $426,381.

Earliest Charge Effective Date: November 1, 2011.

Estimated Charge Expiration Date: October 1, 2015.

Class of Air Carriers Not Required To Collect PFC'S: Air taxi/Commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Gillette—Campbell County Airport.

Brief Description of Projects Approved for Collection and Use:

Expand terminal parking lot.
Repair and maintain runway 16/34 pavement.
PFC administration.
Repair and maintain runway 03/21 pavement.
Repair and maintain taxiway A pavement.
Repair and maintain taxiway B pavement.

Repair and maintain taxiway C pavement.
Repair and maintain taxiway D pavement.
Repair and maintain taxiway E pavement.
Repair and maintain apron 1 pavement.
Repair and maintain apron 2 pavement.

Decision Date: May 14, 2010.

For Further Information Contact: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: Port Authority of New York and New Jersey, New York, New York.

Application Number: 10–07–C–00–EWR.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $191,631,217.

Earliest Charge Effective Date: March 1, 2011.

Estimated Charge Expiration Date: February 1, 2014.

Class of Air Carriers Not Required to Collect PFC'S: Non-scheduled/on-demand air carriers, filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Newark Liberty International Airport (EWR).

Brief Description of Projects Approved for Collection at EWR, John F. Kennedy International Airport (JFK), Laguardia Airport (LGA), and Stewart International Airport (SWF) and Use at EWR At A $4.50 PFC Level:

Security enhancement projects for the physical protection of terminal building frontages.
Multiple taxiway entrance construction.
Fire alarm upgrade.

Brief Description of Projects Approved for Collection at EWR, JFK, LGA, and SWF and Use at JFK at a $4.50 PFC Level:

Security enhancement projects for the physical protection of terminal building frontages.
Aircraft ramp expansion and hangar demolition.
Reconstruction of runway 13R/37L.

Brief Description of Project Approved for Collection at EWR, JFK, LGA, and SWF and Use at LGA at a $4.50 PFC Level: Rehabilitation of runway 4/22.

Brief Description Of Project Partially Approved for Collection at EWR, JFK, LGA, and SWF and Use at LGA at a $4.50 PFC Level: Security enhancement projects for the physical protection of terminal building frontages.

Determination: After submission of the PEG application, the public agency received an Airport Improvement Program (AIP) grant for partial funding of this project. Therefore, the approved PFC amount was reduced by the amount of the AIP grant.

Brief Description of Project Approved for Collection AT EWR, JFK, LGA, and SWF and Use at LGA at a $3.00 PFC Level: Planning for a centralized deicing facility.

Brief Description of Project Approved for Collection AT EWR, JFK, LGA, and SWF and Use at LGA at a $3.00 PFC Level: PEG planning and program administration.

Decision Date: May 17, 2010.

For Further Information Contact: Andrew Brooks, New York Airports District Office, (516) 227–3816.

Public Agency: Port Authority of New York and New Jersey, New York, New York.

Application Number: 10–07–C–00–JFK.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $255,794,990.

Earliest Charge Effective Date: March 1, 2011.

Estimated Charge Expiration Date: February 1, 2014.

Class of Air Carriers Not Required To Collect PEG'S: Non-scheduled/on-demand air carriers, filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at JFK.

Brief Description of Projects Approved for Collection at EWR, JFK, LGA, and SWF and Use at EWR at a $4.50 PFC Level:

Security enhancement projects for the physical protection of terminal building frontages.
Multiple taxiway entrance construction.
Fire alarm upgrade.

Brief Description of Projects Approved for Collection at EWR, JFK, LGA, and SWF and Use at JFK at a $4.50 PFC Level:

Security enhancement projects for the physical protection of terminal building frontages.
Aircraft ramp expansion and hangar demolition.
Reconstruction of runway 13R/37L.

Brief Description of Project Approved for Collection at EWR, JFK, LGA, and SWF and Use at LGA at a $4.50 PFC Level: Rehabilitation of runway 4/22.

Brief Description of Project Partially Approved for Collection at EWR, JFK, LGA, and SWF and Use at LGA at a $4.50 PFC Level: Security enhancement projects for the physical protection of terminal building frontages.

Determination: After submission of the PFC application, the public agency received an airport improvement program (AIP) grant for partial funding of this project. Therefore, the approved PFC amount was reduced by the amount of the AIP grant.

Brief Description of Project Approved For Collection at EWR, JFK, LGA, and SWF and Use at JFK at a $3.00 PFC Level: Planning for a centralized deicing facility.

Brief Description of Project Approved for Collection at EWR, JFK, LGA, and SWF and Use at EWR, JFK, LGA and SWF at a $3.00 PFC Level: PFC planning and program administration.

Decision Date: May 17, 2010.

For Further Information Contact: Andrew Brooks, New York Airports District Office, (516) 227–3816.

Public Agency: Port Authority of New York And New Jersey, New York, New York.

Application Number: 10–07–C–00–LGA.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $121,561,393.

Earliest Charge Effective Date: March 1, 2011.

Estimated Charge Expiration Date: February 1, 2014.

Class Of Air Carriers Not Required To Collect PFC's: Non-Scheduled/On-Demand Air Carriers, Filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at LGA.

Brief Description of Projects Approved for Collection at EWR, JFK, LGA, and SWF and Use at EWR at a $4.50 PFC Level:

Security Enhancement Projects for the Physical Protection Of Terminal Building Frontages.
Multiple Taxiway Entrance Construction.
Fire Alarm Upgrade.

Brief Description of Projects Approved for Collection at EWR, JFK, LGA, and SWF and Use at JFK at a $4.50 PFC Level:

Security Enhancement Projects for the Physical Protection Of Terminal Building Frontages.

Aircraft Ramp Expansion and Hangar Demolition.
Reconstruction of Runway 13R/37L.

Brief Description of Project Approved for Collection at EWR, JFK, LGA, and SWF and Use at LGA at a $4.50 PFC Level: Rehabilitation Of Runway 4/22.

Brief Description of Project Partially Approved for Collection at EWR, JFK, LGA, and SWF and Use at LGA at a $4.50 PFC Level: Security Enhancement Projects For The Physical Protection of Terminal Building Frontages.

Determination: After Submission of the PFC Application, The Public Agency Received an Airport Improvement Program (AIP) Grant for Partial Funding of this project. Therefore, the approved PFC amount was reduced by the Amount of the AIP grant.

Brief Description of Project Approved for Collection at EWR, JFK, LGA, and SWF and Use at JFK at a $3.00 PFC Level: Planning for a centralized deicing facility.

Brief Description of Project Approved for Collection at EWR, JFK, LGA, and SWF and Use at EWR, JFK, LGA and SWF at a $3.00 PFC Level: PFC Planning and Program Administration.

Decision Date: May 17, 2010.

For Further Information Contact: Andrew Brooks, New York Airports District Office, (516) 227–3816.

Public Agency: Port Authority Of New York And New Jersey, New York, New York.

Application Number: 10–04–C–00–SWF.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $4,415,202.

Earliest Charge Effective Date: July 1, 2010.

Estimated Charge Expiration Date: February 1, 2014.

Class of Air Carriers Not Required To Collect PFC'S: Non-Scheduled/On-Demand Air Carriers, filing FAA form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at SWF.

Brief Description of Projects Approved for Collection at EWR, JFK, LGA, and SWF and Use at EWR at a $4.50 PFC Level:

Security Enhancement Projects for the Physical Protection of Terminal Building Frontages.
Multiple Taxiway Entrance Construction.
Fire Alarm Upgrade.

Brief Description of Projects Approved for Collection at EWR, JFK, LGA, and SWF and Use at JFK at a $4.50 PFC Level:

Security Enhancement Projects for the Physical Protection of Terminal Building Frontages.
Aircraft Ramp Expansion and Hangar Demolition.
Reconstruction of Runway 1 3r/37l.

Brief Description of Project Approved for Collection at EWR, JFK, LGA, and SWF and Use at LGA at a $4.50 PFC Level: Rehabilitation of Runway 4/22.

Brief Description of Project Partially Approved for Collection at EWR, JFK, LGA, and SWF and Use at LGA at a $4.50 PFC Level: Security Enhancement Projects for the Physical Protection Of Terminal Building Frontages.

Determination: After Submission of the PFC Application, the Public Agency Received an Airport Improvement Program (AIP) Grant for Partial Funding of this Project. Therefore, the approved FEC amount was reduced by the amount of the AIP grant.

Brief Description of Project Approved for Collection At EWR, JFK, LGA, and SWF and Use at JFK at a $3.00 PFC Level: Planning for a Centralized Deicing Facility.

Brief Description of Project Approved for Collection at EWR, JFK, LGA, and SWF and Use at EWR, JFK, LGA and SWF at a $3.00 PFC Level: PFC Planning and Program Administration.

Decision Date: May 17, 2010.

For Further Information Contact: Andrew Brooks, New York Airports District Office, (516) 227–3816.

Public Agency: City Of Eugene, Oregon.

Application Number: 10–10–C–00–Eug.

Application Type: Impose And Use A Fec.

PFC Level: $4.50.

Total FEC Revenue Approved in This Decision: $2,342,214.

Earliest Charge Effective Date: July 1, 2010.

Estimated Charge Expiration Date: March 1, 2012.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Aircraft Rescue And Firefighting Station.
Runway 18r/34l Overlay/Rehabilitation.
Pavement Management Plan.
Security Enhancement.
Mitigate And Fill Ponds, Runway 34l.
Interactive Employee Training.
Taxiway Signs Replacement.
Passenger Breezeway Rehabilitation.

Decision Date: May 18, 2010.

For Further Information Contact: Trang Tran, Seattle Airports District Office, (425) 227–1662.

AMENDMENT TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
05–05–C–04–EWR Newark, NJ	05/07/10	$537,262,955	$537,262,955	03/01/11	03/01/11
09–06–U–01–EWR Newark, NJ	05/07/10	NA	NA	03/01/11	03/01/11
05–05–C–04–JFK New York, NY	05/07/10	613,926,100	613,926,100	03/01/11	03/01/11
09–06–U–01–JFK New York, NY	05/07/10	NA	NA	03/01/11	03/01/11
05–05–C–04–LGA New York, NY	05/07/10	400,697,004	400,697,004	03/01/11	03/01/11
09–06–U–01–LGA New York, NY	05/07/10	NA	NA	03/01/11	03/01/11
05–05–C–01–BPT Beaumont, TX	05/07/10	290,471	179,333	05/01/07	10/01/06
07–06–C–01–BPT Beaumont, TX	05/07/10	525,062	536,594	03/01/12	06/01/11
*09–05–C–01–ELP El Paso, TX	05/10/10	20,634,000	20,634,000	08/01/12	03/01/13
04–11–C–03–BNA Nashville, TN	05/11/10	75,873,967	75,086,772	08/01/09	08/01/09
06–12–C–04–BNA Nashville, TN	05/11/10	10,066,488	10,045,529	09/01/10	09/01/10
92–01–C–09–SJU San Juan, PR	05/12/10	45,027,956	45,868,477	05/01/97	05/01/97
97–01–C–01–RAP Rapid City, SD	05/12/10	1,087,206	700,358	01/01/00	01/01/00
06–06–C–01–GEG Spokane, WA	05/12/10	24,754,063	33,574,266	08/01/11	08/01/12
09–07–U–01–GEG Spokane, WA	05/12/10	NA	NA	08/01/11	08/01/12
08–09–C–01–EUG Eugene, OR	05/13/10	4,450,000	2,400,000	12/01/11	07/01/10
05–05–C–01–MSO Missoula, MT	05/13/10	2,339,144	2,203,206	06/01/07	06/01/07

AMENDMENT TO PFC APPROVALS—Continued

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
09–07–0–01–GCC Gillette, WY	05/21/10	433,172	33,341	11/01/11	06/01/09
01–08–C–03–PDX Portland, OR	05/24/10	551,230,600	551,230,600	05/01/16	05/01/16
05–09–C–01–PDX Portland, OR	05/24/10	68,207,251	68,207,251	03/01/18	03/01/18
97–10–0–04–CHO Charlottesville, VA	05/24/10	897,404	829,621	09/01/03	09/01/03
99–13–U–03–CHO Charlottesville, VA	05/24/10	NA	NA	09/01/03	09/01/03

Notes: The amendment denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For El Paso, TX, this change is effective on August 1, 2010.

Issued in Washington, DC on June 7, 2010.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 2010–13983 Filed 6–10–10; 8:45 am]

BILLING CODE 4910–13–M

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.

Township of Montclair, New Jersey

[Waiver Petition Docket Number FRA–2010–0096]

The Township of Montclair, New Jersey (Township), and the New Jersey Transit Corporation (NJT) jointly seek a temporary waiver of compliance from certain provisions of the Use of Locomotive Horns at Highway-Rail Grade Crossings, 49 CFR part 222. The Township intends to convert its Pre-Rule Partial Quiet Zone that it had previously continued under the provisions of 49 CFR 222.41(c)(1) to a 24-hour New Quiet Zone. The Township is seeking a waiver for the requirement to construct and complete a New Quiet Zone by June 24, 2010, as required by 49 CFR 222.41(c)(2) and for an extension of such date to September 30, 2010.

The Township states that it has worked diligently to complete the necessary improvements to establish a New Quiet Zone. There are 12 crossings in the existing Pre-Rule Partial Quiet Zone. 6 of these crossings will be treated with Supplementary Safety Measures (SSM) as follows: 3 crossings with gates and medians, 2 crossings with four-quadrant gates, and 1 crossing that will be reconfigured from a two-street with gates to a one-way streets with gates.

The Township and NJT have cooperatively worked to implement the planned improvements; however, due to the number of crossings and the complexity of the project, all of the planned improvements will not be completed by June 24, 2010. The Township requests that the existing Pre-Rule Partial Quiet Zone with hours from 7 p.m. to 7 a.m. be allowed to continue until September 30, 2010, by which time all of the improvements will have been completed.

The Township states that SSMs consisting of gated crossings with medians will be completed at 3 of the crossings by June 24, 2010. It also notes that the existing Pre-Rule Partial Quiet Zone has been in existence since 1973, and that the residents and business owners have become accustomed to the absence of the horn during these hours. There has been only 1 grade crossing collision (property damage only) during the last 10 years. The Township and NJT feel that the extension of the Pre-Rule Partial Quiet Zone until September 30, 2010, will not pose any additional risk to public health and safety.

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 FRA–2010–0096) 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 15 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 June 7, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–14044 Filed 6–10–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. EP 290 (Sub-No. 4); Docket No. EP 290 (Sub-No. 5)]

Railroad Cost Recovery Procedures—Productivity Adjustment; Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Notice and request for comments.

SUMMARY: The Surface Transportation Board seeks comments on a request from the Association of American Railroads that the Board restate the previously published productivity adjustment for the 2003–2007 averaging period (2007 productivity adjustment) so that it tracks the 2007 productivity adjustment figure used in the Board's March 26, 2010 calculation of the modified 2008 productivity adjustment, and restate any quarterly RCAF (Adjusted) and RCAF–5 calculations that would be affected by a restatement of the 2007 productivity adjustment.

DATES: Comments are due by July 12, 2010; replies are due by August 10, 2010.

ADDRESSES: Comments and replies may be submitted either via the Board's e-filing format or in traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E–FILING link on the Board's Web site at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies referring to Docket No. EP 290 (Sub-No. 4) *et al.* to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn, (202) 245–0382. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's June 14, 2010 decision, which is available on our website at *http://www.stb.dot.gov.* Copies of the decision may be purchased by contacting the office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0235. Assistance for the hearing impaired is available through FIRS at (800) 877–8339.

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

Decided: June 7, 2010.

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

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–14112 Filed 6–10–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4952

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4952, Investment Interest Expense Deduction.

DATES: Written comments should be received on or before *August 10, 2010* to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov*.

Title: Investment Interest Expense Deduction.

OMB Number: 1545–0191.

Form Number: Form 4952.

Abstract: Interest expense paid by an individual, estate, or trust on a loan allocable to property held for investment may not be fully deductible in the current year. Form 4952 is used to compute the amount of investment interest expense deductible for the current year and the amount, if any, to carry forward to future years.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 137,064.

Estimated Time per Respondent: 1 hour, 30 minutes.

Estimated Total Annual Burden Hours: 205,596.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 25, 2010.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14005 Filed 6–10–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8909

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8909, Energy Efficient Appliance Credit.

DATES: Written comments should be received on or before August 10, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Energy Efficient Appliance Credit.

OMB Number: 1545–2055.

Form Number: Form 8909.

Abstract: Form 8909, Energy Efficient Appliance Credit, was developed to carry out the provisions of new Code section 45M. This new section was added by section 1334 of the Energy Policy Act of 2005 (Pub. L. 109–58). The new form provides a means for the eligible manufacturer/taxpayer to compute the amount of, and claim, the credit.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 10.

Estimated Time Per Respondent: 13 hours, 6 minutes.

Estimated Total Annual Burden Hours: 131.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 1, 2010.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14006 Filed 6–10–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8821

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8821, Tax Information Authorization.

DATES: Written comments should be received on or before August 10, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tax Information Authorization.

OMB Number: 1545–1165.

Form Number: 8821.

Abstract: Form 8821 is used to appoint someone to receive or inspect certain tax information. The information on the form is used to identify appointees and to ensure that confidential tax information is not divulged to unauthorized persons.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not for profit institutions, and farms.

Estimated Number of Respondents: 133,333.

Estimated Time Per Respondent: 1 hour, 3 minutes.

Estimated Total Annual Burden Hours: 140,300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 25, 2010.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14007 Filed 6–10–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–3–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–34–91 (TD 8456), Capitalization of Certain Policy Acquisition Expenses (§§ 1.848–2(g)(8), 1.848–2(h)(3) and 1.848–2(i)(4)).

DATES: Written comments should be received on or before August 10, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald J. Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Capitalization of Certain Policy Acquisition Expenses.

OMB Number: 1545–1287.

Regulation Project Number: FI–3–91 (TD 8456).

Abstract: Internal Revenue Code section 848 provides that insurance companies' must capitalize "specified policy acquisition expenses. In lieu of identifying the categories of expenses that must be capitalized, section 848 requires that a company capitalize an amount of otherwise deductible expenses equal to specified percentages of net premiums with respect to certain types of insurance contracts. Insurance companies that enter into reinsurance agreements must determine the amounts to be capitalized under those agreements consistently. This regulation provides elections to permit the parties to a reinsurance agreement to shift the burden of capitalization for their mutual benefit.

Current Actions: There is no change to these existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,070.

Estimated Time per Respondent: 1 hr.

Estimated Total Annual Burden Hours: 2,070.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 4, 2010.

Gerald J. Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14008 Filed 6–10–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 926

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation, Foreign Estate or Trust, or Foreign Partnership.

DATES: Written comments should be received on or before August 10, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Return by a U.S. Transferor of Property to a Foreign Corporation.

OMB Number: 1545–0026.

Form Number: Form 926.

Abstract: Form 926 is filed by any U.S. person who transfers certain tangible or intangible property to a foreign corporation to report information required by section 6038B.

Current Actions: There are no changes being made to Form 926 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 667.

Estimated Time per Respondent: 44 hours, 50 minutes.

Estimated Total Annual Burden Hours: 29,902.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 4, 2010.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14009 Filed 6–10–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Regulation Section 1.6001–1]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, regulation section 1.6001–1, Records.

DATES: Written comments should be received on or before August 10, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald J. Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation section should be directed to R. Joseph Durbala at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Records (26 CFR 1.6001–1).

OMB Number: 1545–1156.

Regulation Project Number: Regulation section 1.6001–1.

Abstract: Internal Revenue Code section 6001 requires, in part, that every person liable for tax, or for the collection of that tax, keep such records and comply with such rules and regulations as the Secretary (of the Treasury) may from time to time prescribe. It also allows the Secretary, in his or her judgment, to require any person to keep such records that are sufficient to show whether or not that person is liable for tax. Under regulation section 1.6001–1, in general, any person subject to tax, or any person required to file an information return, must keep permanent books of account or records, including inventories, that are sufficient to establish the amount of gross income, deductions, credits or other matters required to be shown by such person in any tax return or information return. Books and records are to be kept available for inspection by authorized internal revenue officers or employees and are to be retained so long as their contents any became material in the administration of any internal revenue law.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and Business or other for-profit organizations, not-for-profit institutions, Farms, and Federal, State, Local or Tribal Governments.

The recordkeeping burden in this regulation is already reflected in the burden of all tax forms.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 4, 2010.

Gerald J. Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14010 Filed 6–10–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8855

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is

soliciting comments concerning Form 8855, Election To Treat a Qualified Revocable Trust as Party of an Estate.

DATES: Written comments should be received on or before August 10, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Election To Treat a Qualified Revocable Trust as Party of an Estate.

OMB Number: 1545–1881.

Form Number: 8855.

Abstract: Form 8855 is used to make a section 645 election that allows a qualified revocable trust to be treated and taxed (for income tax purposes) as part of its related estate during the election period.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time per Respondent: 5 hours, 38 minutes.

Estimated Total Annual Burden Hours: 28,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 1, 2010.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14011 Filed 6–10–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–952–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking and temporary regulation, INTL–952–86 (TD 8228; TD 8410), Allocation and Apportionment of Interest Expense and Certain Other Expenses (§§ 1.861–9T, and 1.861–12T).

DATES: Written comments should be received on or before August 10, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald J. Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Allocation and Apportionment of Interest Expense and Certain Other Expenses.

OMB Number: 1545–1072.

Regulation Project Number: INTL–952–86 (TD 8228; TD 8410-final).

Abstract: Section 864(e) of the Internal Revenue Code provides rules concerning the allocation and apportionment of interest and certain other expenses to foreign source income for purposes of computing the foreign tax credit limitation. These regulations provide for the affirmative election of either the gross income method or the asset method of apportionment in the case of a controlled foreign corporation.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents/Recordkeepers: 15,000.

Estimated Time per Respondent/Recordkeeper: 15 minutes.

Estimated Total Annual Reporting/Recordkeeping Hours: 3,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Approved: June 4, 2010.

Gerald J. Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14012 Filed 6–10–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning an information collection titled, "Interagency Statement on Complex Structured Finance Transactions."

DATES: Comments must be submitted on or before August 10, 2010.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0229, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect and photocopy comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, please send a copy of your comments to OCC Desk Officer, 1557–0229, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You may request additional information or a copy of the collection and supporting documentation submitted to OMB by contacting: Mary H. Gottlieb, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Title: Interagency Statement on Complex Structured Finance Transactions.

OMB Control No.: 1557–0229.

Type of Review: Regular review.

Description: The statement describes the types of internal controls and risk management procedures that the agencies (OCC, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, and the Securities and Exchange Commission) consider particularly effective in helping financial institutions identify and address the reputational, legal, and other risks associated with complex structured finance transactions.

Affected Public: Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 12.

Estimated Number of Responses: 12.

Estimated Annual Burden: 300 hours.

Frequency of Response: On occasion.

Comments: Comments submitted in response to this notice will be summarized and 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 OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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: June 7, 2010.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. 2010–14068 Filed 6–10–10; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, "Comptroller's Licensing Manual."

DATES: You should submit written comments by August 10, 2010.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0014, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.*

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0014, by mail to U.S. Office of Management and Budget, 725, 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Comptroller's Licensing Manual

OMB Number: 1557–0014.

Description: This submission covers an existing manual and involves no change to the manual or to the information collection requirements. The information collection requirements ensure that national banks conduct their operations in a safe and sound manner and in accordance with applicable Federal banking statutes and

regulations. The information is necessary for regulatory and examination purposes.

The Comptroller's Licensing Manual (Manual) explains the OCC's policies and procedures for the formation of a new national bank, entry into the national banking system by other institutions, and corporate expansion and structural changes by existing national banks. The Manual includes sample documents to assist the respondent in understanding the types of information that the OCC needs in order to process a filing. The documents are samples only. An applicant may use any format that provides sufficient information for the OCC to act on a particular filing, including the OCC's e-Corp filing system.

Type of Review: Regular.

Affected Public: Individuals or households; businesses or other for-profit.

Estimated Number of Respondents: 5,864.

Estimated Total Annual Responses: 5,864.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 16,144 hours.

Comments submitted in response to this notice will be summarized and 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 has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 7, 2010.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2010–14067 Filed 6–10–10; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2010–28

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2010–28, Stripping Transactions for Qualified Tax Credit Bonds.

DATES: Written comments should be received on or before August 10, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Stripping Transactions for Qualified Tax Credit Bonds.

OMB Number: 1545–2167.

Notice Number: Notice 2010–28.

Abstract: The IRS requires the information to ensure compliance with the tax credit bond credit coupon stripping requirements, including ensuring that no excess tax credit is taken by holders of bonds and coupons strips. The information is required in order to inform holders of qualified tax credit bonds whether the credit coupons relating to those bonds may be stripped as provided under § 54A(i). The respondents are issuers of tax credit bonds, including states and local governments and other eligible issuers.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of currently approved collection.

Affected Public: State, local or tribal governments and not-for-profit institutions.

Estimated Number of Respondents: 1,000.

Estimated Average Time per Respondent: 1 min.

Estimated Total Annual Burden Hours: 1,000 hrs.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 2010.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14018 Filed 6–10–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5500 and Schedules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5500 and Schedules, Annual Return/Report of Employee Benefit Plan.

DATES: Written comments should be received on or before August 10, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Annual Return/Report of Employee Benefit Plan.

OMB Number: 1545–1610.

Form Number: 5500 and Schedules.

Abstract: Form 5500 is an annual information return filed by employee benefit plans. The IRS uses this information to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals and households, not-for-profit institutions, and farms.

Estimated Number of Respondents: 780,000.

Estimated Time per Respondent: 25 minutes.

Estimated Total Annual Burden Hours: 323,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 2010.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14017 Filed 6–10–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1098–E

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1098–E, Student Loan Interest Statement.

DATES: Written comments should be received on or before *August 10, 2010* to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Student Loan Interest Statement.

OMB Number: 1545–1576.

Form Number: Form 1098–E.

Abstract: Section 6050S(b)(2) of the Internal Revenue Code requires persons (financial institutions, governmental units, etc.) to report $600 or more of interest paid on student loans to the IRS and the students. Form 1098–E is used for this purpose.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and State, local or tribal governments.

Estimated Number of Respondents: 8,761,303.

Estimated Time per Respondent: 7 min.

Estimated Total Annual Burden Hours: 1,051,357.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 2010.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14016 Filed 6–10–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–B

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–B, Proceeds From Broker and Barter Exchange Transactions.

DATES: Written comments should be received on or before August 10, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Proceeds From Broker and Barter Exchange Transactions.

OMB Number: 1545–0715.

Form Number: Form 1099–B.

Abstract: Internal Revenue Code section 6045 requires the filing of an information return by brokers to report the gross proceeds from transactions and by barter exchanges to report exchanges of property or services. Form 1099–B is used to report proceeds from these transactions to the Internal Revenue Service.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Responses: 117,611,875.

Estimated Time per Response: 19 minutes.

Estimated Total Annual Burden Hours: 39,988,038.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 2, 2010.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14014 Filed 6–10–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Regulation Section 601.601]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, regulation section 601.601, Rules and Regulations.

DATES: Written comments should be received on or before August 10, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald J. Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Rules and Regulations.

OMB Number: 1545–0800.

Regulation Project Number: Regulation section 601.601.

Abstract: Persons wishing to speak at a public hearing on a proposed rule must submit written comments and an outline within prescribed time limits, for use in preparing agendas and allocating time. Persons interested in the issuance, amendment, or repeal of a rule may submit a petition for this. IRS considers the petitions in it deliberations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations, not-for-profit institutions, farms, and Federal, State, local or tribal governments.

Estimated Number of Respondents: 600.

Estimated Time per Respondent: 1 hour, 30 minutes.

Estimated Total Annual Burden Hours: 900.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long

as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 4, 2010.

Gerald J. Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14013 Filed 6–10–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–25–94]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–25–94 (TD 8686), Requirements to Ensure Collection of Section 2056A Estate Tax (§ 20.2056A–2).

DATES: Written comments should be received on or before August 10, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald J. Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Requirements to Ensure Collection of Section 2056A Estate Tax.

OMB Number: 1545–1443.

Regulation Project Number: PS–25–94.

Abstract: This regulation provides guidance relating to the additional requirements necessary to ensure the collection of the estate tax imposed under Internal Revenue Code section 2056A(b) with respect to taxable events involving qualified domestic trusts (QDOT'S). In order to ensure collection of the tax, the regulation provides various security options that may be selected by the trust and the requirements associated with each option. In addition, under certain circumstances the trust is required to file an annual statement with the IRS disclosing the assets held by the trust.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 4,390.

Estimated Time per Respondent: 1 hour, 23 minutes.

Estimated Total Annual Burden Hours: 6,070.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 4, 2010.

Gerald J. Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14015 Filed 6–10–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

TierOne Bank Lincoln, Nebraska; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Federal Deposit Insurance Corporation as sole Receiver for TierOne Bank, Lincoln, Nebraska, (OTS No. 03309), on June 4, 2010.

Dated: June 7, 2010.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. 2010–13989 Filed 6–10–10; 8:45 am]

BILLING CODE 6720–01–M

Federal Register

Friday,

June 11, 2010

Part II

Environmental Protection Agency

40 CFR Parts 72 and 75

Amendments to the Protocol Gas Verification Program and Minimum Competency Requirements for Air Emission Testing; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72 and 75

[EPA–HQ–OAR–2009–0837; FRL–9148–1]

RIN 2060–AQ06

Amendments to the Protocol Gas Verification Program and Minimum Competency Requirements for Air Emission Testing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule; Reconsideration.

SUMMARY: Recent EPA gas audit results indicate that some gas cylinders used to calibrate continuous emission monitoring systems on stationary sources do not meet EPA's performance specification. Reviews of stack test reports in recent years indicate that some stack testers do not properly follow EPA test methods or do not correctly calculate test method results. Therefore, EPA is proposing to amend its Protocol Gas Verification Program (PGVP) and the minimum competency requirements for air emission testing (formerly air emission testing body requirements) to improve the accuracy of emissions data. EPA is also proposing to amend other sections of the Acid Rain Program continuous emission monitoring system regulations by adding and clarifying certain recordkeeping and reporting requirements, removing the provisions pertaining to mercury monitoring and reporting, removing certain requirements associated with a class-approved alternative monitoring system, disallowing the use of a particular quality assurance option in EPA Reference Method 7E, adding an incorporation by reference that was inadvertently left out of the January 24, 2008 final rule, and clarifying the language and applicability of certain provisions.

DATES: Comments must be received on or before July 12, 2010. Under the Paperwork Reduction Act, comments on the information collection provisions are best assured of having full effect if the Office of Management and Budget (OMB) receives a copy of your comments on or before July 12, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0837 (which includes Docket ID No. EPA–HQ–OAR–2005–0132, and Docket ID No. EPA–HQ–OAR–2008–0800), by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Mail:* Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Air and Radiation Docket, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0837. 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 *www.regulations.gov* or e-mail. The *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 submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: John Schakenbach, U.S. Environmental Protection Agency, Clean Air Markets Division, MC 6204J, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202) 343–9158, e-mail at *schakenbach.john@epa.gov.* Electronic copies of this document can be accessed through the EPA Web site at: *http://epa.gov/airmarkets.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Entities regulated by this action primarily are fossil fuel-fired boilers, turbines, and combined cycle units that serve generators that produce electricity for sale or cogenerate electricity for sale and steam. Regulated categories and entities include:

Category	NAICS code	Examples of potentially regulated industries
Industry	221112 and others	Electric service providers.

This table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities which EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability provisions in §§ 72.6, 72.7, and 72.8 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Considerations in Preparing Comments for EPA.

A. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly

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

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

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Outline. The following outline is provided to aid in locating information in this preamble.

I. Detailed Discussion of Proposed Rule Revisions
A. Amendments to the Protocol Gas Verification Program
B. Amendments to the Minimum Competency Requirements for Air Emission Testing
C. Other Amendments
II. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. Detailed Discussion of Proposed Rule Revisions

On January 24, 2008, revisions to 40 CFR part 75, the Acid Rain Program continuous emission monitoring regulations, were published in the **Federal Register** (*see* 73 FR 4340 January 24, 2008). These amendments included provisions requiring that EPA Protocol gases used for Part 75 purposes be obtained from specialty gas producers that participate in a PGVP. The final rule further provided that only PGVP participants were allowed to market calibration gas as "EPA Protocol gas". The January 24, 2008 rulemaking also included a provision requiring minimum competency requirements for air emission testing bodies (AETBs). The PGVP and AETB provisions became effective on January 1, 2009.

The Administrator received a Petition for Review, and a Petition for Reconsideration, claiming that EPA had not properly promulgated the PGVP. The Agency also received a Petition for Review challenging the AETB requirements. Subsequently, EPA published a final rule in the **Federal Register** staying the AETB requirements (73 FR 65554, November 4, 2008). EPA also posted a notice on an Agency Web site stating that the PGVP is not in effect, and a revised PGVP would not be effective until EPA goes through notice and comment rulemaking on any revised procedure. EPA is today announcing its reconsideration of certain aspects of the January 24, 2008 final rule and is proposing to amend the PGVP and AETB requirements. If these revisions become final, the amended rule will replace the existing AETB requirements, effectively removing the stay.

EPA is also proposing to amend other sections of Part 75 by adding several data elements associated with EPA's Emissions Collection and Monitoring Plan System (ECMPS) software, clarifying the requirements for including cover letters with monitoring plan submittals, certification applications, and recertification applications, removing the provisions pertaining to mercury monitoring and reporting, removing certain requirements associated with a class-approved alternative monitoring system, disallowing the use of a particular quality assurance option in EPA Reference Method 7E, adding an incorporation by reference that was inadvertently left out of the January 24, 2008 final rule, and clarifying the language and applicability of certain provisions.

A. Amendments to the Protocol Gas Verification Program

The purpose of the proposed EPA Protocol Gas Verification Program (PGVP) is to ensure the accuracy of EPA Protocol gases. EPA proposes to require that the owner or operator of a Part 75 affected source ensure that all calibration gases used to quality assure the operation of instrumentation meet the definition of calibration gas contained in § 72.2, and the relevant provision in Section 5.1 of Appendix A of Part 75. In turn, § 72.2 defines calibration gas to include, among other things, EPA Protocol gas. EPA Protocol gas is a calibration gas mixture prepared and analyzed according to Section 2 of the "EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards," or such revised procedure as approved by the Administrator. All of the other calibration gases defined in § 72.2 are analyzed by the National Institute of Standards and Technology (NIST) or are produced following a more rigorous procedure and are presumed more accurate (and costly) than EPA Protocol gases. Therefore, only EPA Protocol gases are included in the PGVP described in today's proposed rule. The proposed rule would revise § 75.21 to require a Part 75 affected source that uses EPA Protocol gas to obtain it from an EPA Protocol gas production site which is on the EPA list of sites participating in the PGVP at the time the owner or operator procures the gases.

EPA is proposing that any EPA Protocol gas production site that chooses to participate in the PGVP must notify the Administrator of its intent to participate. EPA would then issue a unique vendor identification number (ID) to the EPA Protocol gas production site (*e.g.,* a company's four participating EPA Protocol gas production sites might be issued vendor IDs: 75.1, 75.2, 75.3 and 75.4). Affected units would report the vendor ID as a required data element in each electronic quarterly report, thus confirming that the affected unit's calibration gases are being supplied by a participating EPA Protocol gas production site.

Proposed § 75.21(g) would require an EPA Protocol gas production site to notify EPA of its participation in the

PGVP by following the instructions on the Forms page of the Clean Air Markets Division (CAMD) Web site (notification will likely be through an official EPA e-mail box). Initial participation in the program would commence on the date of notification and would extend from that date through the remainder of the calendar year. An EPA Protocol gas production site that elects to continue participating in the PGVP in the next calendar year would be required to notify the Administrator of its intent to continue in the program by December 31 of the current year. The names of EPA Protocol gas production sites participating in the PGVP would be made publicly available by posting on official EPA Web sites. EPA believes that annual posting will be frequent enough to allow EPA Protocol gas users to verify that their calibration gases are being provided by PGVP participants.

The contents of the initial notification and subsequent re-notification(s) would be as follows:

(i) The specialty gas company name which owns or operates the EPA Protocol gas production site;

(ii) The name and address of that participating EPA Protocol gas production site owned or operated by the specialty gas company; and

(iii) The name, e-mail address, and telephone number of a contact person for that participating EPA Protocol gas production site.

If any of the above information changes during the year, updates may be sent to EPA, and Agency Web sites will be amended accordingly.

Under the PGVP as proposed, the Agency may annually audit up to four EPA Protocol gas cylinders from each participating EPA Protocol gas production site. The same number and type of cylinders (*i.e.,* cylinders with the same certified components, approximately the same certified component concentration, and same number of certified components) would be obtained from each participating EPA Protocol gas production site that produces such cylinders to allow for better intercompany comparisons.

Each year, EPA intends to audit all participating EPA Protocol gas production sites that produce the type of gas being audited, and to obtain EPA Protocol gas cylinders that are as representative of the normal production process as possible, given the limited sample size. To achieve this goal, the Agency intends to obtain cylinders in such a way that an EPA Protocol gas production site is not aware that its cylinders are being audited. In the past, the Agency has hired a company that uses EPA Protocol gas cylinders as part of its normal business to purchase cylinders. It is possible that EPA would hire a different company each year for this purpose. The Agency specifically requests comment on how it can better ensure that cylinders are obtained from each production site without raising suspicion that the cylinders are being audited. One possibility is to place cylinder orders from locations that are geographically close to a production site. However, there is no guarantee that EPA can always find a purchaser in such a location.

After obtaining all of the EPA Protocol gas cylinders to be audited, EPA would notify each participating EPA Protocol gas production site that its EPA Protocol gas cylinders are being audited and would identify the purchaser as an EPA representative or contractor participating in the audit process. EPA proposes that each participating EPA Protocol gas production site would then either cancel that purchaser's invoice or credit the purchaser's account for the purchase of those EPA Protocol gas cylinders, and provide funding to the National Institute of Standards and Technology (NIST) for analysis of those EPA Protocol gas cylinders, for their portion of an electronic NIST audit report on all audited cylinders for the current audit, for demurrage, and for return shipment of their cylinders. The rule as proposed would require that at the EPA Protocol gas production site's own cost, audit results be submitted electronically by NIST to EPA upon completion of NIST's analyses of all audit cylinders. A copy of NIST's analysis of EPA Protocol gas cylinders from an EPA Protocol gas production site could also be provided to that site, if that provision is part of the production site's agreement with NIST.

Section 75.21(g) of the proposed rule provides minimum criteria for auditing cylinders and reporting the results to EPA at cost to the production site. As proposed each participating EPA Protocol gas production site would reach formal agreement with and pay NIST to analyze its EPA Protocol gas cylinders within two weeks of NIST's receipt of the batch containing those cylinders (or as soon as possible thereafter) using procedures at least as rigorous as the "EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards" (Traceability Protocol), September 1997 (EPA–600/R–97/121) or equivalent written cylinder analysis protocol that has been approved by EPA. The two week deadline assumes that EPA Protocol gas cylinders would be sent to NIST in manageable batches, which EPA intends to do.

Each cylinder's concentration would be determined and the results compared to the cylinder's certification documentation and tag value and for conformity to Section 5.1 of Appendix A. After NIST analysis, a participant would then have to assure that each cylinder has a NIST analyzed concentration with an uncertainty of plus or minus 1.0 percent (inclusive) or better, unless otherwise approved by EPA. The Agency notes that especially with very low concentration cylinders, it may not be possible to meet the 1.0 percent uncertainty and reserves the right to make appropriate adjustments. Further, the proposed rule would require that the certification documentation must be verified in the audit report as meeting the requirements of the Traceability Protocol or such revised procedure as approved by the Administrator.

All of the information described in §§ 75.21(g)(9)(ii)–(v) would be provided in an audit report submitted electronically by NIST to EPA at the end of the current (annual) audit. The Agency would post on EPA Web sites the results of the NIST analysis in the same format as Figure 3 (or the Note below Figure 3, as applicable) or a revised format approved by EPA.

EPA believes that owners or operators of Part 75 affected units will use the results of the NIST analysis to better inform their EPA Protocol gas purchase decisions. We specifically request comment on whether the format and information contained in proposed Figure 3 and the Note below Figure 3 are useful for this purpose.

In proposed § 75.21(g)(4), EPA would reserve the right to remove an EPA Protocol gas production site from the list of PGVP participants for any of the following reasons:

(1) If the production site fails to provide all of the information required by § 75.21(g)(1), specifically, items (i) through (iii), listed above;

(2) If, after being notified that its EPA Protocol gas cylinders are being audited by EPA, the EPA Protocol gas production site fails to cancel its invoice or to credit the purchaser's account for the cylinders; or

(3) Any participating EPA Protocol gas production site whose cylinders were sent to NIST by EPA for analysis but are not in the electronic audit report submitted by NIST to EPA.

EPA would relist an EPA Protocol gas production site as follows:

(1) An EPA Protocol gas production site may be relisted immediately, after its failure is remedied, if the only failure is not providing all of the information required by § 75.21(g)(1);

(2) If EPA fails to receive from the participating EPA Protocol gas production site a written invoice cancellation or a hardcopy credit receipt for the cylinders within two weeks of notifying the production site that its cylinders are being audited by EPA, the cylinders would be returned to the production site and that production site would not be eligible for relisting until December 31 of the current year and until it submits to EPA the information required by § 75.21(g)(1), in accordance with the procedures in §§ 75.21(g)(2) and 75.21(g)(3); and

(3) Any participating EPA Protocol gas production site whose cylinders were sent to NIST by EPA for analysis, but are not in the electronic audit report submitted by NIST to EPA, would not be eligible for relisting until December 31 of the next year and until it submits to EPA the information required by § 75.21(g)(1), in accordance with the procedures in §§ 75.21(g)(2) and 75.21(g)(3). The eligible relisting date of December 31 of the next year is later than the eligible relisting date in (2), above, because EPA will not know whether a particular EPA Protocol gas production site is missing from the NIST audit report until the last half of the calendar year. Thus, a production site would potentially be removed from the list of participants for only a few months if the eligible relisting date were December 31 of the current year, which may not be sufficient to prevent gaming of the program.

EPA believes that removing EPA Protocol gas production sites from the participants list for cause will provide sufficient incentive for good faith participation. However, EPA specifically requests comment on whether there are better mechanisms to ensure good faith participation once a company elects to participate in the PGVP.

EPA notes that some EPA Protocol gas production sites produce EPA Protocol gas cylinders claiming NIST traceability for both NO and NO_X concentrations in the same cylinder. If, as provided in the proposed rule, such cylinders were analyzed by NIST for the PGVP, they would have to be analyzed and the results reported for both the NO and NO_X components, where total NO_X is determined by NO plus NO_2. The Agency believes that this requirement would better assure NIST traceability, regardless of whether NO or NO_X is used when performing QA/QC tests.

The Agency believes that there are approximately 14 specialty gas companies in the U.S. Some companies have multiple production sites, resulting in approximately 30 potential EPA Protocol gas production sites. If all production sites were to participate in the PGVP and EPA were to audit 4 cylinders from each production site, NIST would have to analyze 120 cylinders each year. If it takes NIST two weeks to analyze 20 cylinders, and if EPA shipped a batch of 20 cylinders every two weeks, it would take NIST 3 months to analyze all 120 cylinders (six batches). NIST would need additional time to produce an analysis report and submit it electronically to EPA. NIST has indicated that it can analyze 120 cylinders and submit an analysis report to EPA within six months.

However, if cylinder analyses and report submittal ever take longer than one year to complete, an annual PGVP would not be possible. To address this and other possibilities, the Agency specifically requests comments on the following options.

Option 1: EPA could interpret that an "EPA Protocol gas production site that is on the EPA list of sites participating in the PGVP at the time the owner or operator procures such gases" has the literal meaning that an EPA Protocol gas production site simply has to be on the EPA list to be able to provide EPA Protocol gases to owners or operators of Part 75 affected units. Therefore, if EPA does not procure gases for audit in a given year (and consequently NIST does not analyze the gases), an EPA Protocol gas production site could still market its EPA Protocol gases to Part 75 sources. Option 1 would also allow NIST to take longer than 12 months to analyze and report on all audit cylinders. However, a downside would be that audit results would be posted at less than an annual frequency, and Part 75 sources would not be able to determine the best performing EPA Protocol gas production sites as frequently.

Option 2: EPA could reduce the number of cylinders audited per production site in a year so that NIST could analyze and report on all audit cylinders, and EPA could post results on an annual basis. While each production site would still be represented in the audit, a downside to Option 2 would be that fewer cylinders per production site would be audited.

Option 3: Instead of procuring cylinders from all production sites, EPA could select fewer production sites from each specialty gas company. A downside would be that not all production sites would be audited, even though each specialty gas company would still be represented in the audit sample.

Option 4: EPA could use any of the above three options or some combination in a given year. The Agency prefers this option because of the increased flexibility it provides. This flexibility might be required to address certain situations, *e.g.,* an expansion in the number of EPA Protocol gas production sites, unforeseen delays in cylinder analyses or logistics, and possible Federal budget constraints.

EPA proposes that if an EPA Protocol gas production site is removed from the list of PGVP participants after EPA Protocol gas cylinders have been purchased from that site, the owner or operator would be allowed to use the cylinders for Part 75 applications until the earlier of the cylinder's expiration date or until the cylinder gas pressure reaches 150 psig.[1] Further, if on the effective date of § 75.21(g), a Part 75 affected source, or an emissions testing group or testing company has in its possession EPA Protocol gases from an EPA Protocol gas production site that is not participating in the PGVP, use of those cylinder gases would also be permitted for Part 75 applications until the earlier of the cylinder's expiration date or until the cylinder gas pressure reaches 150 psig. EPA believes that these proposed rule provisions help clarify the liability of Part 75 affected sources in such cases.

After analysis, each EPA Protocol gas cylinder would be returned to the EPA Protocol gas production site that provided it. The EPA Protocol gas cylinders being returned to the production site would be almost full and have an accompanying NIST analyzed concentration with an uncertainty of plus or minus 1.0 percent (inclusive) or better, which more than meets the Part 75 EPA Protocol gas plus or minus 2.0 percent of cylinder tag value requirement.

In order to help contain the cost of NIST's cylinder analyses, NIST has agreed to implement the following cost containment measures:

(1) The concentrations of the gaseous components of interest in each batch of cylinders will be within predefined concentration ranges. This will allow NIST to setup instrumentation and form calibration curves more efficiently.

(2) The arrival of each batch of cylinders will be coordinated with the work schedules of key NIST personnel. This will allow NIST to more efficiently manage its resources.

(3) NIST has modeled the cross interactions of the analytical species on

[1] Section 2.1.6.4 of the "EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards," establishes a minimum compressed gas cylinder pressure of 150 pounds per square inch gravimetric, below which the cylinder gas concentration cannot be assured.

its instrumentation. Future work can make use of that modeling, so that NIST needs only to confirm that the correction factors are still good before using them.

(4) Since NIST's uncertainty [2] requirements for intermediate gas standards are quite stringent (*i.e.,* less than 0.5% uncertainty, and 1% expanded), NIST can use intermediate standards for all of this work. This keeps the cost down, because expensive primary standards do not have to be used. In addition, NIST has invested in tri-mix working standards that will allow them to validate their methods much more quickly.

(5) For the future, NIST is considering using a Fourier Transform Infrared Spectroscopy (FTIR) method, which might further reduce costs by consolidating all of the analytical work in a single automated instrument.

NIST has agreed to analyze audit cylinders to 0.5% uncertainty (1% expanded uncertainty). The reason for this uncertainty goal is to allow reasonable certainty when judging an audited cylinder with a 2.0% uncertainty requirement under Part 75. No reasonable cost savings will be achieved by increasing the uncertainty to 1% (2% expanded).

According to NIST, high concentration cylinders will always cost less to analyze. The lowest concentration cylinders will cost NIST approximately 25% more to analyze.

Based on 2009 cost data from NIST and recent cylinder shipping costs, EPA estimates that the average cost for NIST to analyze one EPA Protocol gas cylinder, produce a report and return ship a cylinder is approximately $1,800. This cost assumes implementation of cost containment measures #1 through #3 described above. The cost may decrease further as a result of implementing measures #4 and #5.

EPA proposes to add the following simple recordkeeping and reporting requirements under §§ 75.59 and 75.64 to enable the Agency to verify that Part 75 affected sources are using EPA Protocol gases from EPA Protocol gas production sites that are participating in the PGVP, and to inform the gas cylinder selection for the PGVP audits:

(i) Gas level code;

(ii) A code for the type of EPA Protocol gas used for each gas monitor that uses EPA Protocol gas for daily calibrations;

(iii) A code for type of EPA Protocol gas used for each gas monitor that uses EPA Protocol gas for quarterly linearity checks;

(iv) Start and end date and hour for EPA Protocol gas type code for gases used on CEMS;

(v) A code for type of EPA Protocol gas used with EPA Reference Methods 3A and/or 6C and/or 7E, when those methods are used to perform relative accuracy test audits (RATAs) for certification, recertification, routine quality assurance, or diagnostic testing of Part 75 monitoring systems; and

(vi) The PGVP vendor ID issued by EPA.

EPA specifically requests comments on the following proposed codes for the type of EPA Protocol gas used. These codes would not be specified in the rule, but rather in the electronic reporting instructions:

SO_2 = EPA Protocol gas standard consisting of a single certified component, SO_2, and a balance gas.

NO_X = EPA Protocol gas standard consisting of a single certified component, NO_X, and a balance gas.

NO = EPA Protocol gas standard consisting of a single certified component, NO, and a balance gas.

CO_2 = EPA Protocol gas standard consisting of a single certified component, CO_2, and a balance gas.

O_2 = EPA Protocol gas standard consisting of a single certified component, O_2, and a balance gas.

SC = EPA Protocol gas bi-blend standard consisting of two certified components, SO_2 and CO_2, and a balance gas.

SN = EPA Protocol gas bi-blend standard consisting of two certified components, SO_2 and NO and a balance gas.

SN_1 = EPA Protocol gas bi-blend standard consisting of two certified components, SO_2 and NO_X and a balance gas.

NC = EPA Protocol gas bi-blend standard consisting of two certified components, NO and CO_2, and a balance gas.

N_1C = EPA Protocol gas bi-blend standard consisting of two certified components, NO_X and CO_2, and a balance gas.

NCO = EPA Protocol gas bi-blend standard consisting of two certified components, NO and CO, and a balance gas.

N_1CO = EPA Protocol gas bi-blend standard consisting of two certified components, NO_X and CO, and a balance gas.

OC = EPA Protocol gas bi-blend standard consisting of two certified components, O_2 and CO_2, and a balance gas.

OCO = EPA Protocol gas bi-blend standard consisting of two certified components, O_2 and CO, and a balance gas.

SO = EPA Protocol gas bi-blend standard consisting of two certified components, SO_2 and O_2, and a balance gas.

SCO = EPA Protocol gas bi-blend standard consisting of two certified components, SO_2 and CO, and a balance gas.

SN_2 = EPA Protocol gas tri-blend standard consisting of three certified components, SO_2, NO, and NO_X and a balance gas.

N_2C = EPA Protocol gas tri-blend standard consisting of three certified components, NO, NO_X, and CO_2, and a balance gas.

N_2CO = EPA Protocol gas tri-blend standard consisting of three certified components, NO, NO_X, and CO, and a balance gas.

SNC = EPA Protocol gas tri-blend standard consisting of three certified components, SO_2, NO, and CO_2, and a balance gas.

SN_1C = EPA Protocol gas tri-blend standard consisting of three certified components, SO_2, NO_X, and CO_2, and a balance gas.

NCC = EPA Protocol gas tri-blend standard consisting of three certified components, NO, CO_2, and CO, and a balance gas.

N_1CC = EPA Protocol gas tri-blend standard consisting of three certified components, NO_X, CO_2, and CO, and a balance gas.

NSC = EPA Protocol gas tri-blend standard consisting of three certified components, SO_2, NO, and CO, and a balance gas.

N_1SC = EPA Protocol gas tri-blend standard consisting of three certified components, SO_2, NO_X, and CO, and a balance gas.

OCC = EPA Protocol gas tri-blend standard consisting of three certified components, O_2, CO_2, and CO, and a balance gas.

OSC = EPA Protocol gas tri-blend standard consisting of three certified components, O_2, SO_2, and CO, and a balance gas.

SN_2C = EPA Protocol gas quad-blend standard consisting of four certified components, SO_2, NO, NO_X, and CO_2, and a balance gas.

N_2CC = EPA Protocol gas quad-blend standard consisting of four certified components, NO, NO_X, CO_2, and CO, and a balance gas.

N_2SC = EPA Protocol gas quad-blend standard consisting of four certified components, SO_2, NO, NO_X, and CO, and a balance gas.

[2] Like any measurement, cylinder gas concentration is subject to uncertainty due to instrument measurement accuracy and repeatability, operator error, measurement methodology, accuracy of reference standards used, and other sources of error.

EPA proposes to allow participation in the PGVP on and after the effective date of the rule. The proposed rule would require PGVP-related recordkeeping requirements to start six months after the effective date of this rule. On and after January 1, 2011, the new PGVP-related data elements in § 75.64 (described in items (i) through (vi) listed above) would be submitted prior to or concurrent with the submittal of the relevant quarterly electronic data report. However, if the final rule is delayed, EPA reserves the right to amend the reporting deadline. The Agency believes that this will provide both EPA and the regulated community adequate time to reprogram recordkeeping/reporting software.

The Agency is also proposing to amend Section 6.5.10 of Appendix A to Part 75 to require that the EPA Protocol gases used when performing Methods 3A, 6C, and/or 7E must be from EPA Protocol gas production sites participating in the PGVP. The Agency anticipates that this will help improve the data quality when these test methods are used at Part 75 affected sources.

B. Amendments to the Minimum Competency Requirements for Air Emission Testing

EPA proposes to add minimum competency requirements for air emission testing under § 75.21(f). This proposed section describes where the minimum competency requirements apply and where they do not.

EPA proposes to add simple recordkeeping requirements under § 75.59 and reporting requirements under §§ 75.63 and 75.64 to enable the Agency to verify that Qualified Individuals and Air Emission Testing Bodies (AETBs) meet the requirements of this rule should we take final action. On and after January 1, 2011, the new AETB-related data elements in § 75.64 would be submitted prior to or concurrent with the submittal of the relevant quarterly electronic data report required under § 75.64. However, if the final rule is delayed, EPA reserves the right to amend the reporting deadline. The Agency believes that this will provide both EPA and the regulated community adequate time to reprogram recordkeeping/reporting software.

Proposed revisions to Sections 6.1.2(a), (b), and (c) of Appendix A to Part 75 would provide that all relative accuracy test audits (RATAs) of Part 75 CEMS and stack tests conducted under § 75.19 and Appendix E to Part 75 are to be conducted by an AETB that has provided to the owner or operator a certification that as of the time of testing the AETB is operating in conformance with ASTM D7036–04. That certification is a certificate of accreditation or interim accreditation for the relevant test method issued by a recognized national accreditation body or a letter of certification for the relevant test methods signed by a member of the senior management staff of the AETB. The owner or operator would also record and report: (a) The name, telephone number and e-mail address of the Air Emission Testing Body; (b) the name of the on-site Qualified Individual; (c) For the reference method(s) that were performed, the date that the on-site Qualified Individual took and passed the relevant qualification exam(s), required by ASTM D 7036–04; and (d) the name and e-mail address of the qualification exam provider (*see* Section 6.1.2(b)). All of this information would have to be recorded and kept on site for at least 3 years and would be reported to EPA, except for the certificate of accreditation or interim accreditation and the letter of certification. The certificate of accreditation or interim accreditation and the letter of certification would not be reported to EPA but would be retained on-site for at least 3 years.

The AETB must reasonably have all of this information available to be in compliance with ASTM D 7036–04, §§ 5.4.11 and 8.3.7. Section 5.4.11 states that the AETB shall "be able to provide documentation or otherwise demonstrate, on request from the persons or organizations evaluating its competence, that it complies with * * * this practice." Section 8.3.7 states that "The qualification credentials of each qualified individual shall be available for inspection at the test site." Qualification credentials are defined in the ASTM standard as "evidence that the qualified individual meets the requirements of 8.3.2 * * * ." Section 8.3.2 includes criteria on experience, qualification exams, and a statement saying that all test projects conducted under the QI's supervision "will conform to the AETB's quality manual and to this practice in all respects."

EPA is proposing to remove the reference to sorbent trap testing from Section 6.1.2(a) of Appendix A, in view of the vacatur of the Clean Air Mercury Regulation (CAMR) by the D.C. Court of Appeals. Proposed Section 6.1.2(d) of Appendix A recommends that the owner or operator of a Part 75 affected source request the following information from an AETB:

(1) The AETB's quality manual;

(2) The results of any external or internal audits performed by the AETB in the prior 12 months;

(3) A written description of any corrective actions being implemented by the AETB in the prior 12 months; and

(4) Any AETB training records in the prior 12 months. This proposed provision is merely a recommendation, will not affect data validation, and does not require the owner or operator to review, retain or report copies of such records. The provision is simply for the protection of the owner or operator. The Agency believes this will provide the owner or operator more assurance that the AETB is complying with all the requirements of ASTM D 7036–04. The Agency anticipates that testers would have this information with them in their vehicles when visiting a site in view of the requirements of the ASTM standard.

If an AETB fails to provide information provided in Section 6.1.2(d) when requested by an owner or operator, the proposed rule provides that EPA can demand that an AETB provide evidence to the Administrator that the AETB has provided the information to the owner or operator. If the AETB fails to provide such evidence, which EPA anticipates would be clearly identified in the demand, EPA would have several courses of action. First, as described below, under Section 6.1.2(g), the EPA could list the offending AETB on its Web sites. Secondly, as more fully explained below, since EPA's authority to make the demand is premised on Clean Air Act Section 114 (42 U.S.C. 7414)(CAA), a non-compliant AETB could be subject to enforcement action by EPA under CAA Section 113. The CAA provides for several levels of enforcement that include administrative, civil, and criminal penalties. The CAA allows for injunctive relief to compel compliance and civil and administrative penalties of up to $32,500 per day. EPA believes that the availability of these enforcement tools, coupled with the owner or operator's express right to require the enumerated information from the AETB, are significant deterrents and will result in better quality testing.

Proposed Section 6.1.2(e) of Appendix A states that testing must be conducted or overseen on site by at least one Qualified Individual (QI), who is qualified in the methods employed in the test project. It is expected that when a QI is overseeing a test, that the QI would be actively observing the test for its duration. It is also expected that if a QI is conducting a test, that a QI would actively conduct the test for its duration. However, allowance would be made for normal activities of a QI who is overseeing or conducting a test, *e.g.,* bathroom breaks, food breaks, etc., and emergencies that may arise during a test.

Proposed Section 6.1.2(e) also provides that if during the test period, it is discovered that a Qualified Individual is not present on site either conducting or overseeing the methods employed for the test project, that test must be invalidated and repeated with a Qualified Individual present. This provision is intended to encourage the owner or operator and those observing the test to make it standard operating practice to verify that a QI is present while the testing is still in progress, thereby preventing potentially large amounts of data from being invalidated (*e.g.,* if six months after the completion of a RATA, EPA were to discover that a QI was not on site during the test period). The Agency notes that an owner or operator could act as an AETB for its own source or for other sources, provided that the requirements of Section 6.1.2 are met.

Of course, having a QI on site either conducting or overseeing the methods employed in the test project does not guarantee proper performance of the test. Third party (*e.g.,* state agency) oversight is recommended to help ensure that testing is properly conducted. (The Agency notes that even though third party oversight is highly recommended, it is not required in today's proposed rule.)

Proposed Section 6.1.2(f) of Appendix A, states that (in the absence of other information such as evidence of collusion during testing), test data that otherwise meet the requirements of Part 75 will be considered valid, provided that the AETB provides to the owner or operator a certificate of accreditation (or interim accreditation) or letter of certification described in Sections 6.1.2(b)(1) and (2), and the Qualified Individual requirements in Section 6.1.2(e) are met.

The Agency notes that ASTM D7036–04 requires that the QI re-take and pass a qualification exam at least once every five years (*see* § 8.3.3 of the ASTM standard). Therefore, EPA, State and local air agencies will be checking that QI exam certificates are current. The Agency recommends, but is not requiring, that owners or operators of Part 75 affected sources also check that the exam certificates are current.

EPA believes that requiring submittal of the name and e-mail address of the qualification exam provider is important for two reasons: (1) It will be a valuable deterrent to an AETB providing false qualification exam dates or certifications because the Agency may from time to time check with the exam provider; and (2) it allows the Agency to more easily verify the QI's credentials.

EPA understands that it may be unfair to hold an owner or operator of an affected source responsible for certain actions (or inactions) related to an external AETB's compliance with ASTM D7036–04. Therefore, proposed Section 6.1.2(f) also provides that "The certification described in paragraph (b) of this section, and compliance with paragraph (e), shall be sufficient proof of validity of test data that otherwise meet the requirements of this part." Proposed paragraph (g) provides that "[i]f the Administrator finds that an AETB has not provided accurate or complete information required by this section to an affected source or requested by an affected source under this section, the Administrator may post the name of the offending AETB on Agency Web sites, and provide the AETB a description of the failures to be remedied." EPA believes that this would be a deterrent to non-compliance with ASTM D7036–04. The Agency requests comments on whether posting an offending AETB's name on Agency Web sites is an appropriate response in these situations.

Further, EPA would have the express authority under proposed Section 6.1.2(h) to require an AETB to provide certain information relating to evaluation of the effectiveness of these provisions and the accuracy of information provided thereunder. If the Administrator learns that an AETB has not provided accurate or complete information or has not provided information to an owner or operator upon request as recommended in this rule, EPA has the authority under CAA Section 114 to itself require the AETB to provide evidence to the Agency that the AETB has in fact provided such information. EPA's authority under § 114 is broad, and extends to any person "who the Administrator believes may have information necessary for the purposes" of carrying out the CAA, even if that person is not otherwise subject to the CAA. The broad requirement to provide "such information as the Administrator may reasonably require", can be one-time or on a continuous basis.

By specifically authorizing EPA to collect information from persons subject to any requirement of the CAA, as well as any person whom the Administrator believes may have necessary information, Congress clearly intended that EPA could gather information from persons not otherwise subject to CAA requirements. In an effort to resolve problems which affected sources have had with air emissions testing bodies, EPA is proposing these amendments to Parts 72 and 75, and information to be available to owners or operators from AETBs is an integral part of that regulatory structure. Therefore, a clear statement of EPA's authority to obtain information relevant to that which an owner or operator might solicit from an AETB is merited.

Further, if following demand, an AETB fails to provide evidence to the Agency that (1) it has provided accurate or complete information or (2) it has in fact made information available to the owner or operator upon request, an AETB could be subject to enforcement action by EPA under CAA Section 113. As structured, the proposed rule provides that upon learning of an AETB's deviation from the rule, EPA would provide notice to the offender and provide a reasonable period for the AETB to correct the deviation. If an AETB does not comply, EPA has the authority to bring an enforcement action. EPA's enforcement authority includes injunctive relief to compel compliance and civil and administrative penalties of up to $32,500 per day. Deviations from the rule that could ultimately be considered violations include, but are not limited to, failure to provide such information as a certification of accreditation or interim accreditation, or a letter of certification and the date on which the on-site QI took and passed the qualification exam for the relevant test method, assuring that the QI meets the periodic timing requirement of examinations to retain his QI status. Additionally, as discussed above, EPA also would have the authority to publish the name of the offending AETB on its Web sites.

EPA is also attempting to clarify internal and external audit provisions in ASTM D 7036–04, self certification, and accreditation by a recognized, national accreditation body provisions in this preamble. EPA also specifically requests comment on whether AETBs should be required to be accredited.

If the AETB chooses to be accredited by a recognized, national accreditation body (neither the January 24, 2008 final rule nor today's proposed rule requires such accreditation), compliance with ASTM D7036–04 is determined by that accreditation body. If an AETB fails to meet the requirements of ASTM D7036–04, the accreditation body may revoke the AETB's accreditation.

However a revoked or denied accreditation might not affect compliance with the Part 75 AETB requirements. Section 4 of the ASTM practice states that the "quality manual and its implementation (including test protocols, reports, and personnel testing)" will provide the "sole basis" for determining conformance of the AETB with the practice. Under Section 7.4 of

the practice, AETBs are required to conduct annual internal audits to identify any deficiencies and determine and document the effectiveness of corrective action. Under Sections 18 and 19 of the practice, the AETB also must have policies and procedures, and designate appropriate authorities, for implementing corrective action when nonconforming work or departures from its quality system are identified. For purposes of the Part 75 rule, an AETB that is conducting internal (or external) audits and implementing its policies and procedures for corrective action is operating in conformance with the ASTM practice, despite any deficiencies in the AETB certification or certificate of accreditation or interim accreditation required under Section 6.1.2(b) of Appendix A that might be discovered by the AETB or by a third party during an audit.

EPA intends to post a list of activities on Agency Web site(s) to assist sources in complying with ASTM D7036–04. Additionally, EPA plans to similarly post questions and answers (Qs&As) related to the air emission testing minimum competency requirements. Such Qs&As will be developed and made available as implementation of the air emission testing minimum competency requirements progresses.

Regarding the AETB-related recordkeeping requirements, EPA believes that a commencement date of six months after the effective date of a final rule would allow sufficient time for stack testers and stack testing companies to become fully compliant with the AETB provisions. Affected sources and air emission testing bodies have known that EPA would impose AETB requirements since August 22, 2006, when the first AETB-related rule was proposed (*see* 71 FR 49300, August 22, 2006). On and after January 1, 2011, the new AETB-related data elements in § 75.64 would be submitted to EPA prior to or concurrent with the submittal of the relevant quarterly electronic data report. However, if the final rule is delayed, EPA reserves the right to amend the reporting deadline. The Agency believes that this will provide both EPA and the regulated community adequate time to reprogram recordkeeping/reporting software.

C. Other Amendments

1. Compliance Dates

EPA is proposing to amend paragraphs (b)(2) and (c)(2) of § 75.4 to remove the 90 unit operating days provision pertaining to the monitoring system certification deadline for new Acid Rain Program (ARP) units and newly-affected units that lose their ARP-exempt status under 40 CFR 72.6. A new ARP unit would have 180 calendar days after the date the unit commences commercial operation to complete certification tests of all monitoring systems, and would, according to § 72.9(c)(3)(iv), be required to commence holding SO_2 allowances when the 180 day window expires. A newly-affected ARP unit would also have 180 days to complete monitor certification testing and begin holding allowances, except that in this case, the reference point would be the date on which the unit becomes subject to the ARP, rather than the date on which the unit commenced commercial operation. Since § 75.61(a)(2) requires the owner or operator to notify EPA of the date on which a new unit commences commercial operation or the date on which a previously ARP-exempt unit loses its exempt status, the Agency believes the proposed amendments to §§ 75.4(b) and (c) will clarify and simplify the determination of when new and newly-affected ARP units must complete certification testing and commence holding SO_2 allowances.

EPA is also proposing to amend § 75.4(e), chiefly to clarify the applicability of this section. Section 75.4(e) applies to the construction of a new stack or the installation of add-on SO_2 or NO_X emission controls (or both) at an existing Acid Rain Program (ARP) unit after the compliance date specified in § 75.4(a). For these events, the owner or operator is given 90 unit operating days or 180 calendar days (whichever occurs first) after gases first exit to the atmosphere through the new stack, flue, or emission control device to complete all necessary monitoring system certification testing.

Under 40 CFR 72.2, a "new" ARP unit is defined as one that commences commercial operation on or after November 15, 1990. Since § 75.4(e) applies only to "existing" units, it only covers Phase I and Phase II ARP units that commenced commercial operation prior to November 15, 1990.

Therefore, to ensure that the owner or operator of a new ARP unit that commences commercial operation after November 15, 1990 is given the same 90 operating day/180 calendar day flexible window of time to perform the necessary monitoring system testing when a new stack is constructed or add-on SO_2 or NO_X emission controls are installed, EPA proposes to amend § 75.4(e), as follows:

- First, the reference to the compliance date in § 75.4(a), which applies only to existing units, would be expanded to include the compliance date in § 75.4(b), which applies to new units.
- Second, the reference to "certification testing" of the monitoring systems would be expanded to include the terms "recertification" and "diagnostic testing," because new stack construction and/or addition of emission controls does not necessarily require a full battery of certification tests to be performed.
- Third, the exact starting time of the 90 operating day/180 calendar day window would be clarified. For construction of a new stack, no change is proposed—the clock will start when gases first exit to the atmosphere through the new stack. However, for SO_2 or NO_X control device addition, the clock would start when reagent is first injected into the gas stream. In cases where there is both new stack construction and control device addition, the start of the clock would be governed by the new stack construction.
- Finally, the allowable data reporting options during the flexible 90 operating day/180 calendar day window of time would be clarified.

2. Incorporation by Reference

The Agency is proposing to amend § 75.6 by including reference to Section 3, Small Volume Provers, First Edition, of the American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapter 4—Proving Systems. Section 3 was inadvertently left out of the January 24, 2008 final rule.

3. Miscellaneous Recordkeeping Requirements

EPA is proposing to amend certain recordkeeping and reporting provisions in §§ 75.53(g)(1)(i)(A), (g)(1)(i)(C), (g)(1)(i)(E), (g)(1)(i)(F), (g)(1)(v)(F), (g)(1)(v)(G), (g)(1)(vi)(J), (h)(2)(i), and (h)(5), §§ 75.58(d)(4)(iii)(A)–(H), §§ 75.59(a)(1)(iii), (a)(5)(ii)(L), (a)(5)(iii)(H), (a)(12)(iv)(G), (d)(3)(xii) and (xiii), § 75.62(d), and § 75.63(d) by adding various data elements that were inadvertently left out of the August 22, 2006 proposed rule and the January 24, 2008 final rule. These data elements have already been included in the data acquisition and handling systems of Part 75 affected units, and are needed to make EPA's new reporting software data requirements consistent with the regulatory requirements. Because there was zero tolerance for reporting errors during the transition to the EPA's re-engineered reporting software system (ECMPS), the Agency is confident that all Part 75 affected sources have already met the reporting deadlines for these data elements.

4. Reference Methods

In § 75.22(a)(5)(iv), the Agency is proposing to disallow multiple Method 7E runs to be performed before conducting the post-run bias or system calibration error check. EPA is concerned that if the use of this option, which is described in Section 8.5 of Method 7E, were allowed, less accurate gas concentration measurements are likely to result; and correction of the run-level data for calibration bias would become unnecessarily complex and prone to error.[3]

5. Alternative Monitoring Systems

EPA is proposing to remove the requirement for an owner or operator to demonstrate that emissions for a class-approved alternative monitoring system (AMS) are de minimis from § 75.47(b). EPA believes that the de minimis emissions concept is not appropriate for Subpart E petitions because in order to be approved, an AMS must be shown to be equivalent to a continuous emission monitoring system (CEMS). In the Acid Rain Program and in other Part 75 emissions trading programs, the de minimis emissions concept has been used only to justify allowing the use of less rigorous monitoring methods for low-emitting units (such as the Appendix E methodology for gas-fired and oil-fired peaking units and the low mass emissions (LME) methodology in § 75.19) rather than for justifying the use of CEMS or AMS shown to be equivalent to CEMS. There are also potential problems defining de minimis emissions for a class of units, and tracking the available increment. The Agency notes that today's proposed revision to § 75.47(b) does not imply that it will be easier to get a class-approved AMS petition granted under Subpart E.

The Agency is also proposing to remove the self-imposed requirement for EPA to publish a **Federal Register** notice for a 30-day public comment period prior to granting a class-approved AMS in § 75.47(c). This Federal Register notice is unnecessary in view of EPA's authority under Subpart E to approve alternative monitoring systems, and the rigorous requirements in §§ 75.40 through 75.48 that an AMS must meet in order to be certified.

6. Cover Letters

EPA is proposing to amend §§ 75.62 and 75.63, regarding the need for cover letter text to accompany official monitoring plan submittals, certification applications, and recertification applications. Sections 72.21 and 72.22 of the Acid Rain Program core rules require each official Program submittal to come from the Designated Representative (DR) or the Alternate Designated Representative (ADR), and to include a certification statement attesting that the information in the submittal is, to the best of his or her knowledge, true and accurate.

In past years, EPA had required a hard copy form (*i.e.,* EPA form 7610–14) to be included with all initial monitoring plan submittals, and with all certification and recertification applications. Form 7610–14 included a certification statement and a signature block for the DR or ADR. However, the form eventually became outdated, and in the January 24, 2008 rulemaking, EPA removed the requirement to include it in future monitoring plan, certification application, and recertification application submittals. Although discontinuing the use of Form 7610–14 was appropriate, it resulted in a loss of the official status of these submittals.

Today's proposed rule would add a new paragraph, (d), to both § 75.62 and § 75.63. Section 75.62(d) would require the DR or ADR to enclose a hard copy cover letter with each hard copy monitoring plan submittal. The cover letter would be submitted to the EPA Regional Office and to the State or local air agency. Consistent with § 72.21(b), the cover letter would include the DR's (or ADR's) signature and a certification statement. Section 75.63(d) would similarly require a hard copy cover letter and a signed certification statement from the DR or ADR to accompany the hard copy portion of each certification or recertification application.

In contrast, for electronic monitoring plan submittals and the electronic portions of certification and recertification applications, there is no need for cover letter text. For these official Program submittals, the requirements of §§ 72.21 and 72.22 are met by means of the DR's (or ADR's) electronic signature and electronic certification statements. However, the DR or ADR may wish to provide important explanatory text and comments along with an official electronic submittal. In view of this, EPA proposes to include in §§ 75.62(d) and 75.63(d) provisions allowing such text and comments to accompany both electronic monitoring plan submittals and the electronic portions of certification and recertification applications, provided that the information is communicated in an electronic format compatible with the rest of the data required under §§ 75.62 and 75.63. This is consistent with § 75.64(g), which allows the DR or ADR to provide EPA with similar textual information in electronic format, so long as it is compatible with the rest of the data in the quarterly emissions reports.

7. Recordkeeping and Reporting Formats

EPA proposes to amend Part 75, Appendix A, Section 4 to update recordkeeping and reporting formats.

8. Calibration Gas Tag Values

EPA proposes to amend Part 75, Appendix A, Sections 5.1.4(b) and 5.1.5 to clarify the meaning of the plus or minus 2.0 percent performance specification for EPA Protocol gases and research gas mixtures.

Section 5.1.4(b) currently requires calculation of a 95 percent confidence interval which may provide justification for a specialty gas company to claim that it is permissible for an EPA Protocol gas cylinder tag value to be more than 2.0 percent different than the actual cylinder gas concentration. The Agency generally does not assign an uncertainty to a performance specification, *e.g.,* cylinder concentration must be within 2.0% of cylinder tag value, because performance specifications are used to determine compliance.

Proposed Section 5.1.4(b) would state that "EPA Protocol gas concentrations must be certified by a specialty gas company to have an analytical uncertainty to be not more than plus or minus 2.0 percent (inclusive)."

Section 5.1.5 currently states that research gas mixtures (RGM) must be vendor certified to be within 2.0 percent of the cylinder tag value. This statement may be confusing because the National Institute of Standards and Technology (rather than a specialty gas vendor) actually certifies an RGM concentration.

Proposed Section 5.1.5 would state: "Concentrations of research gas

[3] EPA instrumental Method 7E was developed and validated with a requirement to conduct a system bias or calibration error check before and after each run to ensure that each reference method run is accurate. Method 7E also includes a procedure to correct for drift if the drift is less than the allowable specification. This mathematical correction assumes (not always correctly) that the drift over the duration of the testing run is uniform and therefore adjusts the run measurement to the average system bias calibration response. In a recent revision to Section 8.5 of Method 7E, an option was added to allow testers to forgo the run-by-run quality assurance (QA) and instead only test the calibration of the reference method measurement equipment at the beginning and end of a series of runs. This change lengthens the interval between QA checks and thus increases the likelihood that the uniform drift assumption is not true. Furthermore, even if the uniform drift assumption were true, the resulting correction would be appropriate for the middle runs but not for the early or later runs of a test.

mixtures, as defined in § 72.2 of this chapter, must be certified by the National Institute of Standards and Technology to be within plus or minus 2.0 percent (inclusive) of the concentration specified on the cylinder label (*i.e.,* the tag value) in order to be used as calibration gas under this part."

The Agency requests comments on these proposed changes to Sections 5.1.4(b) and 5.1.5, particularly regarding the appropriateness of the 2.0 percent specification for very low gas concentrations. Would an alternative specification (*e.g.,* in terms of absolute difference) be more appropriate for very low concentration gases?

9. Removal of Mercury Monitoring Provisions

EPA is proposing to remove the mercury (Hg) monitoring, recordkeeping, and reporting provisions from Parts 72 and 75. These provisions were originally published in May 2005, in support of the Clean Air Mercury Rule (CAMR) (*see* 70 FR 28606, May 18, 2005), and were subsequently amended on September 7, 2007 and January 24, 2008 (*see* 72 FR 51494, September 7, 2007 and 73 FR 4312, January 24, 2008).

CAMR provided a blueprint for a national Hg emissions reduction program, using a "cap and trade" approach. However, the rule was challenged, and on February 8, 2008, the *District of Columbia Court of Appeals in New Jersey* v. *EPA, 517 F.3d 574 (D.C. Cir. 2008) vacated the rule.* The sole purpose of the Part 75 Hg monitoring provisions was to facilitate the implementation of CAMR. EPA appealed the Court's ruling on CAMR, but the petition for a rehearing was denied.

In view of vacatur of CAMR, today's proposed amendments would not only remove the more visible Hg monitoring sections of the rule, such as Subpart I (Hg mass emissions monitoring options), § 75.15 (operation of sorbent trap monitoring systems), §§ 75.38 and 75.39 (Hg missing data provisions), §§ 75.57(i) and (j) (Hg recordkeeping provisions), Section 9 of Appendix F (Hg mass emissions calculations), and Appendix K (QA procedures for sorbent trap systems), but would also remove a myriad of less obvious references to Hg monitoring scattered throughout the rule text, Tables, and Figures.

The rule texts affected by the proposed amendments are as follows: § 72.2, § 75.2(d), § 75.4(d), § 75.6, § 75.10(d), §§ 75.20(a) through (d), § 75.21(a), §§ 75.22(a) and (b), § 75.24(d), §§ 75.31(a) and (b), § 75.32(a), Table 1 in § 75.33, §§ 75.34(a) and (d), § 75.38, § 75.39, § 75.53(g), §§ 75.57(i) and (j), Table 4a in § 75.57, § 75.58(b), §§ 75.59(a), (c) and (e), § 75.60(b), §§ 75.61(a) and (b), §§ 75.80 through 75.84, Appendix A, Sections 1.1, 2.1.7, 2.1.7.1 through 2.1.7.4, 2.2.3, 3.1(c), 3.2(3), 3.3.8, 3.4.3, 4 introductory text, 5.1.9, 6.2 introductory text, (g) and (h), 6.3.1 introductory text, 6.4 introductory text, 6.5 introductory text, (c), (e), and (g), 6.5.1, 6.5.6(c), 6.5.10, 7.3 introductory text, 7.6 introductory text, 7.6.1, 7.6.5(b) and (f), Appendix B, Sections 1.1.4, 1.5, 1.5.1 through 1.5.6, 2.1.4(a), 2.2.1, 2.3.1.1(a), 2.3.1.3(a), 2.3.2(d) and (i), 2.3.4, 2.6, Figures 1 and 2, Appendix F, section 9, and Appendix K.

10. Miscellaneous Corrections and Additions

EPA also proposes to make several minor corrections and additions to Part 75, most of which are in the rule sections cited immediately above. Many of the proposed revisions are simply grammatical in nature, for added clarity. The more substantive proposed revisions are as follows. First, in §§ 75.21 and 75.22 and Section 6.5.10 of Appendix A, corrections would be made to the citations of the Appendices to Part 60 in which the EPA reference methods are found. Second, Equation A–7 in Appendix A would be corrected. Third, references to SO_2-diluent monitoring systems, which are no longer used for Part 75 reporting, would be removed from § 75.59, Section 2.3.1.1(a) of Appendix B, and from Figure 2 of Appendix B. Fourth, the reference to moisture sensors, which are not required to perform daily calibration error tests, would be removed from Section 2.1.4(a) of Appendix B. Fifth, a reference to the NO_X emission tests of low mass emissions units, which had been inadvertently omitted, would be added to § 75.22. Sixth, in Table 4a in § 75.57, the reference to the maximum potential flow rate (MPF) would be removed from the description of Method of Determination Code (MODC) "23". Code 23 pertains to data reporting for an unmonitored bypass stack. Section 75.16(c)(3) states that during bypass hours, the standard missing data procedures are to be used for stack gas flow rate, rather than reporting the MPF. Finally, a new MODC, "53", would be added to Table 4a. This code would be used for certain alternative emissions data approved by petition. MODC "53" differs from existing code "54", in that the hours in which code "53" is reported would be considered "available" hours that do not affect the percent monitor data availability (PMA). An example of a case where code "53" might be used is a situation where a developing problem with a monitor (*e.g.,* a dilution probe leak) is undetectable by means of daily or quarterly QA tests, but it is later discovered, at the time of the annual RATA. Ordinarily, this could result in an extended period of missing data substitution, including the use of maximum potential values, and a sharp reduction in the PMA. However, if the probe leak could be reasonably quantified, EPA would consider a petition under § 75.66 to make an upward adjustment to the data recorded by the monitor during the leak period and to report the adjusted data using MODC "53" instead of applying the standard Part 75 missing data routines.

II. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735 (Oct. 4, 1993)) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2203.03. The currently approved Information Collection Request (ICR) document prepared by EPA reflects the January 24, 2008 rule (EPA ICR Number 2203.02; OMB No.: 2060–0626). (OMB control numbers for EPA regulations are listed in 40 CFR part 9.) The information requirements covered by EPA ICR Number 2203.03 reflect the revisions to the requirements in 40 CFR parts 72, and 75 that are being proposed in this action.

Basic information on the identity of EPA Protocol gas production sites and on the type of cylinders used by Part 75 affected sources will be collected by the Agency. These data will allow the Agency to verify that a Part 75 affected source is using EPA Protocol gases from EPA Protocol gas production sites that are participating in the Protocol Gas Verification Program (PGVP), and to inform the gas cylinder selection for the PGVP audits. This same type of information will be collected when EPA Protocol gases are used to perform certain EPA test methods. The Agency anticipates that this will help improve

the quality of results when these test methods are used.

EPA has added simple recordkeeping and reporting requirements to enable the Agency to verify that Qualified Individuals and Air Emission Testing Bodies meet the requirements of this rule. EPA maintains that the main costs for air emission testing bodies to comply with the minimum competency requirements in ASTM D7036–04 are associated with taking qualified individual (QI) competency exams, and the development and revision of quality assurance manuals. The costs will be passed through to the customers (Part 75 affected sources, primarily large electric utility and industrial companies), and the Agency notes that these costs will be offset by the savings generated by fewer failed or incorrectly performed relative accuracy test audits (RATAs), and fewer repeat tests required.

EPA is also requiring certain recordkeeping and reporting provisions for various data elements that were inadvertently left out of the August 22, 2006 proposed rule and the January 24, 2008 final rule. These data elements have already been incorporated in the data acquisition and handling systems of Part 75 affected units, and are required to make EPA's new reporting software data requirements consistent with the regulatory requirements.

All of the above data collections are mandatory under 40 CFR part 75. None of the data are considered confidential business information under 40 CFR part 2, subpart B.

This proposed rule does not significantly change the existing requirements in 40 CFR Parts 72, and 75 and thus does not significantly change the existing information collection burden. The total annual respondent burden is estimated to be 2,254 hours, with total annual labor and O&M costs estimated to be $1,081,989. This estimate includes the burden associated with the increase in fees from AETBs and PGVP vendors resulting from their compliance with the new requirements in the rule as well as the small labor burden for sources to review the new requirements and comply with the modified recordkeeping and reporting requirements (*See* Exhibits 1 and 2). Burden is defined at 5 CFR 1320.3(b). The respondent burden for this collection of information is estimated to be a small fraction of both the 124,976 labor hours, and the $8,581,420 total cost that were calculated for the existing supporting statement (ICR 2203.02) for revisions to 40 CFR Parts 72 & 75.

Most of these costs are expected to be borne by the private sector and will be passed through to the customers (Part 75 affected sources, primarily large electric utility and industrial companies, or the rate payers). The Agency notes that much of the overall cost will be offset by the savings generated by fewer failed or incorrectly performed daily calibration error tests, quarterly linearity checks, and relative accuracy test audits (RATAs), and fewer repeat tests required.

Exhibits 1 and 2 summarize the respondent burden and cost estimates performed for the ICR (2203.03) supporting statement for revisions to 40 CFR Parts 72 & 75. EPA estimates that: (a) 1,249 ARP sources and 253 additional CAIR sources will need to review the revised requirements and comply with the modified reporting requirements; and (b) 3,736 ARP sources and 777 additional CAIR sources will need to perform quality assurance testing and maintenance tasks. Low mass emissions units will not have to modify their DAHS, and sources with only new units already have their initial startup burdens and costs accounted for in the underlying program ICRs. Exhibit 1 shows the total burden and total cost based on this respondent universe.

EXHIBIT 1—INCREASED RESPONDENT BURDEN/COST (LABOR ONLY) ESTIMATES RELATED TO REVISIONS OF 40 CFR PARTS 72 & 75

Information collection activity	Mean hourly rate	Hours per activity/ year	Number of respondents (facilities)	Respondent hours/year	Total labor cost/year
ARP Respondents One Time Rule Review	80.71	1	1,249	1,249	100,807
ARP Respondents Compliance with Modified Reporting Requirements	80.71	0.5	1,249	624.5	50,444
CAIR Respondents One Time Rule Review	80.71	1	253	253	20,420
CAIR Respondents Compliance with Modified Reporting Requirements	80.71	0.5	253	126.5	10,210
Total			1,502	2,254	181,881

EXHIBIT 2—INCREASED RESPONDENT BURDEN/COST (QA AND MAINTENANCE) ESTIMATES RELATED TO REVISIONS OF 40 CFR PARTS 72 & 75

Information collection activity	Previously established cont./O&M cost	Increased cont./O&M cost per respondent	Number of respondents (units)	Increased total cost/year
ARP Perform QA Testing and Maintenance				
Model A (CEMS)	$31,949	$319	1,046	$333,674
Model C (App D—NO_X CEM)	17,818	178	2,107	375,046
Model D (App D and E)	1,843	19	438	8,322
Model E (LME)	1,991	20	145	2,900
CAIR Perform QA Testing and Maintenance				
• Non ARP Sources in PM/O_3 and PM Only States				
—Solid Fuel: SO_2, NO_X, and Flow CEMS (units)	31,200	312	102	31,824
—Gas-Oil: NO_X CEMS and App D (units)	17,400	174	493	85,782
—Gas-Oil Peaking Units: App D, App E, or LME methods (units)	1,800	18	150	2,700

EXHIBIT 2—INCREASED RESPONDENT BURDEN/COST (QA AND MAINTENANCE) ESTIMATES RELATED TO REVISIONS OF 40 CFR PARTS 72 & 75—Continued

Information collection activity	Previously established cont./O&M cost	Increased cont./O&M cost per respondent	Number of respondents (units)	Increased total cost/year
• Non ARP Sources in O_3 Only States				
—Solid Fuel: SO_2, NO_X, and Flow CEMS (units)	20,800	208	4	832
—Gas-Oil: NO_X CEMS and App D (units)	17,400	174	28	4,872
—Gas-Oil Peaking Units: App D, App E, or LME methods (units)	1,800	18	0	0
PGVP Increased Costs				
($2 per cylinder at an assumed average of 6 cylinders per year)		12	4,513	54,156
Total				900,108

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2009–0837. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after June 11, 2010, a comment to OMB is best assured of having its full effect if OMB receives it by July 12, 2010. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 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 unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

EPA conducted a screening analysis of today's rule on small entities in the following manner. The SBA defines small utilities as any entity and associated affiliates whose total electric output for the preceding fiscal year did not exceed 4 million megawatt hours. The SBA 4 million megawatt hour threshold was applied to the Energy Information Administration (EIA) Annual Form EIA–923, "Power Plant Operations Report" 2008 net generation megawatt hour data and results in an estimated 1169 facilities. This data is then paired with facility owner and associated affiliates data (owners with net generation over 4 million were disregarded) resulting in a total of 620 small entities with a 2008 average net generation of 650,169 megawatt hours. Multiplying net generation by the 2009 EIA average retail price of electricity (9.72 cents per kilowatt hour), the average revenue stream per small entity was determined to be $63,196,427 dollars. In contrast the average respondent costs burden for this rule was determined to be $720.37 per year, which is considerably less than one percent of the estimated average revenue stream per entity. All of the 620 small entities except for one had respondent costs that were less than one percent of the estimated revenue stream.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. All but one of the 620 small electric utilities directly affected by this proposed rule are expected to experience costs that are well under one percent of their estimated revenues.

The proposed rule revisions represent minor changes to existing monitoring requirements under Part 75. There will be some small level of annual costs to participate in a gas audit program, taking a qualified stack test individual competency exam and developing or revising a quality assurance manual, and a slight up-front cost to reprogram existing electronic data reporting software used under Part 75. The Agency notes that these costs will be offset by the savings generated by fewer failed or incorrectly performed daily calibration error tests, quarterly linearity checks, and relative accuracy test audits (RATAs), and fewer repeat tests required.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The total annual respondent burden is estimated to be 2,254 hours, with total annual labor and O&M costs estimated to be $1,081,989. This estimate includes the burden associated with the increase in fees from AETBs and PGVP vendors resulting from their compliance with the new requirements in the rule as well as the small labor burden for sources to review the new requirements and comply with the modified recordkeeping and reporting requirements (See Exhibits 1 and 2). The respondent burden for this collection of

information is estimated to be a small fraction of both the 124,976 labor hours, and the $8,581,420 total cost that were calculated for the existing supporting statement (ICR 2203.03) for revisions to 40 CFR Parts 72 & 75. The costs incurred by AETBs and PGVP vendors will be passed through to their customers (Part 75 affected sources, primarily large electric utility and industrial companies, or the rate payers). The Agency notes that much of the costs will be offset by the savings generated by fewer failed or incorrectly performed daily calibration error tests, quarterly linearity checks, and relative accuracy test audits (RATAs), and fewer repeat tests required. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule would generally affect large electric utility or industrial companies.

E. Executive Order 13132: Federalism

This action 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. This proposed rule primarily amends the Protocol Gas Verification Program, and the minimum competency requirements for air emission testing (first promulgated on January 24, 2008 (See 73 FR 4340, 4364, and 4365)) by having specialty gas company funds go to the National Institute of Standards and Technology, who has statutory authority to receive such funds, to fund gas cylinder analyses, by changing the rule language to rely on certain documentation provided at the time of stack testing as sufficient proof of validity of test data that otherwise meets the requirements of Part 75, by adding simple recordkeeping/reporting requirements, and by extending relevant compliance deadlines. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed rule primarily amends the Protocol Gas Verification Program, and the minimum competency requirements for air emission testing (first promulgated on January 24, 2008 (*See* 73 FR 4340, 4364, and 4365)) by having specialty gas company funds go to the National Institute of Standards and Technology, who has statutory authority to receive such funds, to fund gas cylinder analyses, by changing the rule language to rely on certain documentation provided at the time of stack testing as sufficient proof of validity of test data that otherwise meets the requirements of Part 75, by adding simple recordkeeping/reporting requirements, and by extending relevant compliance deadlines. Thus, Executive Order 13175 does not apply to this action. EPA specifically solicits additional comment on this proposed action from tribal officials.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This 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)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

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.

This rulemaking involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. The Agency found an applicable voluntary consensus standard, ASTM D 7036–04, Standard Practice for Competence of Air Emission Testing Bodies, for use with the air emission testing body provisions of the proposed rule. However, EPA could not identify any applicable voluntary consensus standard for the Protocol Gas Verification Program. Therefore, for the PGVP, EPA has decided to use "EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards," September 1997, EPA–600/R–97/121 or such revised procedure as approved by the Administrator.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this proposed regulation.

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 proposed 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. This proposed rule primarily amends the Protocol Gas Verification Program, and the minimum competency requirements for air emission testing (first promulgated on January 24, 2008 (See 73 FR 4340, 4364, and 4365)) by having specialty gas company funds go to the National

Institute of Standards and Technology, who has statutory authority to receive such funds, to fund gas cylinder analyses, by changing the rule language to rely on certain documentation provided at the time of stack testing as sufficient proof of validity of test data that otherwise meets the requirements of Part 75, by adding simple recordkeeping/reporting requirements, and by extending relevant compliance deadlines.

List of Subjects in 40 CFR Parts 72 and 75

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Carbon dioxide, Continuous emission monitoring, Intergovernmental relations, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides, Reference test methods.

Dated: April 29, 2010.

Lisa P. Jackson,

Administrator.

40 CFR parts 72 and 75 are proposed to be amended as follows:

PART 72—PERMITS REGULATION

1. The authority citation for part 72 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

2. Section 72.2 is amended by:

a. Revising definitions of "Air Emission Testing Body (AETB)", "EPA Protocol Gas", "EPA Protocol Gas Verification Program", and "Qualified Individual";

b. Revising the introductory text of the definition of "Continuous emission monitoring system or CEMS";

c. Removing paragraph (7) of the definition of "Continuous emission monitoring system or CEMS"

d. Removing the definitions of "NIST traceable elemental Hg standards", "NIST traceable source of oxidized Hg", "Sorbent trap monitoring system", and "Specialty Gas Producer"; and

e. Adding in alphabetical order definitions for "EPA Protocol Gas Production Site", and "Specialty Gas Company", to read as follows:

§ 72.2 Definitions.

* * * * *

Air Emission Testing Body (AETB) means a company or other entity that provides to the owner or operator the certification required by section 6.1.2(b) of appendix A to part 75 of this chapter.

* * * * *

Continuous emission monitoring system or CEMS means the equipment required by part 75 of this chapter used to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of SO_2, NO_X, or CO_2 emissions or stack gas volumetric flow rate. The following are the principal types of continuous emission monitoring systems required under part 75 of this chapter. Sections 75.10 through 75.18, and § 75.71(a) of this chapter indicate which type(s) of CEMS is required for specific applications:

* * * * *

EPA Protocol Gas means a calibration gas mixture prepared and analyzed according to section 2 of the "EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards," September 1997, EPA–600/R–97/121 or such revised procedure as approved by the Administrator.

EPA Protocol Gas Production Site means a site that produces or blends calibration gas mixtures prepared and analyzed according to section 2 of the "EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards," September 1997, EPA–600/R–97/121 or such revised procedure as approved by the Administrator.

EPA Protocol Gas Verification Program or PGVP means a calibration gas audit program described in § 75.21(g) of this chapter and implemented by EPA in cooperation with the National Institute of Standards and Technology (NIST).

* * * * *

Qualified Individual (QI) means an individual who is identified by an AETB as meeting the requirements described in ASTM D7036–04 "Standard Practice for Competence of Air Emission Testing Bodies" (incorporated by reference under § 75.6 of this part), as of the date of testing.

* * * * *

Specialty Gas Company means an organization that wholly or partially owns or operates one or more EPA Protocol gas production sites.

* * * * *

PART 75—CONTINUOUS EMISSION MONITORING

3. The authority citation for part 75 continues to read as follows:

Authority: 42 U.S.C. 7601, 7651k, and 7651k note.

§ 75.2 [Amended]

4. Section 75.2 is amended by removing paragraph (d).

5. Section 75.4 is amended by:

a. Revising paragraphs (b)(2) and (c)(2);

b. Revising paragraph (d) introductory text; and

c. Revising paragraphs (d)(1) and (e), to read as follows:

§ 75.4 Compliance dates.

* * * * *

(b) * * *

(2) 180 calendar days after the date the unit commences commercial operation, notice of which date shall be provided under subpart G of this part.

(c) * * *

(2) 180 calendar days after the date on which the unit becomes subject to the requirements of the Acid Rain Program, notice of which date shall be provided under subpart G of this part.

(d) This paragraph (d) applies to affected units under the Acid Rain Program and to units subject to a State or Federal pollutant mass emissions reduction program that adopts the emission monitoring and reporting provisions of this part. In accordance with § 75.20, for an affected unit which, on the applicable compliance date, is either in long-term cold storage (as defined in § 72.2 of this chapter) or is shut down as the result of a planned outage or a forced outage, thereby preventing the required continuous monitoring system certification tests from being completed by the compliance date, the owner or operator shall provide notice of such unit storage or outage in accordance with § 75.61(a)(3) or § 75.61(a)(7), as applicable. For the planned and unplanned unit outages described in this paragraph (d), the owner or operator shall ensure that all of the continuous monitoring systems for SO_2, NO_X, CO_2, opacity, and volumetric flow rate required under this part (or under the applicable State or Federal mass emissions reduction program) are installed and that all required certification tests are completed no later than 90 unit operating days or 180 calendar days (whichever occurs first) after the date that the unit recommences commercial operation, notice of which date shall be provided under § 75.61(a)(3) or § 75.61(a)(7), as applicable. The owner or operator shall determine and report SO_2 concentration, NO_X emission rate, CO_2 concentration, and flow rate data (as applicable) for all unit operating hours after the applicable compliance date until all of the required certification tests are successfully completed, using either:

(1) The maximum potential concentration of SO_2 (as defined in section 2.1.1.1 of appendix A to this part), the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter, the maximum potential

flow rate, as defined in section 2.1.4.1 of appendix A to this part, or the maximum potential CO_2 concentration, as defined in section 2.1.3.1 of appendix A to this part; or

* * * * *

(e) In accordance with § 75.20, if the owner or operator of an affected unit completes construction of a new stack or flue, flue gas desulfurization system, or add-on NO_X emission controls after the applicable deadline in paragraph (a) or (b) of this section:

(1) The owner or operator shall ensure that all required certification and/or recertification and/or diagnostic tests of the monitoring systems required under this part (*i.e.*, the SO_2, NO_X, CO_2, opacity, and volumetric flow rate monitoring systems, as applicable) are completed not later than 90 unit operating days or 180 calendar days (whichever occurs first) after:

(i) The date that emissions first exit to the atmosphere through the new stack or flue, notice of which date shall be provided under subpart G of this part; or

(ii) The date that reagent is first injected into the flue gas desulfurization system or add-on NO_X emission controls, notice of which date shall be provided under subpart G of this part.

(2) If the project involves both new stack or flue construction and installation of add-on emission controls, the 90 unit operating days and 180 calendar days shall be reckoned from the date that emissions first exit to the atmosphere through the new stack or flue.

(3) The owner or operator shall determine and report SO_2 concentration, NO_X emission rate, CO_2 concentration, and volumetric flow rate data for all unit operating hours after emissions first pass through the new stack or flue, or reagent is injected into the flue gas desulfurization system or add-on NO_X emission controls (as applicable) until all required certification and/or recertification and/or diagnostic tests are successfully completed, using either:

(i) The applicable missing data substitution procedures under §§ 75.31 through 75.37; or

(ii) The conditional data validation provisions of § 75.20(b)(3); or

(iii) Reference methods under § 75.22(b); or

(iv) Another procedure approved by the Administrator pursuant to a petition under § 75.66.

* * * * *

6. Section 75.6 is amended by:

a. Removing and reserving paragraphs (a)(38), (a)(43), and (a)(44); and

b. Revising paragraphs (a)(48) and (f)(3) to read as follows:

§ 75.6 Incorporation by reference.

* * * * *

(a) * * *

(38) [Reserved]

* * * * *

(43) [Reserved]

(44) [Reserved]

* * * * *

(48) ASTM D7036–04, Standard Practice for Competence of Air Emission Testing Bodies, for § 72.2, § 75.59(a)(9)(xi)(iii), (a)(15)(iii), (b)(6)(iii), (d)(4)(iii), and appendix A, § 6.1.2 of this part.

* * * * *

(f) * * *

(3) American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapter 4—Proving Systems, Section 2—Pipe Provers (Provers Accumulating at Least 10,000 Pulses), Second Edition, March 2001, Section 3—Small Volume Provers, First Edition, and Section 5—Master-Meter Provers, Second Edition, May 2000, for appendix D to this part.

* * * * *

7. Section 75.10 is amended by:

a. Revising the second sentence of paragraph (d)(1); and

b. Revising the first sentence of paragraph (d)(3), to read as follows:

§ 75.10 General operating requirements.

* * * * *

(d) * * *

(1) * * * The owner or operator shall reduce all SO_2 concentrations, volumetric flow, SO_2 mass emissions, CO_2 concentration, O_2 concentration, CO_2 mass emissions (if applicable), NO_X concentration, and NO_X emission rate data collected by the monitors to hourly averages. * * *

* * * * *

(3) Failure of an SO_2, CO_2, or O_2 emissions concentration monitor, NO_X concentration monitor, flow monitor, moisture monitor, or NO_X-diluent continuous emission monitoring system to acquire the minimum number of data points for calculation of an hourly average in paragraph (d)(1) of this section shall result in the failure to obtain a valid hour of data and the loss of such component data for the entire hour. * * *

* * * * *

§ 75.15 [Removed and reserved]

8. Section 75.15 is removed and reserved as follows:

9. Section 75.20 is amended by:

a. Revising paragraph (a)(5)(i);

b. Revising the first sentence of paragraph (b) introductory text;

c. Revising paragraph (c)(1) introductory text;

d. Revising paragraphs (c)(1)(ii) and (c)(1)(iii);

e. Removing paragraph (c)(1)(vi);

f. Removing and reserving paragraph (c)(9); and

g. Removing paragraph (d)(2)(ix), to read as follows:

§ 75.20 Initial certification and recertification procedures.

(a) * * *

(5) * * *

(i) Until such time, date, and hour as the continuous emission monitoring system can be adjusted, repaired, or replaced and certification tests successfully completed (or, if the conditional data validation procedures in paragraphs (b)(3)(ii) through (b)(3)(ix) of this section are used, until a probationary calibration error test is passed following corrective actions in accordance with paragraph (b)(3)(ii) of this section), the owner or operator shall substitute the following values, as applicable, for each hour of unit operation during the period of invalid data specified in paragraph (a)(4)(iii) of this section or in § 75.21: The maximum potential concentration of SO_2, as defined in section 2.1.1.1 of appendix A to this part, to report SO_2 concentration; the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter, to report NO_X emissions in lb/mmBtu; the maximum potential concentration of NO_X, as defined in section 2.1.2.1 of appendix A to this part, to report NO_X emissions in ppm (when a NO_X concentration monitoring system is used to determine NO_X mass emissions, as defined under § 75.71(a)(2)); the maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to this part, to report volumetric flow; the maximum potential concentration of CO_2, as defined in section 2.1.3.1 of appendix A to this part, to report CO_2 concentration data; and either the minimum potential moisture percentage, as defined in section 2.1.5 of appendix A to this part or, if Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A to part 60 of this chapter is used to determine NO_X emission rate, the maximum potential moisture percentage, as defined in section 2.1.6 of appendix A to this part; and

* * * * *

(b) *Recertification approval process.* Whenever the owner or operator makes a replacement, modification, or change in a certified continuous emission monitoring system or continuous opacity monitoring system that may significantly affect the ability of the system to accurately measure or record the SO_2 or CO_2 concentration, stack gas volumetric flow rate, NO_X emission rate,

NO_X concentration, percent moisture, or opacity, or to meet the requirements of § 75.21 or appendix B to this part, the owner or operator shall recertify the continuous emission monitoring system or continuous opacity monitoring system, according to the procedures in this paragraph. * * *

* * * * *

(c) * * *

(1) For each SO_2 pollutant concentration monitor, each NO_X concentration monitoring system used to determine NO_X mass emissions, as defined under § 75.71(a)(2), and each NO_X-diluent continuous emission monitoring system:

* * * * *

(ii) A linearity check, where, for the NO_X-diluent continuous emission monitoring system, the test is performed separately on the NO_X pollutant concentration monitor and the diluent gas monitor;

(iii) A relative accuracy test audit. For the NO_X-diluent continuous emission monitoring system, the RATA shall be done on a system basis, in units of lb/mmBtu. For the NO_X concentration monitoring system, the RATA shall be done on a ppm basis;

* * * * *

(9) [Reserved]

* * * * *

10. Section 75.21 is amended by:

a. Revising paragraph (a)(3); and

b. Adding paragraphs (f) and (g), to read as follows:

§ 75.21 Quality assurance and quality control requirements.

(a) * * *

(3) The owner or operator shall perform quality assurance upon a reference method backup monitoring system according to the requirements of Method 2, 6C, 7E, or 3A in Appendices A–1, A–2 and A–4 to part 60 of this chapter (supplemented, as necessary, by guidance from the Administrator), instead of the procedures specified in appendix B to this part.

* * * * *

(f) *Requirements for Air Emission Testing.* On and after [DATE THAT IS SIX MONTHS FROM THE EFFECTIVE DATE OF FINAL RULE], relative accuracy testing under § 75.74(c)(2)(ii), section 6.5 of appendix A to this part, and section 2.3.1 of appendix B to this part, and stack testing under § 75.19 and section 2.1 of appendix E to this part shall be performed by an "Air Emission Testing Body", as defined in § 72.2 of this chapter. Conformance to the requirements of ASTM D7036–04, referred to in section 6.1.2 of appendix A to this part, section 1.1.4 of appendix B to this part, and section 2.1 of appendix E to this part shall apply only to these tests. Tests and activities under this part that do not have to be performed by an AETB as defined in § 72.2 include daily CEMS operation, daily calibration error checks, daily flow interference checks, quarterly linearity checks, routine maintenance of CEMS, voluntary emissions testing, or emissions testing required under other regulations.

(g) *Requirements for EPA Protocol Gas Verification Program.* Any EPA Protocol gas production site that chooses to participate in the EPA Protocol Gas Verification Program (PGVP) must notify the Administrator of its intent to participate. An EPA Protocol gas production site's initial participation shall commence immediately upon such notification and shall extend through the end of the calendar year in which notification is provided. EPA will issue a vendor ID to each participating EPA Protocol gas production site. In each year of the PGVP, EPA may audit up to four EPA Protocol gas cylinders from each participating EPA Protocol gas production site.

(1) A production site participating in the PGVP shall provide the following information in its initial and ongoing notifications to EPA:

(i) The specialty gas company name which owns or operates the production site;

(ii) The name and address of that participating EPA Protocol gas production site, owned or operated by the specialty gas company; and

(iii) The name, e-mail address, and telephone number of a contact person for that participating EPA Protocol gas production site.

(2) An EPA Protocol gas production site that elects to continue participating in the PGVP in the next calendar year must notify the Administrator of its intent to continue in the program by December 31 of the current year by submitting to EPA the information described in paragraph (g)(1) of this section.

(3) EPA Protocol gas production sites shall provide the initial and on-going notifications described in paragraph (g)(1) of this section by following the instructions on the Forms page of the CAMD Web site (*http://www.epa.gov/airmarkets/business/forms.html*). A list of the names of EPA Protocol gas production sites participating in the PGVP will be made publicly available by posting on EPA Web sites.

(4) EPA may remove an EPA Protocol gas production site from the list of PGVP participants for any of the following reasons:

(i) If the EPA Protocol gas production site fails to provide all of the information required by paragraph (g)(1) of this section;

(ii) If, after being notified that its EPA Protocol gas cylinders are being audited by EPA, the EPA Protocol gas production site fails to cancel its invoice or to credit the purchaser's account for the cylinders; or

(iii) If, after the EPA Protocol gas production site is notified that its EPA Protocol gas cylinders are being audited, EPA does not receive an electronic audit report required by paragraph (g)(9)(iv) of this section for the EPA Protocol gas production site's cylinders.

(5) EPA may relist an EPA Protocol gas production site as follows:

(i) An EPA Protocol gas production site may be relisted immediately after its failure is remedied if the only reason for removal from the list of PGVP participants is failure to provide all of the information required by paragraph (g)(1) of this section;

(ii) If EPA does not receive written proof of a credit receipt or of cancellation of the invoice for the cylinders from the EPA Protocol gas production site within two weeks of notifying the EPA Protocol gas production site that its cylinders are being audited by EPA, the cylinders shall be returned to the EPA Protocol gas production site and that EPA Protocol gas production site shall not be eligible for relisting until December 31 of the current year and until it submits to EPA the information required by paragraph (g)(1) of this section, in accordance with the procedures in paragraphs (g)(2) and (g)(3) of this section; and

(iii) Any EPA Protocol gas production site which is notified by EPA that its cylinders are being audited and for whom EPA does not receive an electronic audit report required by paragraph (g)(9)(iv) of this section, shall not be eligible for relisting until December 31 of the next year and until it submits to EPA the information required by paragraph (g)(1) of this section, in accordance with the procedures in paragraphs (g)(2) and (g)(3) of this section.

(6) For each affected unit under this part that uses EPA Protocol gases, the owner or operator must obtain such gases from either an EPA Protocol gas production site that is on the EPA list of sites participating in the PGVP at the time the owner or operator procures such gases or from a reseller that sells to the owner or operator unaltered EPA Protocol gases produced by an EPA Protocol gas production site that is on the EPA list of participating sites. In the

event that an EPA Protocol gas production site is removed from the list of PGVP participants after such gases are procured, but before the gases have been consumed, the gas cylinders may continue to be used for the purposes of this part until the earlier of the cylinder's expiration date or the date on which the cylinder gas pressure reaches 150 psig.

(7) EPA Protocol gas cylinders purchased prior to [EFFECTIVE DATE OF FINAL RULE] from a production site that is not participating in the PGVP may be used for the purposes of this part until the earlier of the cylinder's expiration date or the date on which the cylinder gas pressure reaches 150 psig.

(8) If EPA notifies a participating EPA Protocol gas production site that its EPA Protocol gas cylinders are being audited and identifies the purchaser as an EPA representative or contractor participating in the audit process, the production site shall then either cancel that purchaser's invoice or credit that purchaser's account for the purchase of those EPA Protocol gas cylinders, and provide sufficient funding to NIST for analysis of those EPA Protocol gas cylinders by NIST, and for the production site's pro-rata share of a NIST electronic audit report on all cylinders in the current audit, as specified in paragraphs (g)(9)(i) through (g)(9)(v) of this section, for demurrage, and for return shipment of its cylinders.

(9) If EPA notifies a participating EPA Protocol gas production site that its EPA Protocol gas cylinders are being audited, then:

(i) Each participating EPA Protocol gas production site must reach formal agreement with NIST to analyze its EPA Protocol gas cylinders provided for audit as soon after NIST receives the batch containing those cylinders as possible, preferably within two weeks, using analytical procedures consistent with metrology institute practices and at least as rigorous as the "EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards" (Traceability Protocol), September 1997 (EPA–600/R–97/121) or equivalent written cylinder analysis protocol that has been approved by EPA.

(ii) Each cylinder's concentration must be determined by NIST and the results compared to each cylinder's certification documentation and tag value to establish conformance with section 5.1 of appendix A to this part. After NIST analysis, each cylinder must be provided with a NIST analyzed concentration with an uncertainty of plus or minus 1.0 percent (inclusive) or better, unless otherwise approved by EPA.

(iii) The certification documentation accompanying each cylinder must be verified in the audit report as meeting the requirements of the Traceability Protocol or a revised procedure approved by the Administrator.

(iv) Each participating EPA Protocol gas production site shall have NIST provide all of the information required by paragraphs (g)(9)(ii) through (g)(9)(v) of this section in an audit report. The audit report shall be submitted electronically by NIST to EPA upon completion of the current audit. The audit report shall contain complete documentation of the NIST procedures used to analyze the cylinders, including the analytical reference standards, analytical method, analytical method uncertainty, analytical instrumentation, and instrument calibration procedures. The audit report shall include a table with the information and in the format specified by Figure 3 (or the Note below Figure 3, as applicable) of appendix B to this part or such revised format as approved by the Administrator. The Agency will post the results of the NIST analyses in the same format on EPA Web sites.

(v) For EPA Protocol gas production sites that produce EPA Protocol gas cylinders claiming NIST traceability for both NO and NO_X concentrations in the same cylinder, if analyzed by NIST for the PGVP, such cylinders must be analyzed by NIST for both the NO and NO_X components (where total NO_X is determined by NO plus NO_2) and the results of the analyses shall be included in the audit report.

(10) After analysis by NIST, each EPA Protocol gas cylinder shall be returned to the EPA Protocol gas production site that provided it.

(11) The data validation procedures under §§ 2.1.4, 2.2.3, and 2.3.2 of appendix B to this part apply.

11. Section 75.22 is amended by:

a. Revising paragraph (a) introductory text;

b. Revising paragraph (a)(5)(iv);

c. Adding paragraph (a)(5)(v)

d. Removing paragraph (a)(7);

e. Revising paragraph (b) introductory text; and

f. Removing paragraphs (b)(5) through (b)(8), to read as follows:

§ 75.22 Reference test methods.

(a) The owner or operator shall use the following methods, which are found in appendices A–1 through A–4 to part 60 of this chapter, to conduct the following tests: Monitoring system tests for certification or recertification of continuous emission monitoring Systems; NO_X emission tests of low mass emission units under § 75.19(c)(1)(iv); NO_X emission tests of excepted monitoring systems under appendix E to this part; and required quality assurance and quality control tests:

* * * * *

(5) * * *

(iv) Section 8.6 of the method allowing for the use of "Dynamic Spiking" as an alternative to the interference and system bias checks of the method. Dynamic spiking may be conducted (optionally) as an additional quality assurance check; and

(v) That portion of Section 8.5 of the method allowing multiple sampling runs to be conducted before performing the post-run system bias check or system calibration error check.

* * * * *

(b) The owner or operator may use any of the following methods, which are found in appendices A–1 through A–4 to part 60 of this chapter, as a reference method backup monitoring system to provide quality-assured monitor data:

* * * * *

12. Section 75.24 is amended by revising paragraph (d) to read as follows:

§ 75.24 Out-of-control periods and adjustment for system bias.

* * * * *

(d) When the bias test indicates that an SO_2 monitor, a flow monitor, a NO_X-diluent continuous emission monitoring system, or a NO_X concentration monitoring system used to determine NO_X mass emissions, as defined in § 75.71(a)(2), is biased low (*i.e.,* the arithmetic mean of the differences between the reference method value and the monitor or monitoring system measurements in a relative accuracy test audit exceed the bias statistic in section 7 of appendix A to this part), the owner or operator shall adjust the monitor or continuous emission monitoring system to eliminate the cause of bias such that it passes the bias test or calculate and use the bias adjustment factor as specified in section 2.3.4 of appendix B to this part.

* * * * *

13. Section 75.31 is amended by revising paragraphs (a) and (b) to read as follows:

§ 75.31 Initial missing data procedures.

(a) During the first 720 quality-assured monitor operating hours following initial certification of the required SO_2, CO_2, O_2, or moisture monitoring system(s) at a particular unit or stack location (*i.e.,* the date and time

at which quality assured data begins to be recorded by CEMS(s) installed at that location), and during the first 2,160 quality assured monitor operating hours following initial certification of the required NO_X-diluent, NO_X concentration, or flow monitoring system(s) at the unit or stack location, the owner or operator shall provide substitute data required under this subpart according to the procedures in paragraphs (b) and (c) of this section. The owner or operator of a unit shall use these procedures for no longer than three years (26,280 clock hours) following initial certification.

(b) *SO_2, CO_2,* or *O_2 concentration data, and moisture data.* For each hour of missing SO_2 or CO_2 emissions concentration data (including CO_2 data converted from O_2 data using the procedures in appendix F of this part), or missing O_2 or CO_2 diluent concentration data used to calculate heat input, or missing moisture data, the owner or operator shall calculate the substitute data as follows:

(1) Whenever prior quality-assured data exist, the owner or operator shall substitute, by means of the data acquisition and handling system, for each hour of missing data, the average of the hourly SO_2, CO_2, or O_2 concentrations or moisture percentages recorded by a certified monitor for the unit operating hour immediately before and the unit operating hour immediately after the missing data period.

(2) Whenever no prior quality assured SO_2, CO_2, or O_2 concentration data or moisture data exist, the owner or operator shall substitute, as applicable, for each hour of missing data, the maximum potential SO_2 concentration or the maximum potential CO_2 concentration or the minimum potential O_2 concentration or (unless Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A–7 to part 60 of this chapter is used to determine NO_X emission rate) the minimum potential moisture percentage, as specified, respectively, in sections 2.1.1.1, 2.1.3.1, 2.1.3.2 and 2.1.5 of appendix A to this part. If Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A–7 to part 60 of this chapter is used to determine NO_X emission rate, substitute the maximum potential moisture percentage, as specified in section 2.1.6 of appendix A to this part.

* * * * *

14. Section 75.32 is amended by revising the first sentence of paragraph (a) introductory text, to read as follows:

§ 75.32 Determination of monitor data availability for standard missing data procedures.

(a) Following initial certification of the required SO_2, CO_2, O_2, or moisture monitoring system(s) at a particular unit or stack location (*i.e.,* the date and time at which quality assured data begins to be recorded by CEMS(s) at that location), the owner or operator shall begin calculating the percent monitor data availability as described in paragraph (a)(1) of this section, and shall, upon completion of the first 720 quality-assured monitor operating hours, record, by means of the automated data acquisition and handling system, the percent monitor data availability for each monitored parameter. * * *

* * * * *

15. Section 75.33 is amended by:

a. Revising the section heading; and

b. Revising Table 1 and the footnotes below Table 1, to read as follows:

§ 75.33 Standard missing data procedures for SO_2, NO_X, and flow rate.

* * * * *

TABLE 1—MISSING DATA PROCEDURE FOR SO_2 CEMS, CO_2 CEMS, MOISTURE CEMS, AND DILUENT (CO_2 OR O_2) MONITORS FOR HEAT INPUT DETERMINATION

Trigger conditions		Calculation routines	
Monitor data availability (percent)	Duration (N) of CEMS outage (hours)[2]	Method	Lookback period
95 or more	N ≤ 24	Average	HB/HA.
	N > 24	For SO_2, CO_2, and H_2O**, the greater of:	HB/HA.
		Average	HB/HA.
		90th percentile	720 hours*.
		For O_2 and H_2O^x, the lesser of:	HB/HA.
		10th percentile	720 hours*.
90 or more, but below 95	N ≤ 8	Average	HB/HA.
	N > 8	For SO_2, CO_2, and H_2O**, the greater of:	HB/HA.
		Average	HB/HA.
		95th percentile	720 hours*.
		For O_2 and H_2O^x, the lesser of:	
		Average	HB/HA.
		5th Percentile	720 hours*.
80 or more, but below 90	N > 0	For SO_2, CO_2, and H_2O**, Maximum value[1]	720 hours*.
		For O_2 and H_2O^x: Minimum value[1]	720 hours*.
Below 80	N > 0	Maximum potential concentration[3] or % (for SO_2, CO_2, and H_2O**) *or* Minimum potential concentration or % (for O_2 and H_2O^x).	None

HB/HA = hour before and hour after the CEMS outage.

* Quality-assured, monitor operating hours, during unit operation. May be either fuel-specific or non-fuel-specific. For units that report data only for the ozone season, include only quality assured monitor operating hours within the ozone season in the lookback period. Use data from no earlier than 3 years prior to the missing data period.

[1] Where a unit with add-on SO_2 emission controls can demonstrate that the controls are operating properly during the missing data period, as provided in § 75.34, the unit may use the maximum controlled concentration from the previous 720 quality-assured monitor operating hours.

[2] During unit operating hours.

[3] Where a unit with add-on SO_2 emission controls can demonstrate that the controls are operating properly during the missing data period, the unit may report the greater of: (a) The maximum expected SO_2 concentration or (b) 1.25 times the maximum controlled value from the previous 720 quality-assured monitor operating hours (see § 75.34).

x Use this algorithm for moisture except when Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A–7 to part 60 of this chapter is used for NO_X emission rate.

** Use this algorithm for moisture *only* when Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A–7 to part 60 of this chapter is used for NO_X emission rate.

* * * * *

16. Section 75.34 is amended by:

a. Revising paragraph (a)(2)(ii); and

b. Revising the first sentence of paragraph (d), to read as follows:

§ 75.34 Units with add-on emission controls.

(a) * * *

(2) * * *

(ii) For the purposes of the missing data lookback periods described under §§ 75.33 (c)(1), (c)(2), (c)(3) and (c)(5) of this section, the substitute data values shall be taken from the appropriate database, depending on the date(s) and hour(s) of the missing data period. That is, if the missing data period occurs inside the ozone season, the ozone season data shall be used to provide substitute data. If the missing data period occurs outside the ozone season, data from outside the ozone season shall be used to provide substitute data.

* * * * *

(d) In order to implement the options in paragraphs (a)(1), (a)(3) and (a)(5) of this section; and §§ 75.31(c)(3) and 75.72(c)(3), the owner or operator shall keep records of information as described in § 75.58(b)(3) to verify the proper operation of all add-on SO_2 or NO_X emission controls, during all periods of SO_2 or NO_X emission missing data.

* * *

§§ 75.38–75.39 [Removed and Reserved]

17. Sections 75.38 and 75.39 are removed and reserved.

18. Section 75.47 is amended by:

a. Revising paragraph (b)(2); and

b. Removing paragraphs (b)(3) and (c), to read as follows:

§ 75.47 Criteria for a class of affected units.

* * * * *

(b) * * *

(2) A description of the class of affected units, including data describing all of the affected units that will comprise the class.

19. Section 75.53 is amended by:

a. Revising paragraphs (g)(1)(i)(A), (g)(1)(i)(C), (g)(1)(i)(E), (g)(1)(i)(F), (g)(1)(iii) introductory text, (g)(1)(v)(F), (g)(1)(v)(G), (g)(1)(vi)(H), and (g)(1)(vi)(I);

b. Adding paragraph (g)(1)(vi)(J); and

c. Revising paragraphs (h)(2)(i) and (h)(5), to read as follows:

§ 75.53 Monitoring plan.

* * * * *

(g) * * *

(1) * * *

(i) * * *

(A) A representation of the exhaust configuration for the units in the monitoring plan. On and after [EFFECTIVE DATE OF FINAL RULE], provide the activation date and deactivation date (if applicable) of the configuration. Provide the ID number of each unit and assign a unique ID number to each common stack, common pipe multiple stack and/or multiple pipe associated with the unit(s) represented in the monitoring plan. For common and multiple stacks and/or pipes, provide the activation date and deactivation date (if applicable) of each stack and/or pipe;

* * * * *

(C) The stack exit height (ft) above ground level and ground level elevation above sea level, and the inside cross-sectional area (ft^2) at the flue exit and at the flow monitoring location (for units with flow monitors, only). Also use appropriate codes to indicate the material(s) of construction and the shape(s) of the stack or duct cross-section(s) at the flue exit and (if applicable) at the flow monitor location. On and after [EFFECTIVE DATE OF FINAL RULE], provide the activation date and deactivation date (if applicable) for the information in this paragraph (g)(1)(i)(C);

* * * * *

(E) The type(s) of emission controls that are used to reduce SO_2, NO_X, and particulate emissions from each unit. Also provide the installation date, optimization date, and retirement date (if applicable) of the emission controls, and indicate whether the controls are an original installation;

(F) Maximum hourly heat input capacity of each unit. On and after [EFFECTIVE DATE OF FINAL RULE], provide the activation date and deactivation date (if applicable) for this parameter; and

* * * * *

(iii) For each required continuous emission monitoring system, each fuel flowmeter system, and each continuous opacity monitoring system, identify and describe the major monitoring components in the monitoring system (*e.g.,* gas analyzer, flow monitor, opacity monitor, moisture sensor, fuel flowmeter, DAHS software, *etc.*). Other important components in the system (*e.g.,* sample probe, PLC, data logger, *etc.*) may also be represented in the monitoring plan, if necessary. Provide the following specific information about each component and monitoring system:

* * * * *

(v) * * *

(F) Effective date/hour, and (if applicable) inactivation date/hour of each span value. On and after [EFFECTIVE DATE OF FINAL RULE], provide the activation date and deactivation date (if applicable) for the measurement scale and dual span information in paragraphs (g)(1)(v)(A), (g)(1)(v)(G), and (g)(1)(v)(H) of this section;

(G) An indication of whether dual spans are required. If two span values are required, then, on and after [EFFECTIVE DATE OF FINAL RULE], indicate whether an autoranging analyzer is used to represent the two measurement scales; and

* * * * *

(vi) * * *

(H) Date and hour that the value is no longer effective (if applicable);

(I) For units using the excepted methodology under § 75.19, the applicable SO_2 emission factor; and

(J) On and after [EFFECTIVE DATE OF FINAL RULE], group identification code.

* * * * *

(h) * * *

(2) * * *

(i) *Electronic.* Unit operating and capacity factor information demonstrating that the unit qualifies as a peaking unit, as defined in § 72.2 of this chapter for the current calendar year or ozone season, including: Capacity factor data for three calendar years (or ozone seasons) as specified in the definition of peaking unit in § 72.2 of this chapter; the method of qualification used; and an indication of whether the data are actual or projected data. On and after [EFFECTIVE DATE OF FINAL RULE], provide the activation date and deactivation date (if applicable) for the peaking unit qualification information in this paragraph (h)(2)(i).

* * * * *

(5) For qualification as a gas-fired unit, as defined in § 72.2 of this part, the designated representative shall include in the monitoring plan, in electronic format, the following: Current calendar year, fuel usage data for three calendar years (or ozone seasons) as specified in the definition of gas-fired in § 72.2 of this chapter, the method of qualification used, and an indication of whether the data are actual or projected data. On and

after [EFFECTIVE DATE OF FINAL RULE], provide the activation date and deactivation date (if applicable) for the gas-fired unit qualification information in this paragraph (h)(5).

* * * * *

20. Section 75.57 is amended by:

a. Revising paragraph (a)(5);

b. Revising paragraph (a)(6);

c. Adding paragraph (a)(7);

d. Revising Table 4a; and

e. Removing paragraphs (i) and (j), to read as follows:

§ 75.57 General recordkeeping provisions.

* * * * *

(a) * * *

(5) The current monitoring plan as specified in § 75.53, beginning with the initial submission required by § 75.62;

(6) The quality control plan as described in section 1 of appendix B to this part, beginning with the date of provisional certification; and

(7) The information required by sections 6.1.2(b) and (c) of appendix A to this part.

* * * * *

TABLE 4a—CODES FOR METHOD OF EMISSIONS AND FLOW DETERMINATION

Code	Hourly emissions/flow measurement or estimation method
1	Certified primary emission/flow monitoring system.
2	Certified backup emission/flow monitoring system.
3	Approved alternative monitoring system.
4	Reference method: SO_2: Method 6C. Flow: Method 2 or its allowable alternatives under appendix A to part 60 of this chapter. NO_X: Method 7E. CO_2 or O_2: Method 3A.
5	For units with add-on SO_2 and/or NO_X emission controls: SO_2 concentration or NO_X emission rate estimate from Agency preapproved parametric monitoring method.
6	Average of the hourly SO_2 concentrations, CO_2 concentrations, O_2 concentrations, NO_X concentrations, flow rates, moisture percentages or NO_X emission rates for the hour before and the hour following a missing data period.
7	Initial missing data procedures used. Either: (a) the average of the hourly SO_2 concentration, CO_2 concentration, O_2 concentration, or moisture percentage for the hour before and the hour following a missing data period; or (b) the arithmetic average of all NO_X concentration, NO_X emission rate, or flow rate values at the corresponding load range (or a higher load range), or at the corresponding operational bin (non-load-based units, only); or (c) the arithmetic average of all previous NO_X concentration, NO_X emission rate, or flow rate values (non-load-based units, only).
8	90th percentile hourly SO_2 concentration, CO_2 concentration, NO_X concentration, flow rate, moisture percentage, or NO_X emission rate or 10th percentile hourly O_2 concentration or moisture percentage in the applicable lookback period (moisture missing data algorithm depends on which equations are used for emissions and heat input).
9	95th percentile hourly SO_2 concentration, CO_2 concentration, NO_X concentration, flow rate, moisture percentage, or NO_X emission rate or 5th percentile hourly O_2 concentration or moisture percentage in the applicable lookback period (moisture missing data algorithm depends on which equations are used for emissions and heat input).
10	Maximum hourly SO_2 concentration, CO_2 concentration, NO_X concentration, flow rate, moisture percentage, or NO_X emission rate or minimum hourly O_2 concentration or moisture percentage in the applicable lookback period (moisture missing data algorithm depends on which equations are used for emissions and heat input).
11	Average of hourly flow rates, NO_X concentrations or NO_X emission rates in corresponding load range, for the applicable lookback period. For non-load-based units, report either the average flow rate, NO_X concentration or NO_X emission rate in the applicable lookback period, or the average flow rate or NO_X value at the corresponding operational bin (if operational bins are used).
12	Maximum potential concentration of SO_2, maximum potential concentration of CO_2, maximum potential concentration of NO_X maximum potential flow rate, maximum potential NO_X emission rate, maximum potential moisture percentage, minimum potential O_2 concentration or minimum potential moisture percentage, as determined using § 72.2 of this chapter and section 2.1 of appendix A to this part (moisture missing data algorithm depends on which equations are used for emissions and heat input).
13	Maximum expected concentration of SO_2, maximum expected concentration of NO_X, or maximum controlled NO_X emission rate. (*See* § 75.34(a)(5)).
14	Diluent cap value (if the cap is replacing a CO_2 measurement, use 5.0 percent for boilers and 1.0 percent for turbines; if it is replacing an O_2 measurement, use 14.0 percent for boilers and 19.0 percent for turbines).
15	1.25 times the maximum hourly controlled SO_2 concentration, Hg concentration, NO_X concentration at the corresponding load or operational bin, or NO_X emission rate at the corresponding load or operational bin, in the applicable lookback period (*See* § 75.34(a)(5)).
16	SO_2 concentration value of 2.0 ppm during hours when only "very low sulfur fuel", as defined in § 72.2 of this chapter, is combusted.
17	Like-kind replacement non-redundant backup analyzer.
19	200 percent of the MPC; default high range value.
20	200 percent of the full-scale range setting (full-scale exceedance of high range).
21	Negative hourly CO_2 concentration, SO_2 concentration, NO_X concentration, percent moisture, or NO_X emission rate replaced with zero.
22	Hourly average SO_2 or NO_X concentration, measured by a certified monitor at the control device inlet (units with add-on emission controls only).
23	Maximum potential SO_2 concentration, NO_X concentration, CO_2 concentration, or NO_X emission rate, or minimum potential O_2 concentration or moisture percentage, for an hour in which flue gases are discharged through an unmonitored bypass stack.
24	Maximum expected NO_X concentration, or maximum controlled NO_X emission rate for an hour in which flue gases are discharged downstream of the NO_X emission controls through an unmonitored bypass stack, and the add-on NO_X emission controls are confirmed to be operating properly.
25	Maximum potential NO_X emission rate (MER). (Use only when a NO_X concentration full-scale exceedance occurs and the diluent monitor is unavailable.)
26	1.0 mmBtu/hr substituted for Heat Input Rate for an operating hour in which the calculated Heat Input Rate is zero or negative.
40	Fuel specific default value (or prorated default value) used for the hour.
53	Other quality-assured data approved through petition. These are treated as available hours for percent monitor availability calculations and are included in missing data lookback.

TABLE 4a—CODES FOR METHOD OF EMISSIONS AND FLOW DETERMINATION—Continued

Code	Hourly emissions/flow measurement or estimation method
54	Other quality assured methodologies approved through petition. These hours are included in missing data lookback and are treated as unavailable hours for percent monitor availability calculations.
55	Other substitute data approved through petition. These hours are not included in missing data lookback and are treated as unavailable hours for percent monitor availability calculations.

* * * * *

21. Section 75.58 is amended by:

a. Revising paragraphs (b)(3) and (d)(4)(ii); and

b. Adding paragraph (d)(4)(iii), to read as follows:

§ 75.58 General recordkeeping provisions for specific situations.

* * * * *

(b) * * *

(3) Except as otherwise provided in § 75.34(d), for units with add-on SO_2 or NO_X emission controls following the provisions of §§ 75.34(a)(1), (a)(2), (a)(3) or (a)(5), the owner or operator shall record:

(i) Parametric data which demonstrate, for each hour of missing SO_2 or NO_X emission data, the proper operation of the add-on emission controls, as described in the quality assurance/quality control program for the unit. The parametric data shall be maintained on site and shall be submitted, upon request, to the Administrator, EPA Regional office, State, or local agency;

(ii) A flag indicating, for each hour of missing SO_2 or NO_X emission data, either that the add-on emission controls are operating properly, as evidenced by all parameters being within the ranges specified in the quality assurance/quality control program, or that the add-on emission controls are not operating properly.

* * * * *

(d) * * *

(4) * * *

(ii) For boilers, hourly average boiler O_2 reading (percent, rounded to the nearest tenth) (flag if value exceeds by more than 2 percentage points the O_2 level recorded at the same heat input during the previous NO_X emission rate test); and

(iii) On and after [EFFECTIVE DATE OF FINAL RULE], operating condition codes for the following:

(A) Unit operated on emergency fuel;

(B) Correlation curve for the fuel mixture has expired;

(C) Operating parameter is outside of normal limits;

(D) Uncontrolled hour;

(E) Operation above highest tested heat input rate point on the curve;

(F) Operating parameter data missing or invalid;

(G) Designated operational and control equipment parameters within normal limits; and

(H) Operation below lowest tested heat input rate point on the curve.

* * * * *

22. Section 75.59 is amended by:

a. Revising paragraph (a)(1) introductory text;

b. Revising paragraph (a)(1)(iii);

c. Revising paragraphs (a)(3) introductory text, (a)(5) introductory text, and (a)(5)(ii) introductory text;

d. Revising paragraph (a)(5)(ii)(L);

e. Revising paragraphs (a)(5)(iii)(F) and (G);

f. Adding paragraph (a)(5)(iii)(H);

g. Revising paragraph (a)(6) introductory text;

h. Removing and reserving paragraph (a)(7)(vii);

i. Removing the title of reserved paragraph (a)(7)(viii);

j. Removing paragraph (a)(7)(x);

k. Revising paragraph (a)(9) introductory text;

l. Revising paragraph (a)(9)(vi);

m. Adding paragraphs (a)(9)(x) and (xi);

n. Revising paragraphs (a)(12)(iv)(E) and (F);

o. Adding paragraph (a)(12)(iv)(G);

p. Removing and reserving paragraph (a)(14);

q. Adding paragraph (a)(15);

r. Adding paragraph (b)(6);

s. Revising paragraph (c) introductory text;

t. Revising paragraphs (d)(3)(x) and (xi);

u. Adding paragraphs (d)(3)(xii) and (xiii);

v. Adding paragraph (d)(4);

w. Removing paragraph (e); and

x. Redesignating paragraph (f) as paragraph (e), to read as follows:

§ 75.59 Certification, quality assurance, and quality control record provisions.

* * * * *

(a) * * *

(1) For each SO_2 or NO_X pollutant concentration monitor, flow monitor, CO_2 emissions concentration monitor (including O_2 monitors used to determine CO_2 emissions), or diluent gas monitor (including wet- and dry-basis O_2 monitors used to determine percent moisture), the owner or operator shall record the following for all daily and 7-day calibration error tests, and all off-line calibration demonstrations, including any follow-up tests after corrective action:

* * * * *

(iii) On and after [EFFECTIVE DATE OF FINAL RULE], date, hour, and minute;

* * * * *

(3) For each SO_2 or NO_X pollutant concentration monitor, CO_2 emissions concentration monitor (including O_2 monitors used to determine CO_2 emissions), or diluent gas monitor (including wet- and dry-basis O_2 monitors used to determine percent moisture), the owner or operator shall record the following for the initial and all subsequent linearity check(s), including any follow-up tests after corrective action.

* * * * *

(5) For each SO_2 pollutant concentration monitor, flow monitor, each CO_2 emissions concentration monitor (including any O_2 concentration monitor used to determine CO_2 mass emissions or heat input), each NO_X-diluent continuous emission monitoring system, each NO_X concentration monitoring system, each diluent gas (O_2 or CO_2) monitor used to determine heat input, each moisture monitoring system, and each approved alternative monitoring system, the owner or operator shall record the following information for the initial and all subsequent relative accuracy test audits:

* * * * *

(ii) Individual test run data from the relative accuracy test audit for the SO_2 concentration monitor, flow monitor, CO_2 emissions concentration monitor, NO_X-diluent continuous emission monitoring system, diluent gas (O_2 or CO_2) monitor used to determine heat input, NO_X concentration monitoring system, moisture monitoring system, or approved alternative monitoring system, including:

* * * * *

(L) Average gross unit load, expressed as a total gross unit load, rounded to the nearest MWe, or as steam load, rounded to the nearest thousand lb/hr; on and after [EFFECTIVE DATE OF FINAL

RULE], for units that do not produce electrical or thermal output, record, instead, the average stack gas velocity at the operating level being tested; and

* * * * *

(iii) * * *

(F) Bias test results as specified in section 7.6.4 of appendix A to this part;

(G) Bias adjustment factor from Equation A–12 in appendix A to this part for any monitoring system that failed the bias test (except as otherwise provided in section 7.6.5 of appendix A to this part) and 1.000 for any monitoring system that passed the bias test; and

(H) On and after [EFFECTIVE DATE OF FINAL RULE], RATA frequency code.

* * * * *

(6) For each SO_2, NO_X, or CO_2 pollutant concentration monitor, each component of a NO_X-diluent continuous emission monitoring system, and each CO_2 or O_2 monitor used to determine heat input, the owner or operator shall record the following information for the cycle time test:

* * * * *

(7) * * *

(vii) [Reserved]

(viii) [Reserved]

* * * * *

(9) When hardcopy relative accuracy test reports, certification reports, recertification reports, or semiannual or annual reports for gas or flow rate CEMS are required or requested under § 75.60(b)(6) or § 75.63, the reports shall include, at a minimum, the following elements (as applicable to the type(s) of test(s) performed):

* * * * *

(vi) Laboratory calibrations of the source sampling equipment.

* * * * *

(x) For testing involving use of EPA Protocol gases, the owner or operator shall record in electronic and hardcopy format the following information, as applicable:

(A) On and after [DATE THAT IS SIX MONTHS FROM THE EFFECTIVE DATE OF FINAL RULE], for each gas monitor, for both low and high measurement ranges, record the following information for the mid-level or high-level EPA Protocol gas (as applicable) that is used for daily calibration error tests, and the low-, mid-, and high-level gases used for quarterly linearity checks. For O_2, if purified air is used as the high-level gas for daily calibrations or linearity checks, record the following information for the low- and mid-level EPA Protocol gas used for linearity checks, instead:

(*1*) Gas level code;

(*2*) A code for the type of EPA Protocol gas used;

(*3*) Start date and hour for EPA Protocol gas type code;

(*4*) End date and hour (if applicable) for EPA Protocol gas type code;

(*5*) The PGVP vendor ID issued by EPA for the EPA Protocol gas production site that supplied the gas cylinder.

(*6*) Start date and hour for PGVP vendor ID; and

(*7*) End date and hour (if applicable) for PGVP vendor ID.

(B) On and after [DATE THAT IS SIX MONTHS FROM THE EFFECTIVE DATE OF FINAL RULE], for each usage of Reference Method 3A in appendix A–2 to part 60 of this chapter, or Method 6C or 7E in appendix A–4 to part 60 of this chapter performed using EPA Protocol gas for the certification, recertification, routine quality assurance or diagnostic testing (reportable diagnostics, only) of a Part 75 monitoring system, record the information required by paragraphs (a)(9)(x)(A)(1), (2), and (5) of this section.

(xi) On and after [DATE THAT IS SIX MONTHS FROM THE EFFECTIVE DATE OF FINAL RULE], for all RATAs performed pursuant to § 75.74(c)(2)(ii), section 6.5 of appendix A to this part and section 2.3.1 of appendix B to this part, and for all NO_X emission testing performed pursuant to section 2.1 of appendix E to this part, or § 75.19(c)(1)(iv), the owner or operator shall record the following information as provided by the AETB:

(A) The name, telephone number and e-mail address of the Air Emission Testing Body;

(B) The name of the on-site Qualified Individual, as defined in § 72.2 of this chapter;

(C) For the reference method(s) that were performed, the date that the on-site Qualified Individual took and passed the relevant qualification exam(s) required by ASTM D 7036–04; and

(D) The name and e-mail address of the qualification exam provider.

* * * * *

(12) * * *

(iv) * * *

(E) Type of extension;

(F) Quarter and year; and

(G) On and after [EFFECTIVE DATE OF FINAL RULE], fuel code for Ozone Season Only reporters under § 75.74(c).

* * * * *

(14) [Reserved]

(15) On and after [DATE THAT IS SIX MONTHS FROM THE EFFECTIVE DATE OF FINAL RULE], for all RATAs performed pursuant to § 75.74(c)(2)(ii), section 6.5 of appendix A to this part or section 2.3.1 of appendix B to this part, the owner or operator shall record in electronic format the following information as provided by the AETB:

(i) The name, telephone number and e-mail address of the Air Emission Testing Body;

(ii) The name of the on-site Qualified Individual, as defined in § 72.2 of this chapter;

(iii) For the reference method(s) that were performed, the date that the on-site Qualified Individual took and passed the relevant qualification exam(s) required by ASTM D 7036–04; and

(iv) The name and e-mail address of the qualification exam provider.

(b) * * *

(6) On and after [DATE THAT IS SIX MONTHS FROM THE EFFECTIVE DATE OF FINAL RULE], for all stack testing performed pursuant to section 2.1 of appendix E to this part, the owner or operator shall record in electronic format the following information as provided by the AETB:

(i) The name, telephone number and e-mail address of the Air Emission Testing Body;

(ii) The name of the on-site Qualified Individual, as defined in § 72.2 of this chapter;

(iii) For the reference method(s) that were performed, the date that the on-site Qualified Individual took and passed the relevant qualification exam(s) required by ASTM D 7036–04; and

(iv) The name and e-mail address of the qualification exam provider.

(c) Except as otherwise provided in § 75.58(b)(3)(i), for units with add-on SO_2 or NO_X emission controls following the provisions of § 75.34(a)(1) or (a)(2), the owner or operator shall keep the following records on-site in the quality assurance/quality control plan required by section 1 of appendix B to this part:

* * * * *

(d) * * *

(3) * * *

(x) Documentation supporting the qualification of all units in the group for reduced testing, in accordance with the criteria established in § 75.19(c)(1)(iv)(B)(*1*);

(xi) Purpose of group tests;

(xii) On and after [EFFECTIVE DATE OF FINAL RULE], the number of tests for group; and

(xiii) On and after [EFFECTIVE DATE OF FINAL RULE], the number of units in group.

(4) On and after [DATE THAT IS SIX MONTHS FROM THE EFFECTIVE DATE OF FINAL RULE], for all NO_X emission testing performed pursuant to

§ 75.19(c)(1)(iv), the owner or operator shall record in electronic format the following information as provided by the AETB:

(i) The name, telephone number and e-mail address of the Air Emission Testing Body;

(ii) The name of the on-site Qualified Individual, as defined in § 72.2 of this chapter;

(iii) For the reference method(s) that were performed, the date that the on-site Qualified Individual took and passed the relevant qualification exam(s) required by ASTM D 7036–04; and

(iv) The name and e-mail address of the qualification exam provider.

§ 75.60 [Amended]

23. Section 75.60 is amended by removing paragraph (b)(8).

24. Section 75.61 is amended by:

a. Revising paragraph (a)(1) introductory text;

b. Revising the first sentence of paragraph (a)(5) introductory text; and

c. Revising paragraph (a)(8), to read as follows:

§ 75.61 Notifications.

(a) * * *

(1) *Initial certification and recertification test notifications.* The owner or operator or designated representative for an affected unit shall submit written notification of initial certification tests and revised test dates as specified in § 75.20 for continuous emission monitoring systems, for alternative monitoring systems under subpart E of this part, or for excepted monitoring systems under appendix E to this part, except as provided in paragraphs (a)(1)(iii), (a)(1)(iv) and (a)(4) of this section. The owner or operator shall also provide written notification of testing performed under § 75.19(c)(1)(iv)(A) to establish fuel-and-unit-specific NO_X emission rates for low mass emissions units. Such notifications are not required, however, for initial certifications and recertifications of excepted monitoring systems under appendix D to this part.

* * * * *

(5) *Periodic relative accuracy test audits, appendix E retests, and low mass emissions unit retests.* The owner or operator or designated representative of an affected unit shall submit written notice of the date of periodic relative accuracy testing performed under section 2.3.1 of appendix B to this part, of periodic retesting performed under section 2.2 of appendix E to this part, and of periodic retesting of low mass emissions units performed under § 75.19(c)(1)(iv)(D), no later than 21 days prior to the first scheduled day of testing. * * *

* * * * *

(8) *Certification deadline date for new or newly affected units.* The designated representative of a new or newly affected unit shall provide notification of the date on which the relevant deadline for initial certification is reached, either as provided in § 75.4(b) or § 75.4(c), or as specified in a State or Federal SO_2 or NO_X mass emission reduction program that incorporates by reference, or otherwise adopts, the monitoring, recordkeeping, and reporting requirements of subpart F, G, or H of this part. The notification shall be submitted no later than 7 calendar days after the applicable certification deadline is reached.

* * * * *

25. Section 75.62 is amended by adding paragraph (d) to read as follows:

§ 75.62 Monitoring plan submittals.

* * * * *

(d) On and after [EFFECTIVE DATE OF FINAL RULE], consistent with § 72.21 of this chapter, a hardcopy cover letter signed by the Designated Representative (DR) or the Alternate Designated Representative (ADR) shall accompany each hardcopy monitoring plan submittal. The cover letter shall include the certification statement described in § 72.21(b) of this chapter, and shall be submitted to the applicable EPA Regional Office and to the appropriate State or local air pollution control agency. For electronic monitoring plan submittals to the Administrator, a cover letter is not required. However, at his or her discretion, the DR or ADR may include important explanatory text or comments with an electronic monitoring plan submittal, so long as the information is provided in an electronic format that is compatible with the other data required to be reported under this section.

26. Section 75.63 is amended by adding paragraph (d) to read as follows:

§ 75.63 Initial certification or recertification application.

* * * * *

(d) Consistent with § 72.21 of this chapter, a hardcopy cover letter signed by the Designated Representative (DR) or the Alternate Designated Representative (ADR) shall accompany the hardcopy portion of each certification or recertification application. The cover letter shall include the certification statement described in § 72.21(b) of this chapter, and shall be submitted to the applicable EPA Regional Office and to the appropriate State or local air pollution control agency. For the electronic portion of a certification or recertification application submitted to the Administrator, a cover letter is not required. However, at his or her discretion, the DR or ADR may include important explanatory text or comments with the electronic portion of a certification or recertification application, so long as the information is provided in an electronic format compatible with the other data required to be reported under this section.

27. Section 75.64 is amended by:

a. Revising paragraph (a)(5);

b. Revising paragraph (a)(7)(xi);

c. Revising paragraph (a)(7)(xii)(D);

d. Adding paragraph (a)(7)(xiii); and

e. Redesignating paragraph (a)(127) as paragraph (a)(12), to read as follows:

§ 75.64 Quarterly reports.

(a) * * *

(5) Except for the daily calibration error test data, daily interference check, and off-line calibration demonstration information required in § 75.59(a)(1) and (2), which must always be submitted with the quarterly report, the certification, quality assurance, and quality control information required in § 75.59 shall either be submitted prior to or concurrent with the submittal of the relevant quarterly electronic data report. On and after January 1, 2011, the information required in § 75.59(a)(9)(x), (a)(15), (b)(6), and (d)(4) shall either be submitted prior to or concurrent with the submittal of the relevant quarterly electronic data report.

* * * * *

(7) * * *

(xi) Data and results of RATAs that are aborted or invalidated due to problems with the reference method or operational problems with the unit and data and results of linearity checks that are aborted or invalidated due to problems unrelated to monitor performance;

(xii) * * *

(D) The data under § 75.59(a)(7)(ix)(A) through (F) shall be reported for all flow RATAs at rectangular stacks or ducts in which Method 2 in appendices A–1 and A–2 to part 60 of this chapter is used and a wall effects adjustment factor is applied; and

(xiii) The certification required by section 6.1.2(b) of appendix A to this part and recorded under § 75.57(a)(7).

* * * * *

Subpart I [Removed]

28. Subpart I, consisting of §§ 75.80 through 75.84 is removed.

29. Appendix A to Part 75 is amended by:

a. Revising section 1.1;
b. Removing sections 2.1.7, 2.1.7.1 through 2.1.7.4, and 2.2.3;
c. Removing paragraph (c) of section 3.1 and paragraph (3) of section 3.2;
d. Removing sections 3.3.8 and 3.4.3;
e. Revising the introductory text of section 4;
f. Revising paragraph (6) of section 4;
g. Revising paragraph (b) of Section 5.1.4;
h. Removing paragraph (c) of Section 5.1.4;
i. In section 5.1.4 by redesignating paragraph (d) as paragraph (c) and by revising newly designated paragraph (c);
j. Revising the first sentence in Section 5.1.5;
k. Removing section 5.1.9;
l. Revising section 6.1.2;
m. Revising the first sentence of section 6.2 introductory text;
n. Removing paragraphs (g) and (h) of section 6.2;
o. Revising the introductory text of section 6.3.1;
p. Revising the introductory text of sections 6.4 and 6.5;
q. Revising paragraphs (c), (e), and (g) of section 6.5;
r. Revising section 6.5.1;
s. Removing paragraph (c) of section 6.5.6;
t. Revising paragraphs (a) and (b) of section 6.5.7;
u. Revising section 6.5.10;
v. Revising the introductory text of section 7.3;
w. Revising section 7.3.1;
x. Revising the introductory text of section 7.6;
y. Revising section 7.6.1; and
z. Revising paragraphs (b) and (f) of section 7.6.5, to read as follows:

Appendix A to Part 75—Specifications and Procedures

1. Installation and Measurement Location

1.1 Gas Monitors

(a) Following the procedures in section 8.1.1 of Performance Specification 2 in appendix B to part 60 of this chapter, install the pollutant concentration monitor or monitoring system at a location where the pollutant concentration and emission rate measurements are directly representative of the total emissions from the affected unit. Select a representative measurement point or path for the monitor probe(s) (or for the path from the transmitter to the receiver) such that the SO_2, CO_2, O_2, or NO_X concentration monitoring system or NO_X-diluent CEMS (NO_X pollutant concentration monitor and diluent gas monitor) will pass the relative accuracy test (see section 6 of this appendix).

(b) It is recommended that monitor measurements be made at locations where the exhaust gas temperature is above the dew-point temperature. If the cause of failure to meet the relative accuracy tests is determined to be the measurement location, relocate the monitor probe(s).

* * * * *

4. Data Acquisition and Handling Systems

(a) Automated data acquisition and handling systems shall read and record the entire range of pollutant concentrations and volumetric flow from zero through full-scale and provide a continuous, permanent record of all measurements and required information in an electronic format. These systems also shall have the capability of interpreting and converting the individual output signals from an SO_2 pollutant concentration monitor, a flow monitor, a CO_2 monitor, an O_2 monitor, a NO_X pollutant concentration monitor, a NO_X-diluent CEMS, and a moisture monitoring system to produce a continuous readout of pollutant emission rates or pollutant mass emissions (as applicable) in the appropriate units (*e.g.,* lb/hr, lb/mmBtu, tons/hr).

(b) Data acquisition and handling systems shall also compute and record: Monitor calibration error; any bias adjustments to SO_2, NO_X, flow rate, or NO_X emission rate data; and all missing data procedure statistics specified in subpart D of this part.

(c) For an excepted monitoring system under appendix D or E of this part, data acquisition and handling systems shall:

* * * * *

(6) Provide a continuous, permanent record of all measurements and required information in an electronic format.

* * * * *

5.1 Reference Gases

* * * * *

5.1.4 EPA Protocol Gases

* * * * *

(b) EPA Protocol gas concentrations must be certified by a specialty gas company to have an analytical uncertainty to be not more than plus or minus 2.0 percent (inclusive).

(c) A copy of EPA–600/R–97/121 is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 703–605–6585 or *http://www.ntis.gov,* and from *http://www.epa.gov/ttn/emc/news.html.*

5.1.5 Research Gas Mixtures

Concentrations of research gas mixtures, as defined in § 72.2 of this chapter, must be certified by the National Institute of Standards and Technology to be within plus or minus 2.0 percent (inclusive) of the concentration specified on the cylinder label (*i.e.,* the tag value) in order to be used as calibration gas under this part.* * *

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6.1 General Requirements

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6.1.2 Requirements for Air Emission Testing

(a) On and after [DATE THAT IS SIX MONTHS FROM THE EFFECTIVE DATE OF FINAL RULE], all relative accuracy test audits (RATAs) of CEMS under this part, and stack testing in § 75.19 and Appendix E to this part shall be conducted by an Air Emission Testing Body (AETB) which has provided to the owner or operator of an affected unit the documentation required in paragraph (b) of this section, demonstrating its conformance to ASTM D7036–04 (incorporated by reference under § 75.6 of this part).

(b) The owner or operator shall obtain from the AETB a certification that as of the time of testing the AETB is operating in conformance with ASTM D7036–04. This certification shall be provided in the form of either:

(1) A certificate of accreditation or interim accreditation for the relevant test methods issued by a recognized, national accreditation body; or

(2) A letter of certification for the relevant test methods signed by a member of the senior management staff of the AETB.

(c) The owner or operator shall obtain from the AETB the information required under paragraphs § 75.59(a)(15), (b)(6), and (d)(4), as applicable.

(d) While under no obligation to request the following information from an AETB, to review the information provided by the AETB in response to such a request, or to take any other action related to the response, it is recommended that the owner or operator request that the AETB produce the following:

(1) The AETB's quality manual;

(2) The results of any external or internal audits performed by the AETB during the prior 12 months;

(3) A written description of any corrective actions being implemented by the AETB during the prior 12 months; and

(4) Any AETB training records for the prior 12 months.

(e) All relative accuracy testing and stack testing in § 75.19 and Appendix E to this part shall be conducted or overseen on site by at least one Qualified Individual, as defined in § 72.2 of this chapter with respect to the methods employed in the test project. When a QI oversees a test, the QI shall actively observe the test for its duration. If a QI conducts a test, the QI shall actively conduct the test for its duration. However, allowance is made for normal activities of a QI who is overseeing or conducting a test, *e.g.,* bathroom breaks, food breaks, and emergencies that may arise during a test. If the source owner or operator, or a state, local, or EPA observer, discovers during the test period, that the QI did not conduct or oversee the entire test (as qualified by this paragraph (d)), only those portions of the test that were conducted or overseen by the QI as described above may be used under this part.

(f) The certification described in paragraph (b) of this section, and compliance with paragraph (e) of this section, shall be sufficient proof of validity of test data that otherwise meet the requirements of this part.

(g) If the Administrator finds that the information submitted to an affected source by an AETB under this section or the information requested by an affected source under this section is either incomplete or inaccurate, the Administrator may post the name of the offending AETB on Agency Web sites, and provide the AETB a description of the failures to be remedied. The AETB name will be removed from the EPA Web sites once the failures are remedied.

(h) If the Administrator finds that the information submitted to an affected source by an AETB under this section or the information requested by an affected source under this section is either incomplete or inaccurate, the AETB shall, on demand of the Administrator, provide to the Administrator evidence within a reasonable time of the demand that any missing information has been provided to the affected source and/or that any inaccurate information has been corrected.

6.2 Linearity Check (General Procedures)

Check the linearity of each SO_2, NO_X, CO_2, and O_2 monitor while the unit, or group of units for a common stack, is combusting fuel at conditions of typical stack temperature and pressure; it is not necessary for the unit to be generating electricity during this test.
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6.3 * * *

6.3.1 Gas Monitor 7-Day Calibration Error Test

The following monitors and ranges are exempted from the 7-day calibration error test requirements of this part: the SO_2, NO_X, CO_2 and O_2 monitors installed on peaking units (as defined in § 72.2 of this chapter); and any SO_2 or NO_X measurement range with a span value of 50 ppm or less. In all other cases, measure the calibration error of each SO_2 monitor, each NO_X monitor, and each CO_2 or O_2 monitor while the unit is combusting fuel (but not necessarily generating electricity) once each day for 7 consecutive operating days according to the following procedures. (In the event that unit outages occur after the commencement of the test, the 7 consecutive unit operating days need not be 7 consecutive calendar days). Units using dual span monitors must perform the calibration error test on both high- and low-scales of the pollutant concentration monitor. The calibration error test procedures in this section and in section 6.3.2 of this appendix shall also be used to perform the daily assessments and additional calibration error tests required under sections 2.1.1 and 2.1.3 of appendix B to this part. Do not make manual or automatic adjustments to the monitor settings until after taking measurements at both zero and high concentration levels for that day during the 7-day test. If automatic adjustments are made following both injections, conduct the calibration error test such that the magnitude of the adjustments can be determined and recorded. Record and report test results for each day using the unadjusted concentration measured in the calibration error test prior to making any manual or automatic adjustments (*i.e.,* resetting the calibration). The calibration error tests should be approximately 24 hours apart, (unless the 7-day test is performed over nonconsecutive days). Perform calibration error tests at both the zero-level concentration and high-level concentration, as specified in section 5.2 of this appendix. Alternatively, a mid-level concentration gas (50.0 to 60.0 percent of the span value) may be used in lieu of the high-level gas, provided that the mid-level gas is more representative of the actual stack gas concentrations. In addition, repeat the procedure for SO_2 and NO_X pollutant concentration monitors using the low-scale for units equipped with emission controls or other units with dual span monitors. Use only calibration gas, as specified in section 5.1 of this appendix. Introduce the calibration gas at the gas injection port, as specified in section 2.2.1 of this appendix. Operate each monitor in its normal sampling mode. For extractive and dilution type monitors, pass the calibration gas through all filters, scrubbers, conditioners, and other monitor components used during normal sampling and through as much of the sampling probe as is practical. For in-situ type monitors, perform calibration, checking all active electronic and optical components, including the transmitter, receiver, and analyzer. Challenge the pollutant concentration monitors and CO_2 or O_2 monitors once with each calibration gas. Record the monitor response from the data acquisition and handling system. Using Equation A–5 of this appendix, determine the calibration error at each concentration once each day (at approximately 24-hour intervals) for 7 consecutive days according to the procedures given in this section. The results of a 7-day calibration error test are acceptable for monitor or monitoring system certification, recertification or diagnostic testing if none of these daily calibration error test results exceed the applicable performance specifications in section 3.1 of this appendix. The status of emission data from a gas monitor prior to and during a 7-day calibration error test period shall be determined as follows:

* * * * *

6.4 Cycle Time Test

Perform cycle time tests for each pollutant concentration monitor and continuous emission monitoring system while the unit is operating, according to the following procedures. Use a zero-level and a high-level calibration gas (as defined in section 5.2 of this appendix) alternately. To determine the downscale cycle time, measure the concentration of the flue gas emissions until the response stabilizes. Record the stable emissions value. Inject a zero-level concentration calibration gas into the probe tip (or injection port leading to the calibration cell, for in situ systems with no probe). Record the time of the zero gas injection, using the data acquisition and handling system (DAHS). Next, allow the monitor to measure the concentration of the zero gas until the response stabilizes. Record the stable ending calibration gas reading. Determine the downscale cycle time as the time it takes for 95.0 percent of the step change to be achieved between the stable stack emissions value and the stable ending zero gas reading. Then repeat the procedure, starting with stable stack emissions and injecting the high-level gas, to determine the upscale cycle time, which is the time it takes for 95.0 percent of the step change to be achieved between the stable stack emissions value and the stable ending high-level gas reading. Use the following criteria to assess when a stable reading of stack emissions or calibration gas concentration has been attained. A stable value is equivalent to a reading with a change of less than 2.0 percent of the span value for 2 minutes, or a reading with a change of less than 6.0 percent from the measured average concentration over 6 minutes. Alternatively, the reading is considered stable if it changes by no more than 0.5 ppm or 0.2% CO_2 or O_2 (as applicable) for two minutes. (Owners or operators of systems which do not record data in 1-minute or 3-minute intervals may petition the Administrator under § 75.66 for alternative stabilization criteria). For monitors or monitoring systems that perform a series of operations (such as purge, sample, and analyze), time the injections of the calibration gases so they will produce the longest possible cycle time. Refer to Figures 6a and 6b in this appendix for example calculations of upscale and downscale cycle times. Report the slower of the two cycle times (upscale or downscale) as the cycle time for the analyzer. Prior to January 1, 2009 for the NO_X-diluent continuous emission monitoring system test, either record and report the longer cycle time of the two component analyzers as the system cycle time or record the cycle time for each component analyzer separately (as applicable). On and after January 1, 2009, record the cycle time for each component analyzer separately. For time-shared systems, perform the cycle time tests at each probe locations that will be polled within the same 15-minute period during monitoring system operations. To determine the cycle time for time-shared systems, at each monitoring location, report the sum of the cycle time observed at that monitoring location plus the sum of the time required for all purge cycles (as determined by the continuous emission monitoring system manufacturer) at each of the probe locations of the time-shared systems. For monitors with dual ranges, report the test results for each range separately. Cycle time test results are acceptable for monitor or monitoring system certification, recertification or diagnostic testing if none of the cycle times exceed 15 minutes. The status of emissions data from a monitor prior to and during a cycle time test period shall be determined as follows:

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6.5 Relative Accuracy and Bias Tests (General Procedures)

Perform the required relative accuracy test audits (RATAs) as follows for each CO_2 emissions concentration monitor (including O_2 monitors used to determine CO_2 emissions concentration), each SO_2 pollutant concentration monitor, each NO_X concentration monitoring system used to determine NO_X mass emissions, each flow monitor, each NO_X-diluent CEMS, each O_2 or CO_2 diluent monitor used to calculate heat input, and each moisture monitoring system. For NO_X concentration monitoring systems used to determine NO_X mass emissions, as defined in § 75.71(a)(2), use the same general RATA procedures as for SO_2 pollutant concentration monitors; however, use the reference methods for NO_X concentration specified in section 6.5.10 of this appendix:

* * * * *

(c) For monitoring systems with dual ranges, perform the relative accuracy test on the range normally used for measuring emissions. For units with add-on SO_2 or NO_X controls that operate continuously rather than seasonally, or for units that need a dual range to record high concentration "spikes" during startup conditions, the low range is considered normal. However, for some dual span units (*e.g.,* for units that use fuel switching or for which the emission controls are operated seasonally), provided that both monitor ranges are connected to a common probe and sample interface, either of the two measurement ranges may be considered normal; in such cases, perform the RATA on the range that is in use at the time of the scheduled test. If the low and high measurement ranges are connected to separate sample probes and interfaces, RATA testing on both ranges is required.

* * * * *

(e) Complete each single-load relative accuracy test audit within a period of 168 consecutive unit operating hours, as defined in § 72.2 of this chapter (or, for CEMS installed on common stacks or bypass stacks, 168 consecutive stack operating hours, as defined in § 72.2 of this chapter). For 2-level and 3-level flow monitor RATAs, complete all of the RATAs at all levels, to the extent practicable, within a period of 168 consecutive unit (or stack) operating hours; however, if this is not possible, up to 720 consecutive unit (or stack) operating hours may be taken to complete a multiple-load flow RATA.

* * * * *

(g) For each SO_2 or CO_2 emissions concentration monitor, each flow monitor, each CO_2 or O_2 diluent monitor used to determine heat input, each NO_X concentration monitoring system used to determine NO_X mass emissions, as defined in § 75.71(a)(2), each moisture monitoring system, and each NO_X-diluent CEMS, calculate the relative accuracy, in accordance with section 7.3 or 7.4 of this appendix, as applicable. In addition (except for CO_2, O_2, or moisture monitors), test for bias and determine the appropriate bias adjustment factor, in accordance with sections 7.6.4 and 7.6.5 of this appendix, using the data from the relative accuracy test audits.

6.5.1 Gas Monitoring System RATAs (Special Considerations)

(a) Perform the required relative accuracy test audits for each SO_2 or CO_2 emissions concentration monitor, each CO_2 or O_2 diluent monitor used to determine heat input, each NO_X-diluent CEMS, and each NO_X concentration monitoring system used to determine NO_X mass emissions, as defined in § 75.71(a)(2), at the normal load level or normal operating level for the unit (or combined units, if common stack), as defined in section 6.5.2.1 of this appendix. If two load levels or operating levels have been designated as normal, the RATAs may be done at either load (or operating) level.

(b) For the initial certification of a gas monitoring system and for recertifications in which, in addition to a RATA, one or more other tests are required (*i.e.,* a linearity test, cycle time test, or 7-day calibration error test), EPA recommends that the RATA not be commenced until the other required tests of the CEMS have been passed.

* * * * *

6.5.7 Sampling Strategy

(a) Conduct the reference method tests so they will yield results representative of the pollutant concentration, emission rate, moisture, temperature, and flue gas flow rate from the unit and can be correlated with the pollutant concentration monitor, CO_2 or O_2 monitor, flow monitor, and SO_2 or NO_X CEMS measurements. The minimum acceptable time for a gas monitoring system RATA run or for a moisture monitoring system RATA run is 21 minutes. For each run of a gas monitoring system RATA, all necessary pollutant concentration measurements, diluent concentration measurements, and moisture measurements (if applicable) must, to the extent practicable, be made within a 60-minute period. For NO_X-diluent monitoring system RATAs, the pollutant and diluent concentration measurements must be made simultaneously. For flow monitor RATAs, the minimum time per run shall be 5 minutes. Flow rate reference method measurements may be made either sequentially from port-to-port or simultaneously at two or more sample ports. The velocity measurement probe may be moved from traverse point to traverse point either manually or automatically. If, during a flow RATA, significant pulsations in the reference method readings are observed, be sure to allow enough measurement time at each traverse point to obtain an accurate average reading when a manual readout method is used (*e.g.,* a "sight-weighted" average from a manometer). Also, allow sufficient measurement time to ensure that stable temperature readings are obtained at each traverse point, particularly at the first measurement point at each sample port, when a probe is moved sequentially from port-to-port. A minimum of one set of auxiliary measurements for stack gas molecular weight determination (*i.e.,* diluent gas data and moisture data) is required for every clock hour of a flow RATA or for every three test runs (whichever is less restrictive). Alternatively, moisture measurements for molecular weight determination may be performed before and after a series of flow RATA runs at a particular load level (low, mid, or high), provided that the time interval between the two moisture measurements does not exceed three hours. If this option is selected, the results of the two moisture determinations shall be averaged arithmetically and applied to all RATA runs in the series. Successive flow RATA runs may be performed without waiting in between runs. If an O_2 diluent monitor is used as a CO_2 continuous emission monitoring system, perform a CO_2 system RATA (*i.e.,* measure CO_2, rather than O_2, with the reference method). For moisture monitoring systems, an appropriate coefficient, "K" factor or other suitable mathematical algorithm may be developed prior to the RATA, to adjust the monitoring system readings with respect to the reference method. If such a coefficient, K-factor or algorithm is developed, it shall be applied to the CEMS readings during the RATA and (if the RATA is passed), to the subsequent CEMS data, by means of the automated data acquisition and handling system. The owner or operator shall keep records of the current coefficient, K factor or algorithm, as specified in § 75.59(a)(5)(vii). Whenever the coefficient, K factor or algorithm is changed, a RATA of the moisture monitoring system is required.

(b) To properly correlate individual SO_2 or NO_X CEMS data (in lb/mmBtu) and volumetric flow rate data with the reference method data, annotate the beginning and end of each reference method test run (including the exact time of day) on the individual chart recorder(s) or other permanent recording device(s).

* * * * *

6.5.10 Reference Methods

The following methods are from appendix A to part 60 of this chapter, and are the reference methods for performing relative accuracy test audits under this part: Method 1 or 1A in appendix A–1 to part 60 of this chapter for siting; Method 2 in appendix A–1 to part 60 of this chapter or its allowable alternatives in appendices A–1 and A–2 to part 60 of this chapter (except for Methods 2B and 2E in appendix A–1 to part 60 of this chapter) for stack gas velocity and volumetric flow rate; Methods 3, 3A or 3B in appendix A–2 to part 60 of this chapter for O_2 and CO_2; Method 4 in appendix A–3 to part 60 of this chapter for moisture; Methods 6, 6A or 6C in appendix A–4 to part 60 of this chapter for SO_2; and Methods 7, 7A, 7C, 7D or 7E in appendix A–4 to part 60 of this chapter for NO_X, excluding the exceptions to Method 7E identified in § 75.22(a)(5). When using Method 7E for measuring NO_X concentration, total NO_X, including both NO and NO_2, must be measured. When using EPA Protocol gas with Methods 3A, 6C, and 7E, the gas must be from an EPA Protocol gas production site that is participating in the EPA Protocol Gas Verification Program described in § 75.21(g). However, EPA Protocol gas cylinders purchased prior to [EFFECTIVE DATE OF FINAL RULE] from a production site that is not participating in the PGVP may be used for the purposes of this part until the earlier of the cylinder's expiration date or the date on which the cylinder gas pressure reaches 150 psig. In the event that an EPA Protocol gas production site is removed from the list of PGVP participants after such gases are procured, but before the gases have been consumed, the gas cylinders may continue to be used for the purposes of this part until the earlier of the cylinder's expiration date or the date on which the cylinder gas pressure reaches 150 psig.

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7.3 Relative Accuracy for SO_2 and CO_2 Emissions Concentration Monitors, O_2 Monitors, NO_X Concentration Monitoring Systems, and Flow Monitors

Analyze the relative accuracy test audit data from the reference method tests for SO_2 and CO_2 emissions concentration monitors, CO_2 or O_2 monitors used for heat input rate determination, NO_X concentration monitoring systems used to determine NO_X

mass emissions under subpart H of this part, and flow monitors using the following procedures. Summarize the results on a data sheet. An example is shown in Figure 2. Calculate the mean of the monitor or monitoring system measurement values. Calculate the mean of the reference method values. Using data from the automated data acquisition and handling system, calculate the arithmetic differences between the reference method and monitor measurement data sets. Then calculate the arithmetic mean of the difference, the standard deviation, the confidence coefficient, and the monitor or monitoring system relative accuracy using the following procedures and equations.

7.3.1 Arithmetic Mean

Calculate the arithmetic mean of the differences of a data set as follows:

$$d_{avg} = \frac{1}{n}\sum_{i=1}^{n} d_i \qquad \text{(Eq. A-7)}$$

Where:

d_{avg} = Arithmetic mean of the differences
n = Number of data points (test runs)

$\sum_{i=1}^{n} d_i$ = Algebraic sum of the individual differences d_i

d_i = The difference between a reference method value and the corresponding continuous emission monitoring system value ($RM_i - CEM_i$), for a given data point

* * * * *

7.6 Bias Test and Adjustment Factor

Test the following relative accuracy test audit data sets for bias: SO_2 pollutant concentration monitors; flow monitors; NO_X concentration monitoring systems used to determine NO_X mass emissions, as defined in 75.71(a)(2); and NO_X-diluent CEMS using the procedures outlined in sections 7.6.1 through 7.6.5 of this appendix. For multiple-load flow RATAs, perform a bias test at each load level designated as normal under section 6.5.2.1 of this appendix.

7.6.1 Arithmetic Mean

Calculate the arithmetic mean of the differences of the data set using Equation A–7 of this appendix. To calculate bias for an SO_2 or NO_X pollutant concentration monitor, "d_i" is, for each paired data point, the difference between the SO_2 or NO_X concentration value (in ppm) obtained from the reference method and the monitor. To calculate bias for a flow monitor, "d_i" is, for each paired data point, the difference between the flow rate values (in scfh) obtained from the reference method and the monitor. To calculate bias for a NO_X-diluent continuous emission monitoring system, "d_i" is, for each paired data point, the difference between the NO_X emission rate values (in lb/mmBtu) obtained from the reference method and the monitoring system.

* * * * *

7.6.5 * * *

(b) For single-load RATAs of SO_2 pollutant concentration monitors, NO_X concentration monitoring systems, and NO_X-diluent monitoring systems, and for the single-load flow RATAs required or allowed under section 6.5.2 of this appendix and sections 2.3.1.3(b) and 2.3.1.3(c) of appendix B to this part, the appropriate BAF is determined directly from the RATA results at normal load, using Equation A–12. Notwithstanding, when a NO_X concentration CEMS or an SO_2 CEMS or a NO_X-diluent CEMS installed on a low-emitting affected unit (*i.e.,* average SO_2 or NO_X concentration during the RATA ≤ 250 ppm or average NO_X emission rate ≤ 0.200 lb/mmBtu) meets the normal 10.0 percent relative accuracy specification (as calculated using Equation A–10) or the alternate relative accuracy specification in section 3.3 of this appendix for low-emitters, but fails the bias test, the BAF may either be determined using Equation A–12, or a default BAF of 1.111 may be used.

* * * * *

(f) Use the bias-adjusted values in computing substitution values in the missing data procedure, as specified in subpart D of this part, and in reporting the concentration of SO_2, the flow rate, the average NO_X emission rate, the unit heat input, and the calculated mass emissions of SO_2 and CO_2 during the quarter and calendar year, as specified in subpart G of this part. In addition, when using a NO_X concentration monitoring system and a flow monitor to calculate NO_X mass emissions under subpart H of this part, use bias-adjusted values for NO_X concentration and flow rate in the mass emission calculations and use bias-adjusted NO_X concentrations to compute the appropriate substitution values for NO_X concentration in the missing data routines under subpart D of this part.

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30. Appendix B to Part 75 is amended by:

a. Revising section 1.1.4;

b. Removing sections 1.5 and 1.5.1 through 1.5.6;

c. Revising paragraph (a) of section 2.1.4;

d. Adding paragraph (c) to section 2.1.4;

e. Revising section 2.2.1;

f. Adding paragraph (i) to section 2.2.3;

g. Revising paragraph (a) of section 2.3.1.1, paragraph (a) of section 2.3.1.3, and paragraphs (d) and (i) of section 2.3.2;

h. Adding paragraph (k) to section 2.3.2;

i. Revising section 2.3.4;

j. Removing section 2.6;

k. Revising Figures 1 and 2; and

e. Adding Figure 3, to read as follows:

Appendix B to Part 75—Quality Assurance and Quality Control Procedures

1. Quality Assurance/Quality Control Program

* * * * *

1.1.4 The provisions in section 6.1.2 of appendix A to this part shall apply to the annual RATAs described in § 75.74(c)(2)(ii) and to the semiannual and annual RATAs described in section 2.3 of this appendix.

* * * * *

2. Frequency of Testing

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2.1.4 Data Validation

(a) An out-of-control period occurs when the calibration error of an SO_2 or NO_X pollutant concentration monitor exceeds 5.0 percent of the span value, when the calibration error of a CO_2 or O_2 monitor (including O_2 monitors used to measure CO_2 emissions or percent moisture) exceeds 1.0 percent O_2 or CO_2, or when the calibration error of a flow monitor exceeds 6.0 percent of the span value, which is twice the applicable specification of appendix A to this part. Notwithstanding, a differential pressure-type flow monitor for which the calibration error exceeds 6.0 percent of the span value shall not be considered out-of-control if |R– A|, the absolute value of the difference between the monitor response and the reference value in Equation A–6 of appendix A to this part, is < 0.02 inches of water. In addition, an SO_2 or NO_X monitor for which the calibration error exceeds 5.0 percent of the span value shall not be considered out-of-control if |R- A| in Equation A–6 does not exceed 5.0 ppm (for span values ≤ 50 ppm), or if |R- A| does not exceed 10.0 ppm (for span values > 50 ppm, but ≤ 200 ppm). The out-of-control period begins upon failure of the calibration error test and ends upon completion of a successful calibration error test. Note, that if a failed calibration, corrective action, and successful calibration error test occur within the same hour, emission data for that hour recorded by the monitor after the successful calibration error test may be used for reporting purposes, provided that two or more valid readings are obtained as required by § 75.10. A NO_X-diluent CEMS is considered out-of-control if the calibration error of either component monitor exceeds twice the applicable performance specification in appendix A to this part. Emission data shall not be reported from an out-of-control monitor.

* * * * *

(c) The results of any certification, recertification, diagnostic, or quality assurance test required under this part may not be used to validate the emissions data required under this part, if the test is performed using EPA Protocol gas from a production site that is not participating in the PGVP, except as provided in § 75.21(g)(6) and (7) or if the cylinder(s) are analyzed by an independent laboratory and shown to meet the requirements of section 5.1.4(b) of appendix A to this part.

* * * * *

2.2.1 Linearity Check

Unless a particular monitor (or monitoring range) is exempted under this paragraph or under section 6.2 of appendix A to this part, perform a linearity check, in accordance with the procedures in section 6.2 of appendix A to this part, for each primary and redundant backup SO_2, and NOx pollutant concentration monitor and each primary and

redundant backup CO_2 or O_2 monitor (including O_2 monitors used to measure CO_2 emissions or to continuously monitor moisture) at least once during each QA operating quarter, as defined in § 72.2 of this chapter. For units using both a low and high span value, a linearity check is required only on the range(s) used to record and report emission data during the QA operating quarter. Conduct the linearity checks no less than 30 days apart, to the extent practicable. The data validation procedures in section 2.2.3(e) of this appendix shall be followed.

* * * * *

2.2.3 Data Validation

* * * * *

(i) The results of any certification, recertification, diagnostic, or quality assurance test required under this part may not be used to validate the emissions data required under this part, if the test is performed using EPA Protocol gas from a production site that is not participating in the PGVP, except as provided in § 75.21(g)(6) and (7) or if the cylinder(s) are analyzed by an independent laboratory and shown to meet the requirements of section 5.1.4(b) of appendix A to this part.

* * * * *

2.3.1.1 Standard RATA Frequencies

(a) Except as otherwise specified in § 75.21(a)(6) or (a)(7) or in section 2.3.1.2 of this appendix, perform relative accuracy test audits semiannually, *i.e.,* once every two successive QA operating quarters (as defined in § 72.2 of this chapter) for each primary and redundant backup SO_2 pollutant concentration monitor, flow monitor, CO_2 emissions concentration monitor (including O_2 monitors used to determine CO_2 emissions), CO_2 or O_2 diluent monitor used to determine heat input, moisture monitoring system, NO_X concentration monitoring system, or NO_X-diluent CEMS. A calendar quarter that does not qualify as a QA operating quarter shall be excluded in determining the deadline for the next RATA. No more than eight successive calendar quarters shall elapse after the quarter in which a RATA was last performed without a subsequent RATA having been conducted. If a RATA has not been completed by the end of the eighth calendar quarter since the quarter of the last RATA, then the RATA must be completed within a 720 unit (or stack) operating hour grace period (as provided in section 2.3.3 of this appendix) following the end of the eighth successive elapsed calendar quarter, or data from the CEMS will become invalid.

* * * * *

2.3.1.3 RATA Load (or Operating) Levels and Additional RATA Requirements

(a) For SO_2 pollutant concentration monitors, CO_2 emissions concentration monitors (including O_2 monitors used to determine CO_2 emissions), CO_2 or O_2 diluent monitors used to determine heat input, NO_X concentration monitoring systems, and NO_X-diluent monitoring systems, the required semiannual or annual RATA tests shall be done at the load level (or operating level) designated as normal under section 6.5.2.1(d) of appendix A to this part. If two load levels (or operating levels) are designated as normal, the required RATA(s) may be done at either load level (or operating level).

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2.3.2 Data Validation

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(d) For single-load (or single-level) RATAs, if a daily calibration error test is failed during a RATA test period, prior to completing the test, the RATA must be repeated. Data from the monitor are invalidated prospectively from the hour of the failed calibration error test until the hour of completion of a subsequent successful calibration error test. The subsequent RATA shall not be commenced until the monitor has successfully passed a calibration error test in accordance with section 2.1.3 of this appendix. For multiple-load (or multiple-level) flow RATAs, each load level (or operating level) is treated as a separate RATA (*i.e.,* when a calibration error test is failed prior to completing the RATA at a particular load level (or operating level), only the RATA at that load level (or operating level) must be repeated; the results of any previously-passed RATA(s) at the other load level(s) (or operating level(s)) are unaffected, unless the monitor's polynomial coefficients or K-factor(s) must be changed to correct the problem that caused the calibration failure, in which case a subsequent 3-load (or 3-level) RATA is required), except as otherwise provided in section 2.3.1.3 (c)(5) of this appendix.

* * * * *

(i) Each time that a hands-off RATA of an SO_2 pollutant concentration monitor, a NO_X-diluent monitoring system, a NO_X concentration monitoring system, or a flow monitor is passed, perform a bias test in accordance with section 7.6.4 of appendix A to this part. Apply the appropriate bias adjustment factor to the reported SO_2, NO_X, or flow rate data, in accordance with section 7.6.5 of appendix A to this part.

* * * * *

(k) The results of any certification, recertification, diagnostic, or quality assurance test required under this part may not be used to validate the emissions data required under this part, if the test is performed using EPA Protocol gas from a production site that is not participating in the PGVP, except as provided in § 75.21(g)(6) and (7) or if the cylinder(s) are analyzed by an independent laboratory and shown to meet the requirements of section 5.1.4(b) of appendix A to this part.

* * * * *

2.3.4 Bias Adjustment Factor

Except as otherwise specified in section 7.6.5 of appendix A to this part, if an SO_2 pollutant concentration monitor, a flow monitor, a NO_X-diluent CEMS, or a NO_X concentration monitoring system used to calculate NO_X mass emissions fails the bias test specified in section 7.6 of appendix A to this part, use the bias adjustment factor given in Equations A–11 and A–12 of appendix A to this part or the allowable alternative BAF specified in section 7.6.5(b) of appendix A of this part, to adjust the monitored data.

* * * * *

FIGURE 1 TO APPENDIX B OF PART 75—QUALITY ASSURANCE TEST REQUIREMENTS

Test	Basic QA test frequency requirements		
	Daily *	Quarterly *	Semiannual or annual
Calibration Error Test (2 pt.)	X		
Interference Check (flow)	X		
Flow-to-Load Ratio		X	
Leak Check (DP flow monitors)		X	
Linearity Check* (3 pt.)		X	
RATA (SO_2, NO_X, CO_2, O_2, H_2O)[1]			X
RATA (flow) [1, 2]			X

* "Daily" means operating days, only. "Quarterly" means once every QA operating quarter. "Semiannual" means once every two QA operating quarters. "Annual" means once every four QA operating quarters.

[1] Conduct RATA annually (*i.e.,* once every four QA operating quarters) rather than semiannually, if monitor meets accuracy requirements to qualify for less frequent testing.

[2] For flow monitors installed on peaking units, bypass stacks, or units that qualify for single-level RATA testing under section 6.5.2(e) of this part, conduct all RATAs at a single, normal load (or operating level). For other flow monitors, conduct annual RATAs at two load levels (or operating levels). Alternating single-load and 2-load (or single-level and 2-level) RATAs may be done if a monitor is on a semiannual frequency. A single-load (or single-level) RATA may be done in lieu of a 2-load (or 2-level) RATA if, since the last annual flow RATA, the unit has operated at one load level (or operating level) for ≥ 85.0 percent of the time. A 3-level RATA is required at least once every five years (20 calendar quarters) and whenever a flow monitor is re-characterized, except for flow monitors exempted from 3-level RATA testing under section 6.5.2(b) or 6.5.2(e) of appendix A to this part.

FIGURE 2 TO APPENDIX B OF PART 75—RELATIVE ACCURACY TEST FREQUENCY INCENTIVE SYSTEM

RATA	Semiannual [W]	Annual [W]
SO_2 or NO_X [Y]	7.5% < RA ≤ 10.0% or ± 15.0 ppm [X]	RA ≤ 7.5% or ± 12.0 ppm [X].
NO_X-diluent	7.5% < RA ≤ 10.0% or ± 0.020 lb/mmBtu [X]	RA ≤ 7.5% or ± 0. 015 lb/mmBtu [X].
Flow	7.5% < RA ≤ 10.0% or ± 2.0 fps [X]	RA ≤ 7.5% or ± 1.5 fps [X].
CO_2 or O_2	7.5% < RA ≤ 10.0% or ± 1.0% CO_2/O_2 [X]	RA ≤ 7.5% or ± 0.7% CO_2/O_2 [X].
Moisture	7.5% < RA ≤ 10.0% or ± 1.5% H_2O [X]	RA ≤ 7.5% or ± 1.0% H_2O [X].

[W] The deadline for the next RATA is the end of the second (if semiannual) or fourth (if annual) successive QA operating quarter following the quarter in which the CEMS was last tested. Exclude calendar quarters with fewer than 168 unit operating hours (or, for common stacks and bypass stacks, exclude quarters with fewer than 168 stack operating hours) in determining the RATA deadline. For SO_2 monitors, QA operating quarters in which only very low sulfur fuel as defined in §72.2 of this chapter, is combusted may also be excluded. However, the exclusion of calendar quarters is limited as follows: the deadline for the next RATA shall be no more than 8 calendar quarters after the quarter in which a RATA was last performed. A 720 operating hour grace period is available if the RATA cannot be completed by the deadline.

[X] The difference between monitor and reference method mean values applies to moisture monitors, CO_2, and O_2 monitors, low emitters of SO_2, NO_X, and low flow, only.

[Y] A NO_X concentration monitoring system used to determine NO_X mass emissions under §75.71.

FIGURE 3 TO APPENDIX B OF PART 75—SINGLE COMPONENT PLUS BALANCE GAS CYLINDERS EPA PROTOCOL GAS VERIFICATION PROGRAM RESULTS EPA CYLINDER GAS ASSAYS PERFORMED BY NIST

[NIST to Insert: Month, Year]

Specialty gas company name	EPA protocol gas production site name	Vendor ID	Stamped cylinder ID	Gas Component, *e.g.,* SO_2							Supplied complete documentation (yes/no)
				Tag value (*e.g.,* ppm SO_2)	Audit Results				Vendor analytical method (*e.g.,* FTIR)	Vendor ref std used (*e.g.,* NTRM)	
					Orig tag value (pass/fail)	Orig tag (% diff)	Re-analyzed value (pass/fail)	Re-analysis (% diff)			

A gaseous component is said to fail only if all available analytical techniques used in the audit indicate greater than a 2.0% difference from the cylinder tag value. Any accuracy assessment is an instantaneous snapshot of the process being measured. These results should not be regarded as a final statement on the accuracy of EPA Protocol gases. They can be used as an indicator of the current status of the accuracy of EPA Protocol gases as a whole. However, individual results should not be taken as definitive indicators of the analytical capabilities of individual producers. EPA presents this information without assigning a rating to the gas vendors, for example, who is the best, who is approved, or is not approved.

% diff = 100 × (Tag Value − NIST Value)/NIST Value

Note: For cylinders with more than one component plus balance gas, change the title appropriately, *e.g.,* "FIGURE 3 TO APPENDIX B OF PART 75—BI-BLEND PLUS BALANCE GAS CYLINDERS * * * " and add appropriate columns to Figure 3 for the additional components following the same format used in the columns for SO_2 above.

31. In Appendix E to Part 75, Section 2.1 is amended by revising the last sentence to read as follows:

Appendix E to Part 75—Optional NO_X Emissions Estimation Protocol for Gas-Fired Peaking Units and Oil-Fired Peaking Units

* * * * *

2.1 Initial Performance Testing

* * * The requirements in section 6.1.2 of appendix A to this part shall apply to any stack testing performed to obtain O_2 and NO_X concentration measurements under this appendix, either for units using the excepted methodology in this appendix or for units using the low mass emissions excepted methodology in §75.19.

* * * * *

Appendix F to Part 75 [Amended]

32. Appendix F to Part 75 is amended by removing and reserving section 9.

Appendix K to Part 75 [Removed]

33. Appendix K to Part 75 is removed.

[FR Doc. 2010–10955 Filed 6–10–10; 8:45 am]

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Friday,
June 11, 2010

Part III

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 271, 273, 275, and 277
Supplemental Nutrition Assistance Program: Quality Control Provisions of Title IV of Public Law 107–171; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 273, 275, and 277

[FNS–2009–0045]

RIN 0584–AD31

Supplemental Nutrition Assistance Program: Quality Control Provisions of Title IV of Public Law 107–171

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes provisions of an interim rule entitled "Food Stamp Program: Non-Discretionary Quality Control Provisions of Title IV of Public Law 107–171" published on October 16, 2003, and a proposed rule entitled "Food Stamp Program: Discretionary Quality Control Provisions of Title IV of Public Law 107–171" published on September 23, 2005. The Food Stamp Program is now referred to as the Supplemental Nutrition Assistance Program (SNAP) pursuant to the Food and Nutrition Act of 2008 (Act). This final rule codifies the provisions concerning the Quality Control system in Sections 4118 and 4119 of the Food Stamp Reauthorization Act (FSRA) of 2002. This rule finalizes the liability procedures and the deadlines for completing the quality control review process and announcement of error rates established in the interim rule. It eliminates enhanced administrative funding for low error rates, establishes new time frames for completing individual quality control reviews, establishes procedures for resolving liabilities following appeal decisions, revises the negative case review procedures, and provides procedures for households that separate while subject to the penalty for refusal to cooperate with a quality control review. This rule also adopts several policy changes and technical corrections included in the proposed rule. In addition, this rule affects State agencies' quality control review operations and alters the impact on State agencies of assessment and resolution of potential liabilities for excessive payment error rates and awarding of bonuses for superior performance. Households with cases sampled for quality control review of their cases would be minimally affected by this rule.

DATES: *Effective Date:* This rule is effective July 12, 2010. *Implementation date:* This rule shall be implemented as follows: The provisions in 7 CFR 271.2, 7 CFR 275.11(e)(2)(i), 7 CFR 275.11(e)(2)(ii), 7 CFR 275.13(b), and 7 CFR 275.12(c)(1) concerning negative cases and 7 CFR 273.2(d)(2) concerning consequences to households that refuse to cooperate with quality control (QC) reviews must be implemented no later than October 1, 2011. State agencies may choose to implement these provisions earlier than October 1, 2011. A 120-day hold harmless is provided for implementation of 7 CFR 273.2(d)(2), concerning consequences to households who refuse to cooperate with a QC review. If a State agency implements the provision before October 1, 2011, the 120-day hold harmless period begins on the date of implementation. All other provisions must be implemented August 10, 2010.

FOR FURTHER INFORMATION CONTACT: Margaret Werts Batko, Quality Control Branch, Program Accountability and Administration Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2516. The e-mail address is *margaret.batko@fns.usda.gov*. Questions regarding this rulemaking should be addressed at the above address, by telephone at (703) 305–2516, or via the Internet at *margaret.batko@fns.usda.gov*.

SUPPLEMENTARY INFORMATION:

I. Additional Information on Electronic Access

Electronic Access

You may view and download an electronic version of this final rule at *http://www.fns.usda.gov/snap/*. All comments, including names, street addresses, and other contact information of respondents, received in response to the interim and proposed rules are available for public inspection on the 8th floor, 3101 Park Center Drive, Alexandria, Virginia 22302 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

II. Procedural Matters

Executive Order 12866

This rule has been determined to be significant under E.O. 12866 and has, therefore, been reviewed by the Office of Management and Budget.

Executive Order 12372

The Supplemental Nutrition Assistance Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR Part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). It has been certified that this rule will not have a significant economic impact on a substantial number of small entities. State welfare agencies will be the most affected to the extent that they administer the Supplemental Nutrition Assistance Program.

Public Law 104–4

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

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of E.O. 13132. The Food and Nutrition Service has considered this rule's impact on State and local agencies and has determined that it does not have Federalism implications under E.O. 13132.

Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with the Department Regulation 4300–4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts that the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this rule has no intended impact on any of the protected classes. These changes primarily affect the quality control (QC) review system and not individual recipients' eligibility for or participation in the Supplemental Nutrition Assistance Program. The only provision that has any direct impact on recipients is the conforming change made in 7 CFR 273.2(d)(2). This section provides that a recipient who refuses to cooperate with a QC review of his or her case will be terminated from further participation in the Program; that if the household reapplies during the annual review period, it cannot be determined eligible until it cooperates with the QC review; and if it reapplies following the end of the QC review period, the household is required to provide full verification of its eligibility factors before it can be certified. The purpose of the requirement is to encourage household cooperation with the QC review of its case. This rule contains a conforming amendment to extend the time frame of the penalty consistent with the revised time frame for completing the QC review process established in Section 4119 of the Food Stamp Reauthorization Act of 2002 and addressed in this rule at § 275.23. Significant protection exists within the regulations to ensure that a household is terminated solely for refusal, and not inability, to cooperate. A household so terminated also has the right to request a fair hearing. Further, the household has the ability to reverse its termination by cooperating with the QC review during the QC review period. There were 56,954 active case households subject to a QC review, and 2,101 households who refused to cooperate with a QC review during Fiscal Year 2002, the last year information on non-cooperating households was collected. Information on protected classes is not available for these households.

An additional change is also being made to 7 CFR 273.2(d)(2) that requires a State agency to convey the disqualification penalty for refusing to cooperate with a QC reviewer with the non-cooperating household member if the household breaks up and if the State agency can identify the non-cooperating individual. This change ameliorates the penalty on cooperating household members. It is not intended to have a disproportionate impact on any of the protected classes.

All data available to FNS indicate that protected individuals have the same opportunity to participate in the SNAP as non-protected individuals. The QC system is a systematic method of measuring the validity of the SNAP caseload. A statistically valid sample of active and negative cases is reviewed to determine the extent to which households are receiving the allotments to which they are entitled, and to determine which decisions to deny, suspend, or terminate cases are correct. Protected classes should appear in any given sample to the extent that they are represented in the overall SNAP population. There is no way to determine the percentage of each of the protected classes terminated for refusal to cooperate with a QC review as that data is not collected.

FNS specifically prohibits the State and local government agencies that administer the Program from engaging in actions that discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs (SNAP nondiscrimination policy can be found at 7 CFR 272.6). Discrimination in any aspect of program administration is prohibited by these regulations, the Food and Nutrition Act of 2008, the Age Discrimination Act of 1975 (Pub. L. 94–135), the Rehabilitation Act of 1973 (Pub. L. 93–112, section 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accordance with 7 CFR Part 15.

Paperwork Reduction Act

This rule contains reporting or recordkeeping requirements that have been approved by the Office of Management and Budget (OMB) under several separate information collections under the Paperwork Reduction Act of 1995. The collections are:

0584–0034, Negative Quality Control Review Schedule; Status of Sample Selection and Completion, Form FNS–245 and FNS–248 (expiration date November 30, 2009): This rule does not affect the negative review schedule, Form FNS–245. In the most recent approval of OMB Number 0584–0034, the form FNS–247 (Statistical Summary of Sample Distribution) was eliminated. FNS has stopped requesting that this form be completed and the information be submitted. This rule removes the requirement to submit the report that is still found in the regulation. Eliminating from the regulations the requirement to complete the form does not affect the burden as the burden was already adjusted in the burden approval process when the actual use of the form was discontinued. We proposed to eliminate the Form FNS–248. Over time, we have discontinued requiring that the form itself be submitted. However, some of information on that form is still required. State agencies provide the information on the interval and the number of cases selected each month by phone or e-mail. With the elimination of the Form FNS 248, the regulations will permit that this information be submitted in another format. The burden difference from eliminating most of the data collection found on the form has already been accounted for through the burden approval process. Accordingly, elimination of this form will not increase or decrease the approved burden for OMB Number 0584–0034. We received no comments on this proposal; we are adopting it as proposed.

0584–0074 (Form FNS–380, Worksheet for Supplemental Nutrition Assistance Program Quality Control Reviews) (expiration date February 28, 2010) ; 0584–0299 (Form FNS–380–1, Quality Control Review Schedule)(expiration January 31, 2010); and 0584–0303 (Food Stamp Program Regulations, Part 275—Quality Control)*(expiration date November 30, 2010) (Note the name of 0584–0303 will be changed to Supplemental Nutrition Assistance Program Regulations, Part 275—Quality Control when it is next renewed or a change justification is done.):* This rule does not affect these information collections. This rule does not change the requirements for development and submittal of the States' sampling plans. This rule does not change the requirements for submitting cases for arbitration nor will it impact the number of cases anticipated to be submitted. This rule does include the provisions for good cause; however, those provisions are unchanged except for redesignation. Therefore, this rule will not impact the burden currently approved for good cause either.

OMB Number 0584–0010, Performance Reporting System, Management Evaluation, Data Analysis and Corrective Action (expiration date April 30, 2010): Corrective action

planning is included under this information collection package. Regulations prior to passage of the Food Stamp Reauthorization Act of 2002 required corrective action planning when a State agency failed to reach the yearly target, when a State agency was not entitled to enhanced funding, and when its negative case error rate exceeded one percent. In an interim rule entitled "Food Stamp Program: Non-Discretionary Quality Control Provisions of Title IV of Public Law 107–171" published on October 16, 2003, at 68 FR 59519, the regulations were changed to reflect the provision in Section 4118 of the Food Stamp Reauthorization Act of 2002 that requires corrective action planning whenever a State agency's payment error rate equals or exceeds six percent. This requirement replaced the requirement for corrective action planning whenever a State agency failed to reach the yearly target. This rule finalizes this requirement to conduct corrective action whenever a State's payment error rate equals or exceeds six percent.

In the regulations as modified by the interim rule, State agencies continued to be required to do corrective action whenever they were not entitled to enhanced funding or when the negative case error rate exceeded one percent. A State agency was entitled to enhanced funding when its payment error rate was less than or equal to 5.90 percent and its negative case error rate was less than the national weighted mean negative case error rate for the prior fiscal year. This rule eliminates the requirement that State agencies conduct corrective action planning whenever a State agency is not entitled to enhanced funding because enhanced funding has been eliminated by Section 4118 of the Food Stamp Reauthorization Act of 2002. Elimination of this requirement will not have a significant impact on States' requirements to do corrective action planning because of the requirement in the regulation to do corrective action planning whenever the State's error rate exceeds six percent. The change from 5.9 percent to six is minimal. In Fiscal Year 2002, the last year enhanced funding was provided to States, there was no State whose error rate was below six percent that did not get enhanced funding. This rule finalizes the proposal to require that State agencies do corrective action planning whenever a State's negative case error rate exceeds one percent. Therefore, there is essentially no impact from removing the requirement to do corrective action planning whenever a State agency is not entitled to enhanced funding.

E-Government Act Compliance

The Food and Nutrition Service is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of the final rule. Prior to any judicial challenge to the provisions of this rule or to the application of its provisions, all applicable administrative procedures must be exhausted. In the Supplemental Nutrition *Assistance Program the administrative procedures are as follows:* (1) For Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or Part 283 (for rules related to QC liabilities); (3) for retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR Part 279.

Need for Action

This action is needed to implement certain provisions of Sections 4118 and 4119 of Title IV, the Food Stamp Reauthorization Act of 2002, Public Law 107–171, which was enacted on May 13, 2002. This rule finalizes provisions of the interim rule "Food Stamp Program: Non-Discretionary Quality Control Provisions of Title IV of Public Law 107–171" published on October 16, 2003, and a proposed rule entitled "Food Stamp Program: Discretionary Quality Control Provisions of Title IV of Public Law 107–171" on September 23, 2005.

The interim rule revised the liability procedures and established new deadlines for completing the quality control (QC) review process and announcement of payment error rates. This final rule would amend the Supplemental Nutrition Assistance Program regulations concerning the QC system to eliminate enhanced funding, to address the impact of appeals decisions on the resolution of QC liabilities for high payment error rates, to revise the time frames for completing individual case reviews and the time frames for penalties for households that refuse to cooperate with a QC review, to revise the negative review procedures, and to make a number of technical policy changes and corrections. This analysis addresses the liability procedures, elimination of enhanced funding, the impact of appeals decisions on the resolution of QC liabilities for high payment error rates, the revised time frames for completing individual case reviews and the entire review process and announcement of the error rates, the time frames for penalties for households that refuse to cooperate with a QC review, negative review procedures, and corrective action planning.

Cost Impact

Since this action does not directly impact benefit levels or eligibility, we do not anticipate any impact on SNAP benefit costs. The provision extending the time frames for verification of households reapplying for benefits is not expected to have a measurable impact on benefit costs. Fewer States will be identified as having any potential liability, and most such liabilities will be significantly lower than those under the previous system.

Elimination of enhanced funding will result in a savings of administrative matching funds. In 2002, the Agency paid $77.3 million in enhanced funding incentives to 13 States. Over the five years between 1998 and 2002, the Agency paid $250 million in enhanced funding, for an annual average of $50 million during this period.

If State payment error rates had remained at their 1998–2002 levels, the annual savings to the Supplemental Nutrition Assistance Program would have been $50 million and the five-year savings would have been $250 million. These savings would have been offset by the establishment of high performance bonuses (addressed in the final rule "Food Stamp Program: High Performance Bonuses" published February 7, 2005, at 70 FR 6313).

However, between 2002 and 2008, payment error rates fell from 8.26 percent to 5.01 percent. The number of States that would have qualified for enhanced funding would have risen to 28 by 2008 and the amount of incentive funding received by these States would have totaled nearly $188 million. The amount of incentive funding for the five

years from 2003–2007 would have totaled $720 million, of which only $240 million would have been offset by the new performance bonus, yielding a net savings of $480 million.

See Table below.

Benefit Impact

Elimination of enhanced funding based on payment accuracy did not have a benefit impact on State administrating agencies or on program operations if considered in isolation. However, when this provision was combined with the new performance bonus system in another rulemaking that proposes to change performance criteria from a narrow focus on payment accuracy to a broader measure that incorporates client service criteria in addition to payment accuracy, the new performance bonus system was expected to encourage States to assess and improve overall performance.

COST IMPACT OF CERTAIN QUALITY CONTROL PROVISIONS OF THE FOOD STAMP REAUTHORIZATION ACT OF 2002 (FEDERAL OUTLAYS)

[In millions of dollars]

	2003	2004	2005	2006	2007	5-Year
Elimination of Enhanced funding	−$95	−$133	−$158	−$160	−$174	−$720
High Performance Bonus	48	48	48	48	48	240
Net Savings	−47	−85	−110	−112	−126	−480

The provisions affecting the time frames for completing individual case reviews, negative reviews, procedures for appeals for the resolution of QC liabilities, and the procedures for treating households that refuse to cooperate with QC reviews are not expected to have any measurable impact on program costs.

III. Background

On May 13, 2002, the President signed Public Law 107–171, the Farm Security and Rural Investment Act of 2002. Title IV of Public Law 107–171, the Food Stamp Reauthorization Act of 2002 (FSRA), significantly revised the sanction, liability, and enhanced funding provisions of the QC system. An interim rule entitled "Food Stamp Program: Non-Discretionary Quality Control Provisions of Title IV of Public Law 107–171" was published October 16, 2003, at 68 FR 59519 that addressed certain provisions of Sections 4118 and 4119. A final rule entitled "Food Stamp Program: High Performance Bonuses" was published February 7, 2005, at 70 FR 6313 that implemented Section 4120 of the FSRA. A proposed rulemaking, published September 23, 2005, at 70 FR 55776 addressed the remaining provisions of Sections 4118 and 4119 of the FSRA, negative case review procedures, and several discretionary policy changes, and numerous technical corrections. This rule finalizes both the interim and the proposed rules.

A. Enhanced Funding

The current regulations at 7 CFR 275.1(b) provide that the Department shall pay a State agency enhanced administrative funding if its payment error rate is less than or equal to 5.90 percent and the negative case error rate is less than the national weighted mean negative case error rate for the prior fiscal year. Section 4118 of FSRA removed the provision in the Food Stamp Act of 1977 (now the Food and Nutrition Act of 2008) for giving enhanced funding to State agencies with low payment and negative case error rates, effective fiscal year (FY) 2003, effectively ending enhanced payments. Section 4120 of the FSRA replaced these enhanced funding provisions with high performance bonuses. Regulations addressing high performance bonuses have been published separately (proposed rule published December 17, 2003, at 68 FR 70193; final rule published February 7, 2005, at 70 FR 6313). Section 275.23(d) establishes procedures for providing enhanced funding. In accordance with the elimination of enhanced funding, these sections are no longer necessary. We proposed to eliminate paragraphs (b)(1) and (b)(2) of 7 CFR 275.1, to change paragraph (a) of 7 CFR 275.1 into a general introductory paragraph, and to remove 7 CFR 275.23(d). We received two comments on the proposed elimination of enhanced funding. Both commenters supported the proposal. Accordingly, we are adopting as proposed the revisions to 7 CFR 275.1, eliminating paragraphs (b)(1) and (2), changing paragraph (a) into a general introductory paragraph, and removing 7 CFR 275.23(d).

Section 275.3(c) requires that FNS validate the negative case error rate when a State agency's payment error rate for an annual review period appears to entitle it to an increased share of Federal administrative funding and its reported negative case error rate for that period is less than two percentage points above the national weighted mean negative case error rate for the prior fiscal year. That section also provides that FNS may review any negative case for other reasons. Validation of the negative case error rate is no longer necessary for purposes of establishing eligibility for enhanced funding. However, we proposed in 7 CFR 275.3(c) to require that all States' negative error rates be validated by FNS. First, we believe that fair and equitable treatment needs to be ensured when it comes to denying households benefits. Second, the negative error rate is one of the measurements of high performance. We believe that it is necessary to ensure the accuracy of those error rates if awards will be driven by these rates. We received two comments supporting this proposal. We are adopting the provision mandating FNS validation of all States' negative error rates in 7 CFR 275.3(c).

In addition, we are adopting as proposed the technical changes throughout Part 275 that remove references to enhanced funding. These deletions are not discussed in this preamble.

Part 277, Payments of Certain Administrative Costs of State Agencies, establishes the rules for paying State agency administrative costs for operating the SNAP. In 7 CFR 277.4, paragraphs (b)(1), (b)(4), (b)(5), and (b)(6) describe the procedures for increasing State administrative funding when State agency QC error rates meet certain standards. Each paragraph provides the authority for different fiscal year periods beginning with Fiscal Year 1980. Sections 277.4(b)(1)(i), (b)(4), (b)(5), and (b)(6) cover fiscal year periods beginning October 1, 1980, through September 30, 1988. Section 277.4(b)(1)(ii) provides the authority for the period beginning October 1988 and forward. The authority in the Food Stamp Act (now the Food and Nutrition Act of 2008) for 7 CFR 277.4(b)(1)(i) was

removed by the Hunger Prevention Act of 1988 (Public Law 100–435). The authority for 7 CFR 277.4(b)(4), (b)(5), and (b)(6) was removed by the Omnibus Budget Reconciliation Act of 1982 (Public Law 97–253). Section 4118 of the FSRA eliminated enhanced funding based on QC error rates for fiscal years beginning October 2002 and beyond, thus making 7 CFR 277.4(b)(1)(ii) obsolete for FY 2003 and beyond. All enhanced funding for Fiscal Years 1980 through 2002 paid under any of these authorities has already been made. Therefore, these paragraphs are no longer necessary. No comments were received on these proposed changes. Accordingly, we are removing 7 CFR 277.4(b)(1), (b)(4), (b)(5), and (b)(6). Sections 277.4(b)(2), (b)(3), (b)(7), and (b)(8) are redesignated as 7 CFR 277.4(b)(1), (b)(2), (b)(3), and (b)(4), respectively. In addition, we are also revising the references in redesignated 7 CFR 277.4(b)(3) to reflect these changes.

B. Disposition of Cases Where the Household Refuses To Cooperate

Section 275.12(g) establishes procedures for disposition of active QC cases. Section 275.12(g)(1)(ii) provides procedures for handling cases when the household refuses to cooperate in the review. Under these procedures, the State agency is required to notify the household of the penalties for refusing to cooperate with the review. In 7 CFR 275.12(g)(1)(ii), regulations currently provide that a reviewer may attempt to complete the case if this notice has been sent. This policy was revised by FNS memorandum on September 1, 1998, in "Change 1 to the September 1997 version of FNS Handbook 310," to require the State agency reviewer to attempt to complete the review. The change was effective October 1, 1998. The revised policy has been retained in subsequent revisions of FNS Handbook 310. The Department requires such completion because incomplete reviews introduce bias into the system. Consistent with this change in policy, we proposed to revise 7 CFR 275.12(g)(1)(ii) to say that the reviewer must attempt to complete the case. As provided for in the FNS Handbook 310, the reviewer will attempt to determine all of the necessary information to the point where either ineligibility or the appropriate benefit allotment is determined, verified, and documented. We received six comments addressing this proposed revision, all supporting the revision to the regulations. This policy has been in effect since October 1998 and benefits State agencies. Accordingly, we are adopting as proposed the revision to 7 CFR 275.12(g)(1)(ii) that requires QC reviewers to attempt to complete cases where a household refuses to cooperate.

C. Negative Case Reviews

The Department proposed significant changes to the negative review procedures. In order to fully understand the changes made in this rulemaking to the procedures for reviewing negative cases, readers are referred to the proposed rule located at 70 FR 55776. The proposed rule has a detailed description of the existing requirements and the proposed changes.

First, the Department proposed that the negative universe be selected based only on "action," eliminating the option to use "effective date." Second, the Department proposed to delete the requirement that there be a break in participation in order for a negative action to be subject to review. Finally, the Department proposed to limit the use of the expanded review process.

We received 22 comments on one or more aspects of the proposals to revise the negative review procedures. Most commenters opposed all the proposed changes; a few supported all the changes; some addressed only one or two of the proposed changes; and some commenters supported one or more of the proposals while opposing one or more of them. The opposing commenters also believed that these proposed changes reflected a change from "outcome" based reviews to "procedural" reviews.

Specific comments will be addressed during the discussion of each proposed change to the negative review procedures.

Currently, the regulations allow either "action" or "effective date" as the selection criteria for the sampling universe. Use of the two different selection criteria, "action" and "effective date," has resulted in differences in the sampling universes among the States and inconsistent reviews. These sampling differences are of statistical concern in calculating both the States' and the national negative error rate. Because multiple actions can occur within a sampling period, States using "effective date" have had to decide which of the several actions to review. This decision process introduces bias into the system. Focusing on the "action" means that each negative action has an equal opportunity to be sampled and reviewed. We proposed to revise 7 CFR 275.11(e)(2)(i) and (e)(2)(ii) accordingly. Sixteen commenters addressed the proposal to eliminate "effective date" for constructing the sample. Ten commenters opposed the proposal; 4 commenters supported the proposal; and two commenters supported the proposal but said they used "effective date". We have not categorized these last two commenters as either supporting or opposing the proposals because we believe that, based on how they worded their comments, that these commenters misunderstood the proposal. However, it is possible that they supported the proposal even though these States would be required to change their methods of sample selection.

Commenters did not address the statistical issues that resulted in the decision to propose requiring the use of "action date" and eliminate the use of "effective date." States did, however, discuss how this has been the process for many years and has apparently worked. It has worked largely because the Department was unaware that not all actions were being included in the universe. The problem only came to our attention when we began universal validation of negatives. The increased attention to negatives has resulted in an awareness of many of the problem addressed. State agencies started asking many questions about how to review negatives, questions that were not raised before validation was universal. The Department became aware of problems surrounding sample construction in two major ways. First, statistical reviews revealed that not all negative actions were being captured in some States that were relying on "effective date" to capture terminations. Further, the Department has been receiving questions about what action should be reviewed when multiple actions occurred during a sample month and the reviewer has not been able to determine what action was sampled.

Commenters were concerned that the proposed change would necessitate major computer changes to change the sample selection process. Such computer changes are costly and time-consuming, according to the commenters. While we understand the commenters' concerns about computer changes that will be required, we believe that it is necessary that the sampling universe include all possible negative actions. Therefore, the best way to obtain all possible negative actions and to eliminate possible bias in the selection process is to select based on "action" rather than "effective date." Accordingly, we are adopting as proposed the changes to 7 CFR 275.11(e)(2)(i) and (e)(2)(ii).

We have revised the definition of a "Negative case" in 7 CFR 271.2 to say that a "Negative case means any action to deny, suspend, or terminate a case". One commenter believed the proposed

definition was not consistent with the proposal to sample based on action taken. We disagree with that commenter. The current definition in 7 CFR 271.2 is not consistent with the proposed change; however, the new definition is. We are adopting the revised definition in 7 CFR 271.2 as proposed.

One commenter requested additional time for implementation if the proposal were to be adopted. We have considered this suggestion and have decided to make the modifications to the negative review procedures effective beginning with the first day of FY 2012, October 1, 2011.

Section 275.11(f)(2)(vi) currently provides that a negative action would only be subject to review if there was a break in participation. The Department proposed to eliminate the requirement in 275.11(f)(2)(vi) that there be a break in participation for a negative action to be subject to review because limiting the focus only to the "action" eliminates a need for determining whether there was a break in participation. A conforming change was also proposed to be made to the definition "Negative case" in 7 CFR 271.2. Twelve commenters opposed this proposal; three commenters supported the proposal. As stated in the preamble to the proposed rule, this proposed change to eliminate the "break in participation" is consistent with the change in focus to review each individual action taken. We are adopting the change to 7 CFR 275.11(f)(2)(iv) as proposed.

Finally, the Department proposed to limit the expanded review in 7 CFR 275.13(b). The expanded review allows the QC reviewer to look beyond the reason given for action taken by the eligibility worker (EW) to deny, terminate, or suspend a household. Under current procedures as provided for in 7 CFR 275.13(b) and expanded in FNS Handbook 310, the QC reviewer may examine the case file for additional reasons to support the denial, suspension, or termination. Section 275.13(b) permits contacting the household or a collateral contact to clarify whether a reason exists that supports a denial, suspension, or termination. The FNS Handbook 310 also permits a field investigation. During the validation process, it has become apparent that the expanded review has become an opportunity to search for information to eliminate an invalid negative decision, making the decision correct, rather than determining the validity of the action the EW took. The Department considers this an inappropriate use of the review process that needs to be curtailed. Limiting the expanded review is also consistent with a review of "action."

Under the review procedures as proposed, the QC review would be focused solely on the action taken, not on other possible negative actions that could have been taken. Under this proposal, an action could only be determined "valid" if the case record supported the negative action under review, as it was presented to the household. If documentation is missing in the case file to support and verify the reason for the specific denial action, the Department proposed to continue to allow the QC reviewer to contact the household or a collateral contact to verify the validity of the specific negative action.

The Department received 20 comments on this proposal. Eighteen commenters opposed the proposal; two supported it. The commenters opposing the change felt that this change, especially in combination with the other two changes, emphasized procedure rather than outcome. These commenters believed that the purpose of the negative review should be to determine if a household was ineligible for benefits, regardless of what a household may have been told about its eligibility. One commenter even stated that its notices to households were not always as accurate as one might wish them to be. Ten commenters suggested that if the expanded review be limited, it be limited to other information in the case file that would support an alternative reason for a negative action, but prohibit contact with the household or a collateral contact. State agencies pointed out that while wrong reasons may be coded for a specific negative action, the correct reason may be in the case file. The commenters felt that such coding errors were procedural rather than outcome based.

During the period following the publication of the proposed rule, the Department revised the FNS 310 Handbook to conform the procedures in the Handbook to the regulations. By doing so, the Department eliminated the most far-reaching forms of the expanded review in use by some States, *i.e.,* field investigations. The FNS 310 Handbook now requires the State agency to review the case record to determine if there is another reason in the case record that makes the negative action valid and allows the reviewer to contact the household or a collateral contact to verify information in the case record.

The Department has considered the commenters' concerns about the expanded review. However, the Department has decided the limitations on the scope of the expanded review are appropriate and consistent with reviews based on "action." Further, the Department believes that households are impacted by the reasons they are given for their case closures and denials. Section 273.13(a)(2) requires that the notice of adverse action clearly explain the proposed action, the reason for the proposed action, and the household's right to appeal. We do not believe that it is purely procedural when a household is given an incorrect reason for the negative action. We do not believe that it is purely procedural when the State agency fails to follow certification policy and provide households with the rights to which they are entitled, such as (but not limited to) Notices of Missed Interview (NOMIs), expedited service, or properly-timed denials. Therefore, we believe that it is in the best interests of program integrity and service to households to adopt the procedure as proposed. Further, with the change to "action" only reviews, we do not believe it necessary or appropriate to seek reasons other than the stated one given for the negative action. Accordingly, the Department is adopting as proposed the limiting of the expanded review in 7 CFR 275.13(b), with minor wording changes of "correct" to "valid" and "incorrect" to "invalid". The State agency will continue to be allowed to contact the household or a collateral contact to verify the validity of the specific negative action. A conforming change is also being made to 7 CFR 275.13(c)(1).

In summary, the Department has adopted the provisions revising the negative case review process because we believe that to do so is necessary to correct the statistical issues surrounding sampling, that the changes will result in consistent interpretations among the States, and represents a better balance between accuracy and customer service.

One commenter requested a 120-day hold harmless period if the Department adopted the proposed changes. We have considered this request but have determined that it is not appropriate. Section 16(c)(3) of the Act and Section 275.12(d)(2)(vii) of the regulations (as modified by this rule) provide for exclusion of errors resulting in the application of new regulations. However, a change in review procedures does not result in an error; the QC system is a measurement system and review procedures are the mechanism of that measurement. The errors that are measured are errors in the certification process. Changes to the review procedures do not change the certification requirements. The Department has not been able to

determine what the commenter expected to be excluded.

We would like to address at this point the need for States to be consistent, thorough, and accurate in the construction of the sample universe. All actions to deny, terminate, or suspend households need to be included in the universe. While we believe that using the notices of adverse action would be the simplest way to capture the terminations, it may not be the only way. Further, the failure to send a notice is not in and of itself a reason for an action to be not subject to review. For example, if for some reason, the State's computer fails to issue notices of adverse action to a category of households being terminated from the Program those terminations would still be subject to review. The State agency would be responsible for ensuring that that group of negative actions is subject to sampling. Also, if the computer sends notices of adverse action even if the "action" is solely the expiration of the certification period, it should be noted that expired certification periods are not negative actions and such cases should be excluded from the sample. Another category of concern is administrative closures that do not result in adverse action notices to households, such as a case closure and transfer to another number because the worker incorrectly opened the case under the wrong number. The Department does not consider such administrative closures to be negative actions as defined by this rule.

D. Corrective Action Planning

Section 4118 of the FSRA requires a State agency to do corrective action planning whenever its payment error rate is six percent or greater. In the interim rule published October 16, 2003 at 68 FR 59519, 7 CFR 275.16(b)(1) was revised to require corrective action planning whenever a State agency's error rate equals or exceeds six percent. Current regulations provide that corrective action planning shall also be done by a State agency when the State agency is not entitled to enhanced funding (7 CFR 275.16(b)(2)) or when the State agency's negative case error rate exceeds one percent (7 CFR 275.16(b)(3)). We proposed to remove 7 CFR 275.16(b)(2) as no longer necessary because enhanced funding has been eliminated. We also proposed to continue to require State agencies to conduct corrective action planning whenever the negative case error rate exceeds one percent (7 CFR 275.16(b)(3)), (redesignated as 7 CFR 275.16(b)(2) to reflect the deletion of 7 CFR 275.16(b)(2)). We proposed retaining the requirement to do corrective action planning when the negative error rate exceeds one percent to ensure that households are not being inappropriately denied or terminated. Further, this proposal is consistent with the High Performance Bonuses final rule that provides criteria for rewarding States with very low negative case error rates.

Finally, we proposed to redesignate 7 CFR 275.16(b)(4), (b)(5), and (b)(6) as 7 CFR 275.16(b)(3), (b)(4), and (b)(5), respectively, to reflect the removal of 7 CFR 275.16(b)(2) and redesignation of 7 CFR 275.16(b)(3) as 7 CFR 275.16(b)(2). In practical terms, this change will have little impact on the number of State agencies required to do corrective action planning. In FY 2002, the last year of enhanced funding, no State that had a payment error rate of less than six percent failed to qualify for enhanced funding. We received 4 comments concerning corrective action plans for negative reviews. Two commenters supported the proposal. Two commenters were concerned about the impact of the proposed changes to the negative review process on the negative error rate and were opposed to the provision as written if the changes to the negative review process were adopted. As discussed above, the Department has adopted the changes to the negative review process. We have considered the comments; however, we are adopting as final the change made in the interim rule to 7 CFR 275.16(b)(1) and the deletion of 7 CFR 275.16(b)(2) and the change in the proposed rule to 7 CFR 275.16(b)(3) (redesignated as 7 CFR 275.16(b)(2)). We believe the 1-percent threshold is appropriate even though some States' error rates may rise.

Section 275.13 requires State agencies to review suspended cases as part of the negative case sample. Suspended cases were added to the negative universe in a final rule published July 16, 1999, at 64 FR 38287. That rule did not add suspended cases to those deficiencies requiring corrective action at 7 CFR 275.16(b)(6) (redesignated in this rule as 7 CFR 275.16(b)(5)). To correct this oversight, we proposed to revise redesignated 7 CFR 275.16(b)(5) to include deficiencies which result in improper suspensions. One commenter addressed and supported this proposal. We are adopting as proposed the requirement to address deficiencies in the handling of suspended cases through the corrective action planning process.

E. Time Frames for Announcing the National Performance Measure and for Completing QC Reviews and Resolving State/Federal Differences

The interim rule published October 16, 2003 at 68 FR 59519 revised the regulations at 7 CFR 275.23(e)(7) to establish the following time frames for completing QC reviews and resolving State/Federal differences and for announcing the national performance measure. The deadline for completing QC reviews and resolving State/Federal differences is May 31 of the following year. The deadline for announcing the national performance measure is June 30 following the end of the fiscal year review period. These time frames are mandated by the Act, and we did not receive any comments addressing these new time frames for completing the review process. Accordingly, we are adopting these time frames established in the interim rule.

These new time frames provide approximately two additional months to complete the case review and arbitration process and to develop and announce the national performance measure. We proposed to use this additional time in the following way: (1) Provide State agencies at least 100 days from the end of the sample month to complete and transmit to FNS 90 percent of all cases and that State agencies shall have at least 113 days from the end of the sample month to complete and transmit to FNS 100 percent of all cases selected for the sample month; (2) provide State agencies at least 123 days from the end of the annual review period to complete or otherwise account for all cases selected for review during the annual review period and to report to FNS the results of all the reviews; (3) provide State agencies until January 21 after the end of the review year to complete and dispose of all cases; and (4) stipulate that FNS may grant additional time as warranted upon request by a State agency for cause shown beyond these dates to complete and dispose of all cases. We also proposed to revise 7 CFR 275.21(b)(4) by replacing "95" with "113"; to revise 7 CFR 275.21(c) by replacing "105" with "123"; and to add a sentence to each of these paragraphs stating that if FNS extends the time frames in 7 CFR 275.21(b)(2), that the time frames in these paragraphs will be extended accordingly. We also proposed to continue to allow States 20 days to request arbitration of individual cases; however, we also requested comments about whether this time was considered adequate.

On January 22, 2003, we waived the deadlines for State agencies to complete

processing cases in 7 CFR 273.21(b) for FY 2003 and provided States with 113 days to complete each sample month's cases. This waiver was extended on March 4, 2004 for Fiscal Years 2005 and 2006. The waiver was again extended on September 12, 2006, for FY 2007 and FY 2008. In providing comments on this proposal, we requested comments about whether this amount of additional time was useful and/or sufficient. In addition to the extended time frames for completion of individual cases, that waiver provides State agencies an additional 10 days at the end of the review period, *i.e.,* January 22 through January 31, to perform checks on the individual data transmitted by State agencies (c-trails). In the proposed rulemaking, we did not allow this additional 10 days at the end of the review year for checking the c-trails. We did not propose allowing the additional 10 days at the end of the review year because we felt that States had already received a significant additional amount of time to perform and complete all work related to the individual case reviews. Delaying completion of the State work until January 31 delays the completion of the Federal re-review process which in turn impacts FNS's ability to timely and accurately prepare the payment error rates. However, we were interested in receiving comments on this issue.

We received 16 comments addressing the individual case time frames, the 10-day period at the end of the review year to check the c-trails, and the time period to request arbitration. Concerns were also raised about the failure of FNS to establish individual case review times for the Federal validation process and delayed arbitration responses. Six commenters supported the individual case time frames as proposed; six commenters recommended additional time, up to as much as 125 days. Also, six commenters recommended that we eliminate the interim tracking and establish only a final deadline. We have considered the comments and will eliminate the interim tracking and establish only a final date for completion of each month's sample; provide the States 115 days to complete each month's sample; and allow 10 days at the end of the review year to check the c-trails. We also revised 7 CFR 275.21(b)(4) by replacing the two-tiered time frame completion schedule with 115 days; revised 7 CFR 275.21(c) by replacing "105" with "125"; and adopted the proposed addition to each of these paragraphs stating that if FNS extends the time frames in 7 CFR 275.21(b)(2), that the time frames in these paragraphs will be extended accordingly.

Although we did not provide the States with 125 days to complete individual reviews each month as some State agencies recommended, we did provide the State agencies with 2 days more than proposed to complete individual reviews, *i.e.,* 115 days instead of 113 days. As discussed in the preamble to the proposed rule, when the time to complete reviews and issue error rates was cut back by the Mickey Leland Childhood Hunger Relief Act, Public Law 103–66, FNS absorbed the entire reduction. When the FSRA replaced the 60 days lost under Public Law 103–66, FNS provided the States with a significant amount of that replaced time. We believe that FNS needs the remaining time to complete the individual case reviews. In addition to replacing some of the lost time, FNS's work load has increased with the advent of 100 percent validation of negative cases.

Currently, there is one level of arbitration. Quality control arbitration is the resolution of disagreements between the FNS regional office and the State agency concerning individual QC case findings and the appropriateness of actions taken to dispose of an individual case. The time frames for conducting arbitration are in 7 CFR 275.3(c)(4). Under these rules, a State agency is required to submit its request for arbitration within 20 calendar days of the date of receipt by the State agency of the regional office case findings. The FNS arbitrator has 20 calendar days from receipt of the State agency request to review and make a decision on the case. Prior to Public Law 103–66, States had 28 days to request arbitration. As discussed above, originally FNS absorbed the total cut in review time and States lost 8 days to request arbitration. Although we considered the amount of time allowed for requesting arbitration to be adequate, we specifically requested comments, however, about whether affected parties and the public agree that the time frames are adequate. We received 7 comments addressing the time frames for requesting arbitration. Five commenters supported additional time to request arbitration; two commenters supported the existing 20 days. One commenter suggested that the arbitration process be changed to include a State person. This proposal was outside the scope of the proposed rule and has not been addressed.

Two commenters wanted both more time to do reviews and more time to request arbitration. Three other commenters wanted additional time to request arbitration. In the proposed rule, States were given part of the restored time, and in this rule have been given two more days to perform their reviews, time which has come out of the Department's time to complete the Federal re-reviews, conduct arbitration, and calculate and release the error rates. As we indicated in the proposed rule, if we provided more time to request arbitration, time to conduct reviews by the States may have had to be reduced. States did not address this point; further, States were more concerned about the amount of time available for them to conduct individual reviews than about the time frames to request arbitration. In response to that concern, we provided them more time to conduct individual reviews. That time was taken from time for Federal re-reviews to be conducted.

Three States commented that 20 days was not a sufficient amount of time to request arbitration when multiple cases are received at the same time. We believe that 20 days is an adequate amount of time for a State agency to prepare its case for arbitration. This time period is intended primarily for the State agency to prepare its letter addressing what issue or issues it is appealing, assemble the case file, and transmit the request. This time period is not intended for State agencies to conduct additional review activities. Overall, there are very few arbitration cases in any one review year. In FY 2000 there were a total of 75 cases nationwide; in FY 2001 there were 37; in FY 2002, there were 43 cases; in FY 2004, there were 24 cases; in FY 2005, there were 38 cases; in FY 2006, there were 27 cases; in FY 2007, there were 47 cases, and in FY 2008, there were 55 cases. The commenters did not provide a compelling case stating why this work cannot be completed in the 20 days provided for that purpose. The arbitration time frames as currently established appear to be adequate from our perspective. Accordingly, we have decided to make no change to the time frames to request arbitration.

Under the time frames as provided in the January 23, 2003; March 4, 2004; and September 12, 2006 memoranda from FNS headquarters to FNS regional offices, FNS regional offices were given until March 31 to complete their subsample review process in order for all arbitration to be completed timely and to provide some additional time to ensure the accuracy of the error rates, liabilities, and adjustments to the liabilities. Although we did not request comments on the establishment of Federal review time frames, we received three comments suggesting the

establishment of time frames for completion of Federal reviews. Those comments were outside the scope of the proposed rule. While we understand the concerns expressed by the commenters about delays in receiving Federal re-review results, we believe that this is an issue that can be addressed on a case-by-case basis.

Section 275.21(c) provides that State agencies report the monthly progress of sample selection and completion on the Form FNS–248, Status of Sample Selection and Completion or other format specified by FNS. Prior to publication of the proposed rule (published on September 23, 2005, at 70 FR 55776), in response to a notice published at 68 FR 10437 on March 5, 2003, the Department received two comments suggesting elimination of the form. Federal statisticians use the information on the FNS–248 to track the status of case completions and identify when timely generation of an error rate is jeopardized. Most of the information on the FNS–248 is available elsewhere. Further, the form itself is not necessary for State agencies to provide the necessary information, and the regulation currently provides that States may submit this information other than on the form. Therefore, we proposed to revise 7 CFR 275.21(c) to eliminate the form. State agencies will still be required to submit the information on a monthly basis as directed by the appropriate regional office. We received no comments concerning this proposal; we are adopting it as proposed.

Section 275.21(d) requires State agencies to submit an FNS–247, Statistical Summary of Sample Distribution, annually. Although the requirement is still in the regulations, FNS no longer requires State agencies to submit this form. Accordingly, we proposed to remove 7 CFR 275.21(d). We received no comments concerning this proposal; we are adopting it as proposed.

F. Consequences to Households Who Refuse To Cooperate With QC Reviews

Section 273.2(d)(2) provides procedures for handling the cases of SNAP participants who refuse to cooperate with a QC review of their case. Currently, a household is determined ineligible if it refuses to cooperate with a QC review. Questions have arisen about what happens when one or more household members leave a household subject to this penalty. Because the regulations do not provide an answer to the question, it has been left to State agencies to determine which household members continue to be subject to the penalty. We proposed to amend this provision to provide that the ineligibility penalty will follow the household member(s) who refused to cooperate. We received 13 comments addressing this proposal. Nine commenters opposed the provision; 4 commenters supported; one commenter pointed out that a tracking mechanism would have to be developed. Commenters opposed to the proposal believed that it would be difficult to accomplish and were concerned about the need for a tracking mechanism to be developed that would involve computer expenses. We recognize these concerns; however, we do not believe households should be prohibited from participating in the program if the person who refused to cooperate with the QC review no longer resides with the remaining household members. Therefore, we are adopting as proposed the requirement that the ineligibility penalty follow the household member(s) who refused to cooperate. If the State agency is unable to identify a particular household member as the refusing person, the State agency may continue to decide what member(s) to disqualify. We recognize that it will take States time to adapt their computer systems to track the refusing individual. Accordingly we are giving the States an extended time to implement the provision, until October 1, 2011. States may opt to implement this provision earlier. A 120-day hold harmless provision applies to implementation of this change.

In this rule, we also proposed to make a conforming change to 7 CFR 273.2(d)(2). Current procedures in 7 CFR 273.2(d)(2) require that a household be terminated for refusal to cooperate with a State or Federal QC reviewer. If a household terminated for refusal to cooperate with a State QC reviewer reapplies within 95 days of the end of the annual review period, the household cannot be determined eligible until it cooperates with the State QC reviewer. If the household terminated for refusal to cooperate with a State QC reviewer reapplies more than 95 days after the end of the review period, the household is required to provide verification of all eligibility factors before it can be certified. If a household terminated for refusal to cooperate with a Federal QC reviewer reapplies within 7 months of the end of the annual review period, the household cannot be determined eligible until it cooperates with the Federal QC reviewer. If the household terminated for refusal to cooperate with a Federal reviewer reapplies more than seven months after the end of the review period, the household is required to provide verification of all eligibility factors before it can be certified. We proposed to change the dates in 7 CFR 273.2(d)(2) to 123 days and nine months to conform the dates in 7 CFR 273.2(d)(2) to the proposed changes in the dates for completion of the State review process in 7 CFR 275.21(b) and the end of the Federal QC review process in 7 CFR 275.23(e)(7) (renumbered in this proposed rule as 7 CFR 275.23(c)). As we modified the change in dates for completing the QC review process to 125, we are adopting this conforming change, making the appropriate change to 125 days.

We also proposed additional conforming changes to other sections of the regulations that identify these time frames. These conforming amendments are not discussed in this preamble and are adopted with appropriate modifications to reflect the additional time provided to complete the reviews.

G. Section 275.23—Determination of State Agency Program Performance

Section 275.23 establishes the procedures to be used to evaluate a State agency's performance through the QC review system. This section includes the error rates to be established, the methodology used to establish those error rates (including regression), the thresholds for establishing potential liabilities for excessive error rates, the relationship of the sanction system to the warning process and negligence, the time frames for announcing error rates, the procedures for resolving liabilities, the procedures for reducing liabilities based on good cause on appeal, the policy on charging interest on liabilities, and the procedures for new investment activities to reduce liabilities.

Over time, as the authority for determining the error rates and the sanction system has been changed by legislation, changes have been made throughout 7 CFR 275.23. Those changes were made within the existing structure of the section. The changes to the sanction system made by the FSRA impact much of 7 CFR 275.23. Because several sections require substantive revision and many paragraphs require minor changes or reference changes, we proposed to reorganize the section at the same time as making the necessary changes resulting from the legislation. We have adopted the reorganization to 7 CFR 275.23 in its entirety.

Under this reorganization, 7 CFR 275.23(a) addresses the basic components of FNS determination of a State agency's efficiency and effectiveness (currently 7 CFR 275.23(a) and (b)). A new 7 CFR 275.23(b) addresses the error rates. The existing

methodology for regression in 7 CFR 275.23(e)(6) is incorporated into the new 7 CFR 275.23(b). Section 273.23(c) addresses the time frames for completing case reviews, conducting arbitration, and issuing error rates. Section 273.23(d) addresses State agency liability. Included in this section is the procedure for establishing the national performance measure, the liability amount methodology, appeal rights, and the relationship to the warning process and negligence. Section 275.23(e) addresses liability resolution plans; 7 CFR 275.23(f) addresses good cause; 7 CFR 275.23(g) addresses results of appeals on liability resolution; 7 CFR 275.23(h) addresses new investment (the term "reinvestment" has been changed in this rule to the term "new investment," consistent with the language used in the FSRA); 7 CFR 275.23(i) addresses payment of the at-risk money; and 7 CFR 275.23(j) addresses interest charges.

Current 7 CFR 275.23(e)(4) (Relationship to warning process and negligence), 7 CFR 275.23(e)(5) (Good cause), and 7 CFR 275.23(e)(6) (Determination of payment error rates) are unchanged except for minor editing, renumbering, or reference changes. Sections 275.23(e)(4), (e)(5), and (e)(6) are redesignated as 7 CFR 275.23(d)(4), (f), and (b)(2), respectively. These changes are being made as part of the restructuring for purposes of clarity. Necessary reference changes and language changes resulting from the elimination of enhanced funding have also been made. Such changes are technical in nature and do not impact the procedures themselves. These sections include the regression methodology and the criteria for good cause. As indicated in the preamble of the proposed rule, comments were not being sought on the substantive content of these sections nor was any consideration going to be given to any comments submitted pertinent to these sections in developing the final rule. The inclusion of these sections in the proposed rule was done solely for purposes of structuring. The restructuring and redesignations described in this paragraph have been adopted as proposed.

H. Elimination of Pre-Fiscal Year 2003 Liability Establishment Procedures

The interim rule, published October 16, 2003, at 68 FR 59515, revised 7 CFR 275.23(e) to eliminate procedures for establishing liabilities for Fiscal Years 1983 through 1991. We are adopting as final the revisions to 7 CFR 275.23(e) that eliminated procedures for establishing liabilities for Fiscal Years 1983 through 1991.

Section 275.23(e)(2) provides procedures for establishing liability for excessive payment error rates for FY 2002. We proposed removing 7 CFR 275.23(e)(2) (as part of the overall revision of 7 CFR 275.23) as it no longer is necessary. All liabilities for FY 2002 have already been determined. We are adopting this deletion as proposed.

I. Determination of Payment Error Rates and Potential Liability Amounts

Under the FSRA, liability is established based on two consecutive fiscal years of poor performance. Whenever there is a 95 percent statistical probability that a State's payment error rate exceeds 105 percent of the national performance measure in each of two consecutive review years, the Department will issue, for the second consecutive fiscal year, a statement of potential liability amount to the State agency at the same time that the Department issues the State agency's official regressed payment error rate. One commenter recommended that the regulations incorporate the formula for calculating that there is a 95 percent confidence that error rate is greater than 105 percent of the national average error rate. We have determined that this is unnecessary. This calculation is basic statistical methodology.

Section 275.23(e)(3) provides procedures for establishing liability amounts for FY 2003 and beyond, putting in place the provisions of Section 4118 of the FSRA. The provisions of Section 4118 give the Department the authority to waive any portion of the established liability amount, to require a State agency to invest up to 50 percent of any established liability amount in new program administration activities, to establish up to 50 percent of the established liability amount as being "at-risk" for repayment if a liability amount is established for the subsequent fiscal year, or any combination of the three. Readers should refer to the interim rule for more information concerning the new liability system.

As discussed in the preamble of the proposed rule, at the same time as the Department advises the State agency of its error rates, the Department will also advise the State agency of the Department's determination of the portions of the liability amount (expressed as percentages) designated as waived, for new investment, and at-risk. If the State agency wishes to appeal the liability amount through the process in Part 283 of the regulations, the State agency may do so.

We received two comments on the interim rule provision establishing procedures for addressing the Secretary's authority to resolve the liability amounts for FY 2003 and beyond.

One commenter recommended that liabilities be resolved only through the use of new investment. This would require the Department to waive 50 percent of any potential liability amount that is established. The Department does not believe that this was the intent of the law and is not adopting this proposal.

In the proposed rule, 7 CFR 275.23(c) specified that the Department would issue the potential liability amount settlement proposal at the same time it issues the State's official regressed payment error rate. One comment to the interim rule recommended that the Department delay sending the determination about the disposition of the liability amount until September 30th, and use the time between the issuance of the error rates and the potential liability amount and September 30th to negotiate a proposed liability settlement plan. Under this proposal, the Department would retain the ability to determine amounts to be designated as "at-risk." The Department has considered the commenter's proposal. However, assuming that the statute allows for the delay, the time constraints built into the process do not allow us to proceed as proposed. If the error rates are issued on June 30, there are only 92 days available to negotiate settlements. The Department's experience has been that it takes all of that time just to address the issues surrounding approval of the settlement agreement for new investment. Therefore, we have not adopted the proposal submitted in response to the interim rule to delay release of the proposed potential liability amount settlement plan until after negotiation with the affected States.

J. Appeals of Liability Determinations

One commenter, in response to the interim rule, recommended that the regulations should provide that the notification letter sent to the State agency, Governor, and legislature include a notification of the State agency's appeal rights pursuant to Section 16(c)(8)(D). As a general practice, the letters sent by the Department already include this information. We do not believe that it is necessary to incorporate a requirement in the regulations that the Department include this information in the letters.

Section 16(c)(7) of the Food and Nutrition Act, as amended, provides

that a State agency is entitled to appeal the amount of a liability only for a fiscal year in which a liability amount is established. That means that excessive payment error rates in the first year of the new 2-year liability system are not subject to appeal. Nor is the national performance measure subject to appeal, in accordance with Section 16(c)(6)(D) of the Food and Nutrition Act, as amended. Thus, only a State agency's second year error rate and related potential liability determination are appealable. The Department recognizes that good cause may exist for an excessive error rate in year 2 that could be the result of events in year 1. The Department proposed at 7 CFR 275.23(d)(3) to limit appeals to the determination of a State's payment error rate, or a determination of whether the payment error rate exceeds 105 percent of the national performance measure and the liability amount for any year for which a liability is established. To address the limitations on the appealability of year 1 and the possibility of causes extending back into that year, the Department also proposed to allow a State agency to address areas of good cause in the prior fiscal year that may have impacted the fiscal year 2 for which a liability amount has been established.

We received two comments on the proposal to allow a State agency to address areas of good cause in the prior fiscal year that may have impacted the fiscal year 2 for which a liability amount has been established. One commenter supported the provision as proposed. The second commenter expressed concern that the proposed rule makes no provision for good cause from the year prior to year one to be considered in determining the status of year 1. As discussed in the preamble to the proposed rule and above, there is no appeal right for a determination of a year 1 status. Appeal rights only exist when a potential liability amount is established in year 2 and only that year's error rate and potential liability amount are appealable.

The recent significant drop in the national performance measure and individual State error rates has raised questions about the effect on this new liability system if the error rates continue to fall lower. Specifically questions have arisen about what happens if a State agency's error rate is below six percent but there is a 95 percent statistical probability that the State's payment error rate exceeds 105 percent of the national performance measure. Six percent is the potential liability threshold provided in the FSRA. Thus, if the State's error rate was below 6 percent, no liability amount would be established. However, if the State's error rate was determined by a 95 percent statistical probability to be 105 percent of the national performance measure, the year would be a year of poor performance under the new liability system and would be considered a year 1 in determining whether a State agency would have two consecutive years of error rates exceeding 105 percent of the national performance measure. The law mandates that a year be considered a year 1 whenever there is a 95 percent statistical probability that a State agency's payment error rate exceeds 105 percent of the national performance measure. The six percent threshold for a liability amount determination is not relevant to the determination of year 1 status. We received one comment addressing the relationship between the threshold for establishing a liability amount and the determination of year 1 status. The commenter recommended that a State be considered to be meeting minimum performance standards and that it not be counted as a year 1 whenever a State's error rate fell below 6 percent but there was a 95 percent statistical probability that the State agency's payment error rate exceeded 105 percent of the national performance measure. While we understand the State's viewpoint, these separate measurements are provided by law and the Department has no discretion in this area.

Section 4118 of the FSRA provides that when a State agency appeals its potential liability amount determination, if the State agency began new investment activities prior to an appeal determination, and if the potential liability amount is reduced to $0 through the appeal, the Secretary shall pay to the State agency an amount equal to 50 percent of the new investment amount that was included in the liability amount subject to appeal. If the Secretary wholly prevails on a State agency's appeal, Section 4118 provides that the Secretary will require the State agency to invest all or a portion of the amount designated for new investment to be invested or paid to the Federal government. Section 4118 further specifies that the Department will issue regulations addressing how the remaining new investment amount will be treated if neither party wholly prevails.

As specified in the interim rule, if the State agency appeals the potential liability amount and wholly prevails and consequently its potential liability amount is reduced to $0 through the appeal, and the State agency began new investment activities prior to the appeal determination, FNS shall pay to the State agency an amount equal to 50 percent of the new investment amount expended that was included in the potential liability amount subject to the appeal. The interim rule also provided that if FNS wholly prevails on a State agency's appeal, FNS will require the State agency to invest all or a portion of the amount designated for new investment to be invested or paid to the Federal government. The interim rule published October 16, 2003, at 68 FR 59519 established in 7 CFR 275.23(e)(10) the provisions concerning either the Secretary or the State agency wholly prevailing. These provisions were moved to 7 CFR 275.23(g)(1) in the proposed rule. The provisions of the interim rule, redesignated as 7 CFR 275.23(g)(1) by the proposed rule, are adopted as final.

Section 16(c)(1)(F)(iv) of the Food Stamp Act (as amended by Section 4118 of the FSRA) (now the Food and Nutrition Act of 2008) provides that the Department shall promulgate regulations when neither the Department nor the State agency wholly prevails on appeal. As that section of the Act pertains specifically to liability amounts used for new investment, the Department needed to address a split appeals decision in terms of the amount designated for new investment. The Department believed that the only way to accomplish this and implement the statutory intent was to apply the initial determination percentages to the liability amount newly established through the appeal. For example, if the original liability was $750,000 and the Department determined to waive 25 percent ($187,500) of it, require that 25 percent ($187,500) be newly invested, and require 50 percent ($375,000) remain at-risk and if the appeal resulted in reducing the liability amount to $600,000, the determination under this option would be 25 percent ($150,000 waived, 25 percent ($150,000) required to be newly invested, and 50 percent ($300,000) placed at-risk. Using the original percentages, immediate action can be taken by both parties to process the results of the appeal decision. The Department received no comments on this proposal. We are adopting the provision as proposed.

As indicated above, the Department intends to identify the portions of the liability amount to be waived, newly invested, or at-risk as percentages of the liability amount at the same time that it provides the State agency with notification of its error rates. If the State agency wholly prevails on appeal, the amounts originally designated as

waived, newly invested, or at-risk would be reduced to $0 (percentage designated multiplied by $0 liability amount). If FNS wholly prevails on appeal, the original liability amount determinations (expressed as percentages) and designated as waived, newly invested, or at-risk, would remain unchanged.

K. New Investment

The State agency may choose to begin new investment of any amount of the liability so designated while the appeal is proceeding, based on an approved new investment plan. The interim rule established procedures for adjusting reimbursement and collection procedures if a State began new investment during the appeal process and subsequently wholly prevailed in its appeal or if the Department wholly prevailed on appeal.

We proposed procedures for addressing the Department's responsibility if a State agency began investment prior to completion of an appeal and neither agency wholly prevailed.

If a State begins new investment prior to an appeal decision, and the amount already invested is less than the originally designated percentage multiplied by the new liability amount, the Department proposed to require that the State agency continue to invest up to the newly calculated investment requirement. In the instances where a State agency has expended more than the originally designated percentage multiplied by the new liability amount, we proposed that the Department will match the amount of funds expended in excess of that amount. This is consistent with the requirement in Section 4118 for when the State agency wholly prevails on appeal.

The regulations currently detail the requirements for reinvestment. We proposed that these procedures remain essentially the same but for the above mentioned change of wording to new investment. Under the proposed reorganization, the procedures on new investment would be in new paragraph (h) in 7 CFR 275.23. In the event that a State agency fails to comply with its new investment plan, we proposed in redesignated 7 CFR 275.23(h) that the State agency shall be required to remit to the Department the amount of funds that the State agency failed to invest. Those funds shall be remitted to the Department within 30 days of the date the State agency is notified of its failure to comply with its new investment plan. Further, we proposed that interest shall be charged beginning with the date the State agency received the notice of failure to newly invest as required. The Department received no comments on these proposals. We are adopting these provisions as proposed.

L. Payment of At-Risk Money

We proposed at 7 CFR 275.23(i) the procedures concerning a State agency's payment of the at-risk money. We proposed that the at-risk money would become due if, in the year subsequent to the establishment of the money being at-risk, the State agency is again potentially liable for a sanction. Under the proposal, payment would have to be made before the end of the fiscal year following the reporting period in which the at-risk money became due (that is September 30 of the year that the subsequent liability notification is issued) unless an administrative appeal relating to liability is pending.

For example, if, in FY 2003, a State agency's error rate exceeds the performance goal, and again its error rate is excessive in FY 2004 based on its announced error rate, FNS would send the notification of the FY 2004 liability amount by June 30, 2005. If the State agency's error rate in FY 2005 is excessive, any money designated as at-risk for the FY 2004 liability would be due by September 30, 2006 unless an appeal for the FY 2004 liability was still pending. If the State agency had appealed the liability determination, the State agency would not be required to remit to FNS any at-risk money until any administrative and judicial appeals concerning the liability determination that the at-risk money was based upon had been completed. Appeal of a subsequent liability amount would not have eliminated the State's requirement to pay the at-risk money when it became due. The appeal of the subsequent year's liability amount would determine whether the liability that year would be reduced and would affect the establishment of a possible additional designation of at-risk money.

We did not receive any comments on this proposal. However, subsequent to the publication of the proposed rule, we have determined that a precise reading of the law requires that payment of the at-risk money be held in abeyance until any appeal for the subsequent year's potential liability is resolved. If the potential liability amount for the subsequent year is reduced to zero, the at-risk money would not be subject to repayment. If the potential liability amount is not reduced to zero, the at-risk money would be required to be repaid. We have revised 7 CFR 275.23(i) accordingly.

If an appeal is not pending, we proposed that interest begin accruing beginning October 1 following the September 30 due date for payment of any at-risk money. Section 4118 of the FSRA provides that interest shall not accrue on the at-risk amount during a reasonable period following the resolution of any administrative or judicial appeals. Therefore, if an appeal is pending on September 30, we proposed that interest will begin to accrue beginning 30 calendar days after the completion of the appeals process and notification to the State agency of the final amount of the at-risk money determined to be required to be repaid. This is consistent with the current regulations at 7 CFR 275.23(e)(8) (redesignated as 7 CFR 275.23(j)) for payment of interest on QC liability claims. We also proposed that FNS will continue to have the authority to recover a State's liability for at-risk money through offsets to the letter of credit, billing a State directly, or using other authorized claims collection mechanisms, in accordance with redesignated 7 CFR 275.23(j). The reference to the Federal Claims Collection Act of 1966 (Pub. L. 89–508, 80 Stat. 308) has been updated to refer to the Debt Collection Improvement Act of 1996, Public Law 104–134, and the Federal Claims Collection Standards, 31 CFR Parts 900–904. The Department received no comments on these proposals and is adopting them as proposed.

M. Demonstration Projects/Social Security Administration (SSA) Processing

Demonstration project and SSA joint-processed cases (cases processed in accordance with 7 CFR 273.2(k) of the regulations) are subject to special consideration in terms of the QC review process. Demonstration project cases and SSA joint-processed cases are included in the sampling universe, sampled, reviewed, and in the calculation of completion rates. Demonstration project cases that significantly modify SNAP eligibility and benefit calculations and SSA joint-processed are excluded from the error rate calculations. The determination of whether the modification is significant enough to exclude the demonstration project cases is made on a project-by-project basis. SSA joint-processed cases are excluded under the current regulations in all instances. Because of recent demonstration project cases processed by SSA separately from the procedures in 7 CFR 273.2(k), questions have arisen about how to handle these cases for QC purposes.

These cases would under normal procedures have been excluded from the

error rate calculations. However, as demonstration projects, they have been determined to be more appropriately included in the error rate calculations. State agencies have initiated demonstration projects for many reasons, including program simplification and error reduction. In some instances State agencies want such cases included in the error rates because they perceive that the inclusion would result in improved error rates. Sections 275.11(g), 7 CFR 275.12(h), 7 CFR 275.13(f), and 7 CFR 275.23(c)(5) (redesignated in this rule as 7 CFR 275.23(b)(1)) provide the procedures for sampling, reviewing, and reporting the results of demonstration project cases that significantly modify the rules for determining households' eligibility or allotment level and SSA processed cases. The language in these sections has been interpreted variously by different parties and has been determined to be unclear. In order to clarify the procedures and make it clear that SSA processed demonstration projects may be included in the error rates, we proposed to revise 7 CFR 275.11(g) and redesignated 7 CFR 275.23(b)(1) to provide that demonstration project cases and SSA processed demonstration project cases may be included in error rate calculations, as determined on a project-by-project basis by the Department. The Department received two comments supporting the proposed revisions. We are adopting the revisions as proposed.

N. 120-Day Variance Exclusion (7 CFR 275.12(d)(2)(vii))

A variance is the incorrect application of policy and/or deviation between the information that was used to authorize the sample month issuance and the verified information that should have been used to calculate the sample month issuance. Paragraph 275.12(d)(2)(vii) provides for exclusion of variances resulting from application of new regulations or implementing memoranda of Federal law changes. Originally the provision applied only to mandatory implementation of legislative and regulatory provisions and only during the 120 days of the exclusion. Over time, the extent of the variance exclusion has been expanded to reflect a change in viewpoint of the intent of this hold harmless period. The variance exclusion was expanded to provide that the variance exclusion covered errors made during the 120-day period until the case was next acted upon. Further, in response to passage of the FSRA, the Department applied this variance exclusion to optional provisions of the law. Throughout this expansion, numerous questions have been raised about what the variance exclusion actually means. We proposed to clarify the language in 7 CFR 275.12(d)(2)(vii) to provide that all variances that occur during the variance exclusion period that stem directly from the provision being implemented are excluded until the household's case is next recertified or otherwise acted upon. Further, we proposed to modify the provision to indicate that the variance exclusion may be authorized on a case-by-case basis in the instance of optional legislative or regulatory changes, not just mandatory changes. However, we did not propose to provide the exclusion for waivers. The legislative provision authorizing the variance exclusion is specific in applying it to regulatory implementation. The Department's extension of that to implementation of legislative provisions is driven by the fact that many legislative provisions are effective immediately, prior to any regulation being published. The Department received 6 comments on this proposal; 4 commenters supported the proposal as written; one commenter wanted the exclusion to apply to all optional regulatory and legislative provisions; one commenter wanted the exclusion to apply to waivers. We have adopted the provision as proposed.

O. Federal Information Exchange (FIX) Errors (7 CFR 275.12(f)(3))

As discussed above, a variance is the incorrect application of policy and/or deviation between the information that was used to authorize the sample month issuance and the verified information that should have been used to calculate the sample month issuance. Paragraph 275.12(f)(3) requires that all variances resulting from use by the State agency of information received from automated Federal information exchange systems (FIX errors) be coded and reported as variances, although they are excluded in determining a State agency's error rates. Data subject to the FIX exclusion are limited to Federal sources that verify income provided by the Federal source providing the data, Federal sources that provide the deduction for which the Federal source directly bills the household, and the Federal source that defines the disability. Information provided by Federal sources that are comprised of data provided to the Federal source by other entities is not information subject to the FIX variance exclusion. This requirement was established for program management purposes in an interim rule published November 2, 1988 at 53 FR 44171 and again addressed in the final rule published November 23, 1990, at 55 FR 48831. After fifteen years of having the requirement in place to report such variance, the Department has not found the information to serve any program management purpose. While State agencies would still be required to correct any identified variances in individual cases, as they are for any other identified variance, we feel there is no reason to continue to require States to report this information to FNS. There have been few reported variances. Further, there has been no identified corrective action necessary at a national level during the period this requirement has been in place. Therefore, we proposed to remove 7 CFR 275.12(f)(3). We received 4 comments supporting this proposed removal, all supporting the change. We are adopting it as proposed.

P. Technical Changes

In addition, we proposed in Part 271 Definitions to remove definitions no longer used in the QC system and to add the definition "National performance measure" to reflect current QC policy, and we also proposed to make technical changes throughout Part 275 to remove references to other Federally mandated QC samples, the Worksheet for Integrated AFDC, Supplemental Nutrition Assistance Program, and Medicaid QC Reviews, and the Integrated Review Schedule. With the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, the Aid to Families with Dependent Children was eliminated and consequently, the integrated QC review system was eliminated. Therefore, we proposed to change throughout Part 275 the titles of the Work Sheet and Review Schedule to reflect that QC reviews are now Supplemental Nutrition Assistance Program only reviews. We also proposed to remove throughout Part 275 references to integrated QC samples, reviews, and other Federally-mandated QC systems.

Throughout the rule, we proposed to remove references to the "underissuance error rate" wherever payment error rate and underissuance error rate are used. The definition of payment error rate includes both the overissuance error rate and the underissuance error rate, making the separate reference to the underissuance error rate redundant. This does not mean that FNS will not calculate the underissuance error rate.

With full implementation of electronic benefit transfer systems of issuance, benefits are no longer being issued as coupons. Accordingly we proposed to remove references to

coupons in 7 CFR 275.12(c)(2) and 7 CFR 275.13(d).

In addition, we proposed technical changes throughout Part 275 to correct references based on changes proposed to be made in the proposed rule. Due to the restructuring of 7 CFR 275.23, many sections required renumbering and reference changes throughout 7 CFR 275. These reference changes are not discussed in this preamble. Any substantive changes are discussed in the preamble.

DISTRIBUTION TABLE

Old section	New section
275.23(a)	275.23(a).
275.23(b)	275.23(a).
275.23(c)	275.23(c).
275.23(c)(1)	Removed.
275.23(c)(2)	Removed.
275.23(c)(3)	Removed.
275.23(c)(4)	Removed.
275.23(c)(5)	275.23(b)(1).
275.23(d)	Removed.
275.23(e)(1)	275.23(d) introductory text.
275.23(e)(2)	Removed.
275.23(e)(3) [1st and 3rd sentences]	275.23(d)(1).
275.23(e)(3) [2nd sentence]	271.2 Definition of “National Performance Measure”.
275.23(e)(3) [4th sentence]	275.23(d)(3).
275.23(e)(3) [last sentence and (i), (ii), and (iii)]	275.23(d)(2).
275.23(e)(4)	275.23(d)(4).
275.23(e)(5)	275.23(f).
275.23(e)(6)	275.23(b)(2).
275.23(e)(7)	275.23(c).
275.23(e)(8)	275.23(j).
275.23(e)(9)(i)	275.23(h)(1).
275.23(e)(9)(ii)	275.23(h)(2).
275.23(e)(9)(iii)	275.23(h)(3).
275.23(e)(10)	275.23(e).

DERIVATION TABLE

New section	Old section
271.2 Definition of National Performance Measure	275.23(e)(3) second sentence.
275.23(a)	275.23(a).
	275.23(b).
275.23(b)	275.23(c) [1st sentence].
	275.23(c)(1) [end of sentence beginning with word “based”].
	275.23(c)(4) [end of sentence beginning with word “based”].
273.23(b)(1)	275.23(c)(5) revised.
273.23(b)(2)	275.23(e)(6).
275.23(c)	275.23(e)(7).
275.23(d)(1)	275.23(e)(3) [1st three sentences].
275.23(d)(2)	275.23(e)(3) [sentences 5 & 6] and paragraphs (i), (ii), and (iii).
275.23(d)(3)	275.23(e)(3) [fourth sentence].
275.23(d)(4)	275.23(e)(4).
275.23(e)(1)	275.23(e)(10) [first sentence].
275.23(e)(2)	275.23(e)(10) (second and third sentences].
	275.23(e)(9)(iii) [1st sentence].
275.23(f)	275.23(e)(5) [introductory text revised].
275.23(g)(1)	275.23(e)(10) [fourth sentence].
275.23(g)(2)	275.23(e)(10) [last sentence].
275.23(h)(1)	275.23(e)(9)(i).
275.23(h)(2)	275.23(e)(9)(ii).
275.23(h)(3)	275.23(e)(9)(iv) [first sentence].
275.23(h)(4)	275.23(e)(9)(v).
275.23(h)(5)	275.23(e)(9)(vi).
275.23(j)	275.23(e)(8).

IV. Implementation

The interim rule was effective December 15, 2003. The proposed rule provided that the changes in that rule would be effective and be implemented 60 days following publication of the final rule in the **Federal Register**. This rule finalizes both the interim rule and the proposed rule and is effective July 12, 2010. The provisions in 7 CFR 271.2, 7 CFR 275.11(e)(2)(i), 7 CFR 275.11(e)(2)(ii), 7 CFR 275.13(b), and 7 CFR 275.13(c)(1) concerning negative cases and 7 CFR 273.2(d)(2) concerning consequences to households that refuse to cooperate with QC reviews must be implemented no later than October 1, 2011. State agencies may choose to implement these provisions earlier than October 1, 2011. A 120-day hold

harmless is provided for implementation of 7 CFR 273.2(d)(2), concerning consequences to households who refuse to cooperate with a QC review. If a State agency implements the provision before October 1, 2011, the 120-day hold harmless period begins on the date of implementation. All other provisions must be implemented August 10, 2010.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Supplemental Nutrition Assistance Program, Grant programs—social programs.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Supplemental Nutrition Assistance Program, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

7 CFR Part 275

Administrative practice and procedure, Supplemental Nutrition Assistance Program, Reporting, and recordkeeping requirements.

7 CFR Part 277

Supplemental Nutrition Assistance Program, Government procedure, Grant programs—Social programs, Investigations, Records, Reporting and recordkeeping requirements.

■ Accordingly, 7 CFR Parts 271, 273, 275, and 277 are amended to read as follows:

■ 1. The authority citation for Parts 271, 273, 275, and 277 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 271—GENERAL INFORMATION AND DEFINITIONS

■ 2. In § 271.2:

■ a. Remove the definition "Base period".

■ b. Remove the definition "National standard payment error rate".

■ c. Add the definition "National performance measure" in alphabetical order.

■ d. Revise the definition "Negative case".

The addition and revision read as follows:

§ 271.2 Definitions.

* * * * *

National performance measure means the sum of the products of each State agency's payment error rate times that State agency's proportion of the total value of the national allotments issued for the fiscal year using the most recent issuance data available at the time the State agency is notified of its performance error rate.

Negative case means any action taken to deny, suspend, or terminate a case.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

■ 3. In § 273.2, paragraph (d)(2) is amended as follows:

■ a. Revise "§ 275.3(c)(5) or § 275.12(g)(1)(ii)," to read "§ 275.3(c)(5) and 275.12(g)(1)(ii) of this chapter,";

■ b. Third sentence, revise the number "95" to read "125";

■ c. End of the third sentence revise "§ 273.2(f)(1)(ix)" to read "paragraph (f)(1)(ix) of this section";

■ d. Last sentence revise "seven" to read "nine" and revise "§ 273.2(f)(1)(ix)" to read "paragraph (f)(1)(ix) of this section.";

■ e. Add two new sentences at the end of the paragraph to read as follows:

§ 273.2 Office operations and application processing.

* * * * *

(d)* * *

(2) * * * In the event that one or more household members no longer resides with a household terminated for refusal to cooperate, the penalty for refusal to cooperate will attach to household of the person(s) who refused to cooperate. If the State agency is unable to determine which household member(s) refused to cooperate, the State agency shall determine the household to which the penalty shall apply.

* * * * *

PART 275—PERFORMANCE REPORTING SYSTEM

§ 275.1 [Amended]

■ 4. Section 275.1 is amended by removing the paragraph designation from paragraph (a), and removing paragraph (b).

■ 5. In § 275.3:

■ a. The introductory text of § 275.3 is amended by revising the term "scheduling and conduct" to read "scheduling and conduction".

■ b. The introductory text of paragraph (c) is amended by removing the words "and underissuance error rate" in the first sentence, by removing the third sentence, by revising the fourth sentence, and by revising "§ 275.23(e)(6)" in the last sentence to read "§ 275.23(d)(4)".

The revision reads as follows:

§ 275.3 Federal monitoring.

* * * * *

(c) * * * FNS shall validate each State agency's reported negative error rate. * * *

* * * * *

§ 275.4 [Amended]

■ 6. In § 275.4, paragraph (c) is amended by revising the words "Integrated TANF, Food Stamps and Medicaid Quality Control Reviews" to read "Supplemental Nutrition Assistance Program", by revising "Integrated Review Schedule" to read "Quality Control Review Schedule", and by removing the words ", and Form FNS–248, Status of Sample Selection and Completion".

§ 275.10 [Amended]

■ 7. In § 275.10:

■ a. Paragraph (a) is amended by removing the words "and eligibility for enhanced funding" and the words "that is not entitled to enhanced funding" in the last sentence.

■ b. Paragraph (b)(4) is amended by revising "standard" to read "performance measure" and by removing the words "and State agency eligibility for enhanced funding".

■ 8. In § 275.11:

■ a. Paragraph (a)(1) is amended by removing the last sentence.

■ b. Paragraph (a)(2) introductory text is amended by removing the words "integrated sampling,".

■ c. Paragraph (b)(1)(i) is amended by revising the words "and underissuance error rates" to read "rate".

■ d. Paragraph (e)(2)(i) is revised.

■ e. Paragraph (e)(2)(ii) is revised.

■ f. Paragraph (f)(2) introductory text is revised.

■ g. Paragraph (f)(2)(v) and (f)(2)(vi) are removed and paragraphs (f)(2)(vii), (f)(2)(viii), and (f)(2)(ix) are redesignated as (f)(2)(v), (f)(2)(vi), and (f)(2)(vii), respectively.

■ h. Paragraph (g) is amended by revising "§ 275.23(e)(6)" in the third sentence to read "§ 275.23(b)(2)"; by removing the fourth sentence; and by adding three new sentences at the end of the paragraph.

The revisions and addition read as follows:

§ 275.11 Sampling.

* * * * *

(e) * * *

(2) * * *

(i) All actions to deny an application in the sample month except those excluded from the universe in paragraph (f)(2) of this section. If a household is subject to more than one denial action in a single sample month,

each action shall be listed separately in the sample frame; and

(ii) All actions to suspend or terminate a household in the sample month except those excluded from the universe in paragraph (f)(2) of this section. Each action to suspend or terminate a household in the sample month shall be listed separately in the sample frame.

* * * * *

(f) * * *

(2) *Negative cases.* The universe for negative cases shall include all actions taken to deny, suspend, or terminate a household in the sample month except the following:

* * * * *

(g) * * * FNS shall establish on an individual demonstration project basis whether the results of the reviews of active and negative demonstration project cases shall be included or excluded from the determination of State agencies' error rates as described in § 275.23(b). Cases processed by SSA in accordance with § 273.2(k) of this chapter, except demonstration project cases, shall be excluded from the determination of State agencies' error rates. FNS shall establish on an individual project basis whether demonstration project cases processed by SSA shall be included or excluded from the determination of State agencies' error rates.

■ 9. In § 275.12:

■ a. Paragraph (a) is amended by adding the words "of this chapter" after the reference "273.9" at the end of the fourth sentence and by adding the words "of this chapter" after the reference "273.21" in the sixth sentence.

■ b. Paragraph (b) is amended by removing the words "Integrated Worksheet," in the last sentence.

■ c. The introductory text of paragraph (c) is amended by adding the words "of this chapter" after the reference "§ 272.8" at the end of the second sentence and by removing the words "Integrated Worksheet," in the last sentence.

■ d. Paragraph (c)(2) is amended by removing the word "coupon" in the second sentence.

■ e. The introductory text of paragraph (d) is amended by revising the words "column (5) of the Integrated Worksheet," in the last sentence to read "column (4) of the".

■ f. Paragraph (d)(1) is amended by adding the words "of this chapter" after the references "§ 273.6(c)" and "§ 273.7(f)" in the last sentence.

■ g. Paragraph (d)(2)(i) is amended by adding the words "of this chapter" after the reference "§ 273.2(f)(1)(i)" in the last sentence.

■ h. Paragraph (d)(2)(ii) is amended by adding the words "of this chapter" after the reference "§ 273.2(i)(4)(i)" in the first sentence.

■ i. Paragraph (d)(2)(iii) is amended by adding the words "of this chapter" after the reference "§§ 273.12(a) and 273.21(h) and (i)" in the second sentence and after the reference "§§ 273.12(c) and 273.21(j)" in the last sentence.

■ j. Paragraph (d)(2)(iv) is amended by adding the words "of this chapter" after the reference "§ 273.2(f)(3)(i)(B)" in the first sentence and after the reference "§ 273.12(c)" in the last sentence.

■ k. Introductory text of paragraph (d)(2)(vii) is revised.

■ l. Paragraph (d)(3) is amended by adding the words "of this chapter" after the words "part 273" in the second sentence.

■ m. Paragraph (e) is amended by removing the words "Integrated Worksheet," in the last sentence.

■ n. The introductory text of paragraph (f) is amended by removing the words "Integrated Review Schedule," in the last sentence and paragraph (f)(3) is removed.

■ o. The introductory text of paragraph (g) is amended by removing the words "Integrated Review Schedule," in the last sentence.

■ p. Paragraph (g)(1)(ii) is amended by removing the word "may" in the second sentence and adding in its place the word "must".

■ q. Paragraph (g)(2)(iv) is amended by adding the words "of this chapter" after the reference "§ 273.17".

■ r. Paragraph (h) is amended by adding the words "of this chapter" after the reference "§ 273.2(k)(2)(ii)" in the last sentence.

The revision reads as follows:

§ 275.12 Review of active cases.

* * * * *

(d) * * *

(2) * * *

(vii) Subject to the limitations provided in paragraphs (d)(2)(vii)(A) through (d)(2)(vii)(F) of this section, any variance resulting from application of a new Program regulation or implementing memorandum of a mandatory or optional change in Federal law that occurs during the first 120 days from the required implementation date. The variance exclusion shall apply to any action taken on a case directly related to implementation of a covered provision during the 120-day exclusionary period until the case is required to be recertified or acted upon for some other reason.

* * * * *

■ 10. In § 275.13 is amended by revising paragraphs (a), (b), and (c)(1), and paragraph (d) is amended by removing the word "coupon" in the first sentence.

The revisions read as follows:

§ 275.13 Review of negative cases.

(a) *General.* A sample of actions to deny applications, or suspend or terminate a household in the sample month shall be selected for quality control review. These negative actions shall be reviewed to determine whether the State agency's decision to deny, suspend, or terminate the household, as of the review date, was correct. Depending on the characteristics of individual State systems, the review date for negative cases could be the date of the agency's decision to deny, suspend, or terminate program benefits, the date on which the decision is entered into the computer system, or the date of the notice to the client. State agencies must consistently apply the same definition for review date to all sample cases of the same classification. The review of negative cases shall include a household case record review; an error analysis; and the reporting of review findings, including procedural problems with the action regardless of the validity of the decision to deny, suspend or terminate. In certain instances, contact with the household or a collateral contact may be permitted.

(b) *Household case record review.* The reviewer shall examine the household case record and verify through documentation in it whether the reason given for the denial, suspension, or termination is correct. Through the review of the household case record, the reviewer shall complete the household case record sections and document the reasons for denial, suspension or termination on the Negative Quality Control Review Schedule, Form FNS–245.

(c) * * *

(1) A negative case shall be considered valid if the reviewer is able to verify through documentation in the household case record that a household was correctly denied, suspended, or terminated from the program in accordance with the reason for the action given by the State agency in the notice. Whenever the reviewer is unable to verify the correctness of the State agency's decision to deny, suspend, or terminate a household's participation through such documentation, the QC reviewer may contact the household or a collateral contact to verify the correctness of the specific negative action under review. If the reviewer is unable to verify the correctness of the State agency's decision to deny,

suspend, or terminate the case for the specific reason given for the action, the negative case shall be considered invalid.

* * * * *

§ 275.14 [Amended]

■ 11. In § 275.14 is amended in paragraph (c) by revising the words "Integrated Review Worksheet, Form FNS–380," in the first sentence to read "Form FNS–380" and in paragraph (d) by revising the words "Integrated Review Schedule," in the first sentence to read "Integrated Review Worksheet,".

■ 12. Section 275.16 is amended by removing paragraph (b)(2) and redesignating paragraphs (b)(3), (b)(4), (b)(5), and (b)(6) as (b)(2), (b)(3), (b)(4), and (b)(5), respectively; and newly redesignated paragraph (b)(5) is revised to read as follows:

§ 275.16 Corrective action planning.

* * * * *

(b) * * *

(5) Result in underissuances, improper denials, improper suspensions, improper termination, or improper systemic suspension of benefits to eligible households where such errors are caused by State agency rules, practices, or procedures.

* * * * *

■ 13. In § 275.21:

■ a. The introductory text of paragraph (b) is amended by removing the words "Integrated Review Schedule," in the second sentence.

■ b. Paragraph (b)(2) is revised.

■ c. Paragraph (b)(4) is amended by revising the number "95" in the first sentence to read "115" and adding a new sentence after the first sentence.

■ d. Paragraph (c) is revised.

■ e. Paragraph (d) is removed and paragraph (e) is redesignated as paragraph (d).

■ f. Newly redesignated paragraph (d) is revised.

The revisions and additions read as follows:

§ 275.21 Quality control review reports.

* * * * *

(b) * * *

(2) The State agency shall have at least 115 days from the end of the sample month to dispose of and report the findings of all cases selected in a sample month. FNS may grant additional time as warranted upon request by a State agency for cause shown to complete and dispose of individual cases.

* * * * *

(4) * * * If FNS extends the time frames in paragraph (b)(2) of this section, this date will be extended accordingly. * * *

(c) *Monthly status.* The State agency shall report in a manner directed by the regional office the monthly progress of sample selection and completion within 125 days after the end of the sample month. Each report shall reflect sampling and review activity for a given sample month. If FNS extends the time frames in paragraph (b)(2) of this section, this date will be extended accordingly.

(d) *Demonstration projects/SSA processing.* The State agency shall identify the monthly status of active and negative demonstration project/SSA processed cases (*i.e.,* those cases described in § 275.11(g)) in accordance with paragraph (c) of this section.

■ 14. Section 275.23 is revised to read as follows:

§ 275.23 Determination of State agency program performance.

(a) *Determination of efficiency and effectiveness.* FNS shall determine the efficiency and effectiveness of a State's administration of the Supplemental Nutrition Assistance Program by measuring State compliance with the standards contained in the Food and Nutrition Act, regulations, and the State Plan of Operation and State efforts to improve program operations through corrective action. This determination shall be made based on:

(1) Reports submitted to FNS by the State;

(2) FNS reviews of State agency operations;

(3) State performance reporting systems and corrective action efforts; and

(4) Other available information such as Federal audits and investigations, civil rights reviews, administrative cost data, complaints, and any pending litigation.

(b) *State agency error rates.* FNS shall estimate each State agency's active case, payment, and negative case error rate based on the results of quality control review reports submitted in accordance with the requirements outlined in § 275.21. The determination of the correctness of the case shall be based on certification policy as set forth in part 273 of this chapter.

(1) *Demonstration projects/SSA processing.* FNS shall make a determination for each individual project whether the reported results of reviews of active and negative demonstration project cases shall be included or excluded from the estimate of the active case error rate, payment error rate, and negative case error rate. The reported results of reviews of cases processed by SSA in accordance with § 273.2(k) of this chapter shall be excluded from the estimate of the active case error rate, payment error rate, and negative case error rate. FNS shall make a project by project determination whether the reported results of reviews of active and negative demonstration project cases processed by SSA shall be included or excluded from the estimate of the active case error rate, payment error rate, and negative case error rate.

(2) *Determination of payment error rates.* As specified in § 275.3(c), FNS will validate each State agency's estimated payment error rate by rereviewing the State agency's active case sample and ensuring that its sampling, estimation, and data management procedures are correct.

(i) Once the Federal case reviews have been completed and all differences with the State agency have been identified, FNS shall calculate regressed error rates using the following linear regression equations.

(A) $y_1' = y_1 + b_1 (X_1 - x_1)$, where y_1' is the average value of allotments overissued to eligible and ineligible households; y_1 is the average value of allotments overissued to eligible and ineligible households in the rereview sample according to the Federal finding, b_1 is the estimate of the regression coefficient regressing the Federal findings of allotments overissued to eligible and ineligible households on the corresponding State agency findings, x_1 is the average value of allotments overissued to eligible and ineligible households in the rereview sample according to State agency findings, and X_1 is the average value of allotments overissued to eligible and ineligible households in the full quality control sample according to State agency's findings. In stratified sample designs Y_1, X_1, and x_1 are weighted averages and b_1 is a combined regression coefficient in which stratum weights sum to 1.0 and are proportional to the estimated stratum caseloads subject to review.

(B) $y_2' = y_2 + b_2(X_2 - x_2$, where y_2' is the average value of allotments underissued to households included in the active error rate, y_2 is the average value of allotments underissued to participating households in the rereview sample according to the Federal finding, b_2 is the estimate of the regression coefficient regressing the Federal findings of allotments underissued to participating households on the corresponding State agency findings, x_2 is the average value of allotments underissued to participating households in the rereview sample according to State agency findings, and X_2 is the average value of allotments underissued

to participating households in the full quality control sample according to the State agency's findings. In stratified sample designs y_2, X_2, and x_2 are weighted averages and b_2 is a combined regression coefficient in which stratum weights sum to 1.0 and are proportional to the estimated stratum caseloads subject to review.

(C) The regressed error rates are given by $r_1' = y_1'/u$, yielding the regressed overpayment error rate, and $r_2' = y_2'/u$, yielding the regressed underpayment error rate, where u is the average value of allotments issued to participating households in the State agency sample.

(D) After application of the adjustment provisions of paragraph (b)(2)(iii) of this section, the adjusted regressed payment error rate shall be calculated to yield the State agency's payment error rate. The adjusted regressed payment error rate is given by $r_1'' + r_2''$.

(ii) If FNS determines that a State agency has sampled incorrectly, estimated improperly, or has deficiencies in its QC data management system, FNS will correct the State agency's payment and negative case error rates based upon a correction to that aspect of the State agency's QC system which is deficient. If FNS cannot accurately correct the State agency's deficiency, FNS will assign the State agency a payment error rate or negative case error rate based upon the best information available. After consultation with the State agency, the assigned payment error rate will then be used in the liability determination. After consultation with the State agency, the assigned negative case error rate will be the official State negative case error rate for any purpose. State agencies shall have the right to appeal assessment of an error rate in this situation in accordance with the procedures of Part 283 of this chapter.

(iii) Should a State agency fail to complete 98 percent of its required sample size, FNS shall adjust the State agency's regressed error rates using the following equations:

(A) $r_1'' = r_1' + 2(1 - C)S_1$, where r_1'' is the adjusted regressed overpayment error rate, r_1' is the regressed overpayment error rate computed from the formula in paragraph (b)(2)(i)(C) of this section, C is the State agency's rate of completion of its required sample size expressed as a decimal value, and S_1 is the standard error of the State agency sample overpayment error rate. If a State agency completes all of its required sample size, then $r_1'' = r_1'$.

(B) $r_2'' = r_2' + 2(1 - C)S_2$,where r_2'' is the adjusted regressed underpayment error rate, r_2' is the regressed underpayment error rate computed from the formula in paragraph (b)(2)(i)(C) of this section, C is the State agency's rate of completion of its required sample size expressed as a decimal value, and S_2 is the standard error of the State agency sample underpayment error rate. If a State agency completes all of its required sample size, then $r_2'' = r_2'$.

(c) *FNS Time frames for completing case review process, arbitration, and issuing error rates.* The case review process and the arbitration of all difference cases shall be completed by May 31 following the end of the fiscal year. FNS shall determine and announce the national average payment and negative case error rates for the fiscal year by June 30 following the end of the fiscal year. At the same time FNS shall notify all State agencies of their individual payment and negative case error rates and payment error rate liabilities, if any. FNS shall provide a copy of each State agency's notice of potential liability to its respective chief executive officer and legislature. FNS shall initiate collection action on each claim for such liabilities before the end of the fiscal year following the reporting period in which the claim arose unless an appeal relating to the claim is pending. Such appeals include administrative and judicial appeals pursuant to Section 14 of the Food and Nutrition Act. While the amount of a State's liability may be recovered through offsets to their letter of credit as identified in § 277.16(c) of this chapter, FNS shall also have the option of billing a State directly or using other claims collection mechanisms authorized under the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) and the Federal Claims Collection Standards (31 CFR Parts 900–904), depending upon the amount of the State's liability. FNS is not bound by the time frames referenced in paragraph (c) of this section in cases where a State fails to submit QC data expeditiously to FNS and FNS determines that, as a result, it is unable to calculate the State's payment error rate and payment error rate liability within the prescribed time frame.

(d) *State agencies' liabilities for payment error rates.* At the end of each fiscal year, each State agency's payment error rate over the entire fiscal year will be computed and evaluated to determine whether the payment error rate goal (national performance measure) established in paragraph (d)(1) of this section has been met. Each State agency that fails to achieve its payment error rate goal during a fiscal year shall be liable as specified in the paragraph (d)(2) of this section.

(1) *National performance measure.* FNS shall announce a national performance measure not later than June 30 after the end of the fiscal year. The national performance measure is the sum of the products of each State agency's error rate multiplied by that State agency's proportion of the total value of national allotments issued for the fiscal year using the most recent issuance data available at the time the State agency is notified of its payment error rate. Once announced, the national performance measure for a given fiscal year will not be subject to administrative or judicial appeal.

(2) *Liability.* For fiscal year 2003 and subsequent years, liability for payment shall be established whenever there is a 95 percent statistical probability that, for the second or subsequent consecutive fiscal year, a State agency's payment error rate exceeds 105 percent of the national performance measure. The amount of the liability shall be equal to the product of the value of all allotments issued by the State agency in the second (or subsequent consecutive) fiscal year; multiplied by the difference between the State agency's payment error rate and 6 percent; multiplied by 10 percent.

(3) *Right to appeal payment error rate liability.* Determination of a State agency's payment error rate or whether that payment error rate exceeds 105 percent of the national performance measure shall be subject to administrative or judicial review only if a liability amount is established for that fiscal year. Procedures for good cause appeals of excessive payment error rates are addressed in paragraph (f) of this section. The established national performance measure is not subject to administrative or judicial appeal, nor is any prior fiscal year payment error rate subject to appeal as part of the appeal of a later fiscal year's liability amount. However, State agencies may address matters related to good cause in an immediately prior fiscal year that impacted the fiscal year for which a liability amount has been established. The State agency will need to address how year 2 was impacted by the event(s) in the prior year.

(4) *Relationship to warning process and negligence.* (i) States' liability for payment error rates as determined above in paragraphs (d)(1) through (d)(3) of this section are not subject to the warning process of § 276.4(d) of this chapter.

(ii) FNS shall not determine negligence (as described in § 276.3 of this chapter) based on the overall payment error rate for issuances to ineligible households and overissuances

to eligible households in a State or political subdivision thereof. FNS may only establish a claim under § 276.3 of this chapter for dollar losses from failure to comply, due to negligence on the part of the State agency (as defined in § 276.3 of this chapter), with specific certification requirements. Thus, FNS will not use the result of States' QC reviews to determine negligence.

(iii) Whenever a State is assessed a liability amount for an excessive payment error rate, the State shall have the right to request an appeal in accordance with procedures set forth in part 283 of this chapter. While FNS may determine a State to be liable for dollar loss under the provisions of this section and the negligence provisions of § 276.3 of this chapter for the same period of time, FNS shall not bill a State for the same dollar loss under both provisions. If FNS finds a State liable for dollar loss under both the QC liability system and the negligence provisions, FNS shall adjust the billings to ensure that two claims are not made against the State for the same dollar loss.

(e) *Liability amount determinations.* (1) FNS shall provide for each State agency whose payment error rate subjects it to a liability amount the following determinations, each expressed as a percentage of the total liability amount. FNS shall:

(i) Waive all or a portion of the liability;

(ii) Require the State agency to invest up to 50 percent of the liability in activities to improve program administration (new investment money shall not be matched by Federal funds);

(iii) Designate up to 50 percent of the liability as "at-risk" for repayment if a liability is established based on the State agency's payment error rate for the subsequent fiscal year; or

(iv) Choose any combination of these options.

(2) Once FNS determines the percentages in accordance with paragraphs (e)(1)(i) through (e)(1)(iv) of this section, the amount assigned as at-risk is not subject to settlement negotiation between FNS and the State agency and may not be reduced unless an appeal decision revises the total dollar liability. FNS and the State agency shall settle any waiver percentage amount or new investment percentage amount before the end of the fiscal year in which the liability amount is determined. The determination of percentages for waiver, new investment, and/or at-risk amounts by the Department is not appealable. Likewise, a settlement of the waiver and new investment amounts cannot be appealed.

(f) *Good cause.* When a State agency with otherwise effective administration exceeds the tolerance level for payment errors as described in this section, the State agency may seek relief from liability claims that would otherwise be levied under this section on the basis that the State agency had good cause for not achieving the payment error rate tolerance. State agencies desiring such relief must file an appeal with the Department's Administrative Law Judge (ALJ) in accordance with the procedures established under part 283 of this chapter. Paragraphs (f)(1) through (f)(5) of this section describe the unusual events that are considered to have a potential for disrupting program operations and increasing error rates to an extent that relief from a resulting liability amount or increased liability amount is appropriate. The occurrence of an event(s) does not automatically result in a determination of good cause for an error rate in excess of the national performance measure. The State agency must demonstrate that the event had an adverse and uncontrollable impact on program operations during the relevant period, and the event caused an uncontrollable increase in the error rate. Good cause relief will only be considered for that portion of the error rate/liability amount attributable to the unusual event. The following are unusual events which State agencies may use as a basis for requesting good cause relief and specific information that must be submitted to justify such requests for relief:

(1) *Natural disasters and civil disorders.* Natural disasters such as those under the authority of The Disaster Relief and Emergency Assistance Amendments of 1988 (Pub. L. 100–707), which amended The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288), or civil disorders that adversely affect program operations.

(i) When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

(A) The nature of the disaster(s) (*e.g.,* a tornado, hurricane, earthquake, flood, etc.) or civil disorder(s) and evidence that the President has declared a disaster;

(B) The date(s) of the occurrence;

(C) The date(s) after the occurrence when program operations were affected;

(D) The geographic extent of the occurrence (*i.e.,* the county or counties where the disaster occurred);

(E) The proportion of the Supplemental Nutrition Assistance Program caseload whose management was affected;

(F) The reason(s) why the State agency was unable to control the effects of the disaster on program administration and errors.

(G) The identification and explanation of the uncontrollable nature of errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.).

(H) The percentage of the payment error rate that resulted from the occurrence and how this figure was derived; and

(I) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(ii) (A) The following criteria and methodology will be used to assess and evaluate good cause in conjunction with the appeals process, and to determine that portion of the error rate/liability amount attributable to the uncontrollable effects of a disaster or civil disorder:

(*1*) Geographical impact of the disaster;

(*2*) State efforts to control impact on program operations;

(*3*) The proportion of Supplemental Nutrition Assistance Program caseload affected; and/or

(*4*) The duration of the disaster and its impact on program operations.

(B) Adjustments for these factors may result in a waiver of all, part, or none of the liability amount for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeds the national performance measure. For example, a reduction in the waiver amount may be made when a State agency's recent error rate history indicates that even absent the events described the State agency would have exceeded the national performance measure in the review period.

(iii) If a State agency has provided insufficient information to determine a waiver amount for the uncontrollable effects of a natural disaster or civil disorder using factual analysis, the waiver amount shall be evaluated using the following formula and methodology which measures both the duration and intensity of the event. Duration will be measured by the number of months the event had an adverse impact on program operations. Intensity will be a proportional measurement of the issuances for the counties affected to the State's total issuance. This ratio will be determined using issuance figures for the first full month immediately preceding the disaster. This figure will

not include issuances made to households participating under disaster certification authorized by FNS and already excluded from the error rate calculations under § 275.12(g)(2)(vi). The counties considered affected will include counties where the disaster/civil disorder occurred, and any other county that the State agency can demonstrate had program operations adversely impacted due to the event (such as a county that diverted significant numbers of Supplemental Nutrition Assistance Program certification or administrative staff). The amount of the waiver of liability will be determined using the linear equation W = Ia/Ib × [M/12 or Mp/18] × L, where Ia is the issuance for the first full month immediately preceding the unusual event for the county affected; Ib is the State's total issuance for the first full month immediately preceding the unusual event; M/12 is the number of months in the subject fiscal year that the unusual event had an adverse impact on program operations; Mp/18 is the number of months in the last half (April through September) of the prior fiscal year that the unusual event had an adverse impact on program operations; L is the total amount of the liability for the fiscal year. Mathematically this formula could result in a waiver of more than 100 percent of the liability amount; however, no more than 100 percent of a State's liability amount will be waived for any one fiscal year. Under this approach, unless the State agency can demonstrate a direct uncontrollable impact on the error rate, the effects of disasters or civil disorders that ended prior to the second half of the prior fiscal year will not be considered.

(2) *Strikes.* Strikes by State agency staff necessary to determine Supplemental Nutrition Assistance Program eligibility and process case changes.

(i) When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

(A) Which workers (*i.e.,* eligibility workers, clerks, data input staff, etc.) and how many (number and percentage of total staff) were on strike or refused to cross picket lines;

(B) The date(s) and nature of the strike (*i.e.,* the issues surrounding the strike);

(C) The date(s) after the occurrence when program operations were affected;

(D) The geographic extent of the strike (*i.e.,* the county or counties where the strike occurred);

(E) The proportion of the Supplemental Nutrition Assistance Program caseload whose management was affected;

(F) The reason(s) why the State agency was unable to control the effects of the strike on program administration and errors;

(G) Identification and explanation of the uncontrollable nature of errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(H) The percentage of the payment error rate that resulted from the strike and how this figure was derived; and

(I) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(ii) (A) The following criteria shall be used to assess, evaluate and respond to claims by the State agency for a good cause waiver of a liability amount in conjunction with the appeals process, and to determine that portion of the error rate/liability amount attributable to the uncontrollable effects of the strike:

(*1*) Geographical impact of the strike;

(*2*) State efforts to control impact on program operations;

(*3*) The proportion of Supplemental Nutrition Assistance Program caseload affected; and/or

(*4*) The duration of the strike and its impact on program operations.

(B) Adjustments for these factors may result in a waiver of all, part, or none of the liability amount for the applicable period. For example, the amount of the waiver might be reduced for a strike that was limited to a small area of the State. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure.

(iii) If a State agency has provided insufficient information to determine a waiver amount for the uncontrollable effects of a strike using factual analysis, a waiver amount shall be evaluated by using the formula described in paragraph (f)(1) of this section. Under this approach, unless the State agency can demonstrate a direct uncontrollable impact on the error rate, the effects of strikes that ended prior to the second half of the prior fiscal year will not be considered.

(3) *Caseload growth.* A significant growth in Supplemental Nutrition Assistance Program caseload in a State prior to or during a fiscal year, such as a 15 percent growth in caseload. Caseload growth which historically increases during certain periods of the year will not be considered unusual or beyond the State agency's control.

(i) When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

(A) The amount of growth (both actual and percentage);

(B) The time the growth occurred (what month(s)/year);

(C) The date(s) after the occurrence when program operations were affected;

(D) The geographic extent of the caseload growth (*i.e.* Statewide or in which particular counties);

(E) The impact of caseload growth;

(F) The reason(s) why the State agency was unable to control the effects of caseload growth on program administration and errors;

(G) The percentage of the payment error rate that resulted from the caseload growth and how this figure was derived; and

(H) The degree to which the error rate exceeded the national performance measure in the subject fiscal year.

(ii) (A) The following criteria and methodology shall be used to assess and evaluate good cause in conjunction with the appeals process, and to determine that portion of the error rate/liability amount attributable to the uncontrollable effects of unusual caseload growth:

(*1*) Geographical impact of the caseload growth;

(*2*) State efforts to control impact on program operations;

(*3*) The proportion of Supplemental Nutrition Assistance Program caseload affected; and/or

(*4*) The duration of the caseload growth and its impact on program operations.

(B) Adjustments for these factors may result in a waiver of all, part, or none of the liability amount for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure. For example, a reduction in the waiver amount may be made when a State agency's recent error rate history indicates that even absent the events described the State agency would have exceeded the national performance measure in the review period. Under this approach, unless the State agency can demonstrate a direct uncontrollable impact on the error rate, the effects of caseload growth that ended prior to the second half of the prior fiscal year will not be considered.

(iii) If the State agency has provided insufficient information to determine a waiver amount for the uncontrollable effects of caseload growth using factual

analysis, the waiver amount shall be evaluated using the following five-step calculation:

(A) Step 1—determine the average number of households certified to participate Statewide in the Supplemental Nutrition Assistance Program for the base period consisting of twelve consecutive months ending with March of the prior fiscal year;

(B) Step 2—determine the percentage of increase in caseload growth from the base period (Step 1) using the average number of households certified to participate Statewide in the Supplemental Nutrition Assistance Program for any twelve consecutive months in the period beginning with April of the prior fiscal year and ending with June of the current year;

(C) Step 3—determine the percentage the error rate for the subject fiscal year, as calculated under paragraph (b)(2) of this section, exceeds the national performance measure determined in accordance with paragraph (d)(1) of this section;

(D) Step 4—divide the percentage of caseload growth increase arrived at in step 2 by the percentage the error rate for the subject fiscal year exceeds the national performance measure as determined in step 3; and

(E) Step 5—multiply the quotient arrived at in step 4 by the liability amount for the current fiscal year to determine the amount of waiver of liability.

(iv) Under this methodology, caseload growth of less than 15% and/or occurring in the last three months of the subject fiscal year will not be considered. Mathematically this formula could result in a waiver of more than 100 percent of the liability amount; however, no more than 100 percent of a State's liability amount will be waived for any one fiscal year.

(4) *Program changes.* A change in the Supplemental Nutrition Assistance Program or other Federal or State program that has a substantial adverse impact on the management of the Supplemental Nutrition Assistance Program of a State. Requests for relief from errors caused by the uncontrollable effects of unusual program changes other than those variances already excluded by § 275.12(d)(2)(vii) will be considered to the extent the program change is not common to all States.

(i) When submitting a request for good cause relief based on unusual changes in the Supplemental Nutrition Assistance Program or other Federal or State programs, the State agency shall provide the following information:

(A) The type of changes(s) that occurred;

(B) When the change(s) occurred;

(C) The nature of the adverse effect of the changes on program operations and the State agency's efforts to mitigate these effects;

(D) Reason(s) the State agency was unable to adequately handle the change(s);

(E) Identification and explanation of the uncontrollable errors caused by the changes (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(F) The percentage of the payment error rate that resulted from the adverse impact of the change(s) and how this figure was derived; and

(G) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(ii) (A) The following criteria will be used to assess and evaluate good cause in conjunction with the appeals process and to determine that portion of the error rate/liability amount attributable to the uncontrollable effects of unusual changes in the Supplemental Nutrition Assistance Program or other Federal and State programs:

(*1*) State efforts to control impact on program operations;

(*2*) The proportion of Supplemental Nutrition Assistance Program caseload affected; and/or

(*3*) The duration of the unusual changes in the Supplemental Nutrition Assistance Program or other Federal and State programs and the impact on program operations.

(B) Adjustments for these factors may result in a waiver of all, part, or none of the liability amount for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure.

(5) *Significant circumstances beyond the control of a State agency.* Requests for relief from errors caused by the uncontrollable effect of a significant circumstance other than those specifically set forth in paragraphs (f)(1) through (f)(4) of this section will be considered to the extent that the circumstance is not common to all States, such as a fire in a certification office.

(i) The State agency shall provide the following information when submitting a request for good cause relief based on significant circumstances, the State agency shall provide the following information:

(A) The significant circumstances that the State agency believes uncontrollably and adversely affected the payment error rate for the fiscal year in question;

(B) Why the State agency had no control over the significant circumstances;

(C) How the significant circumstances had an uncontrollable and adverse impact on the State agency's error rate;

(D) Where the significant circumstances existed (*i.e.* Statewide or in particular counties);

(E) When the significant circumstances existed (provide specific dates whenever possible);

(F) The proportion of the Supplemental Nutrition Assistance Program caseload whose management was affected;

(G) Identification and explanation of the uncontrollable errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(H) The percentage of the payment error rate that was caused by the significant circumstances and how this figure was derived; and

(I) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(ii) (A) The following criteria shall be used to assess and evaluate good cause in conjunction with the appeals process, and to determine that portion of the error rate/liability amount attributable to the uncontrollable effects of a significant circumstance beyond the control of the State agency, other than those set forth in paragraph (f)(5) of this section:

(*1*) Geographical impact of the significant circumstances;

(*2*) State efforts to control impact on program operations;

(*3*) The proportion of Supplemental Nutrition Assistance Program caseload affected; and/or

(*4*) The duration of the significant circumstances and the impact on program operations.

(B) Adjustments for these factors may result in a waiver of all, part, or none of the liability amount for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure.

(6) *Adjustments.* When good cause is found under the criteria in paragraphs (f)(1) through (f)(5) of this section, the waiver amount may be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate

exceeds the national performance measure.

(7) *Evidence.* When submitting a request to the ALJ for good cause relief, the State agency shall include such data and documentation as is necessary to support and verify the information submitted in accordance with the requirements of paragraph (f) of this section so as to fully explain how a particular significant circumstance(s) uncontrollably affected its payment error rate.

(8) *Finality.* The initial decision of the ALJ concerning good cause shall constitute the final determination for purposes of judicial review as established under the provisions of § 283.17 and § 283.20 of this chapter.

(g) *Results of appeals on liability amount determinations.* (1) If a State agency wholly prevails on appeal and, consequently, its liability amount is reduced to $0 through the appeal, and if the State agency began new investment activities prior to the appeal determination, FNS shall pay to the State agency an amount equal to 50 percent of the new investment amount that was expended by the State agency.

(2) If FNS wholly prevails on a State agency's appeal, FNS will require the State agency to invest all or a portion of the amount designated for new investment to be invested or to be paid to the Federal government.

(3) If neither the State agency nor FNS wholly prevails on a State agency's appeal, FNS shall apply the original waiver, new investment, and at-risk percentage determinations to the liability amount established through the appeal. If the State agency began new investment prior to the appeal decision and has already expended more than the amount produced for new investment as a result of the appeal decision, the Department will match the amount of funds expended in excess of the amount now required by the Department for new investment.

(h) *New investment requirements.* Once FNS has determined the percentage of a liability amount to be invested or following an appeal and recalculation by FNS of an amount to be invested, a State agency shall submit a plan of offsetting investments in program administration activities intended to reduce error rates.

(1) The State agency's investment plan activity or activities must meet the following conditions to be accepted by the Department:

(i) The activity or activities must be directly related to error reduction in the ongoing program, with specific objectives regarding the amount of error reduction, and type of errors that will be reduced. The costs of demonstration, research, or evaluation projects under sections 17(a) through (c) of the Act will not be accepted. The State agency may direct the investment plan to a specific project area or implement the plan on a Statewide basis. In addition, the Department will allow an investment plan to be tested in a limited area, as a pilot project, if the Department determines it to be appropriate. A request by the State agency for a waiver of existing rules will not be acceptable as a component of the investment plan. The State agency must submit any waiver request through the normal channels for approval and receive approval of the request prior to including the waiver in the investment plan. Waivers that have been approved for the State agency's use in the ongoing operation of the program may continue to be used.

(ii) The program administration activity must represent a new or increased expenditure. The proposed activity must also represent an addition to the minimum program administration required by law for State agency administration including corrective action. Therefore, basic training of eligibility workers or a continuing correction action from a Corrective Action Plan shall not be acceptable. The State agency may include a previous initiative in its plan; however, the State agency would have to demonstrate that the initiative is entirely funded by State money, represents an increase in spending and there are no remaining Federal funds earmarked for the activity.

(iii) Investment activities must be funded in full by the State agency, without any matching Federal funds until the entire amount agreed to is spent. Amounts spent in excess of the settlement amount included in the plan may be subject to Federal matching funds.

(2) The request shall include:

(i) A statement of the amount of money that is a quality control liability claim that is to be offset by investment in program improvements;

(ii) A detailed description of the planned program administration activity;

(iii) Planned expenditures, including time schedule and anticipated cost breakdown;

(iv) Anticipated impact of the activity, identifying the types of error expected to be affected;

(v) Documentation that the funds would not replace expenditures already earmarked for an ongoing effort; and

(vi) A statement that the expenditures are not simply a reallocation of resources.

(3) A State agency may choose to begin expending State funds for any amount of the liability designated as "new investment" in the liability amount determination prior to any appeal. FNS reserves the right to approve whether the expenditure meets the requirements for new investment. Expenditures made prior to approval by the Department will be subject to approval before they are accepted. Once a new investment plan is approved, the State agency shall submit plan modifications to the Department for approval, prior to implementation.

(4) Each State agency which has part of a liability designated for new investment shall submit periodic documented reports according to a schedule in its approved investment plan. At a minimum, these reports shall contain:

(i) A detailed description of the expenditure of funds, including the source of funds and the actual goods and services purchased or rented with the funds;

(ii) A detailed description of the actual activity; and

(iii) An explanation of the activity's effect on errors, including an explanation of any discrepancy between the planned effect and the actual effect.

(5) Any funds that the State agency's reports do not document as spent as specified in the new investment plan may be recovered by the Department. Before the funds are withdrawn, the State agency will be provided an opportunity to provide the missing documentation.

(6) If the funds are recovered, the Department shall charge interest on the funds not spent according to the plan in accordance with paragraph (j) of this section.

(i) *At-risk money.* If appropriate, FNS shall initiate collection action on each claim for such liabilities before the end of the fiscal year following the reporting period in which the claim arose unless an administrative appeal relating to the claim is pending. Such appeals include administrative and judicial appeals pursuant to Section 14 of the Food and Nutrition Act. If a State agency, in the subsequent year, is again subject to a liability amount based on the national performance measure and the error rate issued to the State agency, the State agency will be required to remit to FNS any money designated as at-risk for the prior fiscal year in accordance with either the original liability amount or a revised liability amount arising from an appeal, as appropriate, within 30 days

of the date of the final billing. The requirement that the State agency pay the at-risk amount for the prior year will be held in abeyance pending the outcome of any pending appeal for the subsequent liability. If the subsequent year's liability is reduced to $0, the at-risk money from for the prior fiscal year will not be required to be paid. If the subsequent year's liability is not reduced to $0, the State agency will be required to pay the at-risk money within 30 days of the date of the appeal decision. The amount of a State's at-risk money may be recovered through offsets to the State agency's letter of credit as identified in § 277.16(c) of this chapter. FNS shall also have the option of billing a State directly or using other claims collection mechanisms authorized under the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) and the Federal Claims Collection Standards (31 CFR Parts 900–904), depending upon the amount of the State's liability.

(j) *Interest charges.* (1) To the extent that a State agency does not pay an at-risk amount within 30 days from the date on which the bill for collection is received by the State agency, the State agency shall be liable for interest on any unpaid portion of such claim accruing from the date on which the bill for collection was received by the State agency. If the State agency is notified that it failed to invest funds in accordance with an approved new investment plan, the State agency has 30 days from the date of receipt of notification of non-expenditure of new investment funds to pay the Department the amount of funds not so invested. If the State agency does not pay the Department the amount of funds not invested within 30 days from the date of receipt of the notification of non-expenditure, the State agency shall be liable for interest on the non-expended funds from the date on which the notification was received by the State agency. If the State agency agrees to pay the claim through reduction in Federal financial participation for administrative costs, this agreement shall be considered to be paying the claim. If the State agency appeals such claim (in whole or in part), the interest on any unpaid portion of the claim shall accrue from the date of the decision on the administrative appeal, or from a date that is one year after the date the bill is received, whichever is earlier, until the date the unpaid portion of the payment is received.

(2) A State agency may choose to pay the amount designated as at-risk prior to resolution of any appeals. If the State agency pays such claim (in whole or in part) and the claim is subsequently overturned or adjusted through administrative or judicial appeal, any amounts paid by the State agency above what is actually due shall be promptly returned with interest, accruing from the date the payment was received until the date the payment is returned.

(3) Any interest assessed under paragraph (j)(1) of this section shall be computed at a rate determined by the Secretary based on the average of the bond equivalent of the weekly 90-day Treasury bill auction rates during the period such interest accrues. The bond equivalent is the discount rate (*i.e.,* the price the bond is actually sold for as opposed to its face value) determined by the weekly auction (*i.e.,* the difference between the discount rate and face value) converted to an annualized figure. The Secretary shall use the investment rate (*i.e.,* the rate for 365 days) compounded in simple interest for the period for which the claim is not paid. Interest billings shall be made quarterly with the initial billing accruing from the date the interest is first due. Because the discount rate for Treasury bills is issued weekly, the interest rate for State agency claims shall be averaged for the appropriate weeks.

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

§ 277.4 [Amended]

■ 15. In § 277.4:

■ a. Paragraph (b) is amended by removing paragraphs (b)(1), (b)(4), (b)(5), and (b)(6) and by redesignating paragraphs (b)(2), (b)(3), (b)(7), and (b)(8) as paragraphs (b)(1), (b)(2), (b)(3), and (b)(4), respectively.

■ b. Newly redesignated paragraph (b)(3) is amended by removing the words "Beginning October 1982," and by revising "paragraphs (b)(2) and (b)(3)" to read "paragraphs (b)(1) and (b)(2)".

Dated: May 27, 2010.

Kevin Concannon,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 2010–13446 Filed 6–10–10; 8:45 am]

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Federal Register

Friday,
June 11, 2010

Part IV

Department of Homeland Security

8 CFR Parts 103, 204, 244, et al.
U.S. Citizenship and Immigration Services Fee Schedule; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 204, 244, and 274A

[CIS No. 2490–09; DHS Docket No. USCIS–2009–0033]

RIN 1615–AB80

U.S. Citizenship and Immigration Services Fee Schedule

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Proposed rule.

SUMMARY: The Department of Homeland Security (DHS) proposes to adjust certain immigration and naturalization benefit fees charged by U.S. Citizenship and Immigration Services (USCIS). USCIS conducted a comprehensive fee study and refined its cost accounting process, and determined that current fees do not recover the full costs of services provided. Adjustment to the fee schedule is necessary to fully recover costs and maintain adequate service. DHS proposes to increase USCIS fees by a weighted average of 10 percent. DHS proposes among other amendments to add three new fees to cover USCIS costs related to processing the following requests: Regional center designation under the Immigrant Investor Pilot Program; Civil surgeon designation; and Immigrant visas.

DATES: Written comments must be submitted on or before July 26, 2010.

ADDRESSES: Comments, identified by DHS Docket No. USCIS–2009–0033, should be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Room 3008, Washington, DC 20529–2210. To ensure proper handling, please reference DHS Docket No. USCIS–2009–0033 on the correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Room 3008, Washington, DC 20529–2210. Contact Telephone Number (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Timothy Rosado, Chief, Budget Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529–2130, telephone (202) 272–1930.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Public Participation
II. Legal Authority and Guidance
III. The Immigration Examinations Fee Account
  A. General Background
  B. Fee Review History
  C. USCIS Accomplishments Funded under the 2007 Fee Adjustment
  D. Processing Time Outlook
  E. FY 2008/2009 Fee Rule Enhancements
  F. Administration Policy
IV. FY 2010/2011 Immigration Examination Fee Account Fee Review
  A. Overall Approach
  B. Basis for Fee Schedule Changes
  1. Costs
  a. Baseline Adjustments
  b. Program Increase
  2. Revenue
  3. Refugee and Asylum Surcharge
  4. Military Naturalizations
  5. Proposed FY 2011 Appropriations for Systematic Alien Verification for Entitlements (SAVE) Program and the Office of Citizenship
  6. Establish an Immigrant Visa Processing Fee
  7. Civil Surgeon Program Fees
  8. EB–5 Regional Center Designation Fee
  9. Employment Authorization Document Fees for Applicants Covered by Deferred Enforced Departure (Form I–765)
  C. Summary
  D. Performance Improvements
V. Fee Review Methodology
  A. Background
  1. ABC Methodology
  a. Resources
  b. Resource Drivers and Resource Assignment
  c. Activities
  d. Activity Drivers and Activity Assignment
  e. Cost Objects
  2. Low Volume Reallocation
  3. Application for Naturalization
  B. Key Changes Implemented for the FY 2010/2011 Fee Review
  1. Appropriation for Refugee, Asylum, and Military Naturalization Benefits
  2. Fee Waivers and Exemptions
  3. Immigrant Visa Processing Fee
  4. EB–5 Regional Center Designation Fee
  5. Civil Surgeon Program
VI. Volume
VII. Completion Rates
VIII. Proposed Fee Adjustments
  A. Proposed Adjustments to IEFA Immigration Benefits
  B. Removal of Fees Based on Form Numbers
  C. Collection of Biometrics Fees Overseas
IX. Statutory and Regulatory Reviews
  A. Regulatory Flexibility Act
  B. Unfunded Mandates Reform Act
  C. Small Business Regulatory Enforcement Fairness Act
  D. Executive Order 12866
  E. Executive Order 13132
  F. Executive Order 12988
  G. Paperwork Reduction Act

List of Acronyms and Abbreviations

ABC—Activity-Based Costing.
AAO—Administrative Appeals Office.
AOP—Annual Operating Plan.
ASC—Application Support Centers.
BLS—Bureau of Labor Statistics.
CFO—Chief Financial Officer.
CLAIMS—Computer Linked Application Information System.
CNMI—Commonwealth of Northern Mariana Islands.
CPI–U—Consumer Price Index—Urban Consumers.
CHEP—Cuban Haitian Entrant Program.
CBP—U.S. Customs and Border Protection.
DED—Deferred Enforced Departure.
DOD—Department of Defense.
DHS—Department of Homeland Security.
DOL—Department of Labor.
DOS—Department of State.
DNB—Dun and Bradstreet.
EAD—Employment Authorization Document.
FASAB—Federal Accounting Standards Advisory Board.
FBI—Federal Bureau of Investigation.
FSM—Federated States of Micronesia.
FY—Fiscal Year.
FDNS—Fraud Detection and National Security.
FTE—Full-Time Equivalents.
GAO—Government Accountability Office.
IV—Immigrant Visa.
IEFA—Immigration Examinations Fee Account.
IT—Information Technology.
IBIS—Interagency Border Inspection System.
IO—International Operations.
NARA—National Archives and Records Administration.
OIS—Office of Immigration Statistics.
OIT—Office of Information Technology.
OMB—Office of Management and Budget.
PAS—Performance Analysis System.
PMB—Production Management Branch.
PPA—Program Project Activity Structure.
RAIO—Refugee, Asylum, and International Operations.
RFA—Regulatory Flexibility Act.
RMI—Republic of the Marshall Islands.
SLAs—Service Level Agreements.
SAM—Staffing Allocation Model.
SQA—System Qualified Adjudication.
SAVE—Systematic Alien Verification for Entitlements.
TPS—Temporary Protected Status.
TPO—Transformation Program Office.
TTPI—Trust Territory of the Pacific Islands.
USCIS—U.S. Citizenship and Immigration Services.
UMRA—Unfunded Mandates Reform Act.
USPHS—United States Public Health Service.
VPC—Volume Projection Committee.

I. Public Participation

DHS invites interested persons to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. Comments that will provide the most assistance to DHS will reference a specific portion of the proposed rule, explain the reason for

any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and DHS Docket No. USCIS–2009–0033. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Anonymous comments should be submitted to *http://www.regulations.gov.*

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

The docket includes additional documents that support the analysis contained in this rule to determine the specific fees that are proposed. These documents include:

- FY 2010/2011 Fee Review Supporting Documentation; and
- Small Entity Analysis for Adjustment of the U.S. Citizenship and Immigration Services Fee Schedule.

These documents may be reviewed on the electronic docket. The software used in computing the immigration benefit request and biometric fees is a commercial product licensed to USCIS that may be accessed on-site by appointment by calling (202) 272–1930.

II. Legal Authority and Guidance

The Immigration and Nationality Act of 1952 (INA), as amended, provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including services provided without charge to asylum applicants and certain other immigrant applicants. INA section 286(m), 8 U.S.C. 1356(m).[1] The INA provides that the fees may recover administrative costs as well. The fee revenue collected under section 286(m) of the INA remains available to DHS to provide immigration and naturalization benefits and ensures the collection, safeguarding, and accounting of fees by USCIS. INA section 286(n), 8 U.S.C. 1356(n).

INA section 286(m), 8 U.S.C. 1356(m), contains both silence and ambiguity under *Chevron USA, Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984). Congress has not spoken directly, for example, to a number of issues present in this section, including the scope of application of the section or subsidizing operations from other fees.[2] Congress has provided that USCIS recover costs "including the costs of similar services" provided to "asylum applicants and other immigrants." Congress has not detailed the determination of what costs are to be included. Moreover, "other immigrants" has a broad meaning under the INA because the term "immigrant" is defined by exclusion to mean "every alien except an alien who is within one of the following classes of nonimmigrant aliens." INA section 101(a)(15), 8 U.S.C. 1101(a)(15). The extensive listing of exclusions from "immigrant" by the non-immigrant visa classes is replete with ambiguity evidenced by the detailed and complex regulations and judicial interpretations of those provisions.

Additionally, Congress provides appropriations for specific USCIS programs. Appropriated funding for FY 2010 included asylum and refugee operations (4th Quarter contingency funding), and military naturalization surcharge costs ($55 million); E-Verify ($137 million); immigrant integration ($11 million); REAL ID Act implementation ($10 million); and data center consolidation ($11 million). Department of Homeland Security Appropriations Act, 2010, Public Law 111–83, title IV, 123 Stat. 2142, 2164—5 (Oct. 28, 2009) (DHS Appropriation Act 2010). Providing these limited funds against the backdrop of the broad immigration examinations fee statute—together forming the totality of funding available for USCIS operations—requires that all other costs relating to USCIS and adjudication operations are funded from fees.

When no appropriations are received, or fees are statutorily set at a level that does not recover costs, or DHS determines that a type of application should be exempt from payment of fees, USCIS must use funds derived from other fee applications to fund overall requirements and general operations. For example, when a fee such as Temporary Protected Status (TPS), set by statute at $50, does not cover the cost of adjudicating the TPS application, the excess cost must be recovered by fees charged to other applications. INA section 244(c)(1)(B), 8 U.S.C. 1254a(c)(1)(B). Furthermore, when a policy decision is made by regulations, for example, to exempt aliens who are victims of a severe form of trafficking in persons and who assist law enforcement in the investigation or prosecution of the acts of trafficking (T Visa), and aliens who are victims of certain crimes and are being helpful to the investigation or prosecution of those crimes (U Visa), from visa fees, the cost of processing those fee-exempt visas must be recovered by fees charged against other applications. INA sections 101(a)(15)(T), (U), 214(o), (p), 8 U.S.C. 1101(a)(15)(T), (U), and 1184(o), (p); 8 CFR 214.11, 214.14, 103.7(c)(5)(iii); *Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status*, 73 FR 75540 (Dec. 12, 2008).

The proposed rule follows initial steps taken by the Administration within enacted FY 2010 appropriations for USCIS fee reform that moved some asylum, refugee, and military naturalization costs out of the fee structure. The purpose of this fee reform is to improve the linkage between fees paid by USCIS applicants and petitioners and the cost of programs and activities to provide immigration benefits. Because of fee exemptions for beneficiaries of asylum, refugee, and military naturalization, fee surcharges were added to other applications and petitions. 72 FR 29859. Similarly, costs of SAVE and the Office of Citizenship are currently only partially supported by fee revenue. Additional fee reform in these areas moves these costs out of the USCIS fee structure and improves the transparency of USCIS fees. Nevertheless, while USCIS has calculated its fees as much as possible to bear a relationship with the effort expended to carry out the adjudication, fees are the prevalent source of USCIS funding.[3]

[1] INA section 286(m), 8 U.S.C. 1356(m), provides, in pertinent part:

Notwithstanding any other provisions of law, all adjudication fees as are designated by the [Secretary of Homeland Security] in regulations shall be deposited as offsetting receipts into a separate account entitled "Immigration Examinations Fee Account" in the Treasury of the United States, whether collected directly by the [Secretary] or through clerks of courts: *Provided, however*, * * *: *Provided further*, That fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.

Paragraph (n) provides that deposited funds remain available until expended "for expenses in providing immigration adjudication and naturalization services and the collection, safeguarding and accounting for fees deposited in and funds reimbursed from the 'Immigration Examinations Fee Account'."

[2] Congress's intent in using individual terms, such as "full cost," is clear, although the totality of the section is ambiguous.

[3] INA section 286(m), 8 U.S.C. 1356(m), provides broader fee-setting authority and is an exception from the stricter costs-for-services-rendered requirements of the Independent Offices Appropriations Act, 1952, 31 U.S.C. 9701(c) (IOAA); see *Seafarers Intern. Union of North America* v. *U.S. Coast Guard,* 81 F.3d 179 (DC Cir. 1996) (IOAA provides that expenses incurred by agency to serve some independent public interest cannot be included in cost basis for a user fee,

Continued

DHS works with the Office of Management and Budget (OMB) and follows the guidance provided by OMB Circular A–25, establishing Federal policy guidance regarding fees assessed by Federal agencies for government services. OMB Circular A–25, *User Charges* (Revised), par. 6, 58 FR 38142 (July 15, 1993). Circular A–25 provides that:

> [i]t is the objective of the United States Government to:
>
> a. Ensure that each service, sale, or use of Government goods or resources provided by an agency to specific recipients be self-sustaining;
>
> b. Promote efficient allocation of the Nation's resources by establishing charges for special benefits provided to the recipient that are at least as great as costs to the Government of providing the special benefits; and
>
> c. Allow the private sector to compete with the Government without disadvantage in supplying comparable services, resources, or goods where appropriate.

Id, par. 5. In summary, one objective of Circular A–25 ensures that Federal agencies recover the full costs of providing specific services to users and associated costs. Full costs include, but are not limited to, an appropriate share of:

- Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;
- Physical overhead, consulting, and other indirect costs, including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment;
- Management and supervisory costs; and
- The costs of enforcement, collection, research, establishment of standards, and regulation.

Id. par. 6d1. INA section 286(m), 8 U.S.C. 1356(m), provides DHS broader discretion to include other costs.

OMB Circular A–25 advises that fees should be set to recover these costs in their entirety. Full costs are determined based upon the best available records of the agency. *Id. See also* OMB Circular A–11, section 20.7(d), (g) (August 7, 2009, revised November 16, 2009) (FY 2011 budget formulation and execution policy regarding user fees), found at *http://www.whitehouse.gov/omb/assets/a11_current_year/a_11_2009.pdf.* DHS and OMB use OMB Circular A–25 as the overall policy guidance for determining the activity based costing that forms a base for the ultimate decisions on appropriate fee amounts, and, in conjunction with OMB Circular A–11, issued each budget cycle, determining appropriate requests for appropriations that may offset a portion of the totality of fee recovery.

OMB Circulars A–11 and A–25 provide internal Executive Branch direction for the development of appropriation requests and fee schedules (under the IOAA), but are adapted here to the activity based costing methodology that forms the nucleus for the proposed fee schedule. These internal directions remain at the discretion of the President and the Director of OMB. 5 CFR 1310.1.

DHS also conforms to the requirements of the Chief Financial Officers Act of 1990 (CFO Act), 31 U.S.C. 901–03, requiring that each agency's Chief Financial Officer (CFO) "review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value." *Id.* at 902(a)(8). This proposed rule reflects recommendations made by the DHS CFO and USCIS CFO.

When developing proposed fees, USCIS reviews, to the extent applicable, cost accounting concepts and standards recommended by the Federal Accounting Standards Advisory Board (FASAB). The FASAB defines "full cost" to include "direct and indirect costs that contribute to the output, regardless of funding sources." *FASAB, Statement of Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government* 36 (July 31, 1995). To determine the full cost of a service or services, FASAB identifies various classifications of costs to be included and recommends various methods of cost assignment. *Id.* at 33–42. DHS proposes complete funding of existing services and specific allocation methods.

Accordingly, DHS applies the discretion provided in INA section 286(m), 8 U.S.C. 1356(m), to (1) develop activity based costing to establish basic fee setting parameters that are consistent to the extent practical with OMB Circular A–25, (2) applies administrative judgment to spread those overhead and other costs that are not driven by the cost of services, and (3) applies policy judgments to effectuate the overall Administration policy.[4] The "full" cost of operating USCIS, less any appropriated funding, has been the historical total basis for establishing the cost basis for the fees, and Congress has consistently recognized this concept on annual appropriations. This proposed rule reflects the authority granted to DHS by INA section 286(m) and other statutes.

III. The Immigration Examinations Fee Account

A. General Background

In 1988, Congress established the Immigration Examination Fee Account (IEFA). Public Law 100–459, section 209, 102 Stat. 2186 (Oct. 1, 1988), enacting, after correction, INA sections 286(m) and (n), 8 U.S.C. 1356(m) and (n). Fees deposited into the IEFA fund the provision of immigration and naturalization benefits and other benefits as directed by Congress. In subsequent legislation, Congress directed that the IEFA also fund the cost of asylum processing and other services provided to immigrants at no charge. Public Law 101–515, sec. 210(d)(1) and (2), 104 Stat. 2101, 2121 (Nov. 5, 1990). Consequently, the immigration benefit fees were increased to recover these additional costs. *See* 59 FR 30520 (June 14, 1994).

B. Fee Review History

USCIS conducted a comprehensive fee review in 2007 and promulgated a revised fee schedule that amended many of the fees charged by USCIS to more accurately reflect the costs of the services provided by USCIS. 72 FR 29851 (May 30, 2007) (final rule) (FY 2008/2009 Fee Rule).[5] The 2007 final rule was effective on July 30, 2007, covering FY 2008 and FY 2009. The documentation accompanying this rule in the rulemaking docket at *http://www.regulations.gov* contains a historical fee schedule that shows the immigration benefit fee history since FY

although agency is not prohibited from charging applicant full cost of services rendered to applicant which also results in some incidental public benefits). Congress initially enacted immigration fee authority under the IOAA. See *Ayuda, Inc.* v. *Attorney Genera*l, 848 F.2d 1298 (DC Cir. 1988). Congress thereafter amended the relevant provision of law to require deposit of the receipts into the separate Immigration Examinations Fee Account of the Treasury as offsetting receipts to fund operations, and broadened the fee setting authority. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991, Public Law 101–515, sec. 210(d), 104 Stat. 2101, 2111 (Nov. 5, 1990). Additional values are considered in setting Immigration Examinations Fee Account fees that would not be considered in setting fees under the IOAA. *See* 72 FR at 29866—7.

[4] DHS may reasonably adjust fees based on value judgments and public policy reasons where a rational basis for the methodology is propounded in the rulemaking. *See FCC* v. *Fox Television Stations, Inc.,* 556 U.S. —, —, 129 S.Ct. 1800, 1811 (2009); *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29 (1983).

[5] FY 2008/2009 Fee Rule as used in this rule encompasses the proposed rule, final rule, fee study, and all supporting documentation associated with the regulations effective July 30, 2007.

1985. The Immigration and Naturalization Service (INS) or USCIS also adjusted fees incrementally in 1994, 2002, 2004, and 2005. *See,* respectively, 59 FR 30520 (June 14, 1994); 66 FR 65811 (Dec. 21, 2001); 69 FR 20528 (April 15, 2004); and 70 FR 56182 (Sep. 26, 2005). Prior to USCIS's 2007 review and update, the last comprehensive fee review was conducted by INS in 1998. 63 FR 43604 (Aug, 14, 1998).

USCIS is committed to reviewing the IEFA every two years consistent with the biennial review standard of the CFO Act and guidance from OMB Circular A–25. The FY 2008/2009 Fee Rule followed nearly a decade without a comprehensive review of IEFA fees, and fees increased by a weighted average of 86 percent to recover both base costs and costs for improving operations and service-wide performance needs. By reviewing the IEFA every two years, USCIS is able to implement more moderate fee changes and avoid periods of inadequate revenue that typically precede large fee increases. Additionally, conducting a comprehensive review every two years will allow USCIS to incorporate the productivity gains achieved from investments in technology and modernization of agency operations. These investments should result in improved performance and lower costs.

Table 1 sets out the current IEFA and biometric fee schedule.

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Table 1 – Immigration Benefit Request Fees		
Form No.	**Title**	**Fee**
I-90	Application to Replace Permanent Resident Card	$290
I-102	Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	$320
I-129	Petition for a Nonimmigrant Worker	$320
I-129F	Petition for Alien Fiancé(e)	$455
I-130	Petition for Alien Relative	$355
I-131	Application for Travel Document	$305
I-360	Petition for Amerasian, Widow(er), or Special Immigrant	$375
I-140	Immigrant Petition for Alien Worker	$475
I-191	Application for Advance Permission to Return to Unrelinquished Domicile	$545
I-192	Application for Advance Permission to Enter as Nonimmigrant	$545
I-193	Application for Waiver of Passport and/or Visa	$545
I-212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	$545
I-290B	Notice of Appeal or Motion	$585
I-360	Petition for Amerasian, Widow(er), or Special Immigrant	$375
I-485	Application to Register Permanent Residence or Adjust Status	$930
I-526	Immigrant Petition by Alien Entrepreneur	$1,435
I-539	Application to Extend/Change Nonimmigrant Status	$300
I-600/600A I-800/800A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing of Orphan Petition	$670
I-601	Application for Waiver of Ground of Excludability	$545
I-612	Application for Waiver of the Foreign Residence Requirement	$545
I-687	Application for Status as a Temporary Resident under Sections 245A or 210 of the Immigration and Nationality Act	$710
I-690	Application for Waiver of Grounds of Inadmissibility	$185
I-694	Notice of Appeal of Decision under Sections 245A or 210 of the Immigration and Nationality Act	$545
I-698	Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Public Law 99-603)	$1,370
I-751	Petition to Remove the Conditions of Residence	$465
I-765	Application for Employment Authorization	$340
I-817	Application for Family Unity Benefits	$440
I-824	Application for Action on an Approved Application or Petition	$340
I-829	Petition by Entrepreneur to Remove Conditions	$2,850
	Civil Surgeon Designation	$0
I-924	Application for Regional Center under the Immigrant Investor Pilot Program	$0
N-300	Application to File Declaration of Intention	$235
N-336	Request for Hearing on a Decision in Naturalization Proceedings	$605
N-400	Application for Naturalization	$595

Table 1 – Immigration Benefit Request Fees		
Form No.	**Title**	**Fee**
N-470	Application to Preserve Residence for Naturalization Purposes	$305
N-565	Application for Replacement Naturalization/Citizenship Document	$380
N-600/ 600K	Application for Certification of Citizenship/ Application for Citizenship and Issuance of Certificate under Section 322	$460
	Immigrant Visa	$0
Biometrics	Capturing, Processing, and Storing Biometric Information	$80

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C. USCIS Accomplishments Funded Under the 2007 Fee Adjustment

The 2007 adjustment to USCIS's fee schedule enabled USCIS to accomplish several critical service actions and improvements, including improved service delivery. The following are some of the key accomplishments:

- USCIS processed nearly 1.2 million naturalization applications in FY 2008, 56 percent more than FY 2007. As of March 2010, approximately 262,000 naturalizations cases were pending—one of the lowest levels in recent history.
- A surge response plan implemented in FY 2008 enabled USCIS to meet nearly all FY 2008/2009 Fee Rule processing time goals by the end of FY 2009.
- In FY09 USCIS and the FBI effectively eliminated the National Name Check Program (NNCP) backlog. NNCP now is able to complete 98 percent of name check requests submitted by USCIS within 30 days, and the remaining 2 percent within 90 days.
- Refugee admissions totaled 74,652 for FY 2009, a 25 percent increase over the FY 2008 admissions level. This figure includes the processing of 18,833 Iraqi refugees, up from 13,000 in FY 2008.
- USCIS is using System Qualified Adjudication (SQA) to electronically adjudicate some cases and determine those that require closer review. This improvement helps staff focus attention on more complex cases including those where discrepancies have been found. USCIS uses SQA on about 5 percent of immigration benefit requests.
- USCIS implemented a secure mail delivery process whereby USCIS delivers re-entry permits and refugee travel documents to applicants via the U.S. Postal Service Priority Mail. This process allows documents to be delivered in two to three days with delivery confirmation.
- USCIS is transitioning to a U.S. Department of the Treasury Lockbox provider and away from dispersed collection points to improve intake operations and control the timing of fee deposits. Two major forms—Form N–400, Application for Naturalization, and Form I–90, Application to Replace Permanent Resident Card—have already been centralized for filing at the Lockbox. Likewise, forms related to international adoptions that are filed domestically have been centralized for filing at the Lockbox: (Form I–800, Petition to Classify Convention Adoptee as an Immediate Relative; Form I–800A, Application for Determination of Suitability to Adopt a Child from a Convention Country; Form I–600, Petition to Classify Orphan as an Immediate Relative; and Form I–600A, Application for Advance Processing of Orphan Petition). USCIS centralized eight more application types in December 2009.

In tandem with the additional capacity and efficiency improvements in the FY 2008/2009 Fee Rule, USCIS committed to reducing immigration benefit request processing times. Two performance goals were specified:

- Reduce processing times by the end of FY 2008 for four key benefits:
  - Application to Register Permanent Residence or Adjust Status (Form I–485), from six months to four months;
  - Application for Naturalization (Form N–400) from seven months to five months;
  - Application to Replace Permanent Residence Card (Form I–90) from six months to four months; and
  - Immigrant Petition for Alien Worker (Form I–140), from six months to four months.
- Achieve a 20 percent reduction in average application processing times by the end of FY 2009.

During the period between the 2007 notice of proposed rulemaking and implementation of a final rule on July 30, 2007, USCIS received a substantial surge in immigration benefit requests. This surge more than doubled the number of naturalization applications received for the entire year—at the lower fee level which the fee study had found insufficient to cover the costs of processing those applications. Naturalization applications are very labor-intensive and the additional surge had a significant impact on USCIS resources.

USCIS responded to the 2007 surge by rapidly adding capacity in 2008 in excess of the increases planned in connection with the FY 2008/2009 Fee Rule. Despite completing 1.6 million more requests than received during FY 2008, USCIS could not meet its processing time goals. As a result, all of the FY 2008 goals for key immigration benefits were postponed until the end of FY 2009. No change was made to the existing 20 percent processing time reduction goal slated to be reached by the end of FY 2009. USCIS achieved nearly all of the goals set for the FY 2008/2009 Fee Rule by the end of FY 2009.

D. Processing Time Outlook

USCIS met or exceeded nearly all FY 2008/2009 Fee Rule processing time performance goals by the end of FY 2009. Processing time progress updates are posted monthly to the USCIS Web site. For the FY 2010/2011 period, USCIS intends to ensure that the FY 2008/2009 Fee Rule average processing time goals are met and maintained. Wherever appropriate and feasible, USCIS aims to exceed target performance goals through existing staff levels, efficiency improvements, and systems modernization. USCIS does not plan to increase adjudication staffing levels and, in fact, has and will continue to reduce staff during the FY 2010/2011 biennial period based on current revenue trends and the institutional focus on countering fee increases to the extent possible.

E. FY 2008/2009 Fee Rule Enhancements

Table 2 provides a status summary of all fee rule initiatives by program. USCIS set forth 43 enhancements and initiatives in the FY 2008/2009 fee rule. *See, e.g.,* 72 FR 4888 at 4898–4902 (Feb

1, 2007); 72 FR 29851 at 29855 (May 30, 2007). USCIS has successfully implemented these enhancements and initiatives, and, of 43 initiatives, 35 are complete.

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Table 2 – Status of FY 2008/2009 Fee Rule Enhancements

PROGRAM	COMPLETION DATE
Office of Administration	
Lease Acquisition & Rent	May 2011
Procurement	COMPLETE
Office of Chief Counsel	
Attorneys & Support	COMPLETE
Office of Chief Information Officer	
Baseline Automation Support Infrastructure for Citizenship Services (BASICS)	April 2013
Computer-Linked Application Information Management System 3 Program Optimization (CLAIMS 3 Program Optimization (C3PO))	June 2011
Enterprise Citizens and Immigration Services Centralized Operational Repository (e-CISCOR)	March 2011
IT Portfolio	December 2010
Office of Citizenship	
Learn About the United States	COMPLETE
New Citizen's Almanac	COMPLETE
Office of the Chief Financial Officer	
Performance Analytics	COMPLETE
Budget	COMPLETE
Internal Controls	COMPLETE
Competitive Sourcing Reviews	COMPLETE
Service Level Agreements (SLAs)	COMPLETE
Financial Management Service Level Agreements	COMPLETE
Office of Policy and Strategy	
Policy Consultation	COMPLETE
Research and Evaluation	COMPLETE
Administrative Appeals Office	
Management Support Contract	COMPLETE
Domestic Operations	
Second Full-Service Production Facility	POSTPONED
Adjudication Officers & Support	COMPLETE
Enhanced Delivery of Secure Documents	TBD
Integrated Document Production	COMPLETE
FBI Background Checks	COMPLETE
National Security & Records Verification	
Fraud Prevention and Detection	COMPLETE
Administrative Site Program	COMPLETE
Fraud Detection and National Security (FDNS) Data Systems	June 2011
Freedom of Information Act (FOIA)	COMPLETE
National Archives and Records Administration (NARA) Transfer	COMPLETE
Change of Address	COMPLETE
Refugee, Asylum and International Operations	
Cuban-Haitian Entrant Program	COMPLETE

Table 2 – Status of FY 2008/2009 Fee Rule Enhancements

PROGRAM	COMPLETION DATE
Office of Human Capital, Training, and Career Development	
EDvantage	COMPLETE
Blended Learning Solution	COMPLETE
Enterprise Employee Orientation	COMPLETE
Enterprise Development Program	COMPLETE
Human Resources Service Level Agreements	COMPLETE
Occupational Safety and Health	COMPLETE
National Recruitment Program	COMPLETE
Office of Security and Investigations	
Protective Security Options	COMPLETE
Internal Security and Investigations Operations	COMPLETE
Crisis Management & Information Security	COMPLETE
Information Technology Security	COMPLETE
Personnel Security Operations	COMPLETE
Emergency Management and Safety	
Emergency Preparedness Operations	COMPLETE

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F. Administration Policy

President Obama launched a multi-year effort in his fiscal year (FY) 2010 Budget to reform immigration fees. The purpose of reforming immigration fees is to improve the transparency and precision of how fees are determined and to develop, as a matter of discretion, fees that reflect more closely actual costs of adjudication and assignable associated costs. The President's FY 2010 Budget requested appropriations from Congress to allow USCIS to remove the surcharge for refugee and asylum program costs and military naturalizations. Additional steps to reform immigration fees have continued in the President's FY 2011 Budget request and in this proposed fee rule.

DHS has calculated the proposed changes to the fee schedule based on the fee reform steps taken in the FY 2010 Budget and FY 2011 Budget request. These changes may require adjustment if USCIS's appropriation requests are not enacted or are reduced for FY 2011. Accordingly, DHS is proposing a range of fees to account for fee increases that would be necessary if the requested appropriations for FY 2011 are not enacted.

IV. FY 2010/2011 Immigration Examination Fee Account Fee Review

A. Overall Approach

USCIS manages three fee accounts: The IEFA (which includes premium processing revenues set aside for infrastructure improvements by the Office of Transformation Coordination for near- and long-term investments to strategically improve USCIS operations),[6] the Fraud Prevention and Detection Account (immigration benefit fraud),[7] and the H–1B Nonimmigrant Petitioner Account.[8] The Fraud Prevention and Detection account and the H–1B Nonimmigrant Petitioner Account are both funded by statutorily-set fees. The proceeds of these fees are used for fraud detection and prevention activities and to provide training for American workers in order to reduce employer reliance on nonimmigrant workers, respectively. DHS has no authority to adjust fees for these accounts.

The IEFA account comprised approximately 95 percent of total funding for USCIS in FY 2009, excluding premium processing, and is the focus of this proposed rule. The FY 2010/2011 Fee Review encompasses three core elements:

- *Cost Projections*—The cost baseline is the estimated level of funding necessary to maintain an adequate level of operations and does not include program increases for new development, modernization, or acquisition. Proposed program increases are considered outside of the baseline. Cost projections for FY 2010/2011 are derived from the USCIS operating plan for FY 2010.
- *Revenue Status and Projections*—Actual revenue collections for FY 2009 are used to derive projections for the two-year period of the fee review based on current and anticipated trends.
- *Cost and Revenue Differential*—The difference between anticipated costs and revenue, assuming no change in fees, is identified.

The primary objective of this fee review is to ensure immigration benefit request fee revenue provides sufficient funding to meet ongoing operating costs, including national security, customer service, and business adjudicative processing needs which are essential to provide immigration benefits and services.

B. Basis for Fee Schedule Changes

When conducting the comprehensive fee review, USCIS reviewed its recent cost history, operating environment, and current service levels to determine the appropriate method to assign costs to particular form types. Overall, USCIS kept costs as low as possible and minimized non-critical program changes that would increase costs.

1. Costs

a. Baseline Adjustments

The cost baseline is comprised of the resources (such as personnel and

[6] INA sections 286(m), (n), 8 U.S.C. 1356(m), (n).

[7] INA sections 214(c), 286(v), 8 U.S.C. 1184(c) 1356(v).

[8] INA sections 214(c), 286(s), 8 U.S.C. 1184(c), 1356(s).

general expenses) necessary for each USCIS office to sustain operations. The baseline excludes new or expanded programs or significant policy changes. A detailed USCIS annual operating plan (AOP) is the starting point for baseline estimates.

In developing estimates of program needs for FY 2010/2011, USCIS used the FY 2010 AOP as the starting point. In response to reduced workload and declining revenue during both FY 2008 and FY 2009, USCIS reduced baseline costs for FY 2010.

Expenditures were reduced by $111 million in such areas as staffing and correspondingly reduced introductory training programs, overtime, and facilities improvement.

These reductions were offset by necessary pay adjustments and increases to programs to maintain current services, particularly adjustments to programs that received one-time reductions during FY 2009. Examples of necessary adjustments include:

- Pay inflation ($15.1 million in FY 2010 and $16.5 million in FY 2011). The assumed government-wide pay inflation rate for FY 2010 and FY 2011 is 2 percent and 2.1 percent respectively;
- Within-grade pay step increases ($15.4 million in FY 2010 and $16 million in FY 2011);
- Rent increases ($15.1 million in FY 2010 and $27.6 million in FY 2011). Rent increases as existing leases expire and are renegotiated. Rent is projected to increase by 9 percent in FY 2010 and 15 percent in FY 2011. The increase in rent is attributable to several factors including the size of the facilities, the growth of USCIS, the timing of facility projects, and the cost of construction. Many facility projects that are scheduled for completion in FY 2010 commenced in FY 2008. The additional space was acquired based on increased staffing levels (a direct result of the FY 2008/2009 Fee Rule enhancements). Outside of the acquisition of new facilities, annual rent costs increase due to higher operating costs (such as utilities) that USCIS must pay to the General Services Administration.

Table 3 summarizes adjustments to the FY 2009 cost baseline, as well as the cost increases and decreases to reach the FY 2010 and FY 2011 cost baselines. Overall, the IEFA cost baseline decreases by approximately 1.5 percent in FY 2010 from FY 2009 and increases by 2.7 percent for FY 2011.

Table 3 – Baseline Adjustments
(Dollars in Thousands)

FY 2009 Adjusted IEFA Budget	$2,420,187
Plus: Pay Inflation and Promotions/Within Grade Increases	30,569
Plus: Net Additional Resource Requirements	45,097
Plus: FY 2010 AOP Spending Cuts	-111,175
Total FY 2010 IEFA Budget	**$2,384,678**
Plus: Pay Inflation and Promotions/Within Grade Increases	37,548
Plus: Net Additional Resource Requirements	27,330
Total FY 2011 IEFA Budget	**$2,449,556**

b. Program Increase

USCIS has included only one program increase, encompassing $30 million in infrastructure funding to support the transformation of USCIS operations under its transformation program. To improve operational efficiency, enhance customer service, and increase national security, USCIS is centralizing and consolidating the electronic environments used for case processing and management and to standardize and improve business processes. A large portion of this effort is dedicated to developing and integrating information management systems. USCIS will migrate from a paper file-based, non-integrated systems environment to an electronic customer-focused, centralized case management environment for benefit processing. This transformation will allow USCIS to streamline benefit processing, eliminate the capture and processing of redundant data, and reduce the number of and automate its forms. This process will be a phased multi-year initiative to restructure USCIS business processes and related information technology systems.

Direct transformation program costs are currently funded through premium processing fees. Some supporting infrastructure upgrades outside of the Transformation Program are necessary to enable implementation such as upgrades to existing network, communication, and supporting systems. USCIS is assuming a $30 million program increase each year, for a total of $60 million in additional costs over the fee review period.

2. Revenue

During the fourth quarter of FY 2007, USCIS received over 2.5 million filings, compared to 1.3 million received in the same period of FY 2006, as applicants attempted to file before the July 30, 2007 fee adjustment and in response to adjustments made by the Department of State (DOS) to its July 2007 visa bulletin. This filing surge created a delay in receipting, which led to an increase in revenue at the beginning of FY 2008. The additional applications received were charged lower pre-FY 2008/2009 Fee Rule fees. The increase in early filings meant that FY 2008 application levels were substantially below expectations. The decrease in FY 2008 filings began the last two quarters of FY 2008 and continued throughout FY 2009. IEFA revenue for FY 2008 was $75 million below the estimated FY 2008 projection of $2.329 billion, despite an estimated $300 million of FY 2007 applications receipted in FY 2008. IEFA revenue for FY 2009 was $345 million below the $2.329 billion projection.

Actual FY 2009 IEFA revenue includes the revenue associated with the temporary protected status (TPS) registration that was not included in the FY 2008/2009 Fee Rule projections. In order to have a more reliable budget estimate upon which to base its fees, USCIS chose not to rely on temporary funding sources such as TPS that are subject to being discontinued annually. Therefore, USCIS cannot build TPS cost and revenue into long-term plans. Thus the fees proposed in this rule are based on the TPS Program for re-registrants of certain nationalities not continuing and their associated fees not being collected. When estimated TPS revenue of $120 million is factored out, the IEFA revenue was $465 million below the FY 2008/2009 Fee Rule projections.

USCIS fee revenue collections are affected by many things including the economy, debate in Congress over immigration legislation, and business cycles. A significant downward trend in employment benefit receipts in FY 2009 suggests that the primary cause of reduced receipts was the downturn in the economy. Employment-based workload, adjustment of status and naturalization requests—both primary consumers of work hours and sources of revenue—were also significantly lower than FY 2007 receipts. In addition, there is anecdotal evidence that there was a "surge" in the volume of certain applications, the Application for Naturalization in particular, just before the previous fee rule went into effect that may have had an impact on application volume in FY 2009. The fee increase may have been the reasons for this surge, although other factors, such as the immigration legislation that was considered but not enacted by Congress in 2007, and the 2008 Presidential election, are believed to have had an impact on filing volumes during FY 2008.

Given the downward revenue trend for FY 2008 and FY 2009, USCIS has formulated conservative volume and revenue projections. Overall, this fee review assumes that baseline revenue will decline from an FY 2008/2009 Fee Rule projection of $2.329 billion to $2.056 billion, a decrease of approximately 12 percent. This determination is based on a workload volume reduction from the FY 2008/2009 projections of approximately 1.6 million benefit requests (including biometrics) and a fee-paying volume reduction of 827,689. *See* 72 FR 29851. Table 4 summarizes the projected cost differential.

Table 4 - IEFA Baseline Cost and Revenue Comparison
(Dollars in Thousands)

	FY 2010	FY 2011	FY 2010/2011 AVERAGE
Revenue	$2,056,213	$2,056,213	$2,056,213
Cost	$2,384,678	$2,449,556	$2,417,117
$ Delta	**($328,465)**	**($393,343)**	**($360,904)**

Historically and for the purpose of the fee review, USCIS has reported costs and revenue using an average over the biennial time period. In Table 5, FY 2010 and 2011 costs and revenue are averaged to determine the projected fee rule revenue and cost amounts. Based on current immigration benefit and biometric service fees and projected volumes, fees are expected to generate $2.056 billion in annual revenue in FY 2010 and FY 2011. For the same period, the average cost of processing those benefit requests is $2.417 billion. This calculation results in an average annual deficit of $361 million.

3. Refugee and Asylum Surcharge

The President's FY 2010 Budget requested $200 million to eliminate estimated asylum and refugee surcharges. *See* Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2010,* at 510–1 (2009), available at *http://www.gpoaccess.gov/usbudget/fy10/pdf/appendix/dhs.pdf.* Congress enacted $50 million for FY 2010, contingent upon conforming rulemaking to adjust the surcharges accordingly (*i.e.,* the $50 million represents an annualized figure of $200 million, appropriated in the expectation that it will fund the final quarter of FY 2010 rather than the entire year). DHS Appropriation Act 2010, 123 Stat. at 2164–5. Costs of refugee and asylum processing are currently borne by all fee-paying applicants as a surcharge applied to each fee-paying immigration benefit request. *See* 72 FR at 29859 (all immigration benefit and petition fees include a total of $72 in "surcharges" to recover asylum and refugee costs, and fee waiver and exemption costs). While consistent with the Immigration and Nationality Act, this surcharge raises fees for those applying for other benefits. Estimated costs in these areas include:

- The budgets of both the Refugee and Asylum Divisions of the Refugee, Asylum, and International Operations (RAIO) Directorate, along with the cost of RAIO Headquarters;
- Five percent of the International Operations (IO) office, representing the portion of IO that completes refugee work;
- A proportionate share of overhead costs of USCIS; and
- The cost of the Cuban-Haitian Entrant Program.

The $50 million appropriation enacted by Congress only replaces a portion of the surcharge for FY 2010 representing one-quarter of the fiscal year. DHS Appropriation Act 2010, 123 Stat. at 2164–5. President Obama requested an appropriation from Congress of $207 million to replace the full, annualized costs of these activities in FY 2011. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2011,* at 521–2 (2010) (2011 Budget Request), available at *http://www.whitehouse.gov/omb/budget/fy2011/assets/dhs.pdf.* If Congress enacts the requested FY 2011 appropriations, surcharges for this category of costs will be eliminated when this proposed rule is promulgated as a final rule and becomes effective. If the requested appropriation is not enacted, or a different amount is appropriated, the final rule will adjust the fee schedule accordingly. *See* Table 16 (comparative fee schedule with and without requested appropriations).

4. Military Naturalizations

Service members in any of the branches of the U.S. Military who meet certain requirements may apply for naturalization and are exempt from paying the fee for the Application for Naturalization (Form N–400). INA sec. 328(a)(4), 8 U.S.C. 1439(a)(4); INA sec. 329(b)(4), 8 U.S.C. 1440(b)(4). Congress provided $5 million in FY 2010 to cover the estimated cost to USCIS of processing military naturalization applications. DHS Appropriation Act 2010, Public Law 111–83, 123 Stat. at 2164–5. As recognized by Congress in providing this appropriation, these costs

should not be borne by other fee-payers, particularly since this volume increases as the Department of Defense expands its recruitment efforts to certain aliens and other than lawful permanent residents. The estimated cost is based on a projected workload of 9,500 military naturalizations multiplied by the current fee of $595. The FY 2011 Budget Request of $5 million in appropriations for the Department of Defense is reflected in the recalculation of the proposed fees. *See* 2011 Budget Request, at 521–2. If Congress appropriates a different amount, the fees will be adjusted accordingly in the final rule. Table 5 depicts the cost and revenue differential after appropriations for refugee, asylum, and military naturalizations are assumed.

Table 5 – IEFA Cost Baseline and Revenue Comparison after Incorporating Refugee, Asylum, and Military Naturalization Actual (FY 2010) and Assumed (FY 2011) Appropriations
(Dollars in Thousands)

	FY 2010	FY 2011	FY 2010/2011 AVERAGE
Revenue	$2,056,213	$2,056,213	$2,056,213
Cost	$2,329,678	$2,237,556	$2,283,617
$ Delta	**($273,465)**	**($181,343)**	**($227,404)**

5. Proposed FY 2011 Appropriations for Systematic Alien Verification for Entitlements (SAVE) Program and the Office of Citizenship

The $385,800,000 for USCIS funding in the FY 2011 Budget Request seeks appropriations to cover the estimated cost of the SAVE program ($34 million) and the Office of Citizenship ($18 million) for FY 2011. *See* 2011 Budget Request, at 521–2. If Congress appropriates a different amount, the fees will be adjusted accordingly in the final rule. The fees proposed in this rule are based on the costs of the SAVE program and the Office of Citizenship not being financed by fee revenue and, instead, paid with appropriated funds. The baseline costs (without program increases) are approximately $26.1 million in FY 2011. If appropriations are not approved for these activities, USCIS will be required to adjust fees to reflect costs for the programs.

The proposal follows initial steps taken within enacted FY 2010 appropriations for USCIS fee reform that moved some asylum, refugee, and military naturalization costs out of the fee structure. The purpose of this fee reform is to improve the linkage between fees paid by USCIS applicants and petitioners and the cost of programs and activities to provide immigration benefits. Because of fee exemptions for beneficiaries of asylum, refugee, and military naturalization, fee surcharges were added to other applications and petitions. 72 FR 29859. Similarly, costs of SAVE and the Office of Citizenship are currently only partially supported by fee revenue. Additional fee reform in these areas moves these costs out of the USCIS fee structure and improves the precision and transparency of USCIS fees.

The IEFA cost baseline is increasing while anticipated volumes and revenue are expected to decrease compared to the last fee rule. Table 6 depicts the cost and revenue differential after appropriations for refugee, asylum, military naturalizations, SAVE, and the Office of Citizenship are assumed.

Table 6 – IEFA Cost Baseline and Revenue Comparison after Additional Proposed Appropriation for SAVE and the Office of Citizenship
(Dollars in Thousands)

	FY 2010	FY 2011	FY 2010/2011 AVERAGE
Revenue	$2,056,213	$2,056,213	$2,056,213
Cost	$2,329,678	$2,211,454	$2,270,566
$ Delta	**($273,465)**	**($155,241)**	**($214,353)**

6. Establish an Immigrant Visa Processing Fee

DHS proposes to establish a new fee for immigrant visas to recover the costs to USCIS for related activities. Immigrant visas are issued by the Department of State (DOS) in overseas consulates to foreign nationals seeking to reside permanently in the United States. INA section 221–222, 8 U.S.C. 1201–1202. Although DOS issues the visas, USCIS must complete several visa application-related activities prior to issuance of a permanent resident card. USCIS must create a file, review the application, correspond with the applicant, and produce and issue a secure card upon approval. DOS charges fees for immigrant visas, but USCIS does not. The DOS fee is currently established, using DOS's fee-setting methodology, at $355. 22 CFR 22.1. The DOS fee was established to recover DOS costs only, and the USCIS FY 2010/2011 Fee Review was performed without consideration of fees paid by applicants to DOS. Other USCIS applicants have historically borne the cost of processing this immigrant visa workload.

The USCIS fee only reflects the costs incurred by USCIS. Although USCIS projects an annual volume of 430,000 requests, in anticipation of the timing of implementation of a final rule promulgating the fee, USCIS only accounts for revenue for the second half of the first fiscal year, or 215,000 immigrant visas. USCIS projects that the collection of the immigrant visa fee will be implemented beginning in FY 2011. The proposed fee based on the workload analysis is $165. The additional revenue from implementing this fee will reduce

fees paid by, and fee increases charged to, other applications.

7. Civil Surgeon Program Fees

DHS proposes to establish new fees for processing civil surgeon designations. Medical examinations are needed for most adjustment of status cases (Form I–485) and requests for V nonimmigrant status (Form I–539). The medical examination must be conducted by a civil surgeon who has been designated by USCIS. USCIS traditionally has not charged civil surgeons seeking this designation a fee to recover the costs associated with this application; these costs have been recovered as part of the administrative overhead charged to all fee-paying applicants and petitioners. The process for receiving and reviewing the information required for a civil surgeon designation, however, is labor intensive. For USCIS to continue to provide civil surgeon designations in a timely manner and to further refine the cost analysis and fee setting, USCIS must establish a fee of $615 to cover the cost of processing requests for such designations. Collecting a fee for these services will ensure that other fee-paying applicants do not bear these costs.

8. EB–5 Regional Center Designation Fee

DHS proposes to add a fee for adjudication of regional center designations under the Immigrant Investor Pilot Program. *See* Public Law 102–395, tit. VI, sec. 610, 106 Stat. 1874 (1992) (8 U.S.C. 1153 note). This program, implemented by Congress in 1990 to stimulate the U.S. economy, allows certain foreign investors to obtain lawful permanent resident status in the United States as EB–5 immigrants by making certain levels of capital investment and associated job creation or preservation. One aspect of this program (the Regional Center Pilot Program) encourages foreign investors to invest funds in a distinct economic "regional center." A regional center is an economic unit, public or private, engaged in the promotion of economic growth, improved regional productivity, job creation, and increased domestic capital investment. *See* 8 CFR 204.6(e). An individual or entity interested in participating in the Regional Center Pilot Program must file a Regional Center Proposal with USCIS to request USCIS approval of the proposal and designation of the entity as a regional center. The proposal must provide a framework within which individual alien investors affiliated with the regional center can satisfy the EB–5 eligibility requirements and create qualifying EB–5 jobs.[9]

USCIS's fee study found that these designations are exceptionally labor intensive for USCIS. Historically, the cost of this designation process has been borne by all fee-paying applicants and beneficiaries. Accordingly, to refine the cost accounting and fee structure, and to make the distribution of costs more equitable, DHS proposes a new fee of $6,230 per request for designation.

9. Employment Authorization Document Fees for Applicants Covered by Deferred Enforced Departure (Form I–765)

DHS proposes to collect a fee for an Application for Employment Authorization and the associated biometrics for aliens granted deferred enforced departure (DED). DHS also proposes to remove an extraneous provision from the employment authorization regulations relating to aliens granted "extended voluntary departure by the Attorney General as a member of a nationality group pursuant to a request by the Secretary of State." 8 CFR 274a.12(a)(11).

In the Immigration Act of 1990, Congress established the temporary protected status (TPS) program and instructed that TPS constitutes the exclusive authority of the Attorney General (now the Secretary of Homeland Security) to permit deportable or paroled aliens to remain in the United States temporarily because of their particular nationality. *See* INA sec. 244(g), 8 U.S.C. 1254a(g). Accordingly, since 1990 neither the Attorney General nor the Secretary have designated a class of aliens for nationality-based "extended voluntary departure," and there no longer are aliens in the United States benefiting from such a designation. Accordingly, DHS proposes to remove the obsolete reference to extended voluntary departure.

On occasion, however, Presidents have issued executive orders or memoranda directing the deferral of enforced departure from the United States of certain nationals of a particular country for temporary periods and have directed that eligible individuals be provided employment authorization during the period of deferral. *See, e.g.,* Exec. Order No. 12711, 55 FR 13897 (April 11, 1990) (deferring departure of certain Chinese nationals); Memorandum from President Barack Obama to Secretary of Homeland Security Janet Napolitano Extending Deferred Enforced Departure for Liberians (Mar. 20, 2009), available at *http://www.whitehouse.gov/the_press_office/Presidential-Memorandum-Regarding-Deferred-Enforced-Departure-for-Liberians.* DHS proposes changes that will clarify its authority to process and collect a fee for EADs and associated biometrics for aliens eligible for DED. Proposed 8 CFR 103.7(b) and 274a.12(a)(11). Collection of the EAD fee from individuals who are covered by an occasional Presidential directive to defer their departure temporarily will facilitate adjudication of the benefit, and the production of secure, biometric EADs, as with other EAD-eligible groups, such as aliens granted TPS. An EAD applicant may request a fee waiver based on an inability to pay the fee. The new provision will still be in regulations governing work authorization incident to status. 8 CFR 274a.12(a). The proposed change specifies that work authorization will be provided under terms and conditions set by the Secretary consistent with the President's DED directive. Proposed 8 CFR 274a.12(a)(11).

C. Summary

Projected costs are expected to exceed projected revenue. This differential must be addressed with increased revenue, notwithstanding new appropriations and cost adjustments. Increased revenue will be derived from new immigrant visas, civil surgeon designations, and immigrant investors. Increased revenue will also be derived from a weighted average fee increase on existing immigration benefits. Some fees will be reduced due to lower processing costs; other fees will increase. The level of fee increase necessary to align costs and revenue is a weighted average of 10 percent after adjusting prices to account for reduced surcharges and other costs from appropriations for SAVE, Office of Citizenship, refugee and asylum costs, and military naturalization reimbursements from DOD. USCIS will adjust fees consistent with the details of this supporting documentation if proposed appropriations are not approved.

D. Performance Improvements

In the FY 2008/2009 fee rule, USCIS committed to a series of performance improvements and reduced processing time goals. For the FY 2010/2011 period, USCIS is identifying in this fee rule a new set of goals and performance improvements that are aimed at increasing accountability, providing

[9] *See* "Adjudication of EB–5 Regional Center Proposals and Affiliated Form I–526 and Form I–829 Petitions; Adjudicators Field Manual (AFM) Update to Chapters 22.4 and 25.2," Donald Neufeld, Acting Associate Director, Domestic Operations, USCIS (Dec. 11, 2009); *http://www.uscis.gov.*

better customer service, and increasing efficiency. These enhancements include:

• *Expanding the use of Systems Qualified Adjudication to a larger share of USCIS's workload.* USCIS expects all Form I–90, I–765, and I–821 re-registration applications will be supported by electronic adjudication by September 2011. In addition to improving the processing of these requests, this step will provide adjudicators with more time to focus on more complex applications.

• *Begin Deployment of Transformed Processes and System.* USCIS expects to deploy the initial increment of its transformation program by the end of FY 2011. As one of the Administration's High Priority Performance Goals,[10] USCIS has committed to ensuring that at least 25 percent of applications will be electronically filed and adjudicated using the new transformed integrated operating environment by FY 2012.

• *Integration of productivity measures in future fee review methodology.* Beginning with the next fee rule, USCIS will integrate productivity measures into the underlying methodology USCIS uses to conduct fee studies. This means that efficiency gains resulting from information technology investments and process improvements will be clearly identified, including the cost savings that occur due to these changes, ensuring that those savings are incorporated into new fee amounts.

V. Fee Review Methodology

When conducting a fee review, USCIS reviews its recent cost history, operating environment, and current service levels to determine the appropriate method to assign costs to particular benefit requests. The methodology used in the review reflects a robust capability to calculate, analyze, and project costs and revenues.

USCIS uses commercially available activity-based costing (ABC) software to create financial models to calculate immigration benefit requests and biometric service fees. Following the FY 2008/2009 Fee Rule, USCIS identified several key methodology changes to improve the accuracy of the ABC model. Improvements were also suggested by the Government Accountability Office (GAO) following a review and completion of the FY 2008/2009 Fee Rule.[11] These changes include analyzing cost allocation methods to evaluate methods that may offer greater precision and fully documenting the rationale and any related analysis for using the assumptions and cost assignment methods selected. USCIS continues to update the ABC model with the most current information for fee review and cost management purposes.

A. Background

ABC is a business management tool that assigns resource costs to operational activities and then to products and services. These assignments provide an accurate cost assessment of each work stream involved in producing the individual outputs of an agency or organization. ABC is a preferred cost accounting method endorsed by the FASAB and enables USCIS to conform to Managerial Cost Accounting Concepts and Standards for the Federal Government.[12]

1. ABC Methodology

a. Resources

The total resource base for the ABC model is the FY 2010/2011 cost baseline and assumes that USCIS will receive $55 million in FY 2010 and $238 million in FY 2011 from appropriations to replace surcharges. The resulting $2.271 billion (*see* Table 6) is the estimated cost of FY 2010 and FY 2011 resources necessary to fund the full cost of processing immigration benefit requests and biometric services for which USCIS charges a fee, as well as the cost of providing similar services at no cost. This represents the first stage of the ABC process.

The ABC model structure for FY 2010/2011 was designed to closely resemble the structure of the FY 2009 Annual Operating Plan (AOP). The AOP is the detailed budget execution plan USCIS establishes at the beginning of the fiscal year consistent with the Congressionally approved fiscal year appropriation and forecasted fee revenue. The model includes the same USCIS offices and individual line items associated with these offices. This structure provides a common format and creates a means to project out-year budgets and potentially track commitments, obligations, and expenditures by the operating plan line item description in the model.

The ABC model structure for the FY 2008/2009 Fee Rule was based on the FY 2007 AOP. Headquarters payroll and agency-wide non-payroll were very similar to the operating plan; however, payroll for field offices (Service Centers, District Offices, National Benefits Center, and National Records Center) was broken down into sub-categories similar to the internal USCIS Staffing Allocation Model (SAM).[13]

b. Resource Drivers and Resource Assignment

ABC methodology uses resource drivers to assign resources to activities. Using the resource base of $2.271 billion, costs are assigned to activities using resource drivers. All resource costs are assigned to activities, so the total resources in the model equal the total cost of activities. This represents the second stage of the ABC process.

A commonly used resource driver in ABC is an organization's number of employees and the percentage of time they spend performing certain activities. The FY 2010/2011 ABC model uses this methodology to assign resources to activities. The ABC model assigns resources to activities using authorized positions by funding stream (fund code) and Program, Project, and Activity (PPA) for each USCIS office. This driver is then weighted by the percentage of on-board positions performing specific activities within each USCIS office. These percentages are determined using a payroll position title analysis. The payroll position title analysis identifies the percentage of each office that is dedicated to the nine ABC activities (for more information *see* the section titled "Activities" below) by reviewing the titles and position descriptions of its workforce.

Other resource drivers in the FY 2010/2011 model include a direct driver

[10] See Memorandum for the Heads of Departments and Agencies, *Planning for the President's Fiscal Year 2011 Budget and Performance Plans, from Peter R. Orszag,* Director, Office of Management and Budget, June 11, 2009.

[11] Government Accountability Office, *Immigration Application Fees: Costing Methodology Improvements Would Provide More Reliable Basis for Setting Fees* (GAO–09–70, Jan. 23, 2009); Government Accountability Office, *Federal User Fees: Additional Analyses and Timely Reviews Could Improve Immigration and Naturalization User Fee Design and USCIS Operations* (GAO–09–180, Jan. 23, 2009); Statement of Susan J. Irving, Government Accountability Office, *Federal User Fees: Fee Design Characteristics and Trade-Offs Illustrated by USCIS's Immigration and Naturalization Fees,* Testimony before the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, Committee on the Judiciary, U.S. House of Representatives, 18 (March 23, 2010) (Noting that "Any user fee design embodies trade-offs among equity, efficiency, revenue adequacy, and administrative burden.").

[12] Federal Accounting Standards Advisory Board, *Statement of Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government* 36 (July 31, 1995).

[13] The Staffing Allocation Model is a model used to calculate estimates of staffing types and levels necessary to undertake specific workload (*e.g.,* applications and petitions) levels at target processing times.

and a rent driver that are similar to those used in the FY 2008/2009 model. The direct driver assigns specific resources directly to activities. For example, the contract issued for USCIS Application Support Centers (ASCs) only pertains to the capture biometrics activity. Therefore, the costs associated with this contract are assigned directly to the capture biometrics activity using a direct driver. The rent driver assigns estimated rent costs for each fiscal year to each USCIS office based on projected FY 2010 rent costs by location. Other overhead costs, such as the Office of Information Technology, service-level agreements, and the DHS working capital fund costs are distributed to each USCIS office on a prorated basis by authorized positions.

The FY 2008/2009 model used total authorized positions as the primary resource driver. For Headquarters offices, this driver was weighted by the estimated percentage of time spent performing certain activities, based on operational knowledge. For field offices, total positions were weighted by the time spent performing certain activities, based on operational knowledge as well as time percentages determined using officer hour data from the USCIS Performance Analysis System (PAS).[14]

The allocation methods in the FY 2008/2009 Fee Rule, as well as the FY 2010/2011 Fee Review, are consistent with the FASAB Standard 4 on managerial cost accounting concepts. They fulfill the mandate to directly trace costs when feasible, and to either assign costs on a cause-and-effect basis or allocate them in a reasonable and consistent way.

c. Activities

In ABC, activities are the critical link between resources and cost objects. This represents the third stage of the ABC process. Projected operating costs (resources) for FY 2010/2011 are spread to nine activities. They are:

- *Inform the Public* involves receiving and responding to applicant and petitioner inquires through telephone calls, written correspondence, or walk-in inquiries;
- *Capture Biometrics* involves the electronic capture of biometric information (fingerprint and photograph), background checks performed by the FBI, and use of the collected biometrics for verifying the identity of the applicants;
- *Intake* involves mailroom operations, data capture and collection, file assembly, fee receipting, and file room operations;
- *Conduct Interagency Border Inspection System (IBIS) Checks* involves the process of comparing information on applicants, petitioners, beneficiaries, derivatives, and household members who apply for an immigration benefit against various Federal lookout systems;
- *Review Records* involves searching and requesting files; creating temporary and/or permanent alien files; consolidating files; connecting returned evidence with application or petition files; pulling, storing, and moving files upon request; auditing and updating systems on the location of files; and archiving inactive files;
- *Make Determination* involves the tasks of adjudicating immigration benefits; making and recording adjudicative decisions; requesting and reviewing additional evidence; interviewing applicants; consulting with supervisors or legal counsel; and researching applicable laws and decisions on non-routine adjudications;
- *Fraud Detection and Prevention* involves activities performed by the Fraud Detection and National Security Directorate in detecting, combating, and deterring immigration benefit fraud, and addressing national security and intelligence concerns;
- *Issue Document* involves the tasks of producing and distributing secure cards that identify the holder as an alien and also identify his or her status or employment authorization;
- *Management and Oversight* involves activities in all offices that provide broad, high-level leadership to meet USCIS goals.

Management and Oversight is an activity designed to capture managerial activities at Headquarters and in the field. This activity provides a more specific depiction of the work performed by certain offices. All Headquarters offices [15] are allocated to Management and Oversight in their entirety, including the Executive Secretariat; Office of Administration; Office of the Chief Financial Officer; Office of Citizenship; Office of Communications; Office of Congressional Relations; Office of Emergency Preparedness and Coordination; Office of Equal Opportunity & Inclusion; Office of Human Capital, Training, and Management; Office of Policy & Strategy; Office of Privacy; Office of Security & Integrity; Office of the Chief Counsel; Office of the Deputy Director/ Chief of Staff; Office of the Director; Office of Transformation Coordination;[16] and Office of Records.

The payroll title analysis allowed USCIS to identify leadership positions in the field offices that should be allocated to the Management and Oversight activity. Projected operating costs for FY 2008/2009 were spread to the nine activities (Inform the Public, Intake, Capture Biometrics, Conduct IBIS Check, Review Records, Fraud Detection and Prevention, Make Determination, and Issue Document). Management and Oversight was not a separate activity.

d. Activity Drivers and Activity Assignment

The fourth stage in the ABC process is driving the activity costs to the immigration benefits (cost objects). Activity costs are primarily spread to immigration benefit requests based on the percentage of total projected volume, as similar time and effort are involved in processing each application. There are unique drivers used for two of the activities—Capture Biometrics and Make Determination. The Make Determination activity is spread to requests by a factor of average adjudication time and projected volume (*i.e.,* projected adjudication hours) as these metrics pertain directly to the adjudication function and can vary significantly by application. The general premise is that the more time spent adjudicating a request, the higher the fee. Exceptions to this general rule occur when volumes skew unit costs (*e.g.,* high-volume applications tend to have lower unit costs since costs are allocated over a higher volume base) or additional activities are performed (*e.g.,* some applications require the creation of secure cards). Capture Biometrics uses a direct activity driver to drive all of the costs associated with this activity to Biometric Services.

Activity costs are spread to immigration benefit requests by the locations where they are processed apart from the Intake activity. Intake is primarily performed at the Lockbox; however, some intake is performed at the field offices. Due to varying costs at field locations, spreading intake costs by a percentage of total field office costs introduces inaccurate variability in

[14] The USCIS Performance Analysis System (PAS) is an online data entry and retrieval system used to track workload accomplishments and human resources expenditures.

[15] In January 2010, USCIS realigned its structure and management functions that created new offices and modified the reporting relationship between others. For the purpose of this fee review, the previous organizational chart, valid as of February 2009, was used.

[16] The only portion of the Office of Transformation Coordination that is treated as a Headquarters office is funding for staff (payroll, overtime, and awards) and related general expenses. Other programmatic costs are funded by premium processing revenue.

intake costs by request. There is little variability in the intake process by request type and therefore, intake costs are spread using an average cost per request. Ultimately, nearly all immigration benefit request types will be received only by Lockbox locations.

Activity costs for the FY 2008/2009 Fee Rule were spread by projected volume weighted by average adjudication time for the Make Determination activity. All other activity costs were spread using an average activity cost per application.

e. Cost Objects

Cost objects are the immigration benefits and biometric services for which USCIS charges a fee. Driving activity costs to the cost objects is the final stage of the ABC process.

Application costs were derived for virtually every immigration benefit that USCIS adjudicates including those filed for asylum and refugee protection, Temporary Protected Status, Premium Processing, and H–1B nonimmigrant petitions. The IEFA cost of requests for which no revenue is recovered is redistributed to other applications in a prorated manner similar to the way the FY 2008/2009 Fee Rule handled requests. Temporary Protected Status (Form I–821), Nicaraguan Adjustment and Central American Relief Act (NACARA) (Form I–881)—Suspension of Deportation or Application Special Rule, are temporary programs. Thus USCIS does not rely on their revenue in the FY 2010/2011 Fee Review to support baseline operations, although their costs are analyzed.

A separate fee for biometric services was also derived. The proposed rule continues to provide for a separate $85 biometric fee to accommodate national security and fraud detection decisions that may require extension of biometric requirements to additional immigration benefit requests that do not already include that fee. Table 7 outlines the fees for immigration benefits that require biometric services. These fees assume receipt of $283 million in appropriated funds in FY 2011 for refugee, asylum, military naturalization, SAVE, and Office of Citizenship activities.

Table 7 - Fees for Immigration Benefits Requiring Biometric Services

Form	Proposed Fee	Proposed Biometric Fee	Total Proposed Fee
I-90 Application to Replace Permanent Resident Card	$365	$85	$450
I-131 Application for Travel Document[17]	$360	$85	$445
I-360 Petition for Amerasian, Widow(er), or Special Immigrant[18]	$405	$85	$490
I-485 Application to Register Permanent Residence or Adjust Status	$985	$85	$1,070
I-600/600A, I-800/800A Orphan Petitions	$720	$85	$805
I-687 Application for Status as a Temporary Resident	$1,130	$85	$1,215
I-698 Application to Adjust Status from Temporary to Permanent Resident	$1,020	$85	$1,105
I-751 Petition to Remove Conditions of Residence	$505	$85	$590
I-817 Application for Family Unity Benefits	$435	$85	$520
I-829 Petition by Entrepreneur to Remove Conditions	$3,750	$85	$3,835
N-400 Application for Naturalization	$595	$85	$680

Table 8 outlines the fees for immigration benefits if Congress does not enact the requested appropriations for SAVE and the Office of Citizenship.

[17] Applicants submitting a Form I–131, Travel Document—Advance Parole, are not required to pay the biometrics fee.

[18] Amerasian applicants are the only class of I–360 applicants required to pay for biometric services.

Table 8 - Fees for Immigration Benefits Requiring Biometric Services if SAVE and Office of Citizenship Appropriations are Not Approved

Form	Proposed Fee	Proposed Biometric Fee	Total Proposed Fee
I-90 Application to Replace Permanent Resident Card	$365	$85	$450
I-131 Application for Travel Document	$360	$85	$445
I-360 Petition for Amerasian, Widow(er), or Special Immigrant	$405	$85	$490
I-485 Application to Register Permanent Residence or Adjust Status	$1,000	$85	$1,085
I-600/600A, I-800/800A Orphan Petitions	$725	$85	$810
I-687 Application for Status as a Temporary Resident	$1,145	$85	$1,230
I-698 Application to Adjust Status from Temporary to Permanent Resident	$1,035	$85	$1,120
I-751 Petition to Remove Conditions of Residence	$510	$85	$595
I-817 Application for Family Unity Benefits	$440	$85	$525
I-829 Petition by Entrepreneur to Remove Conditions	$3,805	$85	$3,890
N-400 Application for Naturalization	$595	$85	$680

2. Low Volume Reallocation

USCIS is using its fee setting discretion to adjust certain application and petition fees when the low volume that is projected leads to particularly high unit cost increases. USCIS determined in its fee study that the combined effect of cost, revenue estimates, and methodology results in an inordinate fee burden being placed on these requests relative to other benefit requests. For example, without reallocation for an orphan petition, the fee for that form would be $1,455. USCIS believes it would be contrary to the public interest to impose a fee of this size on an estimated 25,000 potential adoptive parents each year. Similar disparate effects occur for all of the form types that are being adjusted using a low volume reallocation. Thus, USCIS has decided, based on its experience in carrying out immigration benefit programs, assessing fees, and the characteristics of various applicants, that reasonable adjustments based on such equitable considerations are justified.

USCIS will therefore limit the fee increase for these forms to an increase equal to the weighted average percentage fee increase of all immigration benefits. The additional costs from these form types are then prorated to other benefits. This same methodology was used effectively in the FY 2008/2009 Fee Rule. 72 FR at 4910. The benefit requests requiring a low volume adjustment for the FY 2010/2011 Fee Rule are:

- Petition for Amerasian, Widow(er), or Special Immigrant (with respect to Form I–360 applicants who are not already exempt from paying the fee);
- Application for Waiver of Grounds of Inadmissibility (Form I–690);
- Application to File Declaration of Intention (Form N–300);
- Application to Preserve Residence for Naturalization Purposes (Form N–470);
- Orphan Petitions (Forms I–600/I–600A and I–800/I–800A,);
- Notice of Appeal or Motion (Form I–290B);
- Request for Hearing on a Decision in Naturalization Proceedings (Form N–336); and
- Waiver Forms (Forms I–191, I–192, I–193, I–212, I–601, I–612).

Public comments would be particularly useful on whether to maintain fees for certain low volume applications and petitions at levels below the ABC model.

3. Application for Naturalization

DHS proposes to provide special consideration to the fee for an Application for Naturalization (Form N–400), by limiting the fee at its current level of $680 ($595 current fee with the $85 biometrics fee). USCIS received many comments on the FY 2008/2009 Fee Rule expressing concern that the N–400 fee had been increased inordinately. 72 FR at 29856.

DHS has determined that the act of requesting and obtaining U.S. citizenship deserves special consideration given the unique nature of this benefit to the individual applicant, the significant public benefit to the Nation, and the Nation's proud tradition of welcoming new citizens. DHS believes this action to retain the naturalization fee at the current level will reinforce these principles, allow more immigrants to fully participate in civic life, and is consistent with other DHS efforts to promote citizenship and immigrant integration.[19] For these reasons, and based on its experience in administering the naturalization program, DHS proposes to retain the fee for naturalization at the current level over the FY 2010/2011 biennial period.

DHS recognizes that limiting the fee at its current level would lead to the subsidization of naturalization by other fee-paying applicants as allowed by INA section 286(m), 8 U.S.C. 1356(m). Charging "other immigrants" who file an Application for Naturalization (Form N–400) less than full cost of adjudicating that petition, or spreading the costs of administration of USCIS more fully among non-naturalization applicants, may be fairly interpreted as providing the naturalization applicants with a part of that service "without charge." As

[19] *See USCIS Office of Citizenship Vision and Mission at http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=a5e314c0cee47210VgnVCM100000082ca60aRCRD&vgnextchannel=a5e314c0cee47210VgnVCM100000082ca60aRCRD.*

discussed in the Authority section of this rule, DHS is proposing to shift this amount to other applicants as part of full cost recovery in compliance with INA section 286(m).

This proposal would result in setting the fee for the Application for Naturalization (Form N–400) at less than what the ABC model generates as the full cost of adjudicating that application. A model-based fee for naturalization would have increased the current fee level by as much as $60 per application. DHS is anticipating receiving an annual volume of 684,390 fee-paying naturalization applications (Form N–400); accordingly, forgoing the $60 fee increase for the Form N–400 thus would reduce fee collections by approximately $41 million, as compared to using the adjusted fee. As a result, retaining the current fee will spread this portion of the cost from naturalization applicants to other applicants and petitioners as part of full cost recovery in implementing INA section 286(m), 8 U.S.C. 1356(m). The estimated fee impact of this policy on other application and petition types is a weighted average of $8.00 per application and petition (*i.e.,* the impact is greater or less than $8.00 for each application and petition, with the weighted average being $8.00). DHS is specifically requesting comments on this policy decision. The comments will be considered in determining whether the final rule provides a fee of $680 as proposed or a higher amount as calculated in the FY 2010/2011 Fee Review using ABC methodology and all other factors that are part of calculations for the final rule.[20] Table 9 illustrates the impact of this proposed policy decision across all fee paying applications and petitions.

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[20] The fees established in the final rule may vary based on cost figures that are current when the final rule is drafted, enacted appropriations, and adjustments made as a result of public comments on all fees, waivers, exemptions, reallocations, and general methodology. Adjustment of one fee will result in changes in the fees for other benefit requests (raising or reducing fees) depending on the action. The effect of a change in one fee on all other fees cannot be precisely stated because of the other adjustments that will be made.

Costs not recovered with respect to immigration benefits for which the fee is set below the ABC model amount are spread to other immigration benefits by the ABC model output amount. First these redistributed costs are added to all non-held immigrant benefits. Then these redistributed costs, as an average, are spread to the fee-paying volume of each of the non-held immigrant benefit fees. This methodology is consistent with the methodology used in the FY 2007 Fee Rule to spread these costs equitably to the benefit instead of applying a fixed "surcharge."

Table 9. Effect of Policy Decision to Retain or Not to Retain Current Naturalization Fee Levels by Immigration Benefit

Immigration Benefit	1. Current Fees	Proposed Fees with President's Requested Appropriation for Asylum / Refugee Surcharge; Military Naturalization; SAVE; and Citizenship;		4. Percentage Change Retaining Current Naturalization Fee 2./1.	5. Percentage Change not Retaining Current Naturalization Fee 3./1.
		2. Retaining Current Naturalization Fees	3. Not Retaining Current Naturalization Fees		
I-90 Application to Replace Permanent Resident Card	$290	$365	$360	26%	24%
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	$320	$330	$320	3%	0%
I-129 Petition for a Nonimmigrant Worker	$320	$325	$320	2%	0%
I-129F Petition for Alien Fiancé(e)	$455	$340	$330	-25%	-27%
I-130 Petition for Alien Relative	$355	$420	$410	18%	15%
I-131 Application for Travel Document	$305	$360	$350	18%	15%
I-140 Immigrant Petition for Alien Worker	$475	$580	$565	22%	19%
I-290B Notice of Appeal or Motion	$585	$630	$630	8%	8%
I-360 Petition for Amerasian, Widow(er), or Special Immigrant	$375	$405	$405	8%	8%
I-485 Application to Register Permanent Residence or Adjust Status	$930	$985	$960	6%	3%
I-526 Immigrant Petition by Alien Entrepreneur	$1,435	$1,500	$1,460	5%	2%
I-539 Application to Extend/Change Nonimmigrant Status	$300	$290	$280	-3%	-7%
I-600/600A, I-800/800A Orphan Petitions	$670	$720	$720	7%	7%
I-687 Application for Status as a Temporary Resident	$710	$1,130	$1,100	59%	55%
I-690 Application for Waiver of Grounds of Inadmissibility	$185	$200	$200	8%	8%
I-694 Notice of Appeal of Decision	$545	$755	$735	39%	35%
I-698 Application to Adjust Status From Temporary to Permanent Resident	$1,370	$1,020	$995	-26%	-27%
I-751 Petition to Remove the Conditions of Residence	$465	$505	$490	9%	5%
I-765 Application for Employment Authorization	$340	$380	$375	12%	10%
I-817 Application for Family Unity Benefits	$440	$435	$425	-1%	-3%
I-824 Application for Action on an Approved Application or Petition	$340	$405	$395	19%	16%
I-829 Petition by Entrepreneur to Remove Conditions	$2,850	$3,750	$3,655	32%	28%
Civil Surgeon Designation Registration	$0	$615	$600	0%	0%
I-924 Application for Regional Center under the Immigrant Investor Pilot Program	$0	$6,230	$6,070	0%	0%
N-300 Application to File Declaration of Intention	$235	$250	$250	6%	6%
N-336 Request for Hearing on a Decision in Naturalization Proceedings	$605	$650	$650	7%	7%
N-400 Application for Naturalization	$595	$595	$655	0%	10%
N-470 Application to Preserve Residence for Naturalization Purposes	$305	$330	$330	8%	8%
N-565 Application for Replacement	$380	$345	$335	-9%	-12%

Table 9. Effect of Policy Decision to Retain or Not to Retain Current Naturalization Fee Levels by Immigration Benefit

Immigration Benefit	1. Current Fees	Proposed Fees with President's Requested Appropriation for Asylum / Refugee Surcharge; Military Naturalization; SAVE; and Citizenship;		4. Percentage Change Retaining Current Naturalization Fee 2./1.	5. Percentage Change not Retaining Current Naturalization Fee 3./1.
		2. Retaining Current Naturalization Fees	3. Not Retaining Current Naturalization Fees		
Naturalization/Citizenship Document					
N-600/N-600K Applications for Certificate of Citizenship	$460	$600	$585	30%	27%
Waiver Forms (I-191, I-192, I-193, I-212, I-601, I-612)	$545	$585	$585	7%	7%
Immigrant Visas	$0	$165	$160	0%	0%
Biometric Services	$80	$85	$85	6%	6%

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B. Key Changes Implemented for the FY 2010/2011 Fee Review

1. Appropriation for Refugee, Asylum, and Military Naturalization Benefits

Fee setting authority for the IEFA provides that fees may be set at a level to fund the full cost of processing immigration benefit requests and the full cost of providing similar benefits to asylum and refugee applicants. INA sec. 286(m); 8 U.S.C. 1356(m). In the FY 2008/2009 Fee Rule, USCIS attached a $72 surcharge to every immigration benefit request representing the cost of workload for asylum and refugee applicants as well as the cost of estimated fee waivers and exemptions. 72 FR 29859. For the fees proposed in this rule, USCIS will exclude the costs incurred for refugee, asylum, and military naturalization workload from the ABC model. Appropriated funding for these purposes was requested and partially approved for FY 2010; additional appropriations to fund operations were requested for FY 2011.

International Operations (IO) processes immigration benefits and petitions, facilitates the international adoption process, and serves the immediate family members of U.S. citizens residing abroad who want to adjust their status. In the FY 2008/2009 Fee Rule, IO's costs were part of the Refugee/Asylum surcharge applied to all fee-paying applications and petitions. In this proposed rule, the portion of IO's budget attributable to processing refugee benefits has been included in the requested appropriation. The remaining costs are included in the IEFA cost baseline and recovered by fee revenue. The portion of IO that processes fee-paying benefits will be funded using IEFA revenue. If the FY 2011 request for appropriated funds is not enacted or enacted at a reduced level, the model will be revised and the final fee structure will reflect the costs of these activities.

2. Fee Waivers and Exemptions

DHS proposes to modify the regulatory language and clarify eligibility for an individual fee waiver in 8 CFR 103.7(c). Where appropriate in the IEFA fee structure, USCIS exempts certain classes of applicants and petitioners from paying fees, and certain applicants may be granted a fee waiver due to verifiable financial hardship. DHS proposes to modify 8 CFR 103.7(c) to list benefit requests for which applicants may request fee waivers.

DHS also proposes to add a new 8 CFR 103.7(d) to provide USCIS with the discretion to approve and revoke exemptions from fees, or provide that the fee may be waived for a case or class of cases that is not otherwise provided in 8 CFR 103.7(c). To exercise this authority, the Director of USCIS must determine that such an exemption or waiver would be in the public interest and the exception is not inconsistent with other applicable law or regulation. DHS proposes that this exception authority will be vested with the Director of USCIS and cannot be delegated to any other official other than his or her deputy. USCIS plans to issue internal guidance that will require requests for a Director's waiver to be sent to the USCIS District Office. The guidance will require the District Office and applicable program directorate to recommend approval, outline the reasons for the recommendation in their transmission of the waiver or exemption request to the Director, and certify that no other law or regulations are violated by granting the waiver or exemption.

In addition, DHS proposes to remove the separate fee waiver provisions that relate to applications for temporary protected status (TPS). *See* 8 CFR 244.20. The applicant must show that he or she is unable to pay the prescribed fees to establish eligibility for a waiver of the fee for an application for TPS. Those requirements differ only slightly from the more general fee waiver eligibility in 8 CFR 103.7(c) and the redundant provisions have been the source of confusion. These proposed modifications ensure that waivers and exemptions are applied in a fair and consistent manner.

3. Immigrant Visa Processing Fee

DHS is proposing to collect a fee for processing immigrant visas. USCIS does not currently recover fees for the cost of processing visas issued overseas by DOS, although USCIS offices expend time and effort to process those visas. This practice is inconsistent with Executive Branch guidance in OMB Circular A–25 to recover the full cost of providing a service to the public. Historically, these costs were carried as overhead and spread across all fee-paying applicants. By not collecting a fee for this service while incurring significant associated costs, USCIS is placing additional burdens on all fee-paying applicants. The fee proposed in this rule for immigrant visas was calculated at the amount necessary to fully recover the costs to USCIS for processing these requests. This new fee will result in a smaller increase in the fees proposed for other benefit requests absent this action.

While USCIS does not adjudicate immigrant visas applications, USCIS resources are required to complete the processing of this benefit when an immigrant visa is granted by a DOS

consular officer. An individual receiving a visa from a DOS consulate overseas receives visa documentation and his or her photograph in a sealed application package. The individual takes the application package with him or her for use at the U.S. port of entry. At the port of entry, a U.S. Customs and Border Protection (CBP) officer will inspect the individual and fill out remaining information and collect remaining application documentation. CBP forwards the immigrant visa package to USCIS for review and entry into USCIS data systems. If a deficiency is found, the visa case is referred to a USCIS District Office for resolution. Typical deficiencies include missing documentation, missing biometric information, unacceptable photographs, and mismatches of admission stamp information. Some of the deficiencies are resolved between USCIS and CBP.

When an immigrant visa is deemed complete and satisfactory, USCIS enters the data; scans photographs, signatures and fingerprints; and issues a permanent resident card. USCIS Service Centers often take inquiries from immigrants until the card is received in the mail. USCIS integrates visa documentation within a central alien file (A–File) and, if none exists, a new A–File is created and stored. Of the nine ABC activities, the following activities apply directly to processing immigrant visas:

- *Intake*—USCIS must receive immigrant visa packets from CBP, perform data entry, and create a file for each individual packet.
- *Review Records*—USCIS must ensure that inter-agency forms that are essential to the immigrant visa process are received from the appropriate source and collated into one A-file. Each immigrant visa application becomes a record that must be stored, retrieved, and archived as needed.
- *Issue Document*—Each approved immigrant visa applicant receives a permanent resident card (green card) created by the USCIS Integrated Document Production office.
- *Inform the Public*—USCIS receives and processes applicant and petitioner service inquiries from immigrant visa applicants related to their permanent resident status.
- *Management and Oversight*—All applications processed by USCIS receive a portion of the cost of high-level leadership and non-adjudicative support from Headquarters offices.

The proposed fee to service each of the immigrant visas and issue a permanent resident card, based on these activities, is $165.

4. EB–5 Regional Center Designation Fee

DHS is proposing an immigrant investor fee for individuals, State or local government agencies, partnerships, or any other business entity requesting approval and designation to be a regional center under the Immigrant Investor Pilot Program (Pilot Program). *See* Public Law 102–395, tit. VI, section 610, 106 Stat. 1874 (1992) (8 U.S.C. 1153 note). This program is distinct in certain ways from the basic EB–5 investor program. Foreign investors are encouraged to invest funds in an economic unit known as a "regional center." A regional center is defined under 8 CFR 204.6(e) to mean any economic unit, public or private, engaged in the promotion of economic growth, improved regional productivity, job creation, and increased domestic capital investment. USCIS regulations establish eligibility criteria for a regional center and the related reporting requirements. 8 CFR 204.6(m)(3). In conjunction with the new fee, the regional center reporting requirements are proposed to be clarified in this rule. The reporting requirements will make it clearer that the designation as a regional center is subject to maintenance of the eligibility requirements, and the provision of reports to USCIS showing continued compliance. Proposed 8 CFR 204.6(m)(6).

The FY 2010/2011 fee study found that USCIS expends a lot of effort to adjudicate a request for designation as an approved EB–5 regional center. These applicants do not pay fees to cover the costs incurred to carry out this program's activities. As a result, the costs of staff and resources necessary to carry out the regional center program have been paid from revenue derived from other applications. In addition to providing a vehicle for fee collection, the standardized "Application for Regional Center under the Immigrant Investor Pilot Program," (Form I–924); will clarify requirements for a regional center document; improve the quality of applications; better document eligibility for the Pilot Program; alleviate content inconsistencies among applicants' submissions; and support a more efficient process for adjudication of applications.

Of the nine ABC activities, the following apply directly to processing applications for Regional Centers:

- *Intake*—USCIS must receive applications from individuals or entities desiring to receive regional center designation, perform data entry, and create a file for each individual packet.
- *Review Records*—USCIS must ensure that evidence essential to the adjudications process is received from the appropriate source and collated into one file. Each application becomes a record that must be stored, retrieved, and archived as needed.
- *Inform the Public*— USCIS receives and processes applicant and petitioner service inquiries from applicants related to the status of their applications.
- *Fraud Prevention and Detection*—The authenticity of each application must be analyzed in order to prevent immigration benefit fraud.
- *Make Determination*—The Regional Center application requires the submission of extensive documentation and statistical data concerning the geographical region the center will affect. Applicants must also provide thorough business plans, analysis of the potential economic impact the center will have, and proof of immigration status for review by USCIS.
- *Management and Oversight*—All applications processed by USCIS receive a portion of the cost of high-level leadership and non-adjudicative support from Headquarters offices.

Based on these activities, a proposed fee of $6,230 has been calculated for servicing these applications. USCIS estimates that it will receive an average of 132 applications for regional centers per year. Based on the experience USCIS has in administering the regional center and EB–5 investor program, and knowledge of the entities that file the typical application, this fee is affordable and it is reasonable to collect it from the affected applicants. For example, a review of investment subscription agreements and limited partnership membership agreements provided in support of recently submitted proposals during the USCIS adjudication process indicates that multiple investors typically paid from $25,000 to $50,000 each for the opportunity to invest in a project, in addition to the minimum investment required by DHS regulations to be a EB–5 investor.[21] Thus, regardless of the low annual volume estimate, no low volume reallocation of the costs of the EB–5 investor program is being proposed. Thus, the fee of $6,230 will be collected from each applicant.

5. Civil Surgeon Program

DHS is proposing a new fee for individuals requesting civil surgeon designation. Civil surgeons are physicians who are authorized to conduct medical examinations that are required of applicants for certain immigration benefits. 42 CFR part 34. *See also* ch. 373, title III, secs. 325, 361, 58 Stat. 697, 703 (Jul. 1, 1944); 42 U.S.C.

[21] *http://www.uscis.gov/eb-5centers.*

252, 264 (requiring the Secretary of HHS to make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States). Section 232(b) of the INA, 8 U.S.C. 1222(b), provides for officers of the United States Public Health Service (USPHS) to conduct physical and mental examinations of arriving aliens. If there are not enough USPHS officers to conduct these examinations, section 232(b) provides for the designation of civilian physicians as "civil surgeons," who are then authorized to conduct the examinations. Under section 451(b) of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, 2195 (2002), the authority to designate civil surgeons transferred on March 1, 2003, from the Attorney General to the Secretary of Homeland Security. 6 U.S.C. 271(b), 557; *see also* 8 CFR part 2.1. The Secretary of Homeland Security has delegated the authority to designate civil surgeons to USCIS. The civil surgeon must conduct all examinations in accordance with Technical Instructions for the Medical Examination of Aliens in the United States, adopted by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services. *See http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/technical-instructions-civil-surgeons.html.* The INA provides that officers of the United States Public Health Service (USPHS) or civil surgeons, when USPHS officers are not available, conduct physical and mental examinations of arriving aliens. INA section 232(b), 8 U.S.C. 1252(b). The civil surgeon designation is required for physicians wishing to conduct physical and mental examinations of those seeking admission into the United States or applying for adjustment of status. *Id.;* 8 CFR 232.2(b). It is currently within the authority of the District Directors to designate civil surgeons for each district. *See* 8 CFR 232.2(b). Currently, USCIS does not recover the costs of granting civil surgeon designation and managing the Civil Surgeon Program. This is inconsistent with OMB Circular A–25 requirements that USCIS recover the full cost of services provided to the public. DHS, therefore, proposes a fee to correct that oversight in this proposed rule.

In the future, the civil surgeon designation process will be standardized. USCIS will develop a standard designation process and form, maintain an accurate, regularly-updated list of civil surgeons, ensure that the program is self-funded, and improve communication between USCIS and civil surgeons. Six of the nine ABC activities apply to the civil surgeon designation process:

- *Intake*—USCIS must receive requests for civil surgeon designation, perform data entry, and create a file for each individual application.
- *Review Records*—USCIS must ensure that evidence essential to the designations process is received from appropriate sources and collated into one file. Each application becomes a record that must be stored, retrieved, and archived as needed.
- *Inform the Public*—USCIS receives and processes applicant and petitioner service inquiries from applicants related to the status of their applications.
- *Fraud Prevention and Detection*—The authenticity of each application must be analyzed in order to prevent potential immigration benefit fraud.
- *Make Determination*—All physicians applying for civil surgeon designation will be vetted for any adverse actions pending against them by the State medical licensing authorities to determine eligibility.
- *Management and Oversight*—All applications processed by USCIS receive a portion of the cost of high-level leadership and non-adjudicative support from Headquarters offices.

The FY 2010/2011 Fee Study calculated the costs of carrying out each of these activities as, respectively, $26, $61, $85, $24, $350, and $69, for a total proposed fee of $615 for this benefit. Doctors who request a civil surgeon designation will add a payment of $615 to the items that are currently required. Since the estimated number of civil surgeon designation requests is only 3,410 per year, the impact of this proposed fee on other fees is negligible. Nevertheless, even though they amount to only $1.9 million per year, these costs should not be covered by other fee payers.

VI. Volume

USCIS uses two types of volume data in the fee review. Workload volume is a projection of the total number of immigration benefit requests received in a fiscal year and is used to determine the amount of resources needed. Fee-paying volume is a projection of how many applicants will pay a fee for a request. Since USCIS may waive the fee or allow an exemption for certain classes of applicants, fee-paying volume is used to determine projected revenue.

- *Workload Volume* is a primary cost driver for assigning processing activity costs to immigration benefit requests in the USCIS activity-based cost model. Workload volume is projected for each immigration benefit by Service Centers, National Benefit Center, and District Offices in order to assign costs where the work is performed, and thus where costs are realized.
- *Fee-paying Volume* is used to calculate proposed fees for immigration benefit requests and biometric services. The fee-paying volume for each form is determined by dividing the actual fee revenues per request in FY 2008 by the FY 2008 fee to determine the fee-paying percentage, and then applying that percentage to projected workload volumes. USCIS adjusts FY 2008 fee-paying volumes to reflect filing trends and anticipated changes in order to project FY 2010/2011 fee-paying volumes.

USCIS projects workload volumes based on filing trends in FY 2009 and projected changes for FY 2010/2011. USCIS also utilizes time series model data from the last 15 years developed by the DHS Office of Immigration Statistics (OIS), as well as the best available internal understanding of future developments. Given the size and scope of current negative economic conditions, historical data may not provide sufficient insight into the likelihood or timing of volume increases or decreases. Consequently, USCIS has taken a conservative approach to workload volume estimates for FY 2010/2011.

USCIS reviews short- and long-term volume trends and assesses OIS trend data with representatives of other affected components of DHS. OIS volume estimates by application or petition type are primarily drawn from time series models. The time series models analyze historical receipts data in order to capture patterns (such as level, trend, and seasonality) or correlations in historical events. These patterns and correlations are then extrapolated into the future in order to derive projected receipts. All of the models capture the behavioral relationships and dependencies of receipts to past values. For example, the models factor in the correlation between the number of pending Form I–485, Application to Register Permanent Residence or Adjustment of Status, and the projected number of receipts for the Form I–765, Application for Employment Authorization, and the Form I–131, Application for Travel Document. DHS, USCIS, and OIS will continue to improve both the estimating process and the basis for specific estimates.

Table 10 summarizes the FY 2008/2009 workload volume and the projected workload volume for FY 2010/

2011 based on trends and projected changes by immigration benefit request. The projected workload volume is used in the cost model to determine request costs. USCIS has experienced a general decrease in volume and expects that trend to continue.

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Table 10 – Workload Volume Comparison

Immigration Benefit	FY 2008/2009 Fee Rule Workload Receipts	FY 2010/2011 Projected Workload Receipts	Delta
I-90 Application to Replace Permanent Resident Card	552,025	540,000	(12,025)
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	24,035	17,165	(6,870)
I-129 Petition for a Nonimmigrant Worker	400,000	395,000	(5,000)
I-129F Petition for Alien Fiancé(e)	66,177	54,000	(12,177)
I-130 Petition for Alien Relative	743,823	690,520	(53,303)
I-131 Application for Travel Document	139,000	256,255	117,255
I-140 Immigrant Petition for Alien Worker	135,000	75,000	(60,000)
I-290B Notice of Appeal or Motion	47,645	28,734	(18,911)
I-360 Petition for Amerasian, Widow(er) or Special Immigrant	16,000	17,669	1,669
I-485 Application to Register Permanent Residence or Adjust Status	613,400	526,000	(87,400)
I-526 Immigrant Petition by Alien Entrepreneur	600	1,399	799
I-539 Application to Extend/Change Nonimmigrant Status	220,000	195,000	(25,000)
I-600/600A; I-800/800A Orphan Petitions	29,601	25,241	(4,360)
I-687 Application for Status as a Temporary Resident	500	48	(452)
I-690 Application for Waiver on Grounds of Inadmissibility	3,293	74	(3,219)
I-694 Notice of Appeal of Decision	3,696	50	(3,646)
I-698 Application to Adjust Status From Temporary to Permanent Resident	494	704	210
I-751 Petition to Remove the Conditions of Residence	143,000	183,000	40,000
I-765 Application for Employment Authorization	983,000	720,000	(263,000)
I-817 Application for Family Unity Benefits	5,762	1,750	(4,012)
I-824 Application for Action on an Approved Application or Petition	40,785	20,961	(19,824)
I-829 Petition by Entrepreneur to Remove Conditions	88	441	353
Civil Surgeon Request	N/A	3,410	N/A

Table 10 – Workload Volume Comparison			
Immigration Benefit	**FY 2008/2009 Fee Rule Workload Receipts**	**FY 2010/2011 Projected Workload Receipts**	**Delta**
I-924 Application for Regional Center Under the Immigrant Investor Pilot Program	N/A	132	N/A
N-300 Application to File Declaration of Intention	100	45	(55)
N-336 Request for Hearing on a Decision in Naturalization Proceedings	14,000	4,145	(9,855)
N-400 Application for Naturalization	734,716	693,890	(40,826)
N-470 Application to Preserve Residence for Naturalization Purposes	669	621	(48)
N-565 Application for Replacement Naturalization / Citizenship Document	32,000	29,298	(2,702)
N-600/600K Naturalization Certificate Applications	64,711	45,347	(19,364)
Waiver Forms (I-191, I-192, I-193, I-212, I-601, I-612)	45,459	31,432	(14,027)
Immigrant Visa	N/A	215,000	N/A
Total	**5,059,635**	**4,772,331**	**(505,846)**
Biometrics	3,154,330	2,048,177	(1,106,153)
Grand Totals	**8,213,965**	**6,820,509**	**(1,611,999)**

The projected fee-paying volume is used to determine immigration benefit and biometric service unit costs and ultimately the proposed fees. A comparison of 2008/2009 Fee Rule fee-paying volume to projected 2010/2011 fee-paying volume, along with the difference between the two, is outlined in Table 11.

Table 11 – Fee-Paying Volume Comparison			
Immigration Benefit	**FY 2008/2009 Fee Rule Fee Paying Receipts**	**FY 2010/2011 Projected Fee Paying Receipts**	**Delta**
I-90 Application to Replace Permanent Resident Card	510,405	518,400	7,995
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	22,382	17,165	(5,217)
I-129 Petition for a Nonimmigrant Worker	399,757	395,000	(4,757)
I-129F Petition for Alien Fiance(e)	44,731	39,960	(4,771)
I-130 Petition for Alien Relative	740,552	690,520	(50,032)
I-131 Application for Travel Document	132,168	192,255	60,087
I-140 Immigrant Petition for Alien Worker	129,743	75,000	(54,743)
I-290B Notice of Appeal or Motion	47,645	28,734	(18,911)
I-360 Petition for Amerasian, Widow(er) or Special Immigrant	4,772	6,957	2,185
I-485 Application to Register Permanent Residence or Adjust Status	555,010	480,000	(75,010)
I-526 Immigrant Petition by Alien Entrepreneur	600	1,343	743
I-539 Application to Extend/Change Nonimmigrant Status	215,629	195,000	(20,629)
I-600/600A; I-800/800A Orphan Petitions	29,260	16,211	(13,049)
I-687 Application for Status as a Temporary Resident	500	43	(457)
I-690 Application for Waiver on Grounds of Inadmissibility	3,293	74	(3,219)
I-694 Notice of Appeal of Decision	3,696	50	(3,646)
I-698 Application to Adjust Status From Temporary to Permanent Resident	331	605	274
I-751 Petition to Remove the Conditions of Residence	130,169	177,510	47,341
I-765 Application for Employment Authorization	859,543	511,200	(348,343)
I-817 Application for Family Unity Benefits	5,762	1,750	(4,012)
I-824 Application for Action on an Approved Application or Petition	40,231	20,961	(19,270)
I-829 Petition by Entrepreneur to Remove Conditions	45	256	211
Civil Surgeon Request	N/A	3,410	N/A
I-924 Application for Regional Center Under the Immigrant Investor Pilot Program	N/A	132	N/A
N-300 Application to File Declaration of Intention	92	45	(47)
N-336 Request for Hearing on a Decision in Naturalization Proceedings	13,948	4,145	(9,803)
N-400 Application for Naturalization	710,461	684,390	(26,071)
N-470 Application to Preserve Residence for Naturalization purposes	669	621	(48)
N-565 Application for Replacement Naturalization/Citizenship Document	30,741	24,903	(5,838)
N-600/600K Naturalization Certificate Applications	64,711	45,347	(19,364)

Table 11 – Fee-Paying Volume Comparison			
Immigration Benefit	**FY 2008/2009 Fee Rule Fee Paying Receipts**	**FY 2010/2011 Projected Fee Paying Receipts**	**Delta**
Waiver Forms (I-191, I-192, I-193, I-212, I-601, I-612)	45,459	31,432	(14,027)
Immigrant Visa	N/A	215,000	N/A
Total	**4,742,357**	**4,378,419**	**(582,480)**
Biometrics	2,195,812	1,950,603	(245,209)
Grand Totals	**6,938,169**	**6,329,022**	**(827,689)**

VII. Completion Rates

USCIS uses completion rates, reflective of Immigration Services Officer (ISO) hours per completion, to identify the adjudicative time required to complete specific benefit requests from receipt to final disposition. The rate for each benefit request represents an average, as each case is different and some cases are more complex than others. Completion rates reflect what is termed "touch time," or the time the ISO is actually handling the case. It is not reflective of "queue time," or time spent waiting, for example, for additional information or supervisory approval. Nor does it reflect the total time applicants and petitioners can expect to await a decision on their cases once they are received by USCIS.

All ISOs are required to report completion rate information. In addition to using this data to determine fees, completion rates are a key factor in determining staffing allocations to match resources and workload. For this reason, data reported are scrutinized by field and regional office management officials, and by the Production Management Branch (PMB) at USCIS headquarters to ensure data accuracy. When the data are found to be inconsistent with other offices or with prior reported data, the PMB contacts the reporting office and makes any necessary adjustments. Completion rates, reflected in terms of hours per completion, are summarized in Table 12. Completion rates are calculated using data for the 12-month period of May 2008 through April 2009. While more recent rates are available, USCIS believes that the rates utilized for the rule best reflect actual work times. More recent rates that have not had sufficient review and analysis and may reflect near-term trends and work fluctuations that could skew model outcomes.

Table 12 - Completion Rates by Location and Immigration Benefit [22]
(Adjudicative Work Hours)

Immigration Benefit	Service Centers	National Benefits Center	District Offices	Service-Wide
I-90 Application to Replace Permanent Resident Card [23]	0.22	0.22	0.22	0.22
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	0.32	0.66	0.87	0.36
I-129 Petition for a Nonimmigrant Worker	0.51	N/A	0.15	0.51
I-129F Petition for Alien Fiancé(e)	0.40	1.06	1.71	0.41
I-130 Petition for Alien Relative	0.44	0.82	1.14	0.62
I-131 Application for Travel Document	0.15	0.13	0.61	0.16
I-140 Immigrant Petition for Alien Worker	1.13	N/A	2.25	1.13
I-290B Notice of Appeal or Motion [24]	0.75	1.18	1.87	1.11
I-360 Petition for Amerasian, Widow(er) or Special Immigrant	2.48	N/A	1.42	2.39
I-485 Application to Register Permanent Residence or Adjust Status	1.01	3.66	1.49	1.27
I-526 Immigrant Petition by Alien Entrepreneur	5.03	N/A	5.33	5.03
I-539 Application to Extend/Change Nonimmigrant Status	0.35	0.32	1.52	0.35
I-600/600A; I-800/800A Orphan Petitions	N/A	4.78	1.45	1.81
I-687 Application for Status as a Temporary Resident	2.04	0.34	3.27	2.20
I-690 Application for Waiver on Grounds of Inadmissibility	1.40	2.99	1.70	2.59
I-694 Notice of Appeal of Decision	0.97	1.83	1.84	1.60
I-698 Application to Adjust Status From Temporary to Permanent Resident	1.96	0.69	2.13	1.77
I-751 Petition to Remove the Conditions of Residence	0.63	N/A	1.96	0.77
I-765 Application for Employment Authorization	0.13	0.16	0.49	0.14
I-817 Application for Family Unity Benefits	0.63	0.67	1.59	0.64
I-824 Application for Action on an Approved Application or Petition	0.53	0.95	0.99	0.58
I-829 Petition by Entrepreneur to Remove Conditions	5.90	N/A	7.20	5.98
Civil Surgeon Designation	N/A	1.12	N/A	1.12
I-924 Application for Regional Center under the Immigrant Investor Pilot Program	37.33	N/A	N/A	37.33
N-300 Application to File Declaration of Intention	N/A	N/A	1.84	1.84
N-336 Request for Hearing on a Decision in Naturalization Proceedings	N/A	N/A	1.60	1.60
N-400 Application for Naturalization	9.07	3.58	1.05	1.08
N-470 Application to Preserve Residence for Naturalization Purposes	30.80	N/A	1.54	1.75
N-565 Application for Replacement Naturalization/Citizenship Document	0.33	N/A	0.96	0.36
N-600/N-600K Naturalization Certificate Applications	0.88	N/A	0.90	0.90
Waiver Forms (I-191, I-192, I-193, I-212, I-601, I-612)	0.67	0.71	2.11	1.42

[22] Completion rates are calculated using data for the 12-month period of May 2008 through April 2009.

[23] Due to substantial changes in the business processes used to adjudicate the I–90, the completion rate is the 3-year service-wide average from May 2006 through April 2009.

[24] Data for the I–290B was not collected until October 2008, therefore the completion rate time period is the 7-month period of October 2008 through April 2009.

Completion rates for the following immigration benefits are not utilized, due to the special nature of their processing or because there is no fee for the application:

- Application for Posthumous Citizenship (Form N–644); Refugee/ Asylee Relative Petition (Form I–730); Application for T Nonimmigrant Status (Form I–914); and, Petition for U Nonimmigrant Status (Form I–918). Applicants for these form types are exempt from paying a fee.
- Biometric Services (processed by the Application Support Centers) are not included for each request type because specific costs can be directly assigned to these services. Factors of volume and completion rates are not necessary to assign processing costs to this product.
- Application for Temporary Protected Status (Form I–821) and Application for Suspension of Deportation or Special Rule Cancellation of Removal (Form I–881) are not included because these programs are temporary and USCIS does not assume their revenue streams will continue.
- The activities associated with processing immigrant visa packages do not include adjudicative hours and costs are driven by volume only.

VIII. Proposed Fee Adjustments

USCIS costs exceed projected revenue by an average of $214 million each year, even after cuts in operations based on, among other things, reduced workload and appropriations for asylum, refugee, SAVE, the Office of Citizenship, and military naturalizations are taken into account. While USCIS has taken action to minimize or decrease its operating costs, the current deficit is too large to close using cost cutting measures alone without a drastically negative impact on service. USCIS must adjust the fee schedule to recover the full cost of processing immigration benefits, and to continue to maintain current service delivery standards.

A. Proposed Adjustments to IEFA Immigration Benefits

After resource costs are identified, they are distributed to USCIS's primary processing activities in the ABC model. This process was more completely described in section V. Table 13 outlines total IEFA costs by activity.

Table 13 – Summary of FY 2010/2011 IEFA Account Costs by Activity with Appropriations for SAVE and Office of Citizenship
(Dollars in Thousands)

Activity	FY 2010	FY 2011	FY 2010/2011
Management and Oversight	$315,939	$301,912	$308,925
Inform the Public	$205,997	$199,735	$202,866
Intake	$114,987	$114,634	$114,811
Capture Biometrics	$167,696	$167,782	$167,739
Conduct IBIS Check	$81,392	$74,672	$78,032
Review Records	$226,413	$224,592	$225,502
Fraud Detection and Prevention	$102,955	$101,934	$102,445
Make Determination	$1,071,270	$983,220	$1,027,245
Issue Document	$43,029	$42,972	$43,001
Total IEFA Costs	**$2,329,678**	**$2,211,454**	**$2,270,566**

Table 14 outlines IEFA costs by activity if FY 2011 appropriations for SAVE and Office of Citizenship are not approved. As noted previously, if appropriations differ from requested amounts, these costs must be recovered from fees.

Table 14 – Summary of FY 2010/2011 IEFA Account Costs by Activity without Appropriations for SAVE and Office of Citizenship
(Dollars in Thousands)

Activity	FY 2010	FY 2011	FY 2010/2011
Management and Oversight	$315,939	$307,715	$311,827
Inform the Public	$205,997	$203,291	$204,644
Intake	$114,987	$114,827	$114,907
Capture Biometrics	$167,696	$168,542	$168,119
Conduct IBIS Check	$81,392	$76,272	$78,832
Review Records	$226,413	$226,427	$226,420
Fraud Detection and Prevention	$102,955	$101,842	$102,399
Make Determination	$1,071,270	$1,004,330	$1,037,800
Issue Document	$43,029	$34,310	$38,670
Total IEFA Costs	**$2,329,678**	**$2,237,556**	**$2,283,617**

The activity costs are then distributed to the applications. Table 15 summarizes total revenue by immigration benefit request.

Table 15 – Total Revenue per Immigration Benefit
(Dollars in Thousands)

Immigration Benefit	Revenue Total with SAVE and Citizenship Appropriations	Revenue Total without SAVE and Citizenship Appropriations	Delta
I-90 Application to Replace Permanent Resident Card	$190,306	$189,505	($801)
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	$5,644	$5,713	$69
I-129 Petition for a Nonimmigrant Worker	$128,974	$130,290	$1,316
I-129F Petition for Alien Fiancé(e)	$13,525	$13,643	$119
I-130 Petition for Alien Relative	$289,953	$292,958	$3,005
I-131 Application for Travel Document	$69,206	$69,364	$158
I-140 Immigrant Petition for Alien Worker	$43,467	$44,031	$564
I-290B Notice of Appeal or Motion	$18,051	$18,163	$112
I-360 Petition for Amerasian, Widow(er) or Special Immigrant	$2,802	$2,819	$17
I-485 Application to Register Permanent Residence or Adjust Status	$473,700	$479,339	$5,638
I-526 Immigrant Petition by Alien Entrepreneur	$2,013	$2,042	$30
I-539 Application to Extend/Change Nonimmigrant Status	$56,496	$57,040	$544
I-600/600A; I-800/800A Orphan Petitions	$11,664	$11,736	$72
I-687 Application for Status as a Temporary Resident[25]	$49	$49	$1
I-690 Application for Waiver on Grounds of Inadmissibility	$15	$15	$0
I-694 Notice of Appeal of Decision	$38	$39	$1
I-698 Application to Adjust Status From Temporary to Permanent Resident	$617	$625	$8
I-751 Petition to Remove the Conditions of Residence	$89,585	$90,286	$701
I-765 Application for Employment Authorization	$195,322	$195,994	$672
I-817 Application for Family Unity Benefits	$766	$772	$7
I-824 Application for Action on an Approved Application or Petition	$8,506	$8,615	$109
I-829 Petition by Entrepreneur to Remove Conditions	$959	$973	$14
Civil Surgeon Designation	$711	$719	$9
I-924 Application for Regional Center under the Immigrant Investor Pilot Program	$822	$834	$12
N-300 Application to File Declaration of Intention	$11	$11	$0
N-336 Request for Hearing on a Decision in Naturalization Proceedings	$2,693	$2,710	$17
N-400 Application for Naturalization	$407,212	$407,212	$0
N-470 Application to Preserve Residence for Naturalization Purposes	$203	$205	$1
N-565 Application for Replacement Naturalization/Citizenship Document	$8,583	$8,779	$196
N-600/N-600K Applications for Certificate of Citizenship	$27,114	$27,609	$495
Waiver Forms (I-191, I-192, I-193, I-212, I-601, I-612)	$18,396	$18,510	$114
Immigrant Visa	$35,431	$34,892	($539)
Biometric Services	$167,732	$168,122	$390
Grand Total	**$2,270,566**	**$2,283,617**	**$13,051**

[25] The Form I–687 was temporarily available only for Legalization Applications Pursuant to the Northwest Immigrant Rights Project (NWIRP) Settlement Agreement. Filing period ended Jan. 31, 2010.

Finally, consolidating the budget realignment proposed in the President's budget and this rule, Table 16 depicts the current and proposed USCIS fees for immigration benefits and biometric services. This proposed fee schedule is based on the President's requested appropriation to fund the Asylum/Refugee surcharge and for SAVE and Office of Citizenship being enacted into law. In some applications, DHS proposes to reduce the fees and fee increases are mitigated by the President's requested appropriation; in those applications where a fee reduction is proposed, the President's requested appropriation would further reduce that fee. In one instance, the Application To Extend/Change Nonimmigrant Status (Form I–539), the President's requested appropriation would alter a 2% increase in the modeled fee to a 5% decrease in fee. If a different appropriation is enacted, the final rule will adjust the fee schedule to accommodate the appropriated funding.

Table 16 - Fees by Immigration Benefit Proposed with and without Requested Appropriations.

Immigration Benefit	1. Current Fees	2. ABC Model Fees with No Appropriation	3. Delta 2. / 1.	4. Proposed Fees with President's Requested Appropriation for Asylum / Refugee Surcharge; Military Naturalization; SAVE; and Citizenship	5. Delta 4. / 1.	6. Percentage Change without Appro-priations 2. / 1.	7. Percentage Change With President's Requested Appropriations 4. / 1.
I-90 Application to Replace Permanent Resident Card	$290	$390	$100	$365	$75	34%	26%
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	$320	$360	$40	$330	$10	13%	3%
I-129 Petition for a Nonimmigrant Worker	$320	$355	$35	$325	$5	11%	2%
I-129F Petition for Alien Fiancé(e)	$455	$365	($90)	$340	($115)	-20%	-25%
I-130 Petition for Alien Relative	$355	$460	$105	$420	$65	30%	18%
I-131 Application for Travel Document	$305	$390	$85	$360	$55	28%	18%
I-140 Immigrant Petition for Alien Worker	$475	$630	$155	$580	$105	33%	22%
I-290B Notice of Appeal or Motion	$585	$645	$60	$630	$45	10%	8%
I-360 Petition for Amerasian, Widow(er), or Special Immigrant	$375	$410	$35	$405	$30	9%	8%
I-485 Application to Register Permanent Residence or Adjust Status	$930	$1,075	$145	$985	$55	16%	6%
I-526 Immigrant Petition by Alien Entrepreneur	$1,435	$1,635	$200	$1,500	$65	14%	5%
I-539 Application to Extend/Change Nonimmigrant Status	$300	$315	$15	$290	($10)	5%	-3%
I-600/600A, I-800/800A Orphan Petitions	$670	$735	$65	$720	$50	10%	7%
I-687 Application for Status as a Temporary Resident	$710	$1,235	$525	$1,130	$420	74%	59%
I-690 Application for Waiver of Grounds of Inadmissibility	$185	$205	$20	$200	$15	11%	8%
I-694 Notice of Appeal of Decision	$545	$860	$315	$755	$210	58%	39%
I-698 Application to Adjust Status From Temporary to Permanent Resident	$1,370	$1,115	($255)	$1,020	($350)	-19%	-26%
I-751 Petition to Remove the Conditions of Residence	$465	$550	$85	$505	$40	18%	9%
I-765 Application for Employment Authorization	$340	$415	$75	$380	$40	22%	12%
I-817 Application for Family Unity Benefits	$440	$475	$35	$435	($5)	8%	-1%
I-824 Application for Action on an Approved Application or Petition	$340	$440	$100	$405	$65	29%	19%
I-829 Petition by Entrepreneur to Remove Conditions	$2,850	$4,080	$1,230	$3,750	$900	43%	32%
Civil Surgeon Designation Registration	$0	$665	$665	$615	$615	0%	0%
I-924 Application for Regional Center under the Immigrant Investor Pilot Program	$0	$6,820	$6,820	$6,230	$6,230	0%	0%
N-300 Application to File Declaration of Intention	$235	$260	$25	$250	$15	11%	6%
N-336 Request for Hearing on a Decision in Naturalization Proceedings	$605	$665	$60	$650	$45	10%	7%
N-400 Application for Naturalization	$595	$595	$0	$595	$0	0%	0%
N-470 Application to Preserve Residence for Naturalization Purposes	$305	$335	$30	$330	$25	10%	8%
N-565 Application for Replacement Naturalization/Citizenship Document	$380	$380	$0	$345	($35)	0%	-9%
N-600/N-600K Applications for Certificate of Citizenship	$460	$655	$195	$600	$140	42%	30%
Waiver Forms (I-191, I-192, I-193, I-212, I-601, I-612)	$545	$600	$55	$585	$40	10%	7%
Immigrant Visas	$0	$180	$180	$165	$165	0%	0%
Biometric Services	$80	$85	$5	$85	$5	6%	6%

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B. Proposed Adjustments to Premium Processing Fee

The Immigration and Nationality Act permits certain employment-based immigration benefit applicants to request, for a fee, premium processing. INA sec. 286(u), 8 U.S.C. 1356(u). The premium processing fee is paid in addition to the base filing fee. Premium processing guarantees that USCIS will process an application within fifteen days. *Id;* 8 CFR 103.2(f). The Act provides that premium processing revenue shall be used to fund the cost of offering the service, as well as the cost of infrastructure improvements in adjudications and customer service processes.[26] *Id.* USCIS, therefore, segregates revenue from the premium processing and dedicates it to transitioning USCIS from a paper-based operational environment to a paperless electronic case management environment.[27] This program is an extensive, multi-year effort, estimated for completion over a five-year period. Unlike previous efforts to modernize USCIS, however, the Transformation program will implement near-term improvements as they are developed, allowing USCIS and its customers to benefit more quickly with improved service. Transformation will comprehensively touch every aspect of USCIS business operations such as information collection, storage, and data sharing; customer service and support, adjudicatory processes; staff roles and responsibilities; and information technology.

Transforming USCIS systems from paper to electronic is crucial to the success of improving immigration services. The current business model and supporting systems cannot meet anticipated demand and unanticipated workload surges. Among many improvements, after the transformation initiative is completed, USCIS expects much greater utilization of the electronic submission of applications and supporting documentation. Applicants and petitioners will be able to establish online accounts, track activity on their cases, update personal profiles, and will no longer need to resubmit duplicative biometric and biographic information when applying for future benefits.

DHS proposes to adjust the premium processing fee by the percentage increase in inflation according to the Consumer Price Index (CPI) since the fee's inception. The CPI is issued by the Department of Labor's Bureau of Labor Statistics (BLS) and can found at *http://www.bls.gov/cpi/cpi_dr.htm.* In December 2000, Congress authorized the collection of a premium processing fee in the amount of $1,000.[28] INA sec. 286(u); 8 U.S.C. 1356(u). Although the law provides USCIS with explicit authority to adjust the fee for inflation based on the CPI, USCIS has not adjusted the fee since its inception in 2001. This adjustment was recently recommended by the Government Accountability Office. Government Accountability Office, *Federal User Fees,* GAO–09–180 (Jan. 2009).[29] Therefore, DHS proposes to increase the premium processing fee by applying the inflation rate since the fee's inception in June 2001 until the date of publication of a final rule. For illustrative purposes, the proposed rule uses the September 2009 CPI.

USCIS uses the CPI for all urban consumers (CPI–U) because it is the primary CPI measure. The CPI–U covers approximately 87 percent of the total population.[30] In June 2001, the CPI for all urban consumers was 178.0. In March 2010, the CPI–U was 217.631. The 22 percent increase to the CPI–U applied to the $1,000 fee results in a fee of $1,223 ($1,225 after it is rounded to the nearest $5). This calculation results in a proposed increase in the premium processing fee of $225. The final fee could be different from this proposed amount, because the CPI–U, upon which the fee adjustment is based, varies monthly; however, the final fee rule will be based upon the same methodology. The final rule will establish an amount based upon the latest published monthly CPI before the final rule publication. DHS also proposes to specify that USCIS will use the CPI–U to calculate all future inflation-based fee adjustments and will publish a Notice in the **Federal Register** annually (if applicable) to adjust this fee. *See* Proposed 8 CFR 103.7(b).

C. Removal of Fees Based on Form Numbers

Historically, USCIS has depended on paper files, which can make it difficult to efficiently process immigration benefits. As discussed above, USCIS is modernizing its processes and systems to accommodate and encourage greater use of electronic data submission to include e-filing and electronic interaction. Although it is possible some applicants and petitioners may still choose to file paper forms, USCIS plans to encourage electronic filing. USCIS will continue to describe form names, numbers and filing instructions on its Internet Web site and public information phone scripts; however, USCIS may change form numbers as processes evolve.

To avoid prescribing fees in a manner that could undermine the transformation process, DHS proposes fees based on form titles instead of form numbers. Proposed 8 CFR 103.7(b)(1). Although the current form number is included in the text of the regulation for each fee, introductory text is proposed that will allow the form number to change without affecting the fee. *See* Proposed 8 CFR 103.7(b).

As stated previously, current USCIS form fees and those proposed in this rule are based on the average adjudication costs derived from the ABC model. Many forms are used to request a wide variety of benefits for which the evidentiary and adjudication requirements can be quite disparate. For example, Form I–129, Petition for Nonimmigrant Worker, is used for employers to petition for an alien to come to the United States as an H–1B, H–1C, H–2A, H–2B, H–3, L–1, O–1, O–2, P–1, P–1S, P–2, P–2S, P–3, P–3S, Q–1, or R–1 nonimmigrant worker. Employers may also use this form to

[26] In the June 2007 Annual Report to Congress, the USCIS Ombudsman stated that "premium processing is less costly than regular USCIS benefits processing because fewer repeat steps are necessary, fewer employees must handle these applications, and delayed processing inquiries are eliminated. USCIS has not provided any credible data to the contrary. The margin of income that USCIS can derive from premium processing is higher than from regular processing." and made the recommendation that "USCIS conduct a thorough, transparent, and independent analysis of premium processing costs as compared with regular processing." Citizenship and Immigration Services Ombudsman, *Annual Report to Congress,* June 2007, (Recommendation AR 2007–07). A subsequent review by the GAO, *Immigration Application Fees: Costing Methodology Improvements Would Provide More Reliable Basis for Setting Fees* (GAO–09–70, Jan. 23, 2009), suggested that a decision to dedicate all premium revenues to transformation may create inequities where persons not paying for premium processing service still pay the cost of premium processing operations. While the substance of the reports addresses two separate matters, the unified concern is that undue cost and fee burdens are being placed on persons who do not receive premium processing services. Preliminary analysis of premium processing costs indicates that the marginal increase in cost of premium processing operations apart from regular processing is small.

[27] USCIS separately tracks, from an accounting standpoint, revenue receipts from each unique source (such as each application type) including premium processing. All Immigration Examinations Fee Account (IEFA) revenue is, however, deposited into a single account including premium processing fees, and all expenditures are made from this single unified account without separate tracking of spending tied to the specific fees. Ultimately, there is no direct, per dollar, matching of premium processing receipts used to fund adjudication costs, expenditures for infrastructure improvements, or USCIS operating expenses.

[28] Public Law 106–553, App. B, tit. I, sec. 112, 114 Stat. 2762, 2762A–68 (Dec. 21, 2000).

[29] *http://www.gao.gov/new.items/d09180.pdf.*

[30] Consumer Price Index Overview. Bureau of Labor Statistics, Dec. 09, 2009. *http://www.bls.gov/cpi/cpiovrvw.htm#item1.*

request an extension of stay or change of status for an alien as an E–1, E–2, or TN nonimmigrant. The complexity of the evidence required to document eligibility for each of the respective visas varies to some degree based on factors too numerous to outline here. For another example, Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant, is used to classify an alien as: (1) An Amerasian; (2) A Widow or Widower; (3) A Battered or Abused Spouse or Child of a U.S. Citizen or Lawful Permanent Resident; or (4) A special immigrant defined as: A Religious Worker, Panama Canal Company Employee, Canal Zone Government Employee, U.S. Government in the Canal Zone Employee; Physician; International Organization Employee or Family Member; Juvenile Court Dependent; Armed Forces Member; Afghanistan or Iraqi national who supported the U.S. Armed Forces as a translator; or an Iraqi national who worked for, or on behalf of, the U.S. Government in Iraq. Several other examples exist. Future fee reviews may explore establishing the fee schedule with an even wider range of discrete fees than provided in this rule to more closely align the level of effort expended or required to the fee. As an initial step toward such refinement, this rule, by not proposing to promulgate fees based on a precise form number, will allow that form number to be changed as part of the initial phases of the transformation process.

To further facilitate USCIS transformation, 8 CFR 103.7(b) is being restructured to clarify those fees that apply only to USCIS. DHS regulations contain provisions that to varying degrees govern facets of all of the immigration components of DHS—USCBP, USCIS and U.S. Immigration and Customs Enforcement (ICE). This rule applies only to USCIS. DHS will divide 8 CFR 103.7(b)(1) into separate regulatory provisions containing those fees that are managed by USCIS only and those that are shared with or managed by another immigration-related component of DHS. Further, 8 CFR 103.7(c) regarding fee waivers is restructured to list fees that can be waived, rather than those that cannot be waived, and moves the provisions of 8 CFR 103.7(c)(1) into more coherent paragraphs. In addition, the current requirement for an "unsworn declaration" in 8 CFR 103.7(c) is overly technical for an individual who may qualify for a fee waiver and that requirement is proposed to be removed. Beyond the restructuring of 8 CFR 103.7(b) and (c), however, DHS does not propose to change any authority other than that of USCIS in any context. While DHS believes these structural changes will clarify fee waiver policies, DHS specifically requests comments on any unintended substantive effects. Finally, DHS proposes to redesignate and revise 8 CFR 103.7(d) to remove extraneous language, outdated terminology and excessive, internal, procedural detail.

D. Collection of Biometrics Fees Overseas

DHS proposes to remove the provision in current regulations that exempts individuals who require fingerprinting and who reside outside of the United States at the time of filing an immigration benefit request from the requirement to submit the service fee for fingerprinting with the application or petition for immigration benefits. *See* current 8 CFR 103.2(e)(4)(ii). USCIS expects to collect biometrics from an increasing number of overseas residents in order to comply with the Adam Walsh Child Protection and Safety Act of 2006, which restricts the ability of any U.S. citizen or lawful permanent resident alien who has been convicted of any "specified offense against a minor" to file certain family-based immigration petitions, unless USCIS determines that the petitioner poses no risk to the intended beneficiaries of the petition. Public Law 109–248, secs. 402(a) and (b), 120 Stat. 587, 622 (2006). Moreover, USCIS believes that overseas residents can or should be required to pay fees commensurate with the services being provided. The cost of conducting biometrics overseas should not be borne by other applicants. Thus, DHS proposes to eliminate this exemption. Projected biometric volumes for the FY 2010/2011 fee review include overseas volumes.

IX. Statutory and Regulatory Reviews

A. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(6), USCIS examined the impact of this rule on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act, 15 U.S.C. 632), a small not-for-profit organization, or a small governmental jurisdiction (locality with fewer than fifty thousand people). Below is a summary of the small entity analysis. A more detailed analysis is available in the rulemaking docket at *http://www.regulations.gov.*

Individuals rather than small entities submit the majority of immigration and naturalization benefit applications and petitions. Entities that would be affected by this rule are those that file and pay the alien's fees for certain immigration benefit applications. Consequently, there are four categories of USCIS benefits that are subject to a RFA analysis for this rule: Petition for a Nonimmigrant Worker (Form I–129); Immigrant Petition for an Alien Worker (Form I–140); Civil Surgeon Designation; and the new Application for Regional Center under the Immigrant Investor Pilot Program (Form I–924).

DHS does not believe that the increase in fees proposed in this rule will have a significant economic impact on a substantial number of small entities. Nevertheless, DHS is publishing this initial regulatory flexibility analysis to aid the public in commenting on the small entity impact of its proposed adjustment to the USCIS Fee Schedule. In particular, DHS requests information and data that would lead the agency to a different conclusion. DHS also seeks comment on significant alternatives that accomplish the objectives of this rulemaking and that minimize the rule's economic impact on small entities.

1. A Description of the Reasons Why the Action by the Agency Is Being Considered

DHS proposes to adjust certain immigration and naturalization benefit fees charged by USCIS. USCIS has refined its cost accounting process and determined that current fees do not recover the full costs of services provided. Adjustment to the fee schedule is necessary to recover costs and maintain adequate service.

2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

DHS's objectives and legal authority for this proposed rule are discussed in section II of this preamble.

3. A Description—and, Where Feasible, an Estimate of the Number—of Small Entities to Which the Proposed Rule Will Apply

Entities affected by this rule are those that file and pay fees for certain immigration benefit applications on behalf of an alien. These applications include Form I–129 (Petition for Nonimmigrant Worker), Form I–140 (Immigrant Petition for Alien Worker), Civil Surgeon Designation, and Form I–924 (Application for Regional Center). Annual numeric estimates of the small entities impacted by this fee increase total: Form I–129 (87,220 entities), Form

I–140 (44,500 entities), Civil Surgeon Designation (1,200 entities), and Form I–924 (132 entities).

This rule applies to small entities, including businesses, non-profit organizations, and governmental jurisdictions filing for the above benefits. Forms I–129 and I–140, will see a number of industry clusters impacted by this rule (*see* Appendix A of the Small Entity Analysis for a list of impacted industry codes). The fee for Civil Surgeon designation will impact physicians seeking to be designated as a Civil Surgeon. Finally, the Form I–924, will impact any entity requesting approval and designation to be a Regional Center under the Immigrant Investor Pilot Program.

(a) Petition for a Nonimmigrant Worker (Form I–129) and Immigrant Petition for an Alien Worker (Form I–140)

USCIS proposes to increase the fee for Petition for a Nonimmigrant Worker (Form I–129) from $320 to $325, a $5 (1.5%) increase. USCIS proposes to increase the fee for Immigrant Petition for an Alien Worker (Form I–140) from $475 to $580, a $105 (22%) increase. In order not to underestimate the economic impact of this proposed rule on small entities, this analysis uses a fee structure based on fees without including appropriated funds. Therefore, the fees analyzed here are Form I–129 at $355 ($35 increase) and Form I–140 at $630 ($155 increase).

Using fiscal year 2008 data on actual filings of Form I–129 and I–140 petitions, USCIS collected internal data for each filing organization including the name, Employer Identification Number (EIN), city, State, zip code, and number/type of filings. Each entity may make multiple filings; for instance, there were 525,709 I–129 and I–140 petitions, but only 148,289 unique entities.

Since the filing statistics do not contain information such as the revenue of the business, a third party source of data was necessary to help find this information. USCIS utilized the comprehensive online database from Reference USA to help determine an organization's small entity status and then applied SBA guidelines to the entities under analysis.[31]

USCIS devised a methodology to conduct the small entity analysis based on a representative sample of the potentially impacted population. To achieve a 95% confidence level and a 5% confidence interval on a population of 148,289 entities, USCIS used the standard statistical formula to determine a minimum sample size of 383 entities was necessary.

USCIS conducted searches on 891 randomly selected entities from a population of 148,289 unique entities. Based on past experience, USCIS expected to be able to find about 50 to 60 percent of the filing organizations in the Reference USA database, which includes information on approximately 14 million U.S. entities.

Accordingly, USCIS created a sample size much greater than the 383 minimum necessary in order to allow for these non-matches (filing organizations that could not be found in the Reference USA database). The 891 searches resulted in 512 instances where the name of the filing organization was successfully matched with Reference USA and 379 instances where the name of the filing organization was not found in the Reference USA database. Based on previous experience conducting regulatory flexibility analyses, USCIS assumes filing organizations not found in the Reference USA database are likely to be small entities and in order not to underestimate the number of small entities impacted by this rule, USCIS makes the conservative assumption to consider all of these 379 non-matched entities as small entities for the purpose of this analysis. Further, 52 of the 512 matched entities did not contain revenue or employee count data. Additional Internet research allowed us to classify all 52 as small entities: 5 small non-profit/small governmental jurisdiction and 47 small businesses. Among the 512 matches, 336 were determined to be small entities based on their revenue or employee count and their NAICS code. Combining non-matches (379), small non-profit/governmental jurisdiction (22), matches missing data (52), and small entity matches (336), enables us to classify 789 of 891 entities as small.

With an aggregated total of 789 out of a sample size of 891, DHS inferred that a majority, or 88.6%, of the entities filing Form I–129 and Form I–140 petitions were small entities. Furthermore, 332 of the 891 searched were small entities with the sales revenue data needed in order to estimate the economic impact of the proposed rule. Since these 332 were a small entity subset of the random sample of 891 searches, they were statistically significant in the context of this research.

In order to calculate the economic impact of this rule, DHS estimated the total costs associated with the proposed fee increase for each entity, divided by sales revenue of that entity. For example, an entity with $100,000 in sales revenue filed one Form I–129 and one Form I–140. Based on the proposed fee increase of $35 for Form I–129 and $155 for Form I–140, this would amount to a 0.19% economic impact on the entity.[32]

Among the 332 small entities with reported revenue data, all experienced an economic impact considerably less than 1.0%. In fact, using the above methodology, the greatest economic impact imposed by this fee change totaled 0.19% and the smallest totaled 0.00002%. The average impact on all 332 small entities with revenue data was 0.055%.

Finally, the impact on small entities was examined by looking at each form separately. Since entities can file multiple forms, the analysis considers exactly how many forms each entity submitted. For example, an entity with $100,000 in sales revenue that filed four Form I–129s would experience an economic impact of 0.14% of revenue; while an entity with sales revenue of $500,000 filing three Form I–140s would experience an economic impact of 0.093% All small entities filing Form I–129s experienced an average impact of 0.0215% (range of impact from 0.000004% to 0.525%). Similarly, the average impact on filers of Form I–140 of 0.0491% was also insignificant (range of impact from 0.00002% to 0.155.

The evidence suggests that the additional fee imposed by this rule does not represent a significant economic impact on these entities.

(b) Civil Surgeon Designation

USCIS estimates that it will receive a request for designation as a civil surgeon from 1,160 doctors in both FY 2010 and FY 2011. According to the Small Business Administration (SBA) Small Business Size Regulations at 13 CFR part 121, offices of physicians (except mental health professionals) are considered small entities when their annual sales are less than $10 million. USCIS has no records on the average annual revenue for the doctors registered as civil surgeons. For the purposes of this analysis, it is assumed that they all have annual gross revenue of under $10 million.[33] Therefore, it is

[31] The Reference USA Web site can be found at: *http://www.referenceusagov.com.*

[32] Reference USA reports sales revenue for entities as a range of values. For this analysis, DHS utilized the lower end of the range in order to assure the potential economic impact of the proposed rule was not underestimated. For example, if Reference USA reported a filing organization had revenue between $500,000 and $750,000, this analysis assumed the revenue was $500,000.

[33] NAICS Code 62111. *See* U. S. Small Business Administration Table of Small Business Size

Continued

estimated that approximately 1,200 individuals per year that would file a request for designation as a civil surgeon would be affected by this rule, with all of them being classified as small entities.

The rule proposes to establish a processing fee of $615 for the Civil Surgeon Program. This analysis utilized fees calculated without any appropriated funds, resulting in a $665 fee for the Civil Surgeon analysis.

To illustrate whether or not a rule could have a significant impact, guidelines suggested by the SBA Office of Advocacy provide that the cost of the proposed regulation may exceed one percent of the gross revenues of the entities in a particular sector or five percent of the labor costs of the entities in the sector.[34]

According to the U.S. Department of Labor, Bureau of Labor Statistics (BLS), Office of Occupational Employment Statistics, the median annual wage for Family and General Practitioners is about $161,490. Thus, the costs added by this rule are only 0.41 percent of the salary costs for one doctor.[35] As stated before, the average total revenue of the civil surgeon is unknown. Nonetheless, for the new $665 fee to exceed one percent of annual revenues, sales would be required to be $66,500 per year or less.

USCIS believes that the costs of this rulemaking to small entities would not exceed one percent of the gross revenues of the entities in the affected sector. Using the average annual labor costs and the percentage of the affected entities' annual revenue stream as guidelines, USCIS believes that the civil surgeon designation fee proposed by this rule would not have a significant economic impact on a substantial number of small entities.

(c) Application for Regional Center Under the Immigrant Investor Pilot Program (Form I–924)

The Immigrant Investor Program, also known as EB–5, was created by Congress in 1990 under 203(b)(5) of the Immigration and Nationality Act (INA) to stimulate the U.S. economy through job creation and capital investment by alien investors. Alien investors have the opportunity to obtain lawful permanent residence in the United States for themselves, their spouses, and their minor unmarried children by making a certain level of capital investment and associated job creation or preservation. There are two distinct EB–5 pathways for an alien investor to gain lawful permanent residence: the Basic Program and the Regional Center Pilot Program. Both programs require that the alien investor make a capital investment of either $500,000 or $1,000,000 (depending on whether the investment is in a Targeted Employment Area or not) in a new commercial enterprise located within the United States.

USCIS proposes a $6,230 Immigrant Investor fee for entities requesting approval and designation as a Regional Center under the Immigrant Investor Pilot Program. The new application process will require the same information from applicants that is currently required, but will standardize/simplify the reporting format. This analysis utilized fees calculated without any appropriated funds, resulting in a $6,820 fee for the EB–5 Regional Center analysis.

DOS reports that 4,218 EB–5 visas were issued in 2009.[36] USCIS estimates that 1,687 of these are primary aliens (investors) and the remainder are dependents.[37] Typically, ninety percent of EB–5 investors participate in Regional Center-related projects, while the others invest individually. Therefore, USCIS estimates FY 2009 Regional Center investors at 1,518 aliens.[38] As of October 1, 2009, there were 79 USCIS-approved Regional Centers, which equates to an average of 19.2 new investors per Regional Center in FY 2009.

Each Regional Center receives a minimum investment from every alien investor of $500,000. A search of Regional Center Web sites shows that most charge each investor a "syndication fee" of $20,000 to $50,000.[39] Further, during the application process, Regional Centers are required to provide a detailed statement regarding the amount and source of non-alien capital and a description of the planned promotional efforts. Combining the data, an average of 19.2 new investors, each investing $500,000, leads to an average additional investment per Regional Center of $9.6 million in FY 2009. While Regional Centers are prohibited from using alien investments to pay for overhead expenses, comparing FY 2009 average Regional Center investor receipts to the $6,820 application fee provides a reasonable context in which to consider the economic impact of the proposed fee. The proposed Regional Center fee of $6,820 would represent only 0.07104% of the $9.6 million average additional investment per Regional Center in FY 2009. The proposed application fee of $6,820 is only collected once and is not a recurring fee.

The data indicates there are 79 approved Regional Centers in the United States and its territories. An analysis of these 79 Regional Centers shows 66 of these Regional Centers are owned by small businesses and possibly one of these Regional Centers is owned by a small non-profit organization. Consequently 67 of the existing 79 Regional Centers, or 85%, are small entities. Based on increased interest in the EB–5 program, USCIS estimates at least 132 new Regional Centers will be approved each year over the next two years. Since the overwhelming majority of these Regional Centers are small entities, for the purpose of this analysis, DHS will assume all 132 new Regional Centers are small entities.

In summary, even though a significant number of these Regional Centers are small entities, considering this proposed fee represents only 0.07104% of the average additional investment per Regional Center in FY 2009, DHS believes this $6,820 fee does not constitute a significant economic impact on these entities. Nevertheless, DHS has prepared an Initial Regulatory Flexibility Analysis, included it in the proposed rule, and requests public comment on the impact of this rule on small entities.

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Types of Professional Skills

(a). *Forms I–129 and I–140:*

The proposed rule does not directly impose any new or additional "reporting" or "recordkeeping" requirements on filers of Form I–129. The proposed rule does not require any new professional skills for reporting.

USCIS proposes to increase the fee for Petition for a Nonimmigrant Worker (Form I–129) from $320 to $325, a $5 (1.5%) increase. USCIS proposes to

Standards Matched to North American Industry Classification System Codes. *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

[34] *See* SBA Office of Advocacy, *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act,* 18,.available at: *http://www.sba.gov/advo/laws/rfaguide.pdf.*

[35] $665 divided by $161,490.

[36] *http://www.travel.state.gov/visa/frvi/statistics/statistics_4581.html.*

[37] 4,218/2.5 = 1,687 investors. USCIS estimates that 2.5 visas are issued for each primary alien.

[38] 90% × 1,687 = 1,518.

[39] Three exemplar Web sites are provided: *http://www.cmbeb5visa.com/faq_timeline.aspx; http://www.unyrc.com/process.html; http://www.eb5dc.com/resources/CARc_AILA_Price_Plan_2_25_10_Extension.pdf.* Additionally, a list of USCIS approved Regional Centers is available online at: *http://www.uscis.gov/eb-5centers.*

increase the fee for Immigrant Petition for an Alien Worker (Form I–140) from $475 to $580, a $105 (22%) increase. In order not to underestimate the economic impact of this proposed rule on small entities, this analysis uses a fee structure based on fees without including appropriated funds. Therefore, the fees analyzed here are Form I–129 at $355 ($35 increase) and Form I–140 at $630 ($155 increase).

In order to calculate the economic impact of this rule, DHS estimated the total costs associated with the proposed fee increase for each entity, divided by sales revenue of that entity. For example, an entity with $100,000 in sales revenue filed one Form I–129 and one Form I–140. Based on the proposed fee increase of $35 for Form I–129 and $155 for Form I–140, this would amount to a 0.19% economic impact on the entity.[40]

Among the 332 small entities with reported revenue data, all experienced an economic impact considerably less than 1.0%. In fact, using the above methodology, the greatest economic impact imposed by this fee change totaled 0.19% and the smallest totaled 0.00002%. The average impact on all 332 small entities with revenue data was 0.055%.

Analyzed individually by form and weighted by the number of petitions actually filed, the economic impact upon small entities was also insignificant. All small entities filing I–129 experienced an average impact of 0.0215% (range of impact from 0.000004% to 0.525%). Similarly, the average weighted impact on filers of Form I–140 of 0.0491% was also insignificant (range of impact from 0.00002% to 0.155%). These results agree with the results of the combined sample.

(b) *Civil Surgeon Designation:*

The proposed rule does not directly impose any new or additional "reporting" or "recordkeeping" requirements on filers of Form I–129, Form I–140, or Civil Surgeon Designation. Also, the proposed rule does not require any new professional skills for reporting. The rule proposes to establish a processing fee of $615 for the Civil Surgeon Program. This analysis utilized fees calculated without any appropriated funds, resulting in a $665 fee for the Civil Surgeon analysis.

To illustrate whether or not a rule could have a significant impact, guidelines suggested by the SBA Office of Advocacy provide that the cost of the proposed regulation may exceed one percent of the gross revenues of the entities in a particular sector or five percent of the labor costs of the entities in the sector.[41]

According to the U.S. Department of Labor, Bureau of Labor Statistics (BLS), Office of Occupational Employment Statistics, the median annual wage for Family and General Practitioners is about $161,490. Thus, the costs added by this rule are only 0.41 percent of the salary costs for one doctor.[42] As stated before, the average total revenue of the civil surgeon is unknown. Nonetheless, for the new $665 fee to exceed one percent of annual revenues, sales would be required to be $66,500 per year or less.

Therefore, USCIS believes that the costs of this rulemaking to small entities would not exceed one percent of the gross revenues of the entities in the affected sector. Using both the average annual labor costs and the percentage of the affected entities' annual revenue stream as guidelines, the evidence suggests that the civil surgeon designation fee proposed by this rule would not have a significant economic impact on a substantial number of small entities.

(c) *Form I–924:*

A standardized form and instructions for the filing of proposals requesting the Regional Center designation does not currently exist. The lack of a standardized form has resulted in confusion on the part of the public regarding the specific documentation that is required in order to meet the eligibility requirements. Applicants have not paid any fees to cover costs associated with program activities. As a result, costs have been paid by fee-paying applicants and petitioners within the fee levels of other applications.

The new Form I–924, Application for Regional Center under the Immigrant Investor Pilot Program, will serve the purpose of standardizing requests for benefits and ensuring that the basic information required to determine eligibility is provided by applicants which will alleviate content inconsistencies among applicants' submissions. Form I–924 will support a more efficient process for adjudication of Regional Center proposals. Also, the proposed rule does not require any new professional skills beyond those currently in place.

USCIS proposes a $6,230 Immigrant Investor fee for entities requesting approval and designation as a Regional Center under the Immigrant Investor Pilot Program. The new application process will require the same information from applicants that is currently required, but will standardize/simplify the reporting format. This analysis utilized fees calculated without any appropriated funds, resulting in a $6,820 fee for the EB–5 Regional Center analysis.

DOS reports that 4,218 EB–5 visas were issued in 2009.[43] USCIS estimates that 1,687 of these are primary aliens (investors) and the remainder are dependents.[44] Typically, ninety percent of EB–5 investors participate in Regional Center-related projects, while the others invest individually. Therefore, USCIS estimates FY 2009 Regional Center investors at 1,518 aliens.[45]As of October 1, 2009, there were 79 USCIS-approved Regional Centers, which equates to an average of 19.2 new investors per Regional Center in FY 2009.

Each Regional Center receives a minimum investment from every alien investor of $500,000. A search of Regional Center Web sites shows that most charge each investor a "syndication fee" of $20,000 to $50,000.[46] Further, during the application process, Regional Centers are required to provide a detailed statement regarding the amount and source of non-alien capital and a description of the planned promotional efforts. Combining the data, an average of 19.2 new investors, each investing $500,000, leads to an average additional investment per Regional Center of $9.6 million in FY 2009. While Regional Centers are prohibited from using alien investments to pay for overhead expenses, comparing FY 2009 average Regional Center investor receipts to the $6,820 application fee provides a reasonable context in which to consider the economic impact of the proposed fee. The proposed Regional Center fee of

[40] Reference USA reports sales revenue for entities as a range of values. For this analysis, DHS utilized the lower end of the range in order to assure the potential economic impact of the proposed rule was not underestimated. For example, if Reference USA reported a filing organization had revenue between $500,000 and $750,000, this analysis assumed the revenue was $500,000.

[41] *See* SBA Office of Advocacy, *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act,* 18, available at: *http://www.sba.gov/advo/laws/rfaguide.pdf.*

[42] $665 divided by $161,490.

[43] *http://www.travel.state.gov/visa/frvi/statistics/statistics_4581.html.*

[44] 4,218/2.5 = 1,687 investors. USCIS estimates that 2.5 visas are issued for each primary alien.

[45] 90% × 1,687 = 1,518.

[46] Three exemplar Web sites are provided: *http://www.cmbeb5visa.com/faq_timeline.aspx; http://www.unyrc.com/process.html; http://www.eb5dc.com/resources/CARc_AILA_Price_Plan_2_25_10_Extension.pdf.* Additionally, a list of USCIS approved Regional Centers is available online at: *http://www.uscis.gov/eb-5centers.*

$6,820 would represent only 0.07104% of the $9.6 million average additional investment per Regional Center in FY 2009. The proposed application fee of $6,820 is only collected once and is not a recurring fee.

In summary, even though a significant number of these Regional Centers are small entities, considering this proposed fee represents only 0.07104% of the average additional investment per Regional Center in FY 2009, DHS believes this $6,820 fee does not constitute a significant economic impact on these entities. Nevertheless, DHS has prepared an Initial Regulatory Flexibility Analysis, included it in the proposed rule, and requests public comment on the impact of this rule on small entities.

5. An Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

DHS is unaware of any duplicative, overlapping, or conflicting Federal rules. As noted below, DHS seeks comment and information about any such rules.

6. Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of Applicable Statutes and That Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities, Including Alternatives Considered *Such as:* (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; (4) any exemption from coverage of the rule, or any part thereof, for such small entities

The INA provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including services provided without charge to asylum applicants and certain other immigrant applicants. In addition, DHS must fund the costs of providing services without charge by using a portion of the filing fees that are collected for other immigration benefits. Without an increase in fees, USCIS will not be able to provide petitioners with the same level of service for immigration and naturalization benefits. DHS has considered the alternative of maintaining fees at the current level with reduced services and increased wait times. While most immigration benefit fees apply to individuals, as described above, some also apply to small entities. USCIS seeks to minimize the impact on all parties, but in particular small entities. An alternative to the increased economic burden of the proposed rule is to maintain fees at their current level for small entities. The strength of this alternative is that it assures no additional fee-burden is placed on small entities; however, this alternative also would cause negative impacts to small entities.

Without the fee adjustments proposed in this rule, significant operational changes would be necessary. Given current filing volume and other economic considerations, additional revenue is necessary to prevent immediate and significant cuts in planned spending. These spending cuts would include reductions in areas such as Federal and contract staff, infrastructure spending on information technology and facilities, travel, and training. Depending on the actual level of workload received, these operational changes would result in longer application processing times, a degradation in customer service, and reduced efficiency over time. These cuts would ultimately represent an increased cost to small entities by causing delays in benefit processing and less customer service.

7. Questions for Comment To Assist Regulatory Flexibility Analysis

- Please provide comment on the numbers of small entities that may be impacted by this rulemaking.
- Please provide comment on any or all of the provisions in the proposed rule with regard to the economic impact of this rule, paying specific attention to the effect of the rule on small entities in light of the above analysis.
- Please provide comment on any significant alternatives DHS should consider in lieu of the changes proposed by this rule.
- Please describe ways in which the rule could be modified to reduce burdens for small entities consistent with the Immigration and Nationality Act and the Chief Financial Officers Act requirements.
- Please identify all relevant Federal, State or local rules that may duplicate, overlap or conflict with the proposed rule.

B. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires certain actions to be taken before an agency promulgates any notice of rulemaking "that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year." 2 U.S.C. 1532(a). While this rule may result in the expenditure of more than $100 million by the private sector annually, the rulemaking is not a "Federal mandate" as defined for UMRA purposes, 2 U.S.C. 658(6), as the payment of immigration benefit fees by individuals or other private sector entities is, to the extent it could be termed an enforceable duty, one that arises from participation in a voluntary Federal program, applying for immigration status in the United States. 2 U.S.C. 658(7)(A)(ii). Therefore, no actions were deemed necessary under the provisions of the UMRA.

C. Small Business Regulatory Enforcement Fairness Act

This rulemaking is a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rulemaking will result in an annual effect on the economy of more than $100 million, in order to generate the revenue necessary to fully fund the increased cost associated with the processing of immigration benefit applications and petitions and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to other immigrants, as specified in the proposed regulation, at no charge. The increased costs will be recovered through the fees charged for various immigration benefit applications.

D. Executive Order 12866

This rule is considered by the Department of Homeland Security to be an economically significant regulatory action under Executive Order 12866, section 3(f)(1), Regulatory Planning and Review. Accordingly, this rule has been reviewed by the Office of Management and Budget.

The implementation of this rule would provide USCIS with an average of $209 million in FY 2010 and FY 2011 annual fee revenue, based on a projected annual fee-paying volume of 4.4 million immigration benefit requests and 1.9 million requests for biometric services, over the fee revenue that would be collected under the current fee structure. This increase in revenue will be used pursuant to subsections 286(m) and (n) of the INA, 8 U.S.C. 1356(m) and (n), to fund the full costs of processing immigration benefit applications and associated support benefits; the full cost of providing similar benefits to asylum

and refugee applicants; and the full cost of similar benefits provided to others at no charge.

If USCIS does not adjust the current fees to recover the full costs of processing immigration benefit requests, USCIS would be forced to enact additional significant spending reductions resulting in a reversal of the considerable progress it has made over the last several years to reduce the backlogs of immigration benefit filings, to increase the integrity of the immigration benefit system, and to protect national security and public safety. The revenue increase is based on USCIS costs and projected volumes that were available at the time the rule was drafted. USCIS has placed in the rulemaking docket a detailed analysis that explains the basis for the annual fee increase and has included an accounting statement detailing the annualized costs of the proposed rule below.

Accounting Statement, FY 2010 through FY 2011 (2009 Dollars)

Category	Primary Estimate	Minimum Estimate	Maximum Estimate
Benefits			
Un-quantified Benefits	Maintain current level of service with respect to processing times, customer service, and efficiency levels.		
Transfers			
Annualized Monetized Transfers at 3%	$209,264,850	$209,264,850	$355,791,970
Annualized Monetized Transfers at 7%	$209,264,850	$209,264,850	$355,791,970

E. Executive Order 13132

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

F. Executive Order 12988

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

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995) (PRA), all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule. Accordingly, DHS is requesting comments on two information collections for 60-days until August 10, 2010. Comments on these information collections 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 Information Collection: Immigration Investor Pilot Program

DHS proposes to require the use of new Form I–924, Application for Regional Center under the Immigrant Investor Pilot Program, and Form I–924A, Supplement to Form I–924. This form is considered an information collection and is covered under the Paperwork Reduction Act.

a. *Type of information collection:* New information collection.

b. *Abstract:* This collection will be used by individuals and businesses to file a request for USCIS approval and designation as a regional center on behalf of an entity under the Immigrant Investor Pilot Program.

c. *Title of Form/Collection:* Application for Regional Center under the Immigrant Investor Pilot Program.

d. *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–924 and Form 924A; U.S. Citizenship and Immigration Services.

e. *Affected public who will be asked or required to respond:* Individuals and businesses.

f. *An estimate of the total number of respondents:* 132 respondents filing Form I–924, and 116 respondents filing Form I–924A.

g. *Hours per response:* Form I–924 at 40 hours per response, and Form I–924A at 3 hours per response.

h. *Total Annual Reporting Burden:* 4,428 hours.

Overview of Information Collection: Civil Surgeons Fee

This rule proposes a fee for applying for a civil surgeon designation. To apply for a civil surgeon designation, USCIS requires a civil surgeon submit the following information:

- A letter to the District Director requesting consideration,
- A copy of a current medical license (in the State in which the physician seeks to complete immigration medical examinations),
- A current resume that shows at least 4 years of professional experience (not including residency or medical school), and
- Two signature cards showing the physician's name and signature.

This information collection is required to determine whether a physician meets the statutory and regulatory requirement for civil surgeon designation. For example, all documents are reviewed to determine whether the physician has a currently valid medical license and whether the physician has had any action taken against him or her by the medical licensing authority of the State. If the civil surgeon designation request is accepted, the physician is

included in USCIS' Civil Surgeon locator and is authorized to complete Form I–693 for an applicant's adjustment of status.

a. *Type of information collection:* New information collection.

b. *Abstract:* This information collection is required to determine whether a physician meets the statutory and regulatory requirement for civil surgeon designation.

c. *Title of Form/Collection:* Application for Civil Surgeon Designation Registration.

d. *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No form number; U.S. Citizenship and Immigration Services.

e. *Affected public who will be asked or required to respond:* Individuals and businesses.

f. *An estimate of the total number of respondents:* 1,200 respondents.

g. *Hours per response:* One hour.

h. *Total Annual Reporting Burden:* 1,200 hours.

Comments concerning these collections and forms can be submitted to the Department of Homeland Security, USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210.

The changes to the proposed fees will require minor amendments to immigration benefit and petition forms to reflect the new fees. The necessary changes to the annual cost burden and to the forms will be submitted to OMB using OMB Form 83–C, Correction Worksheet, when this proposed rule is submitted to OMB as a final rule.

List of Subjects

8 CFR Part 103

Administrative practice and procedures; Authority delegations (government agencies); Freedom of Information; Privacy; Reporting and recordkeeping requirements; and Surety bonds.

8 CFR Part 204

Administrative practice and procedure; Immigration; Reporting and recordkeeping requirements.

8 CFR Part 244

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

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

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552(a); 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

§ 103.2 [Amended]

2. Section 103.2 is amended by:

a. Removing paragraph (e)(4)(ii);

b. Redesignating paragraphs (e)(4)(iii), and (e)(4)(iv), as paragraphs (e)(4)(ii), and (e)(4)(iii), respectively; and by

c. Removing paragraph (f).

3. Section 103.7 is amended by:

a. Revising paragraphs (b) and (c);

b. Redesignating paragraph (d) as paragraph (f);

c. Adding new paragraphs (d) and (e); and by

d. Revising newly redesignated paragraph (f).

The revisions and additions read as follows:

§ 103.7 Fees.

* * * * *

(b) *Amounts of fees.* (1) *Prescribed fees and charges.* (i) *USCIS fees.* A request for immigration benefits submitted to USCIS must include the required fee as prescribed under this section. The fees prescribed in this section are associated with the benefit, the adjudication, and the type of request and not solely determined by the form number listed below. The term "form" as defined in 8 CFR part 1, may include a USCIS-approved electronic equivalent of such form as USCIS may prescribe on its official Web site at *http//www.uscis.gov.*

(A) *Certification of true copies:* $2.00 per copy.

(B) *Attestation under seal:* $2.00 each.

(C) *Biometric services (Biometric Fee).* For capturing, storing, and using biometric information (Biometric Fee). A service fee of $85 will be charged for any individual who is required to have biometric information captured, stored, and used in connection with an application or petition for certain immigration and naturalization benefits (other than asylum), whose application fee does not already include the charge for biometric services. No biometric service fee is charged when:

(*1*) A written request for an extension of the approval period is received by USCIS prior to the expiration date of approval of an Application for Advance Processing of Orphan Petition, if a Petition to Classify Orphan as an Immediate Relative has not yet been submitted in connection with an approved Application for Advance Processing of Orphan Petition. This extension without fee is limited to one occasion. If the approval extension expires prior to submission of an associated Petition to Classify Orphan as an Immediate Relative, then a complete application and fee must be submitted for a subsequent application.

(*2*) There is no fee for the associated benefit request that was, or is, being submitted.

(D) *Immigrant visas.* For processing immigrant visas issued by the Department of State in embassies or consulates: $165.

(E) Request for a search of indices to historical records to be used in genealogical research (Form G–1041): $20. The search fee is not refundable.

(F) Request for a copy of historical records to be used in genealogical research (Form G–1041A): $20 for each file copy from microfilm, or $35 for each file copy from a textual record. In some cases, the researcher may be unable to determine the fee, because the researcher will have a file number obtained from a source other than USCIS and therefore not know the format of the file (microfilm or hard copy). In this case, if USCIS locates the file and it is a textual file, USCIS will notify the researcher to remit the additional $15. USCIS will refund the records request fee only when it is unable to locate the file previously identified in response to the index search request.

(G) *Application to Replace Permanent Resident Card (Form I–90).* For filing an application for a Permanent Resident Card (Form I–551) in lieu of an obsolete card or in lieu of one lost, mutilated, or destroyed, or for a change in name: $365.

(H) *Application for Replacement/Initial Nonimmigrant Arrival-Departure Document (Form I–102).* For filing a petition for an application for Arrival/Departure Record (Form I–94) or Crewman's Landing Permit (Form I–95), in lieu of one lost, mutilated, or destroyed: $330.

(I) *Petition for a Nonimmigrant Worker (Form I–129).* For filing a petition for a nonimmigrant worker: $325.

(J) *Petition for Nonimmigrant Worker in CNMI (Form I–129CW).* For an employer to petition on behalf of one or more beneficiaries: $325 plus a supplemental CNMI education funding fee of $150 per beneficiary per year. The

CNMI education funding fee cannot be waived.

(K) *Petition for Alien Fiancé(e) (Form I–129F).* For filing a petition to classify a nonimmigrant as a fiancée or fiancé under section 214(d) of the Act: $340; there is no fee for a K–3 spouse as designated in 8 CFR 214.1(a)(2) who is the beneficiary of an immigrant petition filed by a United States citizen on a Petition for Alien Relative (Form I–130).

(L) *Petition for Alien Relative (Form I–130).* For filing a petition to classify status of an alien relative for issuance of an immigrant visa under section 204(a) of the Act: $420.

(M) *Application for Travel Document (Form I–131).* For filing an application for travel document: $360. There is no fee for filing for a Refugee Travel Document or advance parole if filed in conjunction with a pending or concurrently filed Form I–485 with fee that was filed on or after July 30, 2007.

(N) *Immigrant Petition for Alien Worker (Form I–140).* For filing a petition to classify preference status of an alien on the basis of profession or occupation under section 204(a) of the Act: $580.

(O) *Application for Advance Permission to Return to Unrelinquished Domicile (Form I–191).* For filing an application for discretionary relief under section 212(c) of the Act: $585.

(P) *Application for Advance Permission to Enter as a Nonimmigrant (Form I–192).* For filing an application for discretionary relief under section 212(d)(3) of the Act, except in an emergency case or where the approval of the application is in the interest of the United States Government: $585.

(Q) *Application for Waiver for Passport and/or Visa (Form I–193).* For filing an application for waiver of passport and/or visa: $585.

(R) *Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I–212).* For filing an application for permission to reapply for an excluded, deported or removed alien, an alien who has fallen into distress, an alien who has been removed as an alien enemy, or an alien who has been removed at government expense in lieu of deportation: $585.

(S) *Notice of Appeal or Motion (Form I–290B).* For appealing a decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction: $630. The fee will be the same for appeal of a denial of a benefit request with one or multiple beneficiaries.

(T) *Petition for Amerasian, Widow(er), or Special Immigrant (Form I–360).* For filing a petition for an Amerasian, Widow(er), or Special Immigrant: $405. The following requests are exempt from this fee:

(*1*) A petition seeking classification as an Amerasian;

(*2*) A self-petitioning battered or abused spouse, parent, or child of a United States citizen or lawful permanent resident; or

(*3*) A Special Immigrant Juvenile.

(*4*) An Iraqi national who worked for or on behalf of the U.S. Government in Iraq.

(U) *Application to Register Permanent Residence or Adjust Status (Form I–485).* For filing an application for permanent resident status or creation of a record of lawful permanent residence:

(*1*) $985 for an applicant 14 years of age or older; or

(*2*) $635 for an applicant under the age of 14 years when it is:

(*i*) Submitted concurrently for adjudication with the Form I–485 of a parent;

(*ii*) The applicant is seeking to adjust status as a derivative of his or her parent; and

(*iii*) The child's application is based on them being a close relative of the same individual who is the basis for the child's parent's adjustment of status..

(*3*) There is no fee if an applicant is filing as a refugee under section 209(a) of the Act.

(V) *Application To Adjust Status under Section 245(i) of the Act (Supplement A to Form I–485).* Supplement to Form I–485 for persons seeking to adjust status under the provisions of section 245(i) of the Act: $1,000. There is no fee when the applicant is an unmarried child less than 17 years of age, or when the applicant is the spouse, or the unmarried child less than 21 years of age of a legalized alien and who is qualified for and has applied for voluntary departure under the family unity program.

(W) *Immigrant Petition by Alien Entrepreneur (Form I–526).* For filing a petition for an alien entrepreneur: $1,500.

(X) *Application To Extend/Change Nonimmigrant Status (Form I–539).* For filing an application to extend or change nonimmigrant status: $290.

(Y) *Petition To Classify Orphan as an Immediate Relative (Form I–600).* For filing a petition to classify an orphan as an immediate relative for issuance of an immigrant visa under section 204(a) of the Act. Only one fee is required when more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters: $720.

(Z) *Application for Advance Processing of Orphan Petition (Form I–600A).* For filing an application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.): $720. No fee is charged if Form I–600 has not yet been submitted in connection with an approved Form I–600A subject to the following conditions:

(*1*) The applicant requests an extension of the approval in writing and the request is received by USCIS prior to the expiration date of approval.

(*2*) The applicant's home study is updated and USCIS determines that proper care will be provided to an adopted orphan.

(*3*) A no fee extension is limited to one occasion. If the Form I–600A approval extension expires prior to submission of an associated Form I–600, then a complete application and fee must be submitted for any subsequent application.

(AA) *Application for Waiver of Ground of Inadmissibility (Form I–601).* For filing an application for waiver of grounds of inadmissibility: $585.

(BB) *Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the Immigration and Nationality Act, as Amended) (Form I–612).* For filing an application for waiver of the foreign-residence requirement under section 212(e) of the Act: $585.

(CC) *Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act (Form I–687).* For filing an application for status as a temporary resident under section 245A(a) of the Act: $1,130.

(DD) *Application for Waiver of Grounds of Inadmissibility Under Sections 245A or 210 of the Immigration and Nationality Act (Form I–690).* For filing an application for waiver of a ground of inadmissibility under section 212(a) of the Act as amended, in conjunction with the application under sections 210 or 245A of the Act, or a petition under section 210A of the Act: $200.

(EE) *Notice of Appeal of Decision Under Sections 245A or 210 of the Immigration and Nationality Act (or a Petition Under Section 210A of the Act) (Form I–694).* For appealing the denial of an application under sections 210 or 245A of the Act, or a petition under section 210A of the Act: $755.

(FF) *Petition To Remove the Conditions of Residence Based on Marriage (Form I–751).* For filing a petition to remove the conditions on residence based on marriage: $505.

(GG) *Application for Employment Authorization (Form I–765).* $380; no fee if filed in conjunction with a pending or concurrently filed Form I–485 with fee that was filed on or after July 30, 2007.

(HH) *Petition To Classify Convention Adoptee as an Immediate Relative (Form I–800).*

(*1*) There is no fee for the first Form I–800 filed for a child on the basis of an approved Application for Determination of Suitability To Adopt a Child from a Convention Country (Form I–800A) during the approval period.

(*2*) If more than one Form I–800 is filed during the approval period for different children, the fee is $720 for the second and each subsequent petition submitted.

(*3*) If the children are already siblings before the proposed adoption, however, only one filing fee of $720 is required, regardless of the sequence of submission of the immigration benefit.

(II) *Application for Determination of Suitability To Adopt a Child From a Convention Country (Form I–800A).* For filing an application for determination of suitability to adopt a child from a Convention country: $720.

(JJ) *Request for Action on Approved Application for Determination of Suitability To Adopt a Child From a Convention Country (Form I–800A, Supplement 3).* This filing fee is not charged if Form I–800 has not been filed based on the approval of the Form I–800A, and Form I–800A Supplement 3 is filed in order to obtain a first extension of the approval of the Form I–800A: $360.

(KK) *Application for Family Unity Benefits (Form I–817).* For filing an application for voluntary departure under the Family Unity Program: $435.

(LL) *Application for Temporary Protected Status (Form I–821).* For first time applicants: $50. There is no fee for re-registration.

(MM) *Application for Action on an Approved Application or Petition (Form I–824).* For filing for action on an approved application or petition: $405.

(NN) *Petition by Entrepreneur To Remove Conditions (Form I–829).* For filing a petition by entrepreneur to remove conditions: $3,750.

(OO) Application for suspension of deportation or special rule cancellation of removal (pursuant to section 203 of Pub. L. 105–100) (Form I–881):

(*1*) $285 for adjudication by the Department of Homeland Security, except that the maximum amount payable by family members (related as husband, wife, unmarried child under 21, unmarried son, or unmarried daughter) who submit applications at the same time shall be $570.

(*2*) $165 for adjudication by the Immigration Court (a single fee of $165 will be charged whenever applications are filed by two or more aliens in the same proceedings). (*3*) The $165 fee is not required if the Form I–881 is referred to the Immigration Court by the Department of Homeland Security.

(PP) Application for authorization to issue certification for health care workers (Form I–905): $230.

(QQ) *Request for Premium Processing Service (Form I–907).* The fee must be paid in addition to, and in a separate remittance from, other filing fees. The request for premium processing fee will be adjusted annually by notice in the **Federal Register** based on inflation according to the Consumer Price Index (CPI). The fee to request premium processing: $1,225. The fee for Premium Processing Service may not be waived.

(RR) *Civil Surgeon Designation.* For filing an application for civil surgeon designation: $615.

(SS) *Application for Regional Center under the Immigrant Investor Pilot Program (Form I–924).* For filing an application for regional center under the Immigrant Investor Pilot Program: $6,230.

(TT) *Petition for Qualifying Family Member of a U–1 Nonimmigrant (Form I–929).* For U–1 principal applicant to submit for each qualifying family member who plans to seek an immigrant visa or adjustment of U status: $215.

(UU) *Application to File Declaration of Intention (Form N–300).* For filing an application for declaration of intention to become a U.S. citizen: $250.

(VV) *Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the Act) (Form N–336).* For filing a request for hearing on a decision in naturalization proceedings under section 336 of the Act: $650.

(WW) *Application for Naturalization (Form N–400).* For filing an application for naturalization (other than such application filed on or after October 1, 2004, by an applicant who meets the requirements of sections 328 or 329 of the Act with respect to military service, for which no fee is charged): $595.

(XX) *Application to Preserve Residence for Naturalization Purposes (Form N–470).* For filing an application for benefits under section 316(b) or 317 of the Act: $330.

(YY) *Application for Replacement Naturalization/Citizenship Document (Form N–565).* For filing an application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; for a certificate of citizenship in a changed name under section 343(c) of the Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(b) of the Act: $345.

(ZZ) *Application for Certificate of Citizenship (Form N–600).* For filing an application for a certificate of citizenship under section 309(c) or section 341 of the Act for applications filed on behalf of a biological child: $600. For applications filed on behalf of an adopted child: $550.

(AAA) *Application for Citizenship and Issuance of Certificate under Section 322 (Form N–600K).* For filing an application for citizenship and issuance of certificate under section 322 of the Act: $600, for an application filed on behalf of a biological child and $550 for an application filed on behalf of an adopted child.

(ii) *Other DHS immigration fees.* The following fees are applicable to one or more of the immigration components of DHS:

(A) *DCL System Costs Fee.* For use of a Dedicated Commuter Lane (DCL) located at specific Ports of Entry of the United States by an approved participant in a designated vehicle: $80.00, with the maximum amount of $160.00 payable by a family (husband, wife, and minor children under 18 years-of-age). Payable following approval of the application but before use of the DCL by each participant. This fee is non-refundable, but may be waived by the district director. If a participant wishes to enroll more than one vehicle for use in the PORTPASS system, he or she will be assessed with an additional fee of: $42 for each additional vehicle enrolled.

(B) *Form I–17.* For filing a petition for school certification: $1,700, plus a site visit fee of $655 for each location listed on the form.

(C) *Form I–68.* For application for issuance of the Canadian Border Boat Landing Permit under section 235 of the Act: $16.00. The maximum amount payable by a family (husband, wife, unmarried children under 21 years of age, parents of either husband or wife) shall be $32.00.

(D) *Form I–94.* For issuance of Arrival/Departure Record at a land border Port-of-Entry: $6.00.

(E) *Form I–94W.* For issuance of Nonimmigrant Visa Waiver Arrival/Departure Form at a land border Port-of-Entry under section 217 of the Act: $6.00.

(F) *Form I–246.* For filing application for stay of deportation under part 243 of this chapter: $155.00.

(G) *Form I–570.* For filing application for issuance or extension of refugee travel document: $45.00

(H) *Form I–823.* For application to a PORTPASS program under section 286 of the Act—$25.00, with the maximum amount of $50.00 payable by a family (husband, wife, and minor children under 18 years of age). The application fee may be waived by the district director. If fingerprints are required, the inspector will inform the applicant of the current Federal Bureau of Investigation fee for conducting fingerprint checks prior to accepting the application fee. Both the application fee (if not waived) and the fingerprint fee must be paid to CBP before the application will be processed. The fingerprint fee may not be waived. For replacement of PORTPASS documentation during the participation period: $25.00.

(I) *Form I–901.* For remittance of the I–901 SEVIS fee for F and M students: $200. For remittance of the I–901 SEVIS fee for certain J exchange visitors: $180. For remittance of the I–901 SEVIS fee for J–1 au pairs, camp counselors, and participants in a summer work/travel program: $35. There is no I–901 SEVIS fee remittance obligation for J exchange visitors in Federally-funded programs with a program identifier designation prefix that begins with G–1, G–2, G–3 or G–7.

(J) Special statistical tabulations—a charge will be made to cover the cost of the work involved: DHS Cost.

(K) Set of monthly, semiannual, or annual tables entitled "Passenger Travel Reports via Sea and Air": $7.00. Available from DHS, then Immigration & Naturalization Service, for years 1975 and before. Later editions are available from the United States Department of Transportation, contact: United States Department of Transportation, Transportation Systems Center, Kendall Square, Cambridge, MA 02142.

(L) Classification of a citizen of Canada to be engaged in business activities at a professional level pursuant to section 214(e) of the Act (Chapter 16 of the North American Free Trade Agreement): $50.00.

(M) Request for authorization for parole of an alien into the United States: $65.00.

(iii) *Fees for copies of records.* Fees for production or disclosure of records under 5 U.S.C. 552 shall be charged in accordance with the regulations of the Department of Homeland Security at 6 CFR 5.11.

(iv) *Adjustment to fees.* The fees prescribed in paragraph (b)(1)(i) of this section may be adjusted annually by publication of an inflation adjustment. The inflation adjustment will be announced by a publication of a notice in the **Federal Register**. The adjustment shall be a composite of the Federal civilian pay raise assumption and non-pay inflation factor for that fiscal year issued by the Office of Management and Budget for agency use in implementing OMB Circular A–76, weighted by pay and non-pay proportions of total funding for that fiscal year. If Congress enacts a different Federal civilian pay raise percentage than the percentage issued by OMB for Circular A–76, the Department of Homeland Security may adjust the fees, during the current year or a following year to reflect the enacted level. The prescribed fee or charge shall be the amount prescribed in paragraph (b)(1)(i) of this section, plus the latest inflation adjustment, rounded to the nearest $5 increment.

(v) *Fees for immigration court and Board of Immigration Appeals.* Fees for proceedings before immigration judges and the Board of Immigration Appeals are provided in 8 CFR 1103.7.

(c) *Waiver of fees.* (1) *Eligibility for a fee waiver.* Discretionary waiver of the fees provided in paragraph (b)(1)(i) of this section are limited as follows:

(i) The party requesting the benefit is unable to pay the prescribed fee.

(ii) A waiver based on inability to pay is consistent with the status or benefit being sought including requests that require demonstration of the applicant's ability to support himself or herself, or individuals who seek immigration status based on a substantial financial investment.

(2) *Requesting a fee waiver.* To request a fee waiver, a person requesting an immigration benefit must submit a written request for permission to have their request processed without payment of a fee with their benefit request. The request must state the person's belief that he or she is entitled to or deserving of the benefit requested, the reasons for his or her inability to pay, and evidence to support the reasons indicated. There is no appeal of the denial of a fee waiver request.

(3) *USCIS fees that may be waived.* No fee relating to any application, petition, appeal, motion, or request made to U.S. Citizenship and Immigration Services may be waived except for the following:

(i) Biometric Fee,

(ii) Application to Replace Permanent Resident Card;

(iii) Petition for a CNMI-Only Nonimmigrant Transitional Worker,

(iv) Application for Advance Permission to Return to Unrelinquished Domicile,

(v) Notice of Appeal or Motion,

(vi) Application for Employment Authorization,

(vii) Application for Family Unity Benefits

(viii) Application for Temporary Protected Status,

(ix) Application to File Declaration of Intention, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA),

(x) Application for Naturalization,

(xi) Application to Preserve Residence for Naturalization Purposes.

(xii) Application for Replacement Naturalization/Citizenship Document,

(xiii) Application for Certificate of Citizenship, and

(xiv) Application for Citizenship and Issuance of Certificate under Section 322.

(4) The following fees may be waived only in the case of an alien in lawful nonimmigrant status under sections 101(a)(15)(T) or (U) of the Act; an applicant under section 209(b) of the Act; an approved VAWA self-petitioner; or an alien to whom section 212(a)(4) of the Act does not apply with respect to adjustment of status:

(i) Application for Advance Permission to Enter as Nonimmigrant;

(ii) Application for Waiver for Passport and/or Visa;

(iii) Application to Register Permanent Residence or Adjust Status;

(iv) Application for Waiver of Grounds of Inadmissibility.

(5) *Immigration Court fees.* The provisions relating to the authority of the immigration judges or the Board to waive fees prescribed in paragraph (b) of this section in cases under their jurisdiction can be found at 8 CFR 1003.8 and 1003.24.

(6) *Fees under the Freedom of Information Act (FOIA).* FOIA fees may be waived or reduced if DHS determines that such action would be in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(d) *Exceptions and exemptions.* The Director of USCIS may approve and suspend exemptions from any fee required by paragraph (b)(1)(i) of this section or provide that the fee may be waived for a case or specific class of cases that is not otherwise provided in this section, if the Director determines that such action would be in the public interest, and the action is consistent with other applicable law. This discretionary authority will not be delegated to any official other than the USCIS Deputy Director.

(e) *Premium processing service.* A person submitting a request to USCIS may request 15 calendar day processing of certain employment-based immigration benefit requests.

(1) *Submitting a request for premium processing.* A request for premium processing must be submitted on the form prescribed by USCIS, including the required fee, and submitted to the address specified on the form instructions.

(2) *15-day limitation.* The 15 calendar day processing period begins when USCIS receives the request for premium processing accompanied by an eligible employment-based immigration benefit request.

(i) If USCIS cannot reach a final decision on a request for which premium processing was requested, as evidenced by an approval notice, denial notice, a notice of intent to deny, or a request for evidence, USCIS will refund the premium processing service fee, but continue to process the case.

(ii) USCIS may retain the premium processing fee and not reach a conclusion on the request within 15 days, and not notify the person who filed the request, if USCIS opens an investigation for fraud or misrepresentation relating to the benefit request.

(3) *Requests eligible for premium processing.*

(i) USCIS will designate the categories of employment-related benefit requests that are eligible for premium processing.

(ii) USCIS will announce by its official Internet Web site, currently *http://www.uscis.gov,* those requests for which premium processing may be requested, the dates upon which such availability commences and ends, and any conditions that may apply.

(f) *Authority to certify records.* The Director of USCIS or such officials as he or she may designate, may certify records when authorized under 5 U.S.C. 552 or any other law to provide such records.

PART 204—IMMIGRANT PETITIONS

4. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1184, 1186a, 1255, 1641; 8 CFR part 2.

5. Section 204.6 is amended by revising paragraph (m)(6) to read as follows:

§ 204.6 Petitions for employment creation aliens.

* * * * *

(m) * * *

(6) *Termination of participation of regional centers.* To ensure that regional centers continue to meet the requirements of section 610(a) of the Appropriations Act, a regional center must provide USCIS with updated information to demonstrate the regional center is continuing to promote economic growth, improved regional productivity, job creation, or increased domestic capital investment in the approved geographic area. Such information must be submitted to USCIS on an annual basis, on a cumulative basis, and/or as otherwise requested by USCIS, using a form designated for this purpose. USCIS will issue a notice of intent to terminate the participation of a regional center in the pilot program if a regional center fails to submit the required information or upon a determination that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. The notice of intent to terminate shall be made upon notice to the regional center and shall set forth the reasons for termination. The regional center must be provided thirty days from receipt of the notice of intent to terminate to offer evidence in opposition to the ground or grounds alleged in the notice of intent to terminate. If USCIS determines that the regional center's participation in the Pilot Program should be terminated, USCIS shall notify the regional center of the decision and of the reasons for termination. The regional center may appeal the decision within thirty days after the service of notice to the USCIS as provided in 8 CFR 103.3.

* * * * *

PART 244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

4. The authority citation for part 244 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

§ 244.20 [Removed]

5. Section 244.20 is removed.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

6. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; Title VII of Public Law 110–229; 8 CFR part 2.

7. Section 274a.12 is amended by revising paragraphs (a)(8) and (a)(11) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

(a) * * *

(8) An alien admitted to the United States as a nonimmigrant pursuant to the Compact of Free Association between the United States and of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau;

* * * * *

(11) An alien whose enforced departure from the United States has been deferred in accordance with a directive from the President of the United States to the Secretary. Employment is authorized for the period of time and under the conditions established by the Secretary pursuant to the Presidential directive;

* * * * *

Janet Napolitano,

Secretary.

[FR Doc. 2010–13991 Filed 6–9–10; 8:45 am]

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FEDERAL REGISTER PAGES AND DATE, JUNE

30267–30686 1
30687–31272 2
31273–31662 3
31663–32074 4
32075–32244 7
32245–32648 8
32649–32840 9
32841–33158 10
33159–33488 11

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

2339 31273

3 CFR

Proclamations:
8527 32075
8528 32077
8529 32079
8530 32081
8531 32083
8532 32085
Administrative Orders:
Memorandums:
Memorandum of May 21, 2010 32087
Memorandum of June 1, 2010 32245
Memorandum of June 2, 2010 32247
Notices:
Notice of June 8, 2010 32841
Notice of June 8, 2010 32843

5 CFR

875 30267

7 CFR

271 33422
273 33422
275 33422
277 33422
916 31275
917 31275
923 31663
1218 31279
1470 31610
Proposed Rules:
46 32306
319 ..... 30303, 32310
930 31719
1215 31730
1755 32313

8 CFR

Proposed Rules:
103 33446
204 33446
244 33446
274A 33446

10 CFR

440 32089
Proposed Rules:
430 ..... 31224, 31323

12 CFR

205 31665
230 31673
611 30687
613 30687
615 30687
619 30687
620 30687
Proposed Rules:
1282 32099

14 CFR

39 ..... 30268, 30270, 30272, 30274, 30277, 30280, 30282, 30284, 30287, 30290, 30292, 30687, 31282, 32090, 32251, 32253, 32255, 32260, 32262, 32263, 32266, 32649, 33159, 33162
65 31283
71 ..... 30295, 30689, 31677, 32268, 32269, 32271, 32272, 32651, 32652, 33164, 33165
73 32093
91 30690
97 ..... 32094, 32096, 32653, 32655
406 30690
Proposed Rules:
39 ..... 30740, 31324, 31327, 31329, 31330, 31332, 31731, 31734, 32315, 32863
65 30742
71 ..... 30746, 32117, 32119, 32120, 32317, 32865
234 32318
244 32318
250 32318
253 32318
259 32318
399 32318

15 CFR

734 31678
744 31678
740 31678
748 31678
750 31678
766 31678
774 31678
Proposed Rules:
700 32122
902 32994

16 CFR

320 31682
1215 ..... 31688, 31691

17 CFR

240 33100
241 33100
Proposed Rules:
36 33198
37 33198
38 33198
242 32556

18 CFR

375.....32657

19 CFR

Proposed Rules:
351.....32341

20 CFR

404 .....30692, 32845, 33166, 33167
405.....33167
408.....33167
416.....32845, 33167
418.....33167
439.....31273
Proposed Rules:
1001.....33203

21 CFR

106.....32658
107.....32658
312.....32658
803.....32658
872.....33169
Proposed Rules:
1301.....32140
1309.....32140

24 CFR

Proposed Rules:
3500.....31334

25 CFR

900.....31699
1000.....31699

26 CFR

1.....31736, 32659

27 CFR

478.....31285

28 CFR

Proposed Rules:
0.....33205
51.....33205

29 CFR

1202.....32273
1206.....32273
1404.....30704
2530.....32846
Proposed Rules:
1910.....32142

30 CFR

Proposed Rules:
218.....32343

33 CFR

100 .....30296, 32661, 32852
117 .....30299, 30300, 32663, 32854
147.....32273
165 .....30706, 30708, 32275, 32280, 32664, 32666, 32855, 33170
Proposed Rules:
100.....32866
117 .....30305, 30747, 30750, 32349, 32351
165.....30753

34 CFR

361.....32857
691.....32857
Proposed Rules:
Ch. VI.....31338

37 CFR

256.....32857

38 CFR

17.....32668, 32670
21.....32293
Proposed Rules:
17.....30306, 33216

39 CFR

111 .....30300, 31288, 31702
Proposed Rules:
111.....32143
501.....30309

40 CFR

7.....31702
51.....31514
52 .....30710, 31288, 31290, 31306, 31514, 31709, 31711, 32293, 32673, 32857, 32858, 33172, 33174
63.....31317
70.....31514
71.....31514
141.....32295
180.....31713, 33190
260.....31716
261.....31716
262.....31716
263.....31716
264.....31716
265.....31716
266.....31716
268.....31716
270.....31716
Proposed Rules:
7.....31738
52 .....30310, 31340, 32353, 33220
60 .....31938, 32613, 32682
63 .....31896, 32006, 32682
72.....33392
75.....33392
241.....31844, 32682
1039.....32613
1042.....32613
1065.....32613
1068.....32613

42 CFR

417.....32858
422.....32858
423.....32858
480.....32858
Proposed Rules:
412.....30756, 30918
413.....30756, 30918

44 CFR

64.....32302
Proposed Rules:
67 .....31361, 31368, 32684

45 CFR

Proposed Rules:
301.....32145
302.....32145
303.....32145
307.....32145

46 CFR

501.....31320

47 CFR

36.....30301
Proposed Rules:
15.....33220
54.....32692, 32699
73.....30756, 33227

48 CFR

216.....32641
217.....32638, 32639
225.....32637, 32640
228.....32642
231.....32642
234.....32638
252.....32642, 33195
505.....32860
3025.....32676
3052.....32676
Proposed Rules:
242.....33237
252.....32636
970.....32719
3015.....32723
3016.....32723
3052.....32723

49 CFR

390.....32860
395.....32860
1002.....30711
1011.....30711
1152.....30711
1180.....30711
Proposed Rules:
611.....31321

50 CFR

223.....30714
600.....30484
635 .....30484, 30730, 30732
648.....30739
660.....33196
679.....31321, 31717
Proposed Rules:
17 .....30313, 30319, 30338, 30757, 30769, 31387, 32727, 32728, 32869
20.....32872
80.....32877
223.....30769
224.....30769
660.....32994

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 5128/P.L. 111–176
To designate the United States Department of the Interior Building in Washington, District of Columbia, as the ''Stewart Lee Udall Department of the Interior Building''. (June 8, 2010; 124 Stat. 1259)

H.R. 5139/P.L. 111–177
Extending Immunities to the Office of the High Representative in Bosnia and Herzegovina and the International Civilian Office in Kosovo Act of 2010 (June 8, 2010; 124 Stat. 1260)

Last List June 1, 2010

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