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Federal Register

7–6–10 Tuesday
Vol. 75 No. 128 July 6, 2010

Pages 38693–38914

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Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–09–0081; TM–09–04 FR]

RIN 0581–AC93

National Organic Program; Amendments to the National List of Allowed and Prohibited Substances (Crops)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Department of Agriculture's (USDA's) National List of Allowed and Prohibited Substances (National List) to enact two recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) on November 19, 2008, and May 6, 2009. This final rule revises the annotation for tetracycline to eliminate the parenthetical reference and add an expiration date, and adds sulfurous acid, along with a restrictive annotation, to the National List for use in organic crop production.

DATES: *Effective Date:* This final rule becomes effective July 7, 2010.

FOR FURTHER INFORMATION CONTACT: Shannon Nally, Acting Director, Standards Division, Telephone: (202) 720–3252; Fax (202) 205–7808.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Secretary established, within the National Organic Program (NOP) (7 CFR part 205), the National List regulations §§ 205.600 through 205.607. This National List identifies the synthetic substances that may be used and the nonsynthetic (natural) substances that may not be used in organic production. The National List also identifies synthetic, nonsynthetic nonagricultural and nonorganic agricultural substances that may be used in organic handling. The Organic Foods Production Act of 1990 (OFPA), as amended, (7 U.S.C. 6501 *et seq.*), and NOP regulations, in § 205.105, specifically prohibit the use of any synthetic substance in organic production and handling unless the synthetic substance is on the National List. Section 205.105 also requires that any nonorganic agricultural and any nonsynthetic nonagricultural substance used in organic handling must also be on the National List.

Under the authority of the OFPA, the National List can be amended by the Secretary based on proposed amendments developed by the NOSB. Since established, the National List has been amended eleven times: October 31, 2003, (68 FR 61987); November 3, 2003, (68 FR 62215); October 21, 2005, (70 FR 61217), June 7, 2006, (71 FR 32803); September 11, 2006, (71 FR 53299); June 27, 2007 (72 FR 35137); October 16, 2007, (72 FR 58469); December 10, 2007, (72 FR 70479); December 12, 2007, (72 FR 70479); September 18, 2008, (73 FR 59479); October 9, 2008 (73 FR 59479). Additionally, amendments to the National List, proposed on June 3, 2009 (74 FR 26591), are currently pending.

This final rule amends the National List to enact two recommendations submitted to the Secretary by the NOSB on November 19, 2008, and May 6, 2009.

II. Overview of Amendments

The following provides an overview of the amendments to § 205.601 of the National List regulations:

Section 205.601 Synthetic Substances Allowed for Use in Organic Crop Production

This final rule amends § 205.601(i)(11) of the National List regulations by eliminating the parenthetical reference and adding an expiration date to read as follows:

Tetracycline, for fire blight control only and for use only until October 21, 2012.

This final rule amends § 205.601 of the National List regulations by adding a new paragraph (j)(9) to read as follows:

Sulfurous acid (CAS # 7782–99–2) for on-farm generation of substance utilizing 99% purity elemental sulfur per § 205.601(j)(2).

III. Related Documents

Three notices have been published announcing the meetings of the NOSB and its planned deliberations on recommendations involving the use of tetracycline in organic crop production. The two notices were published in the **Federal Register** as follows: (1) 73 FR 18491, April 4, 2008 (to consider a recommendation to add oxytetracycline hydrochloride as plant disease control for all diseases on the crops registered by EPA), (2) 73 FR 54781, September 23, 2008 (to consider a recommendation to add oxytetracycline hydrochloride for fire blight control), and (3) 71 FR 14493, March 22, 2006 (to consider the sunset recommendation for the continued listing of oxytetracycline calcium complex for fire blight control). Tetracycline (oxytetracycline calcium complex for fire blight control) was added to the National List by final rule in the **Federal Register** on December 21, 2000 (65 FR 80548). The listing of tetracycline (oxytetracycline calcium complex for fire blight control) was due to sunset on October 21, 2007. In 2006, during the sunset review process, the NOSB reviewed the listing of tetracycline and streptomycin for fire blight control and recommended the renewal of tetracycline and streptomycin on April 20, 2006, by a vote of 7 in favor and 4 against. Tetracycline (oxytetracycline calcium complex), for fire blight control was renewed by final rule in the **Federal Register** on October 16, 2007 (72 FR 58469). A proposal to amend the annotation for tetracycline was published in the **Federal Register** on January 12, 2010 (74 FR 1555). One notice has been published announcing the meeting of the NOSB and its planned deliberations on a recommendation involving sulfurous acid in organic crop production. The notice was published in the **Federal Register** on March 20, 2009 (74 FR 11904). Sulfurous acid was first proposed for addition to the National List on January 12, 2010 (74 FR 1555).

IV. Statutory and Regulatory Authority

The OFPA authorizes the Secretary to make amendments to the National List

based on proposed amendments developed by the NOSB. Sections 6518(k)(2) and 6518(n) of the OFPA authorize the NOSB to develop proposed amendments to the National List for submission to the Secretary and establish a petition process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion on or deletion from the National List. The National List petition process is implemented under § 205.607 of the NOP regulations. The current petition process (72 FR 2167, January 18, 2007) can be accessed through the NOP Web site at *http://www.ams.usda.gov/nop.*

A. Executive Order 12866

This action has been determined not significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB).

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This final rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in § 2115(b) of the OFPA (7 U.S.C. 6514(b)). States are also preempted under §§ 2104 through 2108 of the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to § 2108(b)(2) of the OFPA (7 U.S.C. 6507(b)(2)), a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to § 2120(f) of the OFPA (7 U.S.C. 6519(f)), this final rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspections Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

Section 2121 of the OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Pursuant to the requirements set forth in the RFA, the Agricultural Marketing Service (AMS) performed an economic impact analysis on small entities in the final rule published in the **Federal Register** on December 21, 2000 (65 FR 80548). The AMS has also considered the economic impact of this action on small entities. The impact on entities affected by this final rule would not be significant. The effect of this final rule would be to allow the use of additional substances in agricultural production and handling. This action would modify the regulations published in the final rule and would provide small entities with more tools to use in day-to-day operations. The AMS concludes that the economic impact of this addition of allowed substances, if any, would be minimal and beneficial to small agricultural service firms. Accordingly, USDA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Small agricultural service firms, which include producers, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000 and small agricultural producers are defined as those having annual receipts of less than $750,000.

According to the USDA, Economic Research Service, U.S. sales of organic food and beverages grew from $3.6 billion in 1997 to $21.1 billion in 2008.[1] [2] Fresh produce remains the most popular organic category for retail sales, accounting for 37% of U.S. organic food sales and averaging 15% growth per year between 1997 and 2007. The percentage of U.S. farmland in fruit production that was certified organic in 2008 reached nearly 3%. The Organic Trade Association's "2010 Organic Industry Survey" reports that sales of organic fruits and vegetables reached $9.5 billion in 2009 and comprise 11.4% of all U.S. fruit and vegetable sales.

According to ERS data based on information from USDA-accredited certifying agents, the U.S. organic industry included approximately 14,540 certified organic crop and livestock operations in 2008, comprising almost 4.0 million acres. There were 2,790 organic handlers (brokers, distributors, wholesalers, and manufacturers) in 2005; in an ERS survey in 2005, just three (3) percent reported over $100 million in sales, and 48 percent reported $1 million or less in total gross sales (both organic and conventional products).[3] AMS believes that most of these entities would be considered

[1] Dimitri, C., and L. Oberholtzer. 2009. *Marketing U.S. Organic Foods: Recent Trends from Farms to Consumers,* Economic Information Bulletin No. 58, U.S. Department of Agriculture, Economic Research Service, *http://www.ers.usda.gov/Publications/EIB58.*

[2] According to the Organic Trade Association's *2010 Organic Industry Survey,* organic food sales reached $24.8 billion in 2009, *http://www.ota.com.*

[3] Greene, C., C. Dimitri, B. Lin, W. McBride, L. Oberholtzer and T. Smith. 2009. *Emerging issues in the U.S. Organic Industry,* Economic Information Bulletin No. 55, U.S. Department of Agriculture, Economic Research Service, *http://www.ers.usda.gov/Publications/EIB55.*

small entities under the criteria established by the SBA.

In addition, USDA has accredited 97 certifying agents who provide certification services to producers and handlers under the NOP. A complete list of names and addresses of accredited certifying agents may be found on the AMS NOP Web site, at *http://www.ams.usda.gov/nop.* AMS believes that most of these accredited certifying agents would be considered small entities under the criteria established by the SBA.

D. Paperwork Reduction Act

Under the OFPA, no additional collection or recordkeeping requirements are imposed on the public by this final rule. Accordingly, OMB clearance is not required by § 350(h) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.,* or OMB's implementing regulation at 5 CFR part 1320.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

E. Received Comments on Proposed Rule TM–09–04

AMS received 35 comments on proposed rule TM–09–04. Comments were received from organic crop producers, consumers, an accredited certifying agent, a foreign government, a trade association, state extension personnel, a state advisory board, consultants and a manufacturer of crop protection products. A number of the comments opposed any use of tetracycline or sulfurous acid in organic crop production, and asserted that such amendments weakened the NOP regulations and compromised the integrity of organic foods. Other comments conveyed support for either or both of the proposed amendments; however, a few of those supportive comments suggested modifications to the wording of the proposed amendments.

Twenty-two of the comments submitted addressed tetracycline. Nearly all of the comments which opposed the proposed amendment for the tetracycline listing were directed at any use of tetracycline in organic production; the comments did not specifically address the proposed action to remove the identification of oxytetracycline calcium complex from the annotation for tetracycline, thereby permitting an equivalent form, oxytetracycline hydrochloride to also be available for controlling fire blight. Most of the comments that were supportive of the proposed action to remove the specification on the form of tetracycline expressed opposition to the proposed expiration date of October 21, 2012.

Eighteen of the 35 comments addressed sulfurous acid. Comments in support of the proposed amendment to add sulfurous acid were primarily submitted by producers or persons who advise growers, such as, state extension specialists or consultants. They asserted that sulfurous acid is an important tool for organic growers enabling the use of water containing bicarbonates or having a high pH without degrading the soil as a result of that use. Comments that were opposed to the addition of sulfurous acid were primarily from consumers and did not offer specific reasons for their position. One commenter asserted that only large corporate farms would be able to afford the costs of specialized employees to manufacture the sulfurous acid.

Changes Requested But Not Made

Several comments expressed total opposition to the use of tetracycline and/or sulfurous acid in organic production asserting that these substances weaken the NOP regulations and undermine the integrity of organic foods; some of these comments opposed the use of pesticides in organic production altogether. A number of the comments in opposition did not include any evidence that would support the position stated.

Some of the reasons cited by comments in opposition to tetracycline included: The substance is harmful to human health and the environment; the diminished host resistance to fire blight; resistance to tetracycline; and alternative practices, such as, moving the crop to another location. One comment advised that the addition of tetracycline be postponed pending completion of EPA's registration review of tetracycline in 2014. We considered these comments, but have determined that the record supports the need for the continued availability of tetracycline for restricted use.

With regard to sulfurous acid, one comment threatened that organic products exported from the U.S. to the nation submitting the comment, could require certification as having been produced without use of sulfurous acid unless the need for sulfurous acid is clarified. The commenter also stated that elemental sulfur, already allowed for use in organic crop production, would be sufficient as an acidifying agent of the soil. The record indicates that the use of sulfurous acid to lower the pH of irrigation water is preferable, from an environmental standpoint, to spreading elemental sulfur on the soil to address alkaline conditions that develop due to the alkalinity of the irrigation water. The later practice is currently allowed per § 205.601(j)(2). According to the record, the application of sulfurous acid in comparison to elemental sulfur, is better controlled, in terms of the quantity applied, and more benign to soil organisms.

The comment which stated that the use of sulfurous acid would be affordable to only large corporate farms did not present evidence to support that assertion. Furthermore, that stance was refuted by other comments submitted on the proposed rule which stated that the addition of sulfurous acid would benefit many stakeholders and is more cost effective than citric acid that is currently used for pH adjustment.

Expiration Date for Tetracyline

A number of comments, particularly from tree fruit growers and associations in the Pacific Northwest, argued for the continued use of tetracycline after the expiration date of October 21, 2012. Those who argue for the continued use of tetracycline after October 21, 2012, stated that there was no other effective alternative treatment available for fire blight and that the expiration for the use of tetracycline for organic apple and pear production would force them to exit the organic production industry. One comment informed that newer reigning varieties, such as Gala, Fuji, Jonagold, Pink Lady and Honeycrisp apples and Bartlett, Bosc and Asian pear varieties are highly susceptible to the disease and tetracycline is the most effective tool for controlling moderate to severe fire blight particularly after bloom period. These commenters also conveyed that the Pacific Northwest, Washington, Oregon and Idaho, produce 66% and 86% of all U.S. apples and pears and 14,000 tons of organic pears in Washington and Oregon.

According to the NOSB discussion at the November 2008 meeting, tetracycline was originally exempted for use in 2000, with the anticipation that alternative treatments for fire blight would be developed, or that new cultivars not susceptible to fire blight would become available for organic production. October 21, 2012, was selected as the expiration because the exemption for oxytetracycline calcium chloride was due to sunset on that date. It was determined that the effect of amending the annotation to delete the specification for oxytetracycline calcium chloride would reset the sunset

date to 5 years from the date of this final rule. As conveyed in the discussion at the NOSB meeting, the exemption for tetracycline has remained divisive and the NOSB did not want to extend the listing for another 5 years. Peracetic acid and copper fungicides were specifically mentioned as alternative substances for fire blight control, although these were noted as only partially or marginally effective. This is consistent with a comment to the proposed rule which acknowledged that Bordeaux mix (copper sulfate and lime) and other copper formulations sprayed at green-tip stage provide some protection, but can cause fruit scarring and are phytotoxic to some cultivars. It was noted anecdotally at the NOSB meeting that there are apple and pear varieties with limited resistance to fire blight and that some producers are growing pears without the use of tetracycline for the organic market in the European Union, where the use of antibiotics for organic crop production is not permitted.

Based on all public comment and documentation received, the NOP believes that issues regarding the availability and viability of alternatives to tetracycline for fire blight control remain outstanding. At the same time, we note the NOSB's recommendation to only allow the continued use of tetracycline for fire blight control until October 21, 2012. Though some commenters have requested the removal of the expiration date from use of tetracycline, the NOP recommends that such interested parties petition the NOSB, using the petition process outlined in 72 FR 2167 (January 18, 2007), to have the expiration date removed from the authorized use of the substance.

Classification of Tetracycline as a Bactericide

One comment asserted that oxytetracycline calcium complex was naturally produced in the soil by bacterial fermentation and therefore it is not an antibiotic, but a bactericide. This comment argued for the approval of the use of "natural" oxytetracycline to be extended indefinitely for organic production so that the organic apple and pear industry would not be lost to fire blight. The comment did not provide evidence to affirm that the entire production of oxytetracycline to its commercial form would qualify as nonsynthetic (natural) in accordance with the NOP regulations. Tetracycline, in technical literature and common use, is universally identified as an antibiotic. While tetracycline is derived from bacteria and has bactericidal properties, we believe that "antibiotic" is the proper and accurate classification.

On-Site Rather Than On-Farm Generation of Sulfurous Acid

One of the comments expressed support for the addition of sulfurous acid, but requested that the annotation to refer to on-*site* generation instead of on-*farm,* because "farm" is not defined in the NOP regulation or in the Organic Food Production Act (OFPA), and use of that word could cause confusion in the organic industry. We recognize that there was considerable discussion over the precise wording to use in the annotation to capture the intent that it be produced at the location where the sulfurous acid would be used to prevent the use of sulfurous acid in forms that would be synthetically stabilized or preserved for shipping. Both terms, "farm" and "site", appear in the NOP regulations. However, we believe these are distinct, as farm refers specifically to land area in crop production, while "site" can refer to production or handling areas. We believe that "farm" is readily understood by the organic industry and is the more appropriate, specific term in this annotation.

F. Effective Date

This final rule reflects recommendations submitted to the Secretary by the NOSB. The revisions being made in the listing of one exempted substance and the substance being added to the National List were based on petitions from the industry and evaluated by the NOSB using criteria in the Act and the regulations. Because these revisions and the exemption have been subject to extensive discussion and comments and are considered vital to the most efficient organic crop production, NOP believes that producers should be able to use them in their operations as soon as possible. In crop production, the effective period for use of any practice or crop input may be limited by the progress of the growing season, and the utility of an exempted substance for organic production in any one year is dependent upon that substance being available when it is needed for use, as its use may be quite ineffective at any other time in the growing season. Accordingly, AMS finds that good cause exists under 5 U.S.C. 553 (d)(3) for not postponing the effective date of this rule until 30 days after publication in the **Federal Register.**

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

■ For the reasons set forth in the preamble, 7 CFR part 205 is amended as follows:

PART 205–NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for 7 CFR part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

■ 2. § 205.601 is amended by:
■ A. Revising paragraph (i)(11).
■ B. Adding new paragraph (j)(9).

The addition and revision read as follows:

§ 205.601 Synthetic substances allowed for use in organic crop production.

* * * * *

(i) * * *

(11) Tetracycline, for fire blight control only and for use only until October 21, 2012.

(j) * * *

(9) Sulfurous acid (CAS # 7782–99–2) for on-farm generation of substance utilizing 99% purity elemental sulfur per paragraph (j)(2) of this section.

* * * * *

Dated: June 29, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–16335 Filed 7–2–10; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Doc. No. AMS–FV–09–0090; FV10–916/917–1 FIR]

Nectarines and Peaches Grown in California; Changes in Handling Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that changed the handling requirements applicable to well matured fruit covered under the nectarine and peach marketing orders (orders). The interim rule updated the lists of commercially significant varieties

subject to size regulations under the orders. The interim rule was necessary to revise the regulations for the current marketing season, which began in April.

DATES: Effective July 7, 2010.

FOR FURTHER INFORMATION CONTACT: Jerry L. Simmons, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906; or E-mail: *Jerry.Simmons@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov.*

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide;* or by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order Nos. 916 and 917, both as amended (7 CFR parts 916 and 917), regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the "orders." The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

The shipping of "well-matured" nectarines and peaches grown in California is regulated by 7 CFR parts 916 and 917, respectively. Among other things, certain varieties of fruit are subject to variety-specific size restrictions. The lists of commercially-significant varieties so regulated are updated regularly as the volume of new varieties increases and as older varieties become obsolete. The sizes of varieties not subject to variety-specific regulations are regulated under generic regulations contained in the orders.

In an interim rule published in the **Federal Register** on April 5, 2010, and effective on April 6, 2010, (75 FR 17027, Doc. No AMS–FV–09–0090, FV10–916/917–1 IFR), §§ 916.356 and 917.459 were amended by adding ten nectarine varieties and eight peach varieties to the lists of commercially-significant varieties that are subject to variety-specific size regulations under the orders. Additionally, twelve nectarine varieties and eleven peach varieties were removed from the variety-specific size regulations.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Industry Information

There are approximately 101 California nectarine and peach handlers subject to regulation under the orders, and approximately 475 producers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those whose annual receipts are less than $7,000,000 and small agricultural producers are defined as those having annual receipts of less than $750,000. A majority of these handlers and producers may be classified as small entities.

For the 2009 season, the committees' staff estimated that the average handler price received was $11.50 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 608,696 containers to have annual receipts of $7,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2009 season, the committees' staff estimates that small handlers represent approximately 50 percent of all the handlers within the industry.

For the 2009 season, the committees' staff estimated the average producer price received was $6.50 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 115,385 containers of nectarines and peaches to have annual receipts of $750,000. Given data maintained by the committees' staff and the average producer price received during the 2009 season, the committees' staff estimates that more than 80 percent of the producers within the industry would be considered small producers.

Under authority provided in §§ 916.52 and 917.41 of the orders, grade, size, maturity, pack, and container marking requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis.

Sections 916.356 and 917.459 of the orders' rules and regulations establish minimum sizes for various varieties of nectarines and peaches. This rule continues in effect the action that adjusted the minimum fruit sizes authorized for certain varieties of each commodity for the 2010 season. Minimum size regulations are put in place to encourage producers to leave fruit on the trees for a longer period of time, increasing both maturity and fruit size. Increased fruit size increases the number of packed containers per acre and, coupled with heightened maturity levels, also provides greater consumer satisfaction, which in turn fosters repeat purchases that benefit producers and handlers alike.

Annual adjustments to minimum sizes of nectarines and peaches, such as these, are recommended by the committees based upon historical data, producer and handler information regarding sizes attained by different varieties, and trends in consumer purchases.

An alternative to such action would include not establishing minimum size regulations for these new varieties. Such an action, however, would be a significant departure from the committees' past practices and represent a significant change in the regulations as they currently exist. For these reasons, this alternative was not recommended.

The committees make recommendations regarding the revisions in handling requirements after considering all available information, including comments received by committee staff. At the meetings, the impact of and alternatives to these recommendations are deliberated. The committees consist of individual producers and handlers with many years of experience in the industry and are familiar with industry practices and trends. All committee meetings are open to the public and comments are widely solicited. In addition, minutes of all meetings are distributed to committee members and others who have requested them, and are also available on the committees' Web site, thereby increasing the availability of this critical information within the industry.

Regarding the impact of this action on the affected entities, both large and small entities are expected to benefit from the changes, and the costs of compliance are not expected to be significantly different between large and small entities.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large nectarine or peach handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as stated in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the committees' meetings were widely publicized throughout the nectarine and peach industry and all interested parties were invited to attend the meetings and participate in Committee deliberations. The committees have appointed a number of joint subcommittees to review certain issues and make recommendations to the committees. The Compliance Subcommittee met on November 3, 2009, and discussed this issue in detail. Their recommendations were presented at the meetings of both committees on December 10, 2009. Like all committee meetings, the November 3, 2009 and December 10, 2009, meetings were public meetings and all entities, both large and small, were able to express their views on this issue.

Comments on the interim rule were required to be received on or before June 4, 2010. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480acfc3e.*

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (75 FR 17027, April 5, 2010) will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

PARTS 916 AND 917—[AMENDED]

■ Accordingly, the interim rule that amended 7 CFR parts 916 and 917 and that was published at 75 FR 17027 on April 5, 2010, is adopted as a final rule, without change.

Dated: June 29, 2010.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–16342 Filed 7–2–10; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Doc. No. AMS–FV–08–0115; FV09–948–2 FIR]

Irish Potatoes Grown in Colorado; Relaxation of Handling Regulation for Area No. 3

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that relaxed the size requirement prescribed under the Colorado potato marketing order. The interim rule provided for the handling of all varieties of potatoes with a minimum diameter of ¾ inch, if the potatoes otherwise meet U.S. No. 1 grade. This change is intended to provide potato handlers with greater marketing flexibility, producers with increased returns, and consumers with a greater supply of potatoes.

DATES: Effective July 7, 2010.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: *Teresa.Hutchinson@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may obtain information on complying with this and other marketing order and agreement regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide;* or by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

The handling of Irish potatoes grown in Colorado is regulated by 7 CFR part 948. Prior to this change, the regulations for Colorado Area No. 3 potatoes provided that U.S. No. 2 grade potatoes, 1⅞ inches minimum diameter or 4 ounces minimum weight, and Size B potatoes (1½ to 2¼ inches in diameter), if U.S. No. 1 grade or better, may be handled.

The Committee believes that in recent years consumer demand has been increasing for smaller potatoes which often command premium prices. The market for these smaller potatoes was primarily supplied by potato production areas outside Colorado Area No. 3. Having the ability to handle smaller potatoes enables Colorado Area No. 3 potato handlers to market a larger portion of their crop while satisfying consumer demand for smaller potatoes. Therefore, this rule continues in effect the rule that relaxed the size requirement for all varieties of Colorado Area No. 3 potatoes by allowing the handling of potatoes with a minimum diameter of ¾ inch, if the potatoes otherwise meet U.S. No. 1 Grade.

In an interim rule published in the **Federal Register** on April 5, 2010, and effective on April 6, 2010, (75 FR 17034, Doc. No. AMS–FV–08–0115, FV09–948–2 IFR), § 948.387, paragraph (a) was revised.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA)(5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Based on Committee data, there are nine producers (eight of whom are also handlers) in the regulated area and nine handlers (eight of whom are also producers) subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $7,000,000.

Also based on Committee data, 825,617 hundredweight of Colorado Area No. 3 potatoes were produced for the fresh market during the 2007 season. Based on National Agricultural Statistics Service (NASS) data, the average producer price for Colorado summer potatoes for 2007 was $7.75 per hundredweight. The average annual producer revenue for the nine Colorado Area No. 3 potato producers is therefore calculated to be approximately $710,948. Using Committee data regarding each individual handler's total shipments during the 2007–2008 fiscal period and a Committee estimated average f.o.b. price for 2007 of $9.95 per hundredweight ($7.75 per hundredweight plus estimated packing and handling costs of $2.20 per hundredweight), all of the Colorado Area No. 3 potato handlers ship under $7,000,000 worth of potatoes. Thus, the majority of handlers and producers of Colorado Area No. 3 potatoes may be classified as small entities.

This rule continues in effect the action that provided for the handling of all varieties of potatoes with a minimum diameter of ¾ inch, if they otherwise meet the requirements of U.S. No. 1 grade. This change enables handlers to respond to consumer demand for small potatoes. Authority for regulating grade and size is provided in § 948.22 of the order. Section 948.387(a) of the order's administrative rules and regulations prescribes the actual size requirements.

This action is expected to have a beneficial impact on handlers and producers due to the increased volume of potatoes. There should be no extra cost to producers or handlers because current harvesting and handling methods can accommodate the sorting of these smaller potatoes. The size relaxation will result in a greater quantity of potatoes meeting the minimum requirements of the handling regulation. This should translate into an increased market for small potatoes and greater returns for handlers and producers.

By providing Colorado Area No. 3 handlers the flexibility to pack smaller potatoes, the Committee believes the industry will remain competitive in the marketplace. The small potato market is a premium market and this action is expected to further increase sales of Colorado potatoes to benefit the Colorado potato industry. The benefits of this rule are not expected to be disproportionately greater or lesser for small entities than for large entities.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meetings were widely publicized throughout the Colorado potato industry and all interested persons were invited to participate in Committee deliberations. Like all Committee meetings, the June 4 and November 17, 2009, meetings were public meetings and all entities, both large and small, were able to express views on this issue.

Comments on the interim rule were required to be received on or before June 4, 2010. No comments were received. Therefore, for reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480acfc3d.*

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (75 FR 17034, April 5, 2010) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 948—IRISH POTATOES GROWN IN COLORADO—[AMENDED]

■ Accordingly, the interim rule that amended 7 CFR part 948 and that was published at 75 FR 17034 on April 5, 2010, is adopted as a final rule, without change.

Dated: June 29, 2010.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–16337 Filed 7–2–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

[Docket No. FDA–2010–N–0002]

Implantation or Injectable Dosage Form New Animal Drugs; Propofol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Fort Dodge Animal Health, Division of Wyeth. The NADA provides for veterinary prescription use of propofol as an anesthetic in dogs and cats.

DATES: This rule is effective July 6, 2010.

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

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, Division of Wyeth, a wholly owned subsidiary of Pfizer, Inc., 235 East 42d St., New York, NY 10017 filed NADA 141–303 that provides for veterinary prescription use of PROPOCLEAR (propofol) in dogs and

cats for induction and maintenance of anesthesia and for induction of anesthesia followed by maintenance with an inhalant anesthetic. The application is approved as of May 21, 2010, and the regulations are amended in 21 CFR 522.2005 to reflect the approval.

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

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

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

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

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

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

■ 2. In § 522.2005, revise paragraphs (b) and (c) to read as follows:

§ 522.2005 Propofol.

* * * * *

(b) *Sponsors.* See sponsor numbers in § 510.600(c) of this chapter.

(1) No. 059130 for use as in paragraphs (c)(1), (c)(2)(i), and (c)(3) of this section.

(2) No. 000074 for use as in paragraphs (c)(1), (c)(2)(i), and (c)(3) of this section.

(3) No. 000856 for use as in paragraphs (c)(1), (c)(2)(ii), and (c)(3) of this section.

(c) *Conditions of use in dogs and cats*—(1) *Amount.* Administer by intravenous injection according to label directions. The use of preanesthetic medication reduces propofol dose requirements.

(2) *Indications for use*—(i) As a single injection to provide general anesthesia for short procedures; for induction and maintenance of general anesthesia using incremental doses to effect; for induction of general anesthesia where maintenance is provided by inhalant anesthetics.

(ii) For the induction and maintenance of anesthesia and for induction of anesthesia followed by maintenance with an inhalant anesthetic.

* * * * *

Dated: June 29, 2010.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2010–16301 Filed 7–2–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 53, 54, 301 and 602

[TD 9492]

RIN 1545–BG18

Excise Taxes on Prohibited Tax Shelter Transactions and Related Disclosure Requirements; Disclosure Requirements With Respect to Prohibited Tax Shelter Transactions; Requirement of Return and Time for Filing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide guidance under section 4965 of the Internal Revenue Code (Code), relating to entity-level and manager-level excise taxes with respect to prohibited tax shelter transactions to which tax-exempt entities are parties; sections 6033(a)(2) and 6011(g), relating to certain disclosure obligations with respect to such transactions; and sections 6011 and 6071, relating to the requirement of a return and time for filing with respect to section 4965 taxes. This action is necessary to implement section 516 of the Tax Increase Prevention Reconciliation Act of 2005. These final regulations affect a broad array of tax-exempt entities, including charities, state and local government entities, Indian tribal governments and employee benefit plans, as well as entity managers of these entities.

DATES: *Effective Date:* These regulations are effective July 6, 2010.

Applicability Date: For dates of applicability, see §§ 1.6033–5(f), 53.4965–9(b) and (c), 53.6071–1(h), 54.6011–1(d), 301.6011(g)–1(j) and 301.6033–5(b).

FOR FURTHER INFORMATION CONTACT: For questions concerning these regulations, contact Benjamin Akins at (202) 622–1124 or Michael Blumenfeld at (202) 622–6070. For questions specifically relating to qualified pension plans, individual retirement accounts, and similar tax-favored savings arrangements, contact Cathy Pastor at (202) 622–6090 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2079. The collection of information in these final regulations is in § 301.6011(g)–1. The collection of information in § 301.6011(g)–1 flows from section 6011(g), which requires a taxable party to a prohibited tax shelter transaction to disclose to any tax-exempt entity that is a party to the transaction that the transaction is a prohibited tax shelter transaction. The likely recordkeepers are taxable entities or individuals that participate in prohibited tax shelter transactions. The estimated number of recordkeepers is between 1,250 and 6,500. The information that is required to be collected for purposes of § 301.6011(g)–1 is a subset of information that is required to be collected in order to complete and file Form 8886, "Reportable Transaction Disclosure Statement." The estimated paperwork burden for taxpayers filling out Form 8886 is approved under OMB number 1545–1800.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control

number assigned by the Office of Management and Budget.

Books and records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, returns and return information are confidential, as required by section 6103.

Background

The Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109–222 (120 Stat. 345) (TIPRA), enacted on May 17, 2006, defines certain transactions as prohibited tax shelter transactions and imposes excise taxes and disclosure requirements with respect to prohibited tax shelter transactions to which a tax-exempt entity is a party. Section 516 of TIPRA added new section 4965 and amended sections 6033(a)(2) and 6011(g) of the Code.

On July 6, 2007, the IRS and the Treasury Department published final and temporary regulations under sections 6011 and 6071 (TD 9334) and temporary regulations under section 6033 (TD 9335) in the **Federal Register** (72 FR 36869; 72 FR 36871). Also on July 6, 2007, the IRS and the Treasury Department issued a notice of proposed rulemaking cross-referencing those temporary regulations (REG–142039–06; REG–139268–06) in the **Federal Register** (72 FR 36927). This notice of proposed rulemaking also included proposed regulations under sections 4965 and 6011(g). On August 16, 2007, and August 31, 2007, the IRS and the Treasury Department issued corrections to TD 9334 (72 FR 45894; 72 FR 50211). On August 16, 2007, the IRS and the Treasury Department issued corrections to TD 9335 (72 FR 45890).

The IRS did not receive any comments or requests for a public hearing. Accordingly, the proposed regulations are adopted as final by this Treasury decision with certain revisions described below.

Explanation of Provisions

Definition of Party to a Prohibited Tax Shelter Transaction

The proposed regulations set forth a three-part definition of the term "party to a prohibited tax shelter transaction." Under the proposed regulations, a tax-exempt entity is a party to a prohibited tax shelter transaction if it: (1) Facilitates a prohibited tax shelter transaction by reason of its exempt, tax indifferent or tax-favored status; (2) enters into a listed transaction and reflects on its tax return (whether an original or an amended return) a reduction or elimination of its liability for applicable Federal employment, excise or unrelated business income taxes that is derived directly or indirectly from tax consequences or tax strategy described in the published guidance that lists the transaction; or (3) is identified in published guidance, by type, class or role, as a party to a prohibited tax shelter transaction. The final regulations eliminate the second part of this definition; therefore, a tax-exempt entity that enters into a transaction to reduce or eliminate its own tax liability generally will not be considered a party to a prohibited tax shelter transaction under these regulations. However, under the third part of the definition in the proposed regulations, which is retained in the final regulations, the IRS and the Treasury Department may identify in published guidance specific transactions or circumstances in which a tax-exempt entity that enters into a transaction to reduce or eliminate its own tax liability will be treated as a party to a prohibited tax shelter transaction for purposes of section 4965.

A variety of circumstances may arise in which an entity generally exempt from tax may nevertheless be subject to some form of Federal taxation. When such circumstances arise, some tax-exempt entities may seek ways to reduce or eliminate the Federal tax as would a similarly situated entity that is not exempt from tax. In general, exempt status does not provide additional opportunities or incentives for a tax-exempt entity to engage in a listed transaction to reduce or eliminate taxes imposed upon it. Further, a tax-exempt entity that engages in such transactions is subject to the same disclosure rules and increased penalties as other similarly situated taxpayers (for example, sections 6011, 6707A, 6662, 6662A and 6663).

Accordingly, the IRS and the Treasury Department believe that, as a general rule, a tax-exempt entity that engages in a listed transaction to reduce or eliminate its own tax liability should not be considered a party to a prohibited tax shelter transaction for purposes of section 4965. The IRS and the Treasury Department have retained the ability to provide exceptions to this general rule through published guidance that identifies, by type, class or role, a tax-exempt entity as a party to a prohibited tax shelter transaction, including a tax-exempt entity that enters into a particular transaction to reduce or eliminate its own tax liability.

Because the IRS and the Treasury Department have eliminated the second part of the definition of the term "party," certain other conforming changes were made to the regulations.

Timing for Disclosure by Taxable Party to Tax-Exempt Party

The proposed regulations required a taxable party to a prohibited tax shelter transaction to disclose by statement to each tax-exempt entity that the taxable party knows or has reason to know is a party to such transaction that the transaction is a prohibited tax shelter transaction. The proposed regulations required the taxable party to make the disclosure within 60 days after the last to occur of (1) the date the person becomes a taxable party to the transaction, or (2) the date the taxable party knows or has reason to know that the tax-exempt entity is a party to the transaction. The proposed regulations provided an exception if the person does not know or have reason to know that the tax-exempt entity is a party to the transaction on or before the first date on which the transaction is required to be disclosed by the person under section 6011.

These final regulations modify the rule governing the timing of this disclosure. The taxable party now must make the disclosure within 60 days after the last to occur of (1) the date the person becomes a taxable party to the transaction, (2) the date the taxable party knows or has reason to know that the tax-exempt entity is a party to the transaction, or (3) July 6, 2010. These final regulations retain the exception for persons who do not know or have reason to know that a tax-exempt entity is a party to the transaction on or before the first date on which the transaction is required to be disclosed by the person under section 6011.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in § 301.6011(g)–1 will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601) (RFA) is not required. The effect of these regulations on small entities flows directly from the statutes these regulations implement. Section 6011(g), as amended by TIPRA, requires any

taxable party to a prohibited tax shelter transaction to notify any tax-exempt entity that is a party to such transaction that the transaction is a prohibited tax shelter transaction. In implementing this statute, § 301.6011(g)–1 of the regulations requires every taxable party to a prohibited tax shelter transaction (or a single taxable party acting by designation on behalf of other taxable parties) to provide to every tax-exempt entity that the taxable party knows or has reason to know is a party to the transaction a single statement disclosing that the transaction is a prohibited tax shelter transaction within 60 days after the last to occur of: (1) The date the taxable person becomes a taxable party to the transaction; (2) the date the taxable party knows or has reason to know that the tax-exempt entity is a party to the transaction; or (3) July 6, 2010. These final regulations retain the exception for persons who do not know or have reason to know that a tax-exempt entity is a party to the transaction on or before the first date on which the transaction is required to be disclosed by the person under section 6011. Moreover, it is unlikely that a significant number of small businesses will engage in transactions that are subject to disclosure under § 301.6011(g).

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Benjamin Akins and Cathy Pastor, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 53, 54, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.6033–5 is added to read as follows:

§ 1.6033–5 Disclosure by tax-exempt entities that are parties to certain reportable transactions.

(a) *In general.* Every tax-exempt entity (as defined in section 4965(c)) shall file with the IRS on Form 8886–T, "Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction" (or a successor form), in accordance with this section and the instructions to the form, a disclosure of—

(1) Such entity's being a party (as defined in § 53.4965–4 of this chapter) to a prohibited tax shelter transaction (as defined in section 4965(e)); and

(2) The identity of any other party (whether taxable or tax-exempt) to such transaction that is known to the tax-exempt entity.

(b) *Frequency of disclosure.* A single disclosure is required for each prohibited tax shelter transaction.

(c) *By whom disclosure is made*—(1) *Tax-exempt entities referred to in section 4965(c)(1), (2) or (3).* In the case of tax-exempt entities referred to in section 4965(c)(1), (2) or (3), the disclosure required by this section must be made by the entity.

(2) *Tax-exempt entities referred to in section 4965(c)(4), (5), (6) or (7).* In the case of tax-exempt entities referred to in section 4965(c)(4), (5), (6) or (7), including a fully self-directed qualified plan, IRA, or other savings arrangement, the disclosure required by this section must be made by the entity manager (as defined in section 4965(d)(2)) of the entity.

(d) *Time and place for filing*—(1) *In general.* The disclosure required by this section shall be filed on or before May 15 of the calendar year following the close of the calendar year during which the tax-exempt entity entered into the prohibited tax shelter transaction.

(2) *Subsequently listed transactions.* In the case of subsequently listed transactions (as defined in section 4965(e)(2)), the disclosure required by this section shall be filed on or before May 15 of the calendar year following the close of the calendar year during which the transaction was identified by the Secretary as a listed transaction.

(3) *Transition rule.* If a tax-exempt entity entered into a prohibited tax shelter transaction after May 17, 2006, and before January 1, 2007, the disclosure required by this section shall be filed on or before November 2, 2007.

(4) *No disclosure.* Disclosure is not required with respect to any prohibited tax shelter transaction entered into by a tax-exempt entity on or before May 17, 2006.

(e) *Penalty for failure to provide disclosure statement.* See section 6652(c)(3) for the penalty applicable to the failure to disclose a prohibited tax shelter transaction in accordance with this section.

(f) *Effective date/applicability date.* This section applies with respect to transactions entered into by a tax-exempt entity after May 17, 2006.

§ 1.6033–5T [Removed].

■ Par. 3. Section 1.6033–5T is removed.

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

■ **Par. 4.** The authority citation for part 53 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 5.** Sections 53.4965–1 through 53.4965–9 are added to subpart K to read as follows:

§ 53.4965–1 Overview.

(a) *Entity-level excise tax.* Section 4965 imposes two excise taxes with respect to certain tax shelter transactions to which tax-exempt entities are parties. Section 4965(a)(1) imposes an entity-level excise tax on certain tax-exempt entities that are parties to "prohibited tax shelter transactions," as defined in section 4965(e). *See* § 53.4965–2 for the discussion of covered tax-exempt entities. *See* § 53.4965–3 for the definition of prohibited tax shelter transactions. *See* § 53.4965–4 for the definition of tax-exempt party to a prohibited tax shelter transaction. The entity-level excise tax under section 4965(a)(1) is imposed on a specified percentage of the entity's net income or proceeds that are attributable to the transaction for the relevant tax year (or a period within that tax year). The rate of tax depends on whether the entity knew or had reason to know that the transaction was a prohibited tax shelter transaction at the time the entity became

a party to the transaction. *See* § 53.4965–7(a) for the discussion of the entity-level excise tax under section 4965(a)(1). *See* § 53.4965–6 for the discussion of "knowing or having reason to know." *See* § 53.4965–8 for the definition of net income and proceeds and the standard for allocating net income and proceeds that are attributable to a prohibited tax shelter transaction to various periods.

(b) *Manager-level excise tax.* Section 4965(a)(2) imposes a manager-level excise tax on "entity managers," as defined in section 4965(d), of tax-exempt entities who approve the entity as a party (or otherwise cause the entity to be a party) to a prohibited tax shelter transaction and know or have reason to know, at the time the tax-exempt entity enters into the transaction, that the transaction is a prohibited tax shelter transaction. *See* § 53.4965–5 for the definition of entity manager and the meaning of "approving or otherwise causing," and § 53.4965–6 for the discussion of "knowing or having reason to know." *See* § 53.4965–7(b) for the discussion of the manager-level excise tax under section 4965(a)(2).

(c) *Effective/applicability dates. See* § 53.4965–9 for the discussion of the relevant effective and applicability dates.

§ 53.4965–2 Covered tax-exempt entities.

(a) *In general.* Under section 4965(c), the term "tax-exempt entity" refers to entities that are described in sections 501(c), 501(d), or 170(c) (other than the United States), Indian tribal governments (within the meaning of section 7701(a)(40)), and tax-qualified pension plans, individual retirement arrangements and similar tax-favored savings arrangements that are described in sections 4979(e)(1), (2) or (3), 529, 457(b), or 4973(a). The tax-exempt entities referred to in section 4965(c) are divided into two broad categories, non-plan entities and plan entities.

(b) *Non-plan entities.* Non-plan entities are—

(1) Entities described in section 501(c);

(2) Religious or apostolic associations or corporations described in section 501(d);

(3) Entities described in section 170(c), including states, possessions of the United States, the District of Columbia, political subdivisions of states and political subdivisions of possessions of the United States (but not including the United States); and

(4) Indian tribal governments within the meaning of section 7701(a)(40).

(c) *Plan entities.* Plan entities are—

(1) Entities described in section 4979(e)(1) (qualified plans under section 401(a), including qualified cash or deferred arrangements under section 401(k) (including a section 401(k) plan that allows designated Roth contributions));

(2) Entities described in section 4979(e)(2) (annuity plans described in section 403(a));

(3) Entities described in section 4979(e)(3) (annuity contracts described in section 403(b), including a section 403(b) arrangement that allows Roth contributions);

(4) Qualified tuition programs described in section 529;

(5) Eligible deferred compensation plans under section 457(b) that are maintained by a governmental employer as defined in section 457(e)(1)(A);

(6) Arrangements described in section 4973(a) which include—

(i) Individual retirement plans defined in sections 408(a) and (b), including—

(A) Simplified employee pensions (SEPs) under section 408(k);

(B) Simple individual retirement accounts (SIMPLEs) under section 408(p);

(C) Deemed individual retirement accounts or annuities (IRAs) qualified under a qualified plan (deemed IRAs) under section 408(q)); and

(D) Roth IRAs under section 408A.

(ii) Arrangements described in section 220(d) (Archer Medical Savings Accounts (MSAs));

(iii) Arrangements described in section 403(b)(7) (custodial accounts treated as annuity contracts);

(iv) Arrangements described in section 530 (Coverdell education savings accounts); and

(v) Arrangements described in section 223(d) (health savings accounts (HSAs)).

(d) *Effective/applicability dates.* See § 53.4965–9 for the discussion of the relevant effective and applicability dates.

§ 53.4965–3 Prohibited tax shelter transactions.

(a) *In general.* Under section 4965(e), the term *prohibited tax shelter transaction* means—

(1) Listed transactions within the meaning of section 6707A(c)(2), including subsequently listed transactions described in paragraph (b) of this section; and

(2) Prohibited reportable transactions, which consist of the following reportable transactions within the meaning of section 6707A(c)(1)—

(i) Confidential transactions, as described in § 1.6011–4(b)(3) of this chapter; or

(ii) Transactions with contractual protection, as described in § 1.6011–4(b)(4) of this chapter.

(b) *Subsequently listed transactions.* A subsequently listed transaction for purposes of section 4965 is a transaction that is identified by the Secretary as a listed transaction after the tax-exempt entity has entered into the transaction and that was not a prohibited reportable transaction (within the meaning of section 4965(e)(1)(C) and paragraph (a)(2) of this section) at the time the entity entered into the transaction.

(c) *Cross-reference.* The determination of whether a transaction is a listed transaction or a prohibited reportable transaction for section 4965 purposes shall be made under the law applicable to section 6707A(c)(1) and (c)(2).

(d) *Effective/applicability dates.* See § 53.4965–9 for the discussion of the relevant effective and applicability dates.

§ 53.4965–4 Definition of tax-exempt party to a prohibited tax shelter transaction.

(a) *In general.* For purposes of sections 4965 and 6033(a)(2), a tax-exempt entity is a party to a prohibited tax shelter transaction if the entity—

(1) Facilitates a prohibited tax shelter transaction by reason of its tax-exempt, tax indifferent or tax-favored status; or

(2) Is identified in published guidance, by type, class or role, as a party to a prohibited tax shelter transaction.

(b) Published guidance may identify which tax-exempt entities, by type, class or role, will not be treated as a party to a prohibited tax shelter transaction.

(c) *Example.* The following example illustrates the principle of paragraph (a)(1) of this section:

Example. A tax-exempt entity enters into a transaction (Transaction A) with an S corporation. Transaction A is the same as or substantially similar to the transaction identified by the Secretary as a listed transaction in Notice 2004–30 (2004–1 CB 828). The tax-exempt entity's role in Transaction A is similar to the role of the tax-exempt party, as described in Notice 2004–30. Under the terms of the transaction, as described in Notice 2004–30, the tax-exempt entity receives the S corporation stock and purports to aid the S corporation and its shareholders in avoiding taxable income. The tax-exempt entity facilitates Transaction A by reason of its tax-exempt, tax indifferent or tax-favored status. Accordingly, the tax-exempt entity is a party to Transaction A for purposes of sections 4965 and 6033(a)(2). *See* § 601.601(d)(2)(ii)(*b*) of this chapter.

(d) *Effective/applicability dates.* See § 53.4965–9 for the discussion of the relevant effective and applicability dates.

§ 53.4965–5 Entity managers and related definitions.

(a) *Entity manager of a non-plan entity*—(1) *In general.* Under section 4965(d)(1), an *entity manager of a non-plan entity* is—

(i) A person with the authority or responsibility similar to that exercised by an officer, director, or trustee of an organization (that is, the non-plan entity); and

(ii) With respect to any act, the person who has final authority or responsibility (either individually or as a member of a collective body) with respect to such act.

(2) *Definition of officer.* For purposes of paragraph (a)(1)(i) of this section, a person is considered to be an officer of the non-plan entity (or to have similar authority or responsibility) if the person—

(i) Is specifically designated as such under the certificate of incorporation, by-laws, or other constitutive documents of the non-plan entity; or

(ii) Regularly exercises general authority to make administrative or policy decisions on behalf of the non-plan entity.

(3) *Exception for acts requiring approval by a superior.* With respect to any act, any person is not described in paragraph (a)(2)(ii) of this section if the person has authority merely to recommend particular administrative or policy decisions, but not to implement them without approval of a superior.

(4) *Delegation of authority.* A person is an entity manager of a non-plan entity within the meaning of paragraph (a)(1)(ii) of this section if, with respect to any prohibited tax shelter transaction, such person has been delegated final authority or responsibility with respect to such transaction (including by transaction type or dollar amount) by a person described in paragraph (a)(1)(i) of this section or the governing board of the entity. For example, an investment manager is an entity manager with respect to a prohibited tax shelter transaction if the non-plan entity's governing body delegated to the investment manager the final authority to make certain investment decisions and, in the exercise of that authority, the manager committed the entity to the transaction. To be considered an entity manager of a non-plan entity within the meaning of paragraph (a)(1)(ii) of this section, a person need not be an employee of the entity. A person is not described in paragraph (a)(1)(ii) of this section if the person is merely implementing a decision made by a superior.

(b) *Entity manager of a plan entity*—(1) *In general.* Under section 4965(d)(2), an *entity manager of a plan entity* is the person who approves or otherwise causes the entity to be a party to the prohibited tax shelter transaction.

(2) *Special rule for plan participants and beneficiaries who have investment elections*—(i) *Fully self-directed plans or arrangements.* In the case of a fully self-directed qualified plan, IRA, or other savings arrangement (including a case where a plan participant or beneficiary is given a list of prohibited investments, such as collectibles), if the plan participant or beneficiary selected a certain investment and, therefore, approved the plan entity to become a party to a prohibited tax shelter transaction, the plan participant or the beneficiary is an entity manager.

(ii) *Plans or arrangements with limited investment options.* In the case of a qualified plan, IRA, or other savings arrangement where a plan participant or beneficiary is offered a limited number of investment options from which to choose, the person responsible for determining the pre-selected investment options is an entity manager and the plan participant or the beneficiary generally is not an entity manager.

(c) *Meaning of "approves or otherwise causes"*—(1) *In general.* A person is treated as approving or otherwise causing a tax-exempt entity to become a party to a prohibited tax shelter transaction if the person has the authority to commit the entity to the transaction, either individually or as a member of a collective body, and the person exercises that authority.

(2) *Collective bodies.* If a person shares the authority described in paragraph (c)(1) of this section as a member of a collective body (for example, board of trustees or committee), the person will be considered to have exercised such authority if the person voted in favor of the entity becoming a party to the transaction. However, a member of the collective body will not be treated as having exercised the authority described in paragraph (c)(1) of this section if he or she voted against a resolution that constituted approval or an act that caused the tax-exempt entity to be a party to a prohibited tax shelter transaction, abstained from voting for such approval, or otherwise failed to vote in favor of such approval.

(3) *Exceptions*—(i) *Successor in interest.* If a tax-exempt entity that is a party to a prohibited tax shelter transaction is dissolved, liquidated, or merged into a successor entity, an entity manager of the successor entity will not, solely by reason of the reorganization, be treated as approving or otherwise causing the successor entity to become a party to a prohibited tax shelter transaction, provided that the reorganization of the tax-exempt entity does not result in a material change to the terms of the transaction. For purposes of this paragraph (c)(3)(i), a material change includes an extension or renewal of the agreement (other than an extension or renewal that results from another party to the transaction unilaterally exercising an option granted by the agreement) or a more than incidental change to any payment under the agreement. A change for the sole purpose of substituting the successor entity for the original tax-exempt party is not a material change.

(ii) *Exercise or nonexercise of options.* Nonexercise of an option pursuant to a transaction involving the tax-exempt entity generally will not constitute an act of approving or causing the entity to be a party to the transaction. If, pursuant to a transaction involving the tax-exempt entity, the entity manager exercises an option (such as a repurchase option), the entity manager will not be subject to the entity manager-level tax if the exercise of the option does not result in the tax-exempt entity becoming a party to a second transaction that is a prohibited tax shelter transaction.

(4) *Example.* The following example illustrates the principles of paragraph (c)(3)(ii) of this section:

Example. In a sale-in, lease-out (SILO) transaction described in Notice 2005–13 (2005–9 IRB 630), X, which is a non-plan entity, has purported to sell property to Y, a taxable entity and lease it back for a term of years. At the end of the basic lease term, X has the option of "repurchasing" the property from Y for a predetermined purchase price, with funds that have been set aside at the inception of the transaction for that purpose. The entity manager, by deciding to exercise or not exercise the "repurchase" option is not approving or otherwise causing the non-plan entity to become a party to a second prohibited tax shelter transaction. See § 601.601(d)(2)(ii)(*b*) of this chapter.

(5) *Coordination with the reason-to-know standard.* The determination that an entity manager approved or caused a tax-exempt entity to be a party to a prohibited tax shelter transaction, by itself, does not establish liability for the section 4965(a)(2) tax. For rules on determining whether an entity manager knew or had reason to know that the transaction was a prohibited tax shelter transaction, *see* § 53.4965–6(b).

(d) *Effective/applicability dates. See* § 53.4965–9 for the discussion of the relevant effective and applicability dates.

§ 53.4965–6 Meaning of "knows or has reason to know".

(a) *Attribution to the entity.* An entity will be treated as knowing or having reason to know for section 4965 purposes if one or more of its entity managers knew or had reason to know that the transaction was a prohibited tax shelter transaction at the time the entity manager(s) approved the entity as (or otherwise caused the entity to be) a party to the transaction. The entity shall be attributed the knowledge or reason to know of any entity manager described in § 53.4965–5(a)(1)(i) even if that entity manager does not approve the entity as (or otherwise cause the entity to be) a party to the transaction.

(b) *Determining whether an entity manager knew or had reason to know*—(1) *In general.* Whether an entity manager knew or had reason to know that a transaction is a prohibited tax shelter transaction is based on all facts and circumstances. In order for an entity manager to know or have reason to know that a transaction is a prohibited tax shelter transaction, the entity manager must have knowledge of sufficient facts that would lead a reasonable person to conclude that the transaction is a prohibited tax shelter transaction. An entity manager will be considered to have "reason to know" if a reasonable person in the entity manager's circumstances would conclude that the transaction was a prohibited tax shelter transaction based on all the facts reasonably available to the manager at the time of approving the entity as (or otherwise causing the entity to be) a party to the transaction. Factors that will be considered in determining whether a reasonable person in the entity manager's circumstances would conclude that the transaction was a prohibited tax shelter transaction include, but are not limited to—

(i) The presence of tax shelter indicia (see paragraph (b)(2) of this section);

(ii) Whether the entity manager received a disclosure statement prior to the consummation of the transaction indicating that the transaction may be a prohibited tax shelter transaction (see paragraph (b)(3) of this section); and

(iii) Whether the entity manager made appropriate inquiries into the transaction (see paragraph (b)(4) of this section).

(2) *Tax-shelter indicia.* The presence of indicia that a transaction is a tax shelter will be treated as an indication that the entity manager knew or had reason to know that the transaction was a prohibited tax shelter transaction. Tax shelter indicia include but are not limited to—

(i) The transaction is extraordinary for the entity considering prior investment activity;

(ii) The transaction promises an economic return for the organization that is exceptional considering the amount invested by, the participation of, or the absence of risk to the organization; or

(iii) The transaction is of significant size relative to the receipts of the entity.

(3) *Effect of disclosure statements.* Receipt by an entity manager of a statement, including a statement described in section 6011(g), in advance of a transaction that the transaction may be a prohibited tax shelter transaction (or a statement that a partnership, hedge fund or other investment conduit may engage in a prohibited tax shelter transaction in the future) is a factor relevant in the determination of whether the entity manager knew or had reason to know that the transaction is a prohibited transaction. However, an entity manager will not be treated as knowing or having reason to know that the transaction was a prohibited tax shelter transaction solely because the entity manager receives such a disclosure.

(4) *Appropriate inquiries.* What inquiries are appropriate will be determined from the facts and circumstances of each case. For example, if one or more tax shelter indicia are present or if an entity manager receives a disclosure statement described in paragraph (b)(3) of this section, an entity manager has a responsibility to inquire further whether the transaction is a prohibited tax shelter transaction.

(c) *Reliance on professional advice*—(1) *In general.* An entity manager is not required to obtain the advice of a professional tax advisor to establish that the entity manager made appropriate inquiries. Moreover, not seeking professional advice, by itself, shall not give rise to an inference that the entity manager had reason to know that a transaction is a prohibited tax shelter transaction.

(2) *Reliance on written opinion of professional tax advisor.* An entity manager may establish that he or she did not have a reason to know that a transaction was a prohibited tax shelter transaction at the time the tax-exempt entity entered into the transaction if the entity manager reasonably, and in good faith, relied on the written opinion of a professional tax advisor. Reliance on the written opinion of a professional tax advisor establishes that the entity manager did not have reason to know if, taking into account all the facts and circumstances, the reliance was reasonable and the entity manager acted in good faith. For example, the entity manager's education, sophistication, and business experience will be relevant in determining whether the reliance was reasonable and made in good faith. In no event will an entity manager be considered to have reasonably relied in good faith on an opinion unless the requirements of this paragraph (c)(2) are satisfied. The fact that these requirements are satisfied, however, will not necessarily establish that the entity manager reasonably relied on the opinion in good faith. For example, reliance may not be reasonable or in good faith if the entity manager knew, or reasonably should have known, that the advisor lacked knowledge in the relevant aspects of Federal tax law.

(i) *All facts and circumstances considered.* The advice must be based upon all pertinent facts and circumstances and the law as it relates to those facts and circumstances. The requirements of this paragraph (c)(2) are not satisfied if the entity manager fails to disclose a fact that it knows, or reasonably should know, is relevant to determining whether the transaction is a prohibited tax shelter transaction.

(ii) *No unreasonable assumptions.* The advice must not be based on unreasonable factual or legal assumptions (including assumptions as to future events) and must not unreasonably rely on the representations, statements, findings, or agreements of the entity manager or any other person (including another party to the transaction or a material advisor within the meaning of sections 6111 and 6112).

(iii) "*More likely than not*" *opinion.* The written opinion of the professional tax advisor must apply the appropriate law to the facts and, based on this analysis, must conclude that the transaction was not a prohibited tax shelter transaction at a "more likely than not" level of certainty at the time the entity manager approved the entity (or otherwise caused the entity) to be a party to the transaction.

(3) *Special rule.* An entity manager's reliance on a written opinion of a professional tax advisor will not be considered reasonable if the advisor is, or is related to a person who is, a material advisor with respect to the transaction within the meaning of sections 6111 and 6112.

(d) *Subsequently listed transactions.* An entity manager will not be treated as knowing or having reason to know that a transaction (other than a prohibited reportable transaction as defined in section 4965(e)(1)(C) and § 53.4965–3(a)(2)) is a prohibited tax shelter

transaction if the entity enters into the transaction before the date on which the transaction is identified by the Secretary as a listed transaction.

(e) *Effective/applicability dates.* See § 53.4965–9 for the discussion of the relevant effective and applicability dates.

§ 53.4965–7 Taxes on prohibited tax shelter transactions.

(a) *Entity-level taxes*—(1) *In general.* Entity-level excise taxes apply to non-plan entities (as defined in § 53.4965–2(b)) that are parties to prohibited tax shelter transactions.

(i) *Prohibited tax shelter transactions other than subsequently listed transactions*—(A) *Amount of tax if the entity did not know and did not have reason to know.* If the tax-exempt entity did not know and did not have reason to know that the transaction was a prohibited tax shelter transaction at the time the entity entered into the transaction, the tax is the highest rate of tax under section 11 multiplied by the greater of—

(*1*) The entity's net income with respect to the prohibited tax shelter transaction (after taking into account any tax imposed by Subtitle D, other than by this section, with respect to such transaction) for the taxable year; or

(*2*) 75 percent of the proceeds received by the entity for the taxable year that are attributable to such transaction.

(B) *Amount of tax if the entity knew or had reason to know.* If the tax-exempt entity knew or had reason to know that the transaction was a prohibited tax shelter transaction at the time the entity entered into the transaction, the tax is the greater of—

(*1*) 100 percent of the entity's net income with respect to the transaction (after taking into account any tax imposed by Subtitle D, other than by this section, with respect to such transaction) for the taxable year; or

(*2*) 75 percent of the proceeds received by the entity for the taxable year that are attributable to such transaction.

(ii) *Subsequently listed transactions*—(A) *In general.* In the case of a subsequently listed transaction (as defined in section 4965(e)(2) and § 53.4965–3(b)), the tax-exempt entity's income and proceeds attributable to the transaction are allocated between the period before the transaction became listed and the period beginning on the date the transaction became listed. See § 53.4965–8 for the standard for allocating net income or proceeds to various periods. The tax for each taxable year is the highest rate of tax under section 11 multiplied by the greater of—

(*1*) The entity's net income with respect to the subsequently listed transaction (after taking into account any tax imposed by Subtitle D, other than by this section, with respect to such transaction) for the taxable year that is allocable to the period beginning on the later of the date such transaction is identified by the Secretary as a listed transaction or the first day of the taxable year; or

(*2*) 75 percent of the proceeds received by the entity for the taxable year that are attributable to such transaction and allocable to the period beginning on the later of the date such transaction is identified by the Secretary as a listed transaction or the first day of the taxable year.

(B) *No increase in tax.* The 100 percent tax under section 4965(b)(1)(B) and § 53.4965–7(a)(1)(i)(B) does not apply to any subsequently listed transaction (as defined in section 4965(e)(2) and § 53.4965–3(b)) entered into by a tax-exempt entity before the date on which the transaction is identified by the Secretary as a listed transaction.

(2) *Taxable year.* The excise tax imposed under section 4965(a)(1) applies for the taxable year in which the entity becomes a party to the prohibited tax shelter transaction and any subsequent taxable year for which the entity has net income or proceeds attributable to the transaction. A taxable year for tax-exempt entities is the calendar year or fiscal year, as applicable, depending on the basis on which the tax-exempt entity keeps its books for Federal income tax purposes. If a tax-exempt entity has not established a taxable year for Federal income tax purposes, the entity's taxable year for the purpose of determining the amount and timing of net income and proceeds attributable to a prohibited tax shelter transaction will be deemed to be the annual period the entity uses in keeping its books and records.

(b) *Manager-level taxes*—(1) *Amount of tax.* If any entity manager approved or otherwise caused the tax-exempt entity to become a party to a prohibited tax shelter transaction and knew or had reason to know that the transaction was a prohibited tax shelter transaction, such entity manager is liable for the $20,000 tax. See § 53.4965–5(d) for the meaning of approved or otherwise caused. See § 53.4965–6 for the meaning of knew or had reason to know.

(2) *Timing of the entity manager tax.* If a tax-exempt entity enters into a prohibited tax shelter transaction during a taxable year of an entity manager, then the entity manager that approved or otherwise caused the tax-exempt entity to become a party to the transaction is liable for the entity manager tax for that taxable year if the entity manager knew or had reason to know that the transaction was a prohibited tax shelter transaction.

(3) *Example.* The application of paragraph (b)(2) of this section is illustrated by the following example:

Example. The entity manager's taxable year is the calendar year. On December 1, 2006, the entity manager approved or otherwise caused the tax-exempt entity to become a party to a transaction that the entity manager knew or had reason to know was a prohibited tax shelter transaction. The tax-exempt entity entered into the transaction on January 31, 2007. The entity manager is liable for the entity manager level tax for the entity manager's 2007 taxable year, during which the tax-exempt entity entered into the prohibited tax shelter transaction.

(4) *Separate liability.* If more than one entity manager approved or caused a tax-exempt entity to become a party to a prohibited tax shelter transaction while knowing (or having reason to know) that the transaction was a prohibited tax shelter transaction, then each such entity manager is separately (that is, not jointly and severally) liable for the entity manager-level tax with respect to the transaction.

(c) *Effective/applicability dates. See* § 53.4965–9 for the discussion of the relevant effective and applicability dates.

§ 53.4965–8 Definition of net income and proceeds and standard for allocating net income or proceeds to various periods.

(a) *In general.* For purposes of section 4965(a), the amount and the timing of the net income and proceeds attributable to the prohibited tax shelter transaction will be computed in a manner consistent with the substance of the transaction. In determining the substance of listed transactions, the IRS will look to, among other items, the listing guidance and any subsequent guidance published in the Internal Revenue Bulletin relating to the transaction.

(b) *Definition of net income and proceeds*—(1) *Net income.* A tax-exempt entity's net income attributable to a prohibited tax shelter transaction is its gross income derived from the transaction reduced by those deductions that are attributable to the transaction and that would be allowed by chapter 1 of the Internal Revenue Code if the tax-exempt entity were treated as a taxable entity for this purpose, and further reduced by taxes imposed by

Subtitle D, other than by this section, with respect to the transaction.

(2) *Proceeds*—(i) *Tax-exempt entities that facilitate the transaction by reason of their tax-exempt, tax indifferent or tax-favored status.* Solely for purposes of section 4965, in the case of a tax-exempt entity that is a party to the transaction by reason of § 53.4965–4(a)(1) of this chapter, the term *proceeds* means the gross amount of the tax-exempt entity's consideration for facilitating the transaction, not reduced for any costs or expenses attributable to the transaction. Published guidance with respect to a particular prohibited tax shelter transaction may designate additional amounts as proceeds from the transaction for section 4965 purposes.

(ii) *Treatment of gifts and contributions.* To the extent not otherwise included in the definition of proceeds in paragraph (b)(2)(i) of this section, any amount that is a gift or a contribution to a tax-exempt entity and is attributable to a prohibited tax shelter transaction will be treated as proceeds for section 4965 purposes, unreduced by any associated expenses.

(c) *Allocation of net income and proceeds*—(1) *In general.* For purposes of section 4965(a), the net income and proceeds attributable to a prohibited tax shelter transaction must be allocated in a manner consistent with the tax-exempt entity's established method of accounting for Federal income tax purposes. If the tax-exempt entity has not established a method of accounting for Federal income tax purposes, solely for purposes of section 4965(a) the tax-exempt entity must use the cash receipts and disbursements method of accounting (cash method) provided for in section 446 of the Internal Revenue Code to determine the amount and timing of net income and proceeds attributable to a prohibited tax shelter transaction.

(2) *Special rule.* If a tax-exempt entity has established a method of accounting other than the cash method, the tax-exempt entity may nevertheless use the cash method of accounting to determine the amount of the net income and proceeds—

(i) Attributable to a prohibited tax shelter transaction entered into prior to the effective date of section 4965(a) tax and allocable to pre- and post-effective date periods; or

(ii) Attributable to a subsequently listed transaction and allocable to pre- and post-listing periods.

(d) *Transition year rules.* In the case of the taxable year that includes August 16, 2006 (the transition year), the IRS will treat the period beginning on the first day of the transition year and ending on August 15, 2006, and the period beginning on August 16, 2006, and ending on the last day of the transition year as short taxable years. This treatment is solely for purposes of allocating net income or proceeds under section 4965. The tax-exempt entity continues to file tax returns for the full taxable year, does not file tax returns with respect to these deemed short taxable years and does not otherwise take the short taxable years into account for Federal tax purposes. Accordingly, the net income or proceeds that are properly allocated to the transition year in accordance with this section will be treated as allocable to the period—

(1) Ending on or before August 15, 2006 (and accordingly not subject to tax under section 4965(a)) to the extent such net income or proceeds would have been properly taken into account in accordance with this section by the tax-exempt entity in the deemed short year ending on August 15, 2006; and

(2) Beginning after August 15, 2006 (and accordingly subject to tax under section 4965(a)) to the extent such income or proceeds would have been properly taken into account in accordance with this section by the tax-exempt entity in the short year beginning August 16, 2006.

(e) *Allocation to pre- and post-listing periods.* If a transaction (other than a prohibited reportable transaction (as defined in section 4965(e)(1)(C) and § 53.4965–3(a)(2)) to which the tax-exempt entity is a party is subsequently identified in published guidance as a listed transaction during a taxable year of the entity (the listing year) in which it has net income or proceeds attributable to the transaction, the net income or proceeds are allocated between the pre- and post-listing periods. The IRS will treat the period beginning on the first day of the listing year and ending on the day immediately preceding the date of the listing, and the period beginning on the date of the listing and ending on the last day of the listing year as short taxable years. This treatment is solely for purposes of allocating net income or proceeds under section 4965. The tax-exempt entity continues to file tax returns for the full taxable year, does not file tax returns with respect to these deemed short taxable years and does not otherwise take the short taxable years into account for Federal tax purposes. Accordingly, the net income or proceeds that are properly allocated to the listing year in accordance with this section will be treated as allocable to the period—

(1) Ending before the date of the listing (and accordingly not subject to tax under section 4965(a)) to the extent such net income or proceeds would have been properly taken into account in accordance with this section by the tax-exempt entity in the deemed short year ending on the day immediately preceding the date of the listing; and

(2) Beginning on the date of the listing (and accordingly subject to tax under section 4965(a)) to the extent such income or proceeds would have been properly taken into account in accordance with this section by the tax-exempt entity in the short year beginning on the date of the listing.

(f) *Examples.* The following examples illustrate the allocation rules of this section:

Example 1. (i) In 1999, X, a calendar year non-plan entity using the cash method of accounting, entered into a lease-in/lease-out transaction (LILO) substantially similar to the transaction described in Notice 2000–15 (2000–1 CB 826) (describing Rev. Rul. 99–14 (1999–1 CB 835), superseded by Rev. Rul. 2002–69 (2002–2 CB 760)). In 1999, X purported to lease property to Y pursuant to a "head lease," and Y purported to lease the property back to X pursuant to a "sublease" of a shorter term. In form, X received $268M as an advance payment of head lease rent. Of this amount, $200M had been, in form, financed by a nonrecourse loan obtained by Y. X deposited the $200M with a "debt payment undertaker." This served to defease both a portion of X's rent obligation under its sublease and Y's repayment obligation under the nonrecourse loan. Of the remainder of the $268M advance head lease rent payment, X deposited $54M with an "equity payment undertaker." This served to defease the remainder of X's rent obligation under the sublease as well as the exercise price of X's end-of-sublease term purchase option. This amount inures to the benefit of Y and enables Y to recover its investment in the transaction and a return on that investment. In substance, the $54M is a loan from Y to X. X retained the remaining $14M of the advance head lease rent payment. In substance, this represents a fee for X's participation in the transaction. See § 601.601(d)(2)(ii)(*b*) of this chapter.

(ii) According to the substance of the transaction, the head lease, sublease and nonrecourse debt will be ignored for Federal income tax purposes. Therefore, any net income or proceeds resulting from these elements of the transaction will not be considered net income or proceeds attributable to the LILO transaction for purposes of section 4965(a). The $54M deemed loan from Y to X and the $14M fee are not ignored for Federal income tax purposes.

(iii) Under X's established cash basis method of accounting, any net income received in 1999 and attributable to the LILO transaction is allocated to X's December 31, 1999, tax year for purposes of section 4965. The $14M fee received in 1999, and which constitutes proceeds of the transaction, is likewise allocated to that tax year. Because the 1999 tax year is before the effective date

of the section 4965 tax, X will not be subject to any excise tax under section 4965 for the amounts received in 1999.

(iv) Any earnings on the amount deposited with the equity payment undertaker that constitute gross income to X will be reduced by X's original issue discount deductions with respect to the deemed loan from Y, in determining X's net income from the transaction.

Example 2. B, a non-plan entity using the cash method of accounting, has an annual accounting period that ends on December 31, 2006. B entered into a prohibited tax shelter transaction on March 15, 2006. On that date, B received a payment of $600,000 as a fee for its involvement in the transaction. B received no other proceeds or income attributable to this transaction in 2006. Under B's method of accounting, the payment received by B on March 15, 2006, is taken into account in the deemed short year ending on August 15, 2006. Accordingly, solely for purposes of section 4965, the payment is treated as allocable solely to the period ending on or before August 15, 2006, and is not subject to the excise tax imposed by section 4965(a).

Example 3. The facts are the same as in *Example 2,* except that B received an additional payment of $400,000 on September 30, 2006. Under B's method of accounting, the payment received by B on September 30, 2006, is taken into account in the deemed short year beginning on August 16, 2006. Accordingly, solely for purposes of section 4965, the $400,000 payment is treated as allocable to the period beginning after August 15, 2006, and is subject to the excise tax imposed by section 4965(a).

Example 4. C, a non-plan entity using the cash method of accounting, has an annual accounting period that ends on December 31. C entered into a prohibited tax shelter transaction on May 1, 2005. On March 15, 2007, C received a payment of $580,000 attributable to the transaction. On June 1, 2007, the transaction is identified by the IRS in published guidance as a listed transaction. On June 15, 2007, C received an additional payment of $400,000 attributable to the transaction. Under C's method of accounting, the payments received on March 15, 2007, and June 15, 2007, are taken into account in 2007. The IRS will treat the period beginning on January 1, 2007, and ending on May 31, 2007, and the period beginning on June 1, 2007, and ending on December 31, 2007, as short taxable years. The payment received by C on March 15, 2007, is taken into account in the deemed short year ending on May 31, 2007. Accordingly, solely for purposes of section 4965, the payment is treated as allocable solely to the pre-listing period, and is not subject to the excise tax imposed by section 4965(a). The payment received by C on June 15, 2007, is taken into account in the deemed short year beginning on June 1, 2007. Accordingly, solely for purposes of section 4965, the payment is treated as allocable to the post-listing period, and is subject to the excise tax imposed by section 4965(a).

(g) *Effective/applicability dates.* See § 53.4965–9 for the discussion of the relevant effective and applicability dates.

§ 53.4965–9 Effective/applicability dates.

(a) *In general.* The taxes under section 4965(a) and § 53.4965–7 are effective for taxable years ending after May 17, 2006, with respect to transactions entered into before, on or after that date, except that no tax under section 4965(a) applies with respect to income or proceeds that are properly allocable to any period ending on or before August 15, 2006.

(b) *Applicability of the regulations.* As of July 6, 2010, except as provided in paragraph (c) of this section, §§ 53.4965–1 through 53.4965–8 of this chapter will apply to taxable years ending after July 6, 2007. A tax-exempt entity may rely on the provisions of §§ 53.4965–1 through 53.4965–8 for taxable years ending on or before July 6, 2007.

(c) *Effective/applicability date with respect to certain knowing transactions*—(1) *Entity-level tax.* The 100 percent tax under section 4965(b)(1)(B) and § 53.4965–7(a)(1)(i)(B) does not apply to prohibited tax shelter transactions entered into by a tax-exempt entity on or before May 17, 2006.

(2) *Manager-level tax.* The IRS will not assert that an entity manager who approved or caused a tax-exempt entity to become a party to a prohibited tax shelter transaction is liable for the entity manager tax under section 4965(b)(2) and § 53.4965–7(b)(1) with respect to the transaction if the tax-exempt entity entered into such transaction prior to May 17, 2006.

■ **Par. 6.** Section 53.6071–1, paragraphs (g) and (h) are revised to read as follows:

§ 53.6071–1 Time for filing returns.

* * * * *

(g) *Taxes imposed with respect to prohibited tax shelter transactions to which tax-exempt entities are parties*—(1) *Returns by certain tax-exempt entities.* A Form 4720, "Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code," required by § 53.6011–1(b) for a tax-exempt entity described in section 4965(c)(1), (c)(2) or (c)(3) that is a party to a prohibited tax shelter transaction and is liable for tax imposed by section 4965(a)(1) shall be filed on or before the due date (not including extensions) for filing the tax-exempt entity's annual information return under section 6033(a)(1). If the tax-exempt entity is not required to file an annual information return under section 6033(a)(1), the Form 4720 shall be filed on or before the 15th day of the fifth month after the end of the tax-exempt entity's taxable year or, if the entity has not established a taxable year for Federal income tax purposes, the entity's annual accounting period.

(2) *Returns by entity managers of tax-exempt entities described in section 4965(c)(1), (c)(2) or (c)(3).* A Form 4720, required by § 53.6011–1(b) for an entity manager of a tax-exempt entity described in section 4965(c)(1), (c)(2) or (c)(3) who is liable for tax imposed by section 4965(a)(2) shall be filed on or before the 15th day of the fifth month following the close of the entity manager's taxable year during which the entity entered into the prohibited tax shelter transaction.

(3) *Transition rule.* A Form 4720, for a section 4965 tax that is or was due on or before October 4, 2007, will be deemed to have been filed on the due date if it is filed by October 4, 2007, and if all section 4965 taxes required to be reported on that Form 4720 are paid by October 4, 2007.

(h) *Effective/applicability date.* Paragraph (g) of this section is applicable on July 6, 2007.

§ 53.6071–1T [Amended]

■ **Par. 7.** Section 53.6071–1T(g) & (h) are removed.

PART 54—PENSION EXCISE TAXES

■ **Par. 8.** The authority citation for part 54 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 9.** Section 54.6011–1, paragraphs (c) and (d) are revised to read as follows:

§ 54.6011–1 General requirement of return, statement or list.

* * * * *

(c) *Entity manager tax on prohibited tax shelter transactions*—(1) *In general.* Any entity manager of a tax-exempt entity described in section 4965(c)(4), (c)(5), (c)(6), or (c)(7) who is liable for tax under section 4965(a)(2) shall file a return on Form 5330, "Return of Excise Taxes Related to Employee Benefit Plans," on or before the 15th day of the fifth month following the close of such entity manager's taxable year during which the entity entered into the prohibited tax shelter transaction, and shall include therein the information required by such form and the instructions issued with respect thereto.

(2) *Transition rule.* A Form 5330, "Return of Excise Taxes Related to Employee Benefit Plans," for an excise tax under section 4965 that is or was due on or before October 4, 2007, will be deemed to have been filed on the due date if it is filed by October 4, 2007, and if the section 4965 tax that was required to be reported on that Form 5330 is paid by October 4, 2007.

(d) *Effective/applicability date.* Paragraph (c) of this section is applicable on July 6, 2007.

§ 54.6011–1T [Amended]

■ **Par. 10.** Section § 54.6011–1T(c) & (d) are removed.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 11.** The authority citation for part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 12.** Section 301.6011(g)–1 is added to read as follows:

§ 301.6011(g)-1 Disclosure by taxable party to the tax-exempt entity.

(a) *Requirement of disclosure*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, any taxable party (as defined in paragraph (c) of this section) to a prohibited tax shelter transaction (as defined in section 4965(e) and § 53.4965–3 of this chapter) must disclose by statement to each tax-exempt entity (as defined in section 4965(c) and § 53.4965–2 of this chapter) that the taxable party knows or has reason to know is a party to such transaction (as defined in paragraph (b) of this section) that the transaction is a prohibited tax shelter transaction.

(2) *Determining whether a taxable party knows or has reason to know.* Whether a taxable party knows or has reason to know that a tax-exempt entity is a party to a prohibited tax shelter transaction is based on all the facts and circumstances. If the taxable party knows or has reason to know that a prohibited tax shelter transaction involves a tax-exempt, tax indifferent or tax-favored entity, relevant factors for determining whether the taxable party knows or has reason to know that a specific tax-exempt entity is a party to the transaction include—

(i) The extent of the efforts made to determine whether a tax-exempt entity is facilitating the transaction by reason of its tax-exempt, tax indifferent or tax-favored status (or is identified in published guidance, by type, class or role, as a party to the transaction); and

(ii) If a tax-exempt entity is facilitating the transaction by reason of its tax-exempt, tax indifferent or tax-favored status (or is identified in published guidance, by type, class or role, as a party to the transaction), the extent of the efforts made to determine the identity of the tax-exempt entity.

(b) *Definition of tax-exempt party to a prohibited tax shelter transaction.* For purposes of section 6011(g), a tax-exempt entity is a party to a prohibited tax shelter transaction if the entity is defined as such under § 53.4965–4 of this chapter.

(c) *Definition of taxable party*—(1) *In general.* For purposes of this section, the term *taxable party* means—

(i) A person who has entered into and participates or expects to participate in the transaction under §§ 1.6011–4(c)(3)(i)(A), (B), or (C), 20.6011–4, 25.6011–4, 31.6011–4, 53.6011–4, 54.6011–4, or 56.6011–4 of this chapter; or

(ii) A person who is designated as a taxable party by the Secretary in published guidance.

(2) *Special rules*—(i) *Certain listed transactions.* If a transaction that was otherwise not a prohibited tax shelter transaction becomes a listed transaction after the filing of a person's tax return (including an amended return) reflecting either tax consequences or a tax strategy described in the published guidance listing the transaction (or a tax benefit derived from tax consequences or a tax strategy described in the published guidance listing the transaction), the person is a taxable party beginning on the date the transaction is described as a listed transaction in published guidance.

(ii) *Persons designated as non-parties.* Published guidance may identify which persons, by type, class or role, will not be treated as a party to a prohibited tax shelter transaction for purposes of section 6011(g).

(d) *Time for providing disclosure statement*—(1) *In general.* A taxable party to a prohibited tax shelter transaction must make the disclosure required by this section to each tax-exempt entity that the taxable party knows or has reason to know is a party to the transaction within 60 days after the last to occur of—

(i) The date the person becomes a taxable party to the transaction within the meaning of paragraph (c) of this section;

(ii) The date the taxable party knows or has reason to know that the tax-exempt entity is a party to the transaction within the meaning of paragraph (b) of this section; or

(iii) July 6, 2010.

(2) *Termination of a disclosure obligation.* A person shall not be required to provide the disclosure otherwise required by this section if the person does not know or have reason to know that the tax-exempt entity is a party to the transaction within the meaning of paragraph (b) of this section on or before the first date on which the transaction is required to be disclosed by the person under §§ 1.6011–4, 20.6011–4, 25.6011–4, 31.6011–4, 53.6011–4, 54.6011–4, or 56.6011–4 of this chapter.

(3) Disclosure is not required with respect to any prohibited tax shelter transaction entered into by a tax-exempt entity on or before May 17, 2006.

(e) *Frequency of disclosure.* One disclosure statement is required per tax-exempt entity per transaction. See paragraph (h) of this section for rules relating to designation agreements.

(f) *Form and content of disclosure statement.* The statement disclosing to the tax-exempt entity that the transaction is a prohibited tax shelter transaction must be a written statement that—

(1) Identifies the type of prohibited tax shelter transaction (including the published guidance citation for a listed transaction); and

(2) States that the tax-exempt entity's involvement in the transaction may subject either it or its entity manager(s) or both to excise taxes under section 4965 and to disclosure obligations under section 6033(a) of the Internal Revenue Code.

(g) *To whom disclosure is made.* The disclosure statement must be provided—

(1) In the case of a non-plan entity as defined in § 53.4965–2(b) of this chapter, to—

(i) Any entity manager of the tax-exempt entity with authority or responsibility similar to that exercised by an officer, director or trustee of an organization; or

(ii) If a person described in paragraph (g)(1)(i) of this section is not known, to the primary contact on the transaction.

(2) In the case of a plan entity as defined in § 53.4965–2(c) of this chapter, including a fully self-directed qualified plan, IRA, or other savings arrangement, to any entity manager of the plan entity who approved or otherwise caused the entity to become a party to the prohibited tax shelter transaction.

(h) *Designation agreements.* If more than one taxable party is required to disclose a prohibited tax shelter transaction under this section, the taxable parties may designate by written agreement a single taxable party to disclose the transaction. The transaction must then be disclosed in accordance with this section. The designation of one taxable party to disclose the transaction does not relieve the other taxable parties of their obligation to disclose the transaction to a tax-exempt entity that is a party to the transaction in accordance with this section, if the designated taxable party fails to disclose the transaction to the tax-exempt entity in a timely manner.

(i) *Penalty for failure to provide disclosure statement.* See section 6707A for the penalty applicable to the failure to disclose a prohibited tax shelter transaction in accordance with this section.

(j) *Effective date/applicability date.* This section will apply with respect to transactions entered into by a tax-exempt entity after May 17, 2006.

■ **Par. 13.** Section 301.6033–5 is added to read as follows:

§ 301.6033–5 Disclosure by tax-exempt entities that are parties to certain reportable transactions.

(a) *In general.* For provisions relating to the requirement of the disclosure by a tax-exempt entity that it is a party to certain reportable transactions, see § 1.6033–5 of this chapter (Income Tax Regulations).

(b) *Effective date/applicability date.* This section applies with respect to transactions entered into by a tax-exempt entity after May 17, 2006.

§ 301.6033–5T [Removed]

■ **Par. 14.** Section 301.6033–5T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 15.** The authority citation for part 602 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 16.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB Control Numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB Control No.
* * * * *	
301.6011(g)–1	1545–2079
* * * * *	

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: June 29, 2010.

Michael Mundaca,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2010–16237 Filed 7–2–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2009–0520]

RIN 1625–AA08

Special Local Regulation, Fran Schnarr Open Water Championships, Huntington Bay, NY

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent Special Local Regulation on the navigable waters of Huntington Bay, New York due to the annual Fran Schnarr Open Water Championships. This Special Local Regulation is necessary to provide for the safety of life by protecting swimmers and their safety craft from the hazards imposed by marine traffic. Entry into this zone is prohibited unless authorized by the Captain of the Port Long Island Sound, New Haven, CT.

DATES: This rule is effective July 6, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–0520 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–0520 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Chief Petty Officer Christie Dixon, Prevention Department, USCG Sector Long Island Sound at 203–468–4459, *christie.m.dixon@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 22, 2010, the Coast Guard published a Supplemental Notice of Proposed Rulemaking (SNPRM) entitled "Special Local Regulation, Fran Schnarr Open Water Championships, Huntington Bay, NY" in the **Federal Register** (75 FR 13454). The Coast Guard received no comments or requests for meetings on the proposed rule.

The Coast Guard is issuing this temporary final rule without the 30-day delayed effective date normally required by the Administrative Procedure Act (APA) (5 U.S.C. 553(d)). Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. To delay the effective date in this case would be impractical and unnecessary. Delay would be impractical because it would require that the event be rescheduled, a change which would affect hundreds of persons. Delay is also unnecessary because this event is not controversial; in the three months since the initial notice of proposed rulemaking, exactly zero comments have been received.

Basis and Purpose

The Fran Schnarr Open Water Championships is an annual open water swim on the waters of Huntington Bay, NY. This swim has historically involved up to 150 swimmers and accompanying safety craft. Prior to this rule there was not a permanent regulation in place to protect the swimmers or safety craft from the hazards imposed by marine traffic. To provide for the safety of life, the Coast Guard is establishing a permanent special local regulation on the navigable waters of Huntington Bay, New York that excludes all unauthorized persons and vessels from approaching within 100 yards of any swimmer or safety craft on the race course.

Background

On October 6, 2009 the Coast Guard published a Notice of Proposed Rulemaking with request for comments titled, "Special Local Regulation, Fran Schnarr Open Water Championships, Huntington Bay, NY" (Docket number USCG–2009–0520) in the **Federal Register** (74 FR 51243). The notice proposed a regulated area encompassing 100 yards around the race course for the duration of the race. This provided safety of life for swimmers and safety craft, but any vessel transiting through the Bay would have to pass through the regulated area putting a burden on vessel traffic. This regulated area was considered but was not chosen due to its burden on vessel traffic.

On March 22, 2010, the Coast Guard published a supplemental notice of proposed rulemaking (SNPRM) entitled: Special Local Regulation, Fran Schnarr Open Water Championships,

Huntington Bay, NY in the **Federal Register** (75 FR 13454).

This notice proposes a 100 yard regulated area that encompasses the swimmers and safety craft moving with them as they travel the race course. This moving regulated area provides protection for swimmers and safety craft with a much smaller regulated area. It allows vessels to pass through the race course as long as they stay clear of the swimmers and safety craft reducing the burden on vessel traffic. This proposal was chosen because it provides the same amount of safety as the previously proposed regulated area while being less of a burden on vessel traffic.

Discussion of Comments and Changes

No comments or requests for meetings were received. However, during the final edits of the Final Rule we realized that the description of the regulated area was incorrect and needed clarification. A supplemental notice of proposed rulemaking with request for comments was then published to provide clarification of the regulatory text and minimize the regulated area.

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

Regulatory Analyses

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

Regulatory Planning and Review

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

Small Entities

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

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

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. As stated previously, there were no comments received from the previous rulemaking.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with

applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule finalizes the establishment of a special local regulation that was published as a Supplemental Notice of Proposed Rulemaking with an invitation to comment on March 22, 2010. No comments were received that would affect the assessment of environmental impacts from this action. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: Authority: 33 U.S.C. 1233.

■ 2. Add § 100.122 to read as follows:

§ 100.122 Fran Schnarr Open Water Championships, Huntington Bay, New York.

(a) *Regulated area.* All navigable waters of Huntington Bay, NY within 100 yards of any swimmer or safety craft on the race course bounded by the following points: Start/Finish at approximate position 40°54′25.8″ N 073°24′28.8″ W, East Turn at approximate position 40°54′45″ N 073°23′36.6″ W and a West Turn at approximate position 40°54′31.2″ N 073°25′21″ W.

(b) *Definitions.* The following definitions apply to this section: *Designated On-scene Patrol Personnel* means any commissioned, warrant or petty officer of the U.S. Coast Guard operating Coast Guard vessels who have been authorized to act on the behalf of the Captain of the Port Long Island Sound.

(c) *Special local regulations.* (1) No person or vessel may approach or remain within 100 yards of any swimmer or safety craft within the regulated area during the enforcement period of this regulation unless they are officially participating in the Fran Schnarr Open Water Championships event or are otherwise authorized by the Captain of the Port Long Island Sound or by Designated On-scene Patrol Personnel.

(2) All persons and vessels must comply with the instructions from Coast Guard Captain of the Port or the Designated On-scene Patrol Personnel. The Designated On-scene Patrol Personnel may delay, modify, or cancel the swim event as conditions or circumstances require.

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

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

(d) *Enforcement period.* This rule is enforced from 7:15 a.m. to 11:30 a.m. on July 11, 2010 and thereafter on a specified day each July to be determined on an annual basis. Notification of the specific date, times and enforcement of the special local regulation will be made via a Notice of Enforcement in the **Federal Register**, separate marine broadcasts and local notice to mariners.

Dated: June 1, 2010.

Daniel A. Ronan,

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

[FR Doc. 2010–16367 Filed 7–2–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–0461]

RIN 1625–AA09

Drawbridge Operation Regulation; Shrewsbury River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the drawbridge operation regulations that govern the operation of the Route 36 Bridge at mile 1.8, across the Shrewsbury River at Highlands, New Jersey. This final rule removes the regulations for the Route 36 Bridge because the bridge has been removed and replaced with a fixed bridge.

DATES: This rule is effective July 6, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket USCG–2010–0461 and are available by going to *http://www.regulations.gov,* inserting USCG–2010–0461 in the "keyword" box, and then clicking "search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Joe Arca, Project Officer, First Coast Guard District Bridge Branch, 212–668–7165, *joe.arca@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 final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedures Act (APA)(5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a

notice of proposed rulemaking (NPRM) with respect to this rule because we are removing the operation regulations for a moveable draw bridge that has been replaced with a fixed span bridge that does not open.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. The drawbridge listed under the regulations we are removing has already been replaced with a fixed span highway bridge that does not open; therefore, the regulations are no longer applicable or necessary.

Background and Purpose

The drawbridge operation regulations for the Route 36 Bridge at mile 1.8, across the Shrewsbury River at Highlands, New Jersey, are listed at 33 CFR 117.755(a).

The bridge has been demolished and replaced with a fixed span structure; therefore, the Coast Guard is removing the drawbridge operation regulations for that bridge because they are no longer applicable or necessary since the bridge they govern, the Route 36 Bridge at mile 1.8, has been removed.

Discussion of Rule

This final rule is removing the drawbridge operation regulations listed at 33 CFR 117.755(a) that govern the operation of the Route 36 Bridge at mile 1.8, across the Shrewsbury River at Highlands, New Jersey, which has been demolished and replaced with a fixed span bridge.

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. This conclusion is based upon the fact that we are removing regulations that are no longer applicable or necessary.

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 conclusion is based upon the fact that we are removing regulations that are no longer applicable or necessary.

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 they can better evaluate its effect on them and participate in the rulemaking process.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not cause a taking of private property or otherwise have a taking implication 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 would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), promulgation of operating regulations or procedures for drawbridges, of the Instruction. Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.755 to read as follows:

§ 117.755 Shrewsbury River.

The draw of the Monmouth County highway bridge at mile 4.0, across the Shrewsbury River at Sea Bright, New Jersey, shall operate as follows:

(a) The draw shall open on signal at all times; except that, from May 15 through September 30, on Saturday, Sunday, and holidays, between 9 a.m. and 7 p.m., the draw need open only on the hour and half hour.

(b) The draw need not be opened at any time for a sail boat unless it is operating under auxiliary power or is being towed by a powered vessel.

(c) The owners of the bridge shall keep in good legible condition two clearance gages with figures not less than eight inches high, designed, installed, and maintained according to the provisions of § 118.160 of this chapter.

Dated: June 18, 2010.

Daniel A. Neptun,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2010–16269 Filed 7–2–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0492]

RIN 1625–AA00

Safety Zone; Macy's Fourth of July Fireworks Display, Hudson River, New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the Hudson River for the Macy's Fourth of July Fireworks Display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays. This zone is intended to restrict vessel traffic from a portion of the Hudson River during the event.

DATES: This rule is effective from 7 p.m. on July 4, 2010 until 11 p.m. on July 5, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0492 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0492 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LTJG Eunice James, Sector New York Waterways Management Division, Marine Events Branch. Coast Guard; telephone (718) 354–4163, e-mail *Eunice.A.James@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because sufficient information regarding the event was not received in time to publish a NPRM followed by a final rule before the effective date, thus making the publication of a NPRM impractical. The Coast Guard did not receive final details regarding the location of the fireworks launch barges and proposed locations for spectator vessel viewing areas necessary to ensure the safety of the event participants and spectators until the Macy's Fireworks Interagency meeting held on May 12, 2010. Immediate action is necessary to prevent vessel traffic from transiting a navigable portion of the Hudson River and to protect the maritime public from the inherent hazards associated with this fireworks event. A delay or cancellation of the event in order to allow for a notice and comment period is contrary to the public interest in having this event occur on July 4 as scheduled.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The rule needs to become effective on the date specified above in order to provide for the safety of the public including spectators and vessels operating in the area near the fireworks display. Delaying the effective date of this rule until after 30 days have elapsed since publication is impractical and a delay or cancellation of the fireworks event to accommodate the 30 day notice period is contrary to the public's interest in having the event occur on July 4th 2010.

Basis and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with the inherent explosive and flammable nature of a large fireworks display. Based on accidents that have occurred in other Captain of the Port zones, and the explosive hazards of fireworks, the Captain of the Port New York has determined that fireworks launches proximate to watercrafts pose significant risk to public safety and property. The combination of increased numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, and debris falling into the water has the potential to result in serious injuries or fatalities. This

temporary safety zone is intended to restrict vessels entering the area around the launch platforms to reduce the risk associated with the launch of fireworks.

Discussion of Rule

The 34th Annual Macy's Fourth of July Fireworks is scheduled to occur on the waters of the Hudson River. This temporary safety zone is necessary to ensure the safety of spectators and vessels from hazards associated with the fireworks display.

The fireworks display is scheduled to occur from 9:20 p.m. until 9:50 p.m. In order to ensure the area is clear of persons and vessels before the display begins, and to allow sufficient time after the fireworks end to ensure no explosive hazards remain, this rule is effective and will be enforced from 7 p.m. until 11 p.m. on July 4, 2010.

If the event is cancelled due to inclement weather, then this regulation will be effective from 7 p.m. until 11 p.m. on July 5, 2010.

The temporary safety zone will encompass all navigable waters of the Hudson River bounded by a line drawn east from approximate position 40°46′35.43″ N, 074°00′37.53″ W in New Jersey; to a point in approximate position 40°46′16.98″ N, 073°59′52.34″ W in New York; thence south along the Manhattan shoreline to approximate position 40°44′48.98″ N, 074°00′41.06″ W; then west to approximate position 40°44′55.91″ N, 074°01′24.94″ W; then north along the New Jersey shoreline and back to the point of origin. All geographic coordinates are North American Datum of 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port New York or the designated on-scene representative. Entry into, transiting, or anchoring within the regulated area is prohibited unless authorized by the Captain of the Port New York, or the designated on-scene representative. The Captain of the Port New York or the on-scene representative may be contacted via VHF Channel 16.

Public notifications will be made prior to the event via the Local Notice to Mariners, and marine information broadcasts.

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.

This determination is based on the limited time that vessels will be restricted from the zone. The temporary safety zone will only be in effect for approximately four hours during the evening. The Coast Guard expects insignificant adverse impact to mariners from the zone's activation as the event has been extensively advertised in the public. Also, affected mariners may request authorization from the Captain of the Port New York or the designated on-scene representative to transit the zone.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of the Hudson River, in the vicinity of New York City, NY from 7 p.m. to 11 p.m. on July 4th, 2010.

This temporary safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only four hours on a single-day during the late evening. The event is well-known and extensive advertisement has allowed for public notification. Although the temporary safety zone will apply to the entire width of the river, traffic will be allowed to pass through the area with the permission of the Captain of the Port New York or the designated on-scene representative. Before the effective period, we will issue maritime advisories widely available to users of the waterway.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a temporary safety zone on a portion of the Hudson River during the launching of fireworks. 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, 33306, 3703; 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. A new temporary § 165.T01–0492 is added as follows:

§ 165.T01–0492 Safety Zone; Macy's Fourth of July Fireworks Display, Hudson River, NY, New York

(a) *Regulated area.* The following area is a temporary safety zone: All navigable waters of the Hudson River bounded by a line drawn east from approximate position 40°46′35.43″ N, 074°00′37.53″ W in New Jersey, to approximate position 40°46′16.98″ N, 073°59′52.34″ W in New York, thence south along the Manhattan shoreline to approximate position 40°44′48.98″ N, 074°00′41.06″ W, then west to approximate position 40°44′55.91″ N, 074°01′24.94″ W, then north along the New Jersey shoreline and back to the point of origin. (NAD 83).

(b) *Effective period.* This regulation is effective from 7 p.m. until 11 p.m. on July 4th, 2010, and if the fireworks display is postponed, it will be effective from 7 p.m. until 11 p.m. on July 5, 2010.

(c) *Regulations.* The general regulations contained in 33 CFR 165.23 apply.

(d) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port New York.

(e) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port New York or the designated on-scene-patrol personnel. These designated on-scene-patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means the operator of a vessel shall proceed as directed.

Dated: June 14, 2010.

R.R. O'Brien, Jr.,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2010–16270 Filed 7–2–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0602]

RIN 1625–AA00

Safety Zone; Vietnam Veterans of America Fireworks Display, Brookings, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Pelican Bay and the Pacific Ocean for the Vietnam Veterans of America Fireworks Display near Brookings, Oregon. This action is necessary to ensure the safety of the maritime public during the display and will do so by prohibiting all persons and vessels from entering the safety zone

unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 8 p.m. until 11 p.m. on July 4, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0602 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0602 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail MST1 Jaime Sayers, Waterways Management Division, Coast Guard Sector Portland; telephone 503–240–9319, e-mail *D13-SG-SecPortlandWWM@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because delaying the effective date by first publishing an NPRM would be contrary to the safety zone's intended objective since immediate action is needed to protect persons and vessels against the hazards associated with fireworks displays on navigable waters. Accordingly, under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because to do so would be contrary to public interest since the event will have already occurred by the time the 30-day comment period will have passed.

Basis and Purpose

The Vietnam Veterans of America are holding a fireworks display near Brookings, Oregon on July 4, 2010. Due to the inherent dangers associated with such displays, the safety zone created by this rule is necessary to help ensure the safety of the maritime public and will do so by prohibiting all persons and vessels from coming too close to the fireworks display and the associated hazards.

Discussion of Rule

This rule establishes a temporary safety zone covering the waters of the Pacific Ocean bounded by a line starting at the tip of the south jetty of the Chetco River (point 1) and extending offshore to the Chetco River Entrance Lighted Bell Buoy 2 (point 2) and another line returning from point 2 at an angle to a point on the shore south of the jetty (point 3). The latitude and longitudes of the three points are as follows: Point 1: 42°02′37.43″ N/124°16′14.66″ W, Point 2: 42°02′05.12″ N/124°16′36.54″ W, and Point 3: 42°02′17.70″ N/124°15′46.01″ W. All persons and vessels will be prohibited from entering the safety zone unless authorized by the Captain of the Port or his designated representative.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard has made this determination because the safety zone will only be in effect for three hours on one day and maritime traffic may be able to transit the zone if authorized by the Captain of the Port or his designated representative.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities some of which may be small entities: The owners or operators of vessels wishing to transit the safety zone established by this rule from 8 p.m. until 11 p.m. on July 4, 2010. The rule will not have a significant economic impact on a substantial number of small entities, however, because the safety zone will only be in effect for three hours on one day and maritime traffic may be able to transit the zone if authorized by the Captain of the Port or his designated representative.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires

Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T13–151 to read as follows:

§ 165.T13–151 Safety Zone; Vietnam Veterans of America Fireworks Display, Brookings, OR.

(a) *Location.* The following area is a safety zone: All waters of the Pacific Ocean bounded by a line starting at the tip of the south jetty of the Chetco River (point 1) and extending offshore to the Chetco River Entrance Lighted Bell Buoy 2 (point 2) and another line returning from point 2 at an angle to a point on the shore south of the jetty (point 3). The latitude and longitudes of the three points are as follows: Point 1: 42°02′37.43″ N/124°16′14.66″ W, Point 2: 42°02′05.12″ N/124°16′36.54″ W, and Point 3: 42°02′17.70″ N/124°15′46.01″ W.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no person or vessel may enter or remain in the safety zone created by this section without the permission of the Captain of the Port or his designated representative. Designated representatives are Coast Guard Personnel authorized by the Captain of the Port to grant persons or vessels permission to enter or remain in the safety zone created by this section. See 33 CFR part 165, subpart C, for additional information and requirements.

(c) *Enforcement Period.* The safety zone created by this section will be in effect from 8 p.m. until 11 p.m. on July 4, 2010.

Dated: June 22, 2010.

F.G. Myer,

Captain, U.S. Coast Guard, Captain of the Port, Portland.

[FR Doc. 2010–16265 Filed 7–2–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0543]

RIN 1625–AA00

Safety Zone; Sault Sainte Marie 4th of July Fireworks, St. Mary's River, Sault Sainte Marie, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the St. Mary's River, Sault Sainte Marie, Michigan. This zone is intended to restrict vessels from a portion of the St. Mary's River during the Sault Sainte Marie 4th of July Fireworks display, July

4, 2010. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This rule is effective from 9 p.m., July 4, 2010 until 11:30 p.m., July 5, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0543 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0543 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail BMC Gregory Ford, Marine Event Coordinator, U.S. Coast Guard Sector Sault Sainte Marie; telephone 906–635–3222, e-mail *Gregory.C.Ford@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the permit application was not received in time to publish an NPRM followed by a final rule before the effective date.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property.

Basis and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on the explosive hazards of fireworks, the Captain of the Port Sault Sainte Marie has determined that fireworks launches proximate to watercraft pose significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup and launching of fireworks in conjunction with the Sault Sainte Marie 4th of July Fireworks display. The fireworks display is planned to occur between 9:45 p.m. and 10:45 p.m. on July 4, 2010. If the July 4th fireworks event is postponed for any reason, the fireworks display would occur between 9:45 p.m. and 10:45 p.m. on July 5, 2010.

The safety zone will be enforced from 9 p.m. to 11:30 p.m. on July 4, 2010. If the event is postponed for any reason, the zone will be enforced from 9 p.m. to 11:30 p.m. on July 5, 2010.

The safety zone for the fireworks will encompass all United States waters of the Sainte Mary's River within a 750-foot radius around the eastern portion of the U.S. Army Corp of Engineers Soo Locks North East Pier, centered in position: 46°30′19.66″ N 084°20′31.61″ W [DATUM: NAD 83].

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Sector Sault Sainte Marie, or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

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 regulation will restrict access to the area, the effect of this rule will not be significant because of the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of the St. Mary's River, Sault Sainte Marie, MI between 9 p.m. and 11:30 p.m. on July 4, 2009 and alternatively between 9 p.m. and 11:30 p.m. on July 5, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for two and one half hours for one event. Vessel traffic can safely pass outside the safety zone during the event. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Sault Sainte Marie to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T10–0543 to read as follows:

§ 165.T10–0543 Safety Zone; Sault Sainte Marie 4th of July Fireworks, St. Mary's River, Sault Sainte Marie, MI

(a) *Location.* The following area is a temporary safety zone: All United States waters of the Sainte Mary's River within a 750-foot radius around the eastern portion of the U.S. Army Corp of Engineers Soo Locks North East Pier, centered in position: 46°30′19.66″ N 084°20′31.61″ W [DATUM: NAD 83].

(b) *Effective period.* This regulation is effective from 9 p.m. on July 4, 2010 until 11:30 p.m. on July 5, 2010. This rule will be enforced from 9 p.m. to 11:30 p.m. on July 4, 2010. If the July 4th fireworks are cancelled for any reason, this regulation will be enforced from 9 p.m. to 11:30 p.m. on July 5, 2010.

(1) The Captain of the Port, Sector Sault Sainte Marie may suspend at any time the enforcement of the safety zone established under this section.

(2) The Captain of the Port, Sector Sault Sainte Marie, will notify the

public of the enforcement and suspension of enforcement of a safety zone established by this section via any means that will provide as much notice as possible to the public. These means might include some or all of those listed in 33 CFR 165.7(a). The primary method of notification, however, will be through Broadcast Notice to Mariners and local Notice to Mariners.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within an enforced safety zone established by this section is prohibited unless authorized by the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Sector Sault Sainte Marie, is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Sault Sainte Marie, to act on his behalf. The on-scene representative of the Captain of the Port, Sector Sault Sainte Marie, will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within an enforced safety zone shall contact the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative to obtain permission to do so. The Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative may be contacted via VHF Channel 16.

Dated: June 23, 2010.

J.C. Mcguiness,

Captain, U.S. Coast Guard, Captain of the Port, Sault Sainte Marie.

[FR Doc. 2010–16267 Filed 7–2–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0567]

RIN 1625–AA00

Safety Zone; Munising 4th of July Fireworks, South Bay, Lake Superior, Munising, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on South Bay, Lake Superior, Munising, Michigan. This zone is intended to restrict vessels from a portion of South Bay during the Munising 4th of July Fireworks display, July 4, 2010. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a fireworks display.

DATES: This rule is effective from 9 p.m. July 4, 2010 until 12:30 a.m. July 6, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0567 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0567 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail BMC Gregory Ford, Marine Event Coordinator, U.S. Coast Guard Sector Sault Sainte Marie; telephone 906–635–3222, e-mail *Gregory.C.Ford@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the permit application was not received in time to publish an NPRM followed by a final rule before the effective date.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property.

Basis and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with the Munising 4th of July Fireworks display. Based on the explosive hazards of fireworks, the Captain of the Port Sector Sault Sainte Marie has determined that fireworks launches proximate to watercraft pose significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup and launching of fireworks in conjunction with the Munising 4th of July fireworks display. The fireworks display is planned to occur between 10 p.m. and 11:30 p.m. on July 4, 2010. If the July 4th fireworks event is postponed for any reason, the fireworks display will occur between 10 p.m. and 11:30 p.m. on July 5, 2010.

The Coast Guard plans to enforce the safety zone from 9 p.m. July 4, 2010 to 12:30 a.m. July 5, 2010. If the event is postponed for any reason, the zone will be enforced from 9 p.m. July 5, 2010 to 12:30 a.m. July 6, 2010.

The safety zone for the fireworks will encompass all U.S. navigable waters of South Bay within a 600-foot radius from the fireworks launch site at the end of the Munising City Dock, centered in position: 46°24′50.08″ N., 086°39′08.52″ W. [DATUM: NAD 83].

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Sector Sault Sainte Marie, or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

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 regulation will restrict access to the area, the effect of this rule will not be significant because of the minimal time that vessels will be restricted from the zone. The zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zone's activation.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of South Bay, Lake Superior, Munising, Michigan between 9 p.m. July 4, 2010 and 12:30 a.m. July 5, 2010, and alternatively between 9 p.m. July 5, 2010 and 12:30 a.m. July 6, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for three and one half hours for one event. Vessel traffic can safely pass outside the safety zone during the event. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Sault Sainte Marie to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0567 to read as follows:

§ 165.T09–0567 Safety Zone; Munising 4th of July Fireworks, South Bay, Lake Superior, Munising, MI.

(a) *Location.* The following area is a temporary safety zone: All U.S. navigable waters of South Bay within a 600-foot radius from the fireworks launch site at the end of the Munising City Dock, centered in position: 46°24′50.08″ N., 086°39′08.52″ W. [DATUM: NAD 83].

(b) *Effective period.* This regulation is effective from 9 p.m., July 4, 2010 until 12:30 a.m., July 6, 2010. The Coast Guard plans to enforce this rule from 9 p.m., July 4, 2010 to 12:30 a.m., July 5, 2010. If the July 4th fireworks are cancelled for any reason, this rule will be enforced from 9 p.m., July 5, 2010 to 12:30 a.m., July 6, 2010.

(1) The Captain of the Port, Sector Sault Sainte Marie may suspend at any time the enforcement of the safety zone established under this section.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within an enforced safety zone established by this section is prohibited unless authorized by the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Sector Sault Sainte Marie, is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Sault Sainte Marie, to act on his behalf. The on-scene representative of the Captain of the Port, Sector Sault Sainte Marie, will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within an enforced safety zone shall contact the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative to obtain permission to do so. The Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative may be contacted via VHF Channel 16.

Dated: June 23, 2010.

J.C. Mcguiness,

Captain, U.S. Coast Guard, Captain of the Port, Sector Sault Sainte Marie.

[FR Doc. 2010–16266 Filed 7–2–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0579]

RIN 1625–AA00

Safety Zone; St. Ignace 4th of July Fireworks, East Moran Bay, Lake Huron, St. Ignace, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on East Moran Bay, Lake Huron, St. Ignace, Michigan. This zone is intended to restrict vessels from a portion of East Moran Bay during the St. Ignace 4th of July Fireworks display, July 4, 2010. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a fireworks display.

DATES: This rule is effective from 9 p.m. July 4, 2010 until 11:30 p.m. July 5, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0579 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0579 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail BMC Gregory Ford, Marine Event Coordinator, U.S. Coast Guard Sector Sault Sainte Marie; telephone 906–635–3222, e-mail *Gregory.C.Ford@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the permit application was not received in time to publish an NPRM followed by a final rule before the effective date.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property.

Basis and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated

with a fireworks display. Based on the explosive hazards of fireworks, the Captain of the Port Sault Sainte Marie has determined that fireworks launches proximate to watercraft pose significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup and launching of fireworks in conjunction with the St. Ignace 4th of July fireworks display. The fireworks display is planned to occur between 10 p.m. and 11 p.m. on July 4, 2010. If the July 4th fireworks event is postponed for any reason, the fireworks display will occur between 10 p.m. and 11 p.m. on July 5, 2010.

The safety zone will be enforced from 9 p.m. to 11:30 p.m. on July 4, 2010. If the event is postponed for any reason, the zone will be enforced from 9 p.m. to 11:30 p.m. on July 5, 2010.

The safety zone for the fireworks will encompass all waters of East Moran Bay within a 700-foot radius from the fireworks launch site at the end of the Arnold Transit Mill Slip, centered in position: 45°52′24.62″ N., 084°43′18.13″ W. [DATUM: NAD 83].

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Sector Sault Sainte Marie, or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

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 regulation will restrict access to the area, the effect of this rule will not be significant because of the minimal time vessels will be restricted from the zone. The zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of East Moran Bay, Lake Huron, St. Ignace, MI between 9 p.m. and 11:30 p.m. on July 4, 2009, and alternatively between 9 p.m. and 11:30 p.m. on July 5, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for two and one half hours for one event. Vessel traffic can safely pass outside the safety zone during the event. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Sault Sainte Marie to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0579 to read as follows:

§ 165.T09–0579 Safety Zone; St. Ignace 4th of July Fireworks, East Moran Bay, Lake Huron, St. Ignace, MI.

(a) *Location.* The following area is a temporary safety zone: All waters of East Moran Bay within a 700-foot radius from the fireworks launch site at the end of the Arnold Transit Mill Slip, centered in position: 45°52′24.62″ N., 084°43′18.13″ W. [DATUM: NAD 83].

(b) *Effective period.* This regulation is effective from 9 p.m. on July 4, 2010 until 11:30 p.m. on July 5, 2010. This rule will be enforced from 9 p.m. to 11:30 p.m. on July 4, 2010. If the July 4th fireworks are cancelled for any reason, this regulation will be enforced from 9 p.m. to 11:30 p.m. on July 5, 2010.

(1) The Captain of the Port, Sector Sault Sainte Marie may suspend at any time the enforcement of the safety zone established under this section.

(2) The Captain of the Port, Sector Sault Sainte Marie, will notify the public of the enforcement and suspension of enforcement of a safety zone established by this section via any means that will provide as much notice as possible to the public. These means might include some or all of those listed in 33 CFR 165.7(a). The primary method of notification, however, will be through Broadcast Notice to Mariners and local Notice to Mariners.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within an enforced safety zone established by this section is prohibited unless authorized by the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Sector Sault Sainte Marie, is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Sault Sainte Marie, to act on his behalf. The on-scene representative of the Captain of the Port, Sector Sault Sainte Marie, will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within an enforced safety zone shall contact the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative to obtain permission to do so. The Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative may be contacted via VHF Channel 16.

Dated: June 23, 2010.

J.C. Mcguiness,

Captain, U.S. Coast Guard Captain of the Port, Sault Sainte Marie.

[FR Doc. 2010–16264 Filed 7–2–10; 8:45 am]

BILLING CODE 9110–04–P

POSTAL REGULATORY COMMISSION

39 CFR Parts 3050 and 3055

[Docket No. RM2009–12; Order No. 465]

Service Performance Measurement

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a final rule on service perfomance measurement and customer satisfaction. The final rule reflects the Commission's consideration of comments on a proposed rule. Adoption of the final rule helps give effect to provisions in a 2006 federal law which, among other things, sought to increase Postal Service accountability. The Commission recognizes that exceptions from, and temporary waivers of, some reporting requirements may be appropriate. The discussion makes clear that these matters may be pursued in separate follow-up rulemakings initiated by the Postal Service.

DATES: This rule is effective on August 5, 2010.

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

SUPPLEMENTARY INFORMATION: *Regulatory History,* 74 FR 49190 (September 25, 2009).

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I. Introduction

The final rules described herein establish Postal Service reporting requirements for measuring the level of service and degree of customer satisfaction for each market dominant product. The reporting of level of service and customer satisfaction are required by 39 U.S.C. 3652(a)(2)(B) as part of the Postal Service's annual report to the Commission; are a necessary part of the modern system of rate regulation for market dominant products as required by 39 U.S.C. 3622; and support the Commission's responsibility to report on universal service as required by 39 U.S.C. 3651(b)(1)(A). The Commission's authority to promulgate the form and content of these reporting rules is 39 U.S.C. 503, 3622(a), 3652(d) and (e), and 3651(c).

Order No. 292, which provides notice of this rulemaking, describes each rule as proposed. The original descriptions have not been repeated in the final order except when necessary to add clarity to the discussion.[1] They may be relied upon, except where noted, and may be considered as incorporated by reference. The rules adopted by the final order are substantially the same as those originally proposed, with relatively few modifications. Specific discussions in this order are limited to rules that are the subject of actionable comments.

The order contains three substantive sections: (1) General issues applicable to both the reporting of service performance measurements and customer satisfaction (section IV); (2) rules applicable to service performance measurement reporting (section V); and (3) rules applicable to reporting of customer satisfaction (section VI).

Four issues of general applicability are addressed in section IV of this order.

1. The Commission, in the notice of rulemaking, invited the Postal Service to identify requirements that it might view as onerous or costly to implement, and to quantify the associated costs. The Postal Service did not reply to this invitation with the level of specificity necessary to consider changes to the proposed rules. The Commission and interested parties would have benefited from this information when evaluating each rule. Over 3 years have passed since the enactment of the Postal Accountability and Enhancement Act (PAEA) of 2006. The Commission finds that reporting of service performance measurements and customer satisfaction must begin without further delay.

2. The Commission adopted the Postal Service's general approach to providing both annual and quarterly reports in developing the proposed rules. However, the Postal Service, for the first time in its comments, offers a new legal argument that quarterly reporting is beyond what is required by the PAEA. After adopting the Postal Service's proposed approach, the Commission does not agree with the Postal Service's new argument that its approach is legally flawed. The final rule retains requirements for both annual and quarterly reporting.

3. The Postal Service outlines its capabilities to comply with the proposed rules. The indications are that the Postal Service still faces a major effort to be able to report service performance as contemplated by the PAEA. The Commission finds it necessary to prescribe a process for ensuring timely compliance with the rules given the current status of the Postal Service's reporting capability.

4. Finally, several commenters propose various approaches for continuing Commission oversight of service performance reporting. The Commission views service performance reporting predominately as part of the Annual Compliance Report/Annual Compliance Determination process, but may take other action as necessary.

Section V of this order discusses specific comments concerning the rules for service performance measurement reporting. Annual reporting requirements are addressed in section V.A, quarterly reporting requirements are addressed in section V.B, and proposals which potentially expand reporting requirements are addressed in section V.C.

For the most part, service performance reporting rules are adopted as proposed. Explanations are provided where comments indicate there could be possible confusion in the interpretation of the rules, and minor wording changes to add clarity to the rules have been incorporated. A proposal to require the Postal Service to provide explanations when requirements are not met is adopted in rule 3055.2(h). This is a task required of the Postal Service in any event. Also, a proposal which modifies the Standard Mail service day groupings for reporting purposes is adopted. *See* rule 3055.50(a). Proposals to modify the proposed rules that were not adopted include elimination of certain documentation requirements, an alternative documentation methodology, expanding the categories of exceptions, raising the standard of review consistent with the "analytical principles" methodology, and eliminating a special study of areas with a unique mailing characteristic.

Proposals also were presented which would expand the reporting requirements. These include proposals concerning forwarding and return of First–Class Mail, tail of the mail, remittance mail, critical entry times, and actionable raw data, among others. None of these proposals have been adopted at this time.

Section VI of this order discusses the reporting of customer satisfaction. The reporting of customer satisfaction is a new reporting requirement imposed for the first time by the PAEA. This requirement is not well defined, and will require development through the regulatory rulemaking process. This rulemaking is the first step in the process of developing satisfactory reporting requirements. Minor terminology changes to provide the most recent names of Postal Service programs are incorporated. A requirement to provide certain Mystery Shopper Program information proposed as rule 3055.93 has not been adopted.

To facilitate the interpretation of the final rules, the market dominant product list appears in the Appendix as Table 1–Market Dominant Product List as of August 10, 2009 to this rulemaking; illustrative examples of annual data reporting charts appear in

[1] Notice of Proposed Rulemaking on Periodic Reporting of Service Performance Measurements and Customer Satisfaction, September 2, 2009 (Order No. 292); *see also* 74 FR 49190 (September 25, 2009).

the Appendix as Table 2–Illustrative Annual Report Data Reporting Charts; illustrative examples of quarterly data reporting charts appear in the Appendix as Table 3–Illustrative Quarterly Report Data Reporting Charts; and illustrative examples of customer satisfaction data reporting charts appear in the Appendix as Table 4–Illustrative Customer Satisfaction Data Reporting Charts. Because these charts are merely illustrative, they will not be published in the **Federal Register.**

All final rules for adoption as new part 3055 of the Commission's rules of practice and procedure appear after the signature of this order. In general, reserved clauses that appeared in the proposed rules are eliminated in the final version.

II. Procedural History

On September 2, 2009, the Commission established Docket No. RM2009–11 to consider the addition of service performance and customer satisfaction reporting requirements to the Commission's rules of practice and procedure. The Commission issued Order No. 292 to establish this docket; propose amendments to its rules of practice and procedure; seek comments and reply comments from interested persons; and publish notice of this proceeding in the **Federal Register.** Order No. 292 also designated Emmett Rand Costich and James Callow to represent the interests of the general public pursuant to 39 U.S.C. 505.

The Commission proposed to amend its rules of practice and procedure by adding new part 3055—Service Performance and Customer Satisfaction Reporting. This part is further subdivided into Subpart A—Annual Reporting of Service Performance Achievements, Subpart B—Periodic Reporting of Service Performance Achievements, and Subpart C—Reporting of Customer Satisfaction.

Establishing rules to report service performance (subparts A and B) is the final step in a four–step process for incorporating measurements of level of service into the modern system of rate regulation for market dominant products. The previous steps established service standards, identified service performance measurement systems, and established performance goals.

The establishment of service standards is mandated by 39 U.S.C. 3691, which requires the Postal Service, in consultation with the Postal Regulatory Commission, to establish by regulation a set of modern service standards for market dominant products. Initial consultations between the Commission and the Postal Service concluded on November 19, 2007, with the Commission providing the Postal Service with comments addressing the Postal Service's service standards proposals.[2] The Postal Service completed this task by publishing as a final rule Modern Service Standards for Market Dominant Products, December 19, 2007 (Service Standards).[3]

In June 2008, the Postal Service identified service performance measurement systems by providing the Commission with a draft of its Service Performance Measurement plan (Plan).[4] The Plan presents the various systems the Postal Service proposes to use to measure the standards presented in the Service Standards document.[5] The Postal Service submitted the Plan for the Commission's "review, feedback, and concurrence."[6] In response, the Commission initiated Docket No. PI2008–1 to consider the Plan and to solicit public comment. This process culminated with the Commission issuing Order No. 140.[7] This order completed the second step in the process by approving the approaches that the Postal Service proposes to take in developing internal measurement systems for various classes of mail.[8]

The PAEA directed the Postal Service, in consultation with the Commission, to develop and submit to Congress a plan for meeting service standards. Congress directed, *inter alia,* that the plan establish performance goals. The Postal Service posted its FY 2009 targets on its Rapid Information Bulletin Board System (RIBBS) Web page at *http://www.ribbs.gov/targets/documents/tech__guides/Targets.pdf.*

The Postal Service's Plan included proposals for both annual and quarterly reporting of service performance measurements. The Commission solicited comments on service performance reporting when it considered the Postal Service's proposals for measurement systems. However, in Order No. 140, the Commission limits its considerations of those comments in anticipation of the instant rulemaking, which specifically addresses reporting requirements. The fourth and final step in the process, and the subject of this rulemaking, is for the Commission to issue rules specifying the reporting of service performance (subparts A and B).

Establishing rules to report customer satisfaction (subpart C) previously had not been addressed by the Postal Service or the Commission. Proposed rules appeared for the first time in the notice of proposed rulemaking establishing this docket.

In this docket, comments pertaining to all proposed rules (subparts A, B and C) were received from ACMA, PostCom/DMA, Bank of America, PSA, the Public Representative, the Postal Service, and Valpak.[9] Reply comments were received from PostCom/DMA, Bank of America, DMA, MOAA, PSA, the Public

[2] Comments of the Postal Regulatory Commission on Modern Service Standards for Market Dominant Products, November 19, 2007. The consultations are described as "initial" because of the ongoing nature of consultations that is necessary to transition from a set of standards to an operational measurement system encompassing performance goals (*see* uncodified section 302(b)(1) of the PAEA) and reporting mechanisms (*see* 39 U.S.C. 3652).

[3] 73 FR 72216 (December 19,2007) (to be codified at 39 CFR parts 121 and 122).

[4] The Commission published the Plan in Docket No. PI2008-1, Second Notice of Request for Comments on Service Performance Measurement Systems for Market Dominant Products, June 18, 2008 (Order No. 83). The draft published in Order No. 83 was the final draft in a series of drafts provided by the Postal Service to the Commission.

[5] An objective in designing service performance standards is for the Postal Service to provide a "system of objective external performance measurements for each market dominant product as a basis for measurement of Postal Service performance." 39 U.S.C. 3691(b)(1)(D). However, "with the approval of the Postal Regulatory Commission an internal measurement system may be implemented instead of an external measurement system" for individual products. 39 U.S.C. 3691(b)(2). In the Plan the Postal Service proposes various internal, external, and hybrid (containing both internal and external elements) measurment systems to measure the performance of its mail products.

[6] Letter from Thomas G. Day, Senior Vice President, United States Postal Service, to Dan G. Blair, Chairman, Postal Regulatory Commission, June 3, 2008.

[7] Docket No. PI2008–1, Order Concerning Proposals for Internal Service Standards measurement Systems, November 25, 2008 (Order No. 140.)

[8] Approval was provided with the exception of the measurement systems for several Special Services where the Commission directed the Postal Service to propose a remedial plan by June 1, 2009. The Postal Service submitted remedial proposals on May 15, 2009. *See* Letter from Thomas G. Day, Senior Vice President, Intelligent Mail and Address Quality, United States Postal Service, to Dan G. Blair, Chairman, Postal Regulatory Commission, May 15, 2009 (May 15, 2009 Letter from Thomas G. Day).

[9] Comments of the Association for Postal Commerce and the Direct Marketing Association in Response to Order No. 292 (PostCom/DMA Comments); Comments of Bank of America Corporation (Bank of America Comments); Comments of the Parcel Shippers Association on PRC Notice of Proposed Rulemaking (PSA Comments); Comments of the Public Representative in Response to Order No. 202 (Public Representative Comments); United States Postal Service Comments in Response to Order No. 292 (Postal Service Comments); Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Initial Comments on Proposed Rulemaking on Periodic Reporting (Valpak Comments), all filed November 2, 2009; and Comments of the American Catalog Mailers Association, November 3, 2009 (ACMA Comments).

Representative, the Postal Service, and Valpak.[10]

Late in this proceeding, the Postal Service informed the Commission that it would provide additional material concerning forwarded mail. Postal Service Reply Comments at 36. This material was provided in response to a Commission request in Docket No. PI2008–1 to "explore the cost of periodically conducting studies of service performance for forwarded and returned First–Class Mail and inform the Commission of their feasibility by the conclusion of fiscal year 2009." Order No. 140 at 24. This material is attached to a Postal Service motion requesting that it be considered in connection with the instant docket (Docket No. RM2009–11).[11] The Public Representative subsequently offers supplemental comments concerning this material.[12]

III. Statutory Provisions

Section 3652(a)(2) of title 39 requires that the Postal Service include in an annual report to the Commission an analysis of the quality of service "for each market–dominant product provided in such year" by providing "(B) measures of the quality of service afforded by the Postal Service in connection with such product, including—(i) the level of service (described in terms of speed of delivery and reliability) provided; and (ii) the degree of customer satisfaction with the service provided." In complying with this requirement, the Commission has authority to "by regulation, prescribe the content and form of the public reports (and any nonpublic annex and supporting matter relating to the report) to be provided by the Postal Service * * * ." 39 U.S.C. 3652(e)(1).[13] The Commission also is to have access to "supporting matter" in connection with any information submitted under this section. 39 U.S.C. 3652(d).

Section 3622 of title 39 provides that the Commission by regulation establish "a modern system for regulating rates and classes for market–dominant products." The quality of service, and its reporting, forms an integral part of many of the objectives and factors set forth in this section. Reporting on quality of service allows assessment of whether the Postal Service is meeting the objective of maintaining the "high quality service standards established under section 3691." 39 U.S.C. 3622(b)(3). It furthers the objective of increasing "the transparency of the ratemaking process." 39 U.S.C. 3622(b)(6). It allows assessment of the factors addressing value of service, and by association with the proposed measurement systems, the value of intelligent mail. 39 U.S.C. 3622(c)(1), (8), and (13). Finally, it is important in relation to the rate cap requirements of 39 U.S.C. 3622(d)(1)(A) when analyzing whether quality of service is impacted in order to comply with rate cap requirements.

Section 3651(b)(1)(A) of title 39 requires that the Commission report to the President and Congress on an annual basis estimates of the costs incurred by the Postal Service in providing universal service. Describing the quality of service afforded a product, both anticipated and actual, is a necessary element in analyzing what service is being provided at a given cost. The Postal Service is to provide the Commission with such information that may, in the judgment of the Commission, be necessary in completing this report. 39 U.S.C. 3651(c).

IV. General Issues

The four issues addressed in this section are applicable to both the rules concerning service performance measurements and to the rules concerning reporting of customer satisfaction. They include quantifying costs and burdens, an objection to providing reports on a quarterly basis, an implementation procedure for ensuring future full compliance with the rules, and the continuing oversight role of the Commission.

A. Quantifying Costs and Burdens

The Commission invited the Postal Service to identify requirements imposed by the proposed rules that would be particularly onerous or costly to comply with.

> If a new requirement in these proposed rules is viewed by the Postal Service as particularly onerous, or involves costly new data collection that does not appear to add needed transparency, the Postal Service is requested to identify it and attempt to quantify its incremental cost.

Order No. 292 at 2.

Other than general comments addressing costs and burdens, the Postal Service did not reply with the specificity necessary to consider changes to the proposed rules.

Several parties commented on the Postal Service's limited response. Bank of America states that it shares the Postal Service's interest in minimizing implementation costs and administrative burdens. However, it notes that the Postal Service had not quantified the costs associated with complying with burdensome requirements, nor had it proposed rule modifications to mitigate perceived burdens. Bank of America Reply Comments at 1. PostCom/DMA comments that "in order to assess what is or is not reasonable, the Commission and affected mailers must be provided with some estimation—and not merely broad, unsupported and self contradictory statements—as to cost." PostCom/DMA Reply Comments at 2. PSA similarly notes that the Postal Service had not quantified costs or burdens. PSA Reply Comments at 1–2.

Noting that the Postal Service had not quantified onerous costs or burdens, PSA urges the Commission to not make significant changes to the proposed rules. *Id.* at 3. Bank of America suggests that the Postal Service be provided another opportunity to identify onerous costs or burdens. Bank of America Reply Comments at 2.

A more detailed response from the Postal Service would have benefited the Commission and other commenters in weighing the costs and burdens of complying with the proposed rules against the importance of the information that is being gathered. This would have provided an opportunity to consider specific alternatives at this time. As the Postal Service develops its plan to achieve compliance with these rules, it will have other opportunities to bring concerns that can be identified with specificity to the attention of the

[10] Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Reply Comments on Proposed Rulemaking on Periodic Reporting, November 24, 2009 (Valpak Reply Comments); Reply Comments of the Association for Postal Commerce and the Direct Marketing Association in Response to Order No. 292 (PostCom/DMA Reply Comments); Reply Comments of Bank of America Corporation (Bank of America Reply Comments); Additonal Reply Comments of the Direct Marketing Association to Commission Order No. 292 (DMA Reply Comments); Reply Comments of the Mail Order Association of America on PRC Notice of Proposed Rulemaking (MOAA Reply Comments); Reply Comments of the Parcel Shippers Association of PRC Notice of Proposed Rulemaking (PSA Reply Comments); and United States Postal Service Reply Comments in Response to Order No. 292, December 2, 2009 (Public Representative Reply Comments).

[11] Motion of the United States Postal Service to File Report on Performance Measurement of Forwarded Mail, December 10, 2009 (Postal Service Supplemental Comments); *see also* Order No. 364, Order Granting Motions Concerning Postal Service Report on Performance Measurement of Forwarded Mail, December 17, 2009.

[12] Public Representative Comments in Response to Postal Service Report on Performance Measurement of Forwarded Mail, December 16, 2009 (Public Representative Supplemental Comments).

[13] The Commission's authority is continuing as it has further authority to initiate proceedings to improve the quality, accuracy and completeness of data whenever it shall appear that "the quality of service data has become significantly inaccurate or can be significantly improved." 39 U.S.C. 3652(e)(2(B).

Commission, and possibly to suggest less costly or burdensome alternatives.

B. Objection to Quarterly Reports

The service performance rules incorporate a two–level system for reporting service performance consisting of an Annual Report provided at a high level of aggregation and four Quarterly Reports which provide information at a more detailed level.

This two–tier approach was proposed by the Postal Service and adopted by the Commission. It was discussed at several Postal Service/Commission consultative meetings, where the statutory, 39 U.S.C. 3652(a)(2), product level reporting requirements also were reviewed with the Postal Service. Section 3652(a) provides that the Postal Service shall prepare and submit such reports as the Commission deems necessary to demonstrate (among other things) that the quality of service it provides complies with all applicable requirements of title 39. Section 3653(b) provides that the Commission shall make a determination on whether service standards in effect during a year have been met. The rules established by this order allow for both of these related, but different, provisions to be met through two–tier reporting.

The section 3653(b) requirement focuses on whether service standards are met over the course of a year. Annual reporting of service performance will enable the Commission to make these determinations. The section 3652(a) requirement is broader, focusing on such standards as the obligation to provide services to bind the nation together and to provide prompt and reliable service to all areas. *See* 39 U.S.C. 101. To evaluate these requirements, the Commission has determined that more detailed, quarterly information is necessary.

The Postal Service initially appeared to endorse this approach in its service performance Plan:

> In accordance with § 3652 of the Postal Accountability and Enhancement Act, the Postal Service is required to report measures of the quality of service on an annual basis. The Postal Service's proposal for service measurement goes far beyond annual reporting and will instead provide quarterly reporting for all market–dominant products, almost entirely at a district level.

Plan at 12.

The Postal Service now argues that the PAEA contemplates only annual reporting of service performance and customer satisfaction, and that the Commission is not authorized to require reports on a different timeframe. It states that there is no reason why the Commission needs quarterly service performance and customer satisfaction reports to effectuate its responsibilities under title 39. Furthermore, it contends that the Commission's authority is generally confined to determining the contents of the annual report, and not the timing of reports. The Postal Service acknowledges that the concept of quarterly reports arose out of Postal Service proposals, but that was when the Postal Service was proposing to report at the class, and not the product, level. Finally the Postal Service contends that the Commission's authority is significantly limited by 39 U.S.C. 3652(e)(1)(B) which requires the Commission to consider unnecessary or unwarranted administrative effort and expense on the part of the Postal Service. Postal Service Comments at 12–17; Postal Service Reply Comments at 3–8.

The Public Representative contends that the section 3652 statutory requirement to provide an annual report does not preclude the reporting of data on a more frequent basis. It argues that the Postal Service's objection to quarterly reporting of service measurements also is inconsistent with the Postal Service's position on the reporting of costs, revenues and rates under the existing periodic reporting rules. Public Representative Reply Comments at 4–5. In addition, the Public Representative argues that quarterly data are necessary for the Commission to carry out its regulatory functions. *Id.* at 5–10.

If the Commission finds the Postal Service's arguments persuasive, the Public Representative proposes two alternatives: (1) Either require the quarterly service performance data proposed by the rules to be provided as part of each annual report; or (2) require a report encompassing the previous four quarters (annual) to be provided 4 times a year (quarterly). *Id.* at 6. Valpak supports the Postal Service position that neither 39 U.S.C. 503 nor 39 U.S.C. 3651 authorizes the Commission to require quarterly reporting. It continues that although the Postal Service is not prohibited from filing quarterly reports, this also is not required by 39 U.S.C. 3652. Valpak argues that time is better spent on improving the quality of reports by product on an annual basis. Valpak Reply Comments at 1–2.

The Commission finds that prescribing the two–tier approach to reporting service performance measurements is within the Commission's statutory authority, provides information necessary to the Commission's regulatory responsibilities, and is based on sound logic and reasoning. The Commission has general authority to "promulgate rules and regulations and establish procedures, subject to chapters 5 and 7 of title 5, and take any other action they deem necessary and proper to carry out their functions and obligations" pursuant to 39 U.S.C. 503. Section III, Statutory Provisions, of this order thoroughly explains how the proffered rules relate to the Commission's regulatory responsibilities and need not be repeated at this point.

The two–tiered approach is intended to provide the appropriate level of detail necessary to evaluate a product's overall service performance for the purpose of an annual compliance determination. Too great a level of detail could distract from this analysis by requiring focus on potential anomalies in data that might not be relevant to a product's overall performance.

The more detailed information provided quarterly is intended to serve multiple purposes. Foremost, it will be used to verify the information provided in the Annual Report, and to ensure that a representative measurement system is in place which produces statistically reliable data. Additionally, it will provide the Commission with the level of detail necessary to carry out its other regulatory functions, such as examining the interaction of level of service with rate changes, which has rate cap implications, and in evaluating universal service.

Alternatively, as proposed by the Public Representative, all annual and quarterly data could be provided annually, *i.e.,* one comprehensive annual report providing information by quarter.[14] This alternate approach was not originally proposed, nor is it desirable. With a single data intensive report, focus could be lost in evaluating annual compliance. Compliance issues easily may arise concerning what amounts to supporting data, rather than a product's overall performance. Providing a separate Annual Report at the appropriate level of detail, as proposed, provides a first level filter, which focuses the analysis on more pertinent information to complete an annual determination of compliance.[15]

The once–a–year all–inclusive approach also creates timeliness of data

[14] This fact substantially weakens the end result of the Postal Service's new argument, as the rules could require the Postal Service to provide identical information, either on an annual, or on a quarterly basis.

[15] Although the Commission intends to focus on annual data for the Annual Compliance Determination, it finds no bar to using quarterly provided information when reviewing any compliance issue that may arise.

issues. Untimely service performance data quickly loses its relevance. Timely, reliable data facilitates the Commission's ability to effectively carry out its many regulatory functions, including review of periodic rate change proposals and universal service analysis. This information will facilitate the Commission's ability to make well–informed decisions.

The Postal Service also argues that the Commission's authority is limited, and must be balanced against the requirements discouraging unnecessary or unwarranted administrative effort and expense on the part of the Postal Service. As discussed previously, the Commission requested that the Postal Service quantify unreasonable costs or burdens when evaluating these rules. The Postal Service chose not to do so with any reasonable level of specificity. For this reason the Commission rejects this generalized and unsupported argument.

Finally, the Postal Service argues that because 39 U.S.C. 3652 only specifically identifies an annual report, the Commission is without authority to ask for more frequent reports. The Commission finds nothing in the statute that prohibits the Commission from seeking more frequent reports, if a regulatory need can be demonstrated. The Commission discusses the regulatory need for quarterly reports throughout this order. The Postal Service's narrow interpretation of the statute to conclude that the Commission may seek information only on an annual basis ignores the other functions this information plays in the Commission's regulatory responsibilities under the PAEA, and ignores the need to validate the data that are provided on an annual basis.

C. Implementation of Rules

The Postal Service's comments inform the Commission of its current ability to generate information as required by the rules. This includes both a product–by–product measurement and reporting capability status, and an estimate of what information may be provided in quarterly and annual reports in the near term. After review of these comments, it is evident that an implementation plan must be developed to ensure timely, full compliance with the service performance reporting rules.

The Postal Service offers that the first annual report should be provided with the FY 2010 Annual Compliance Report, with the anticipation that exceptions to reporting will be necessary. It asserts that it currently lacks the capacity to comply with certain parts of the rules without modifications to its measurement systems. Furthermore, the Postal Service states that the first quarterly report likely will not be capable of reporting on large parts of the information required by the rules. Postal Service Comments at 9–12; 29.

The Postal Service identifies its current abilities to comply with detailed service performance reporting requirements. The Postal Service asserts that it will be able to provide detailed annual and quarterly reports for all First–Class Mail products, except for Flats.[16] *Id.* at 29–30. The exception for the reporting of Flats data is due to limitations with the existing External First–Class (EXFC) system. The Postal Service asserts it will be able to report Flats at the national and area levels for overnight, 2–day and 3/4/5–day service standard groups, but it will not be able to report service performance down to the district level as required by the rules. *Id.* at 31–32.

The Postal Service asserts it will not be able to provide annual or quarterly reports for Standard Mail by product. *Id.* at 29–31. This is due to current electronic documentation requirements for full–service IMb, which in some instances do not require detailed mailpiece level data. *Id.* at 33. The Postal Service also asserts that currently there is insufficient data to provide overall results at the national, area, and district levels in the entry type and service standard groups specified by the rules. *Id.* at 34.

The Postal Service asserts it will not be able to provide annual or quarterly reports for Periodicals by product. *Id.* at 29–31. This is due to limitations with the Red Tag/Del-Trak measurement systems. *Id.* at 35–36. However, the Postal Service may be able to separately report on Destination Entry and End–to–End Periodicals at the class level. *Id.* at 36–37.

The Postal Service asserts it will be able to provide annual Package Services reports by product, except for Bound Printed Matter Flats and Media Mail/Library Mail (to the extent these products do not utilize Delivery Confirmation), and Inbound Surface Parcel Post (at UPU rates). *Id.* at 29. It also will be able to provide quarterly reports for Package Services statistics by product, except for Inbound Surface Parcel Post (at UPU rates). *Id.* at 31.

The Postal Service asserts it will be able to provide annual and quarterly reports for some, but not all, Special Service products. *Id.* at 30–31.

The Postal Service adds that full–service IMb has the capability to provide granular data below the class level, with the limiting factor being customer participation. However, rule changes to the measurement system generally will require a 2 fiscal year time lag before implementation, even assuming funding, availability of resources, and no other competing priorities. *Id.* at 37–40.

The Public Representative acknowledges the Postal Service's practical concerns as to the capabilities of the measurement systems to produce reliable and representative service performance measurement data in the short term. It suggests that this should be dealt with by granting temporary exemptions from specific reporting elements until such time as the measurement capabilities are more developed. Public Representative Reply Comments at 3.

Mailers express an interest in having the Postal Service begin providing service performance data in compliance with the rules as soon as practicable. Bank of America suggests that the final rule contain an effective date on which the Postal Service must comply with the rules. Bank of America Comments at 6. PostCom/DMA urges the Commission to require the Postal Service to develop and release interim and long–term implementation plans for service performance measurement and reporting systems. PostCom/DMA Comments at 6–8. PSA urges early implementation of the rules for product level reporting and suggests that reporting begin no later than Quarter 2, 2010 based upon existing systems. PSA Comments at 2–3. PSA notes that the proposed rules focus on how performance information is to be reported, and do not require significant changes to the Postal Service's performance measurement approach. *Id.*

PostCom/DMA and MOAA express concern with Postal Service comments that it may not be able to provide measurement statistics for Standard Mail by product at any level required by the proposed rules. PostCom/DMA Reply Comments at 2–4; MOAA Reply Comments at 1–2. PostCom/DMA urges

[16] One area of First–Class Mail where the Postal Service's capability to report service performance exceeds the reporting requirements of this rulemaking is in the area of Single–Piece First–Class Mail International. The Postal Service reported Inbound Single–Piece First–Class Mail International and Outbound Single–Piece First–Class Mail International disaggregated by overnight, 2–day, and 3/4/5–day groupings during the FY 2009 annual compliance review. This rulemaking currently requires reporting only a single aggregated number for Inbound Single–Piece First–Class Mail International and a single aggregate number for Outbound Single–Piece First–Class Mail International. A future rulemaking will bring the reporting requirements up to the level of actual reporting capability. Until that time, the Commission requests that the Postal Service continue reporting at the more disaggregate level on an annual basis.

the Postal Service to begin quarterly reporting at the product level to the extent any data is available, and include explanatory notes as the measurement systems continue to evolve. PostCom/DMA Reply Comments at 4. MOAA supports PostCom/DMA's suggestion to provide the maximum data possible under existing systems, and argues that the Postal Service should provide a schedule for full reporting under a reasonably rapid timetable. MOAA Reply Comments at 1–2. MOAA asks the Commission to be sensitive to the costs of providing this data. *Id.* at 2. Valpak also suggests requiring a firm schedule for compliance with service performance reporting by product for Standard Mail. Valpak Reply Comments at 3–5. Valpak argues that if the Postal Service cannot begin providing some data by product within the next 12 months, it would endorse the PostCom/DMA suggestion that data be obtained by other means, such as by using an alternative measurement system. *Id.* at 5.

The rules described in this rulemaking shall be effective 30 days after publication in the **Federal Register.** There is no expectation that the Postal Service will be able to provide service performance reporting in compliance with every aspect of the rules as of the effective date. In the case of customer satisfaction reporting, however, there is no apparent reason why the Postal Service cannot immediately comply with all customer satisfaction data reporting requirements. Most, if not all, customer satisfaction reporting requirements are based on information that the Postal Service currently has available.

Because of the limited initial expectations in the area of service performance reporting, the Commission shall require the Postal Service to follow a two–step process to achieve full compliance with all reporting requirements by the filing date of the FY 2011 Annual Compliance Report (2011 ACR). The first step requires the Postal Service to request semi–permanent exceptions from reporting as allowed by rule 3055.3. These exceptions are applicable only under limited, specific circumstances. The second step is to request temporary, short–term waivers from reporting in areas where measurement and reporting systems need additional time for development. This step further requires the presentation of implementation plans to achieve full compliance by the filing date of the 2011 ACR prior to the granting of a waiver.

In the interim, the Postal Service is directed to provide the Commission with all available required data as performance reports are due. When additional data becomes available in the future, this also shall be provided. Pending action on waivers or exceptions shall not act as a stay to providing available data.

Step 1: semi–permanent exceptions from reporting. Rule 3055.3 allows the Postal Service to petition the Commission to request that a product, or component of a product, be excluded from reporting. The rules establish strict limits on allowable exceptions. Because of these limitations, most instances that warrant an exception should be readily identifiable and justifiable. It is anticipated that any exception approved will be of a semi–permanent nature, as opposed to the temporary, transitional waivers discussed below. Any request for exception that is denied under rule 3055.3 may be further addressed by requesting a temporary waiver until reporting can be provided. The Postal Service shall file initial requests for exclusions from measurement with the Commission no later than June 25, 2010.[17]

Public comments on the first round of requests will be accepted until July 16, 2010. The Commission will issue a ruling shortly thereafter. The public always has an opportunity to comment on any exception, granted or not, during the Annual Compliance Report/Annual Compliance Determination process.

Step 2: temporary waivers from reporting. The Postal Service's recital of its immediate ability to comply with the service performance reporting requirements indicates that a transition period is necessary to allow further development of certain measurement and reporting systems. The Commission will provide an opportunity for the Postal Service to seek temporary waivers where it cannot immediately comply with specific reporting requirements. Waivers will be granted for a defined period of time, and will be applicable to any annual or quarterly report required to be filed in the interim. The FY 2010 annual report and interim quarterly reports will be viewed in light of these waivers.

As a condition of granting any waiver, the Commission shall require the Postal Service to develop and present implementation plans addressing each reporting requirement for which the Postal Service cannot provide the required information. The plans shall conform with a goal of achieving full compliance with all reporting requirements by the filing date of the 2011 ACR. The Postal Service has been working on its measurement systems since the passage of the PAEA in December 2006. Requiring full compliance by issuance of the 2011 ACR provides almost 2 additional years for the Postal Service to implement reporting systems to report service performance in full compliance with the rules.

Implementation plans at a minimum should provide an explanation of why a reporting requirement cannot be complied with, the steps necessary to come into compliance, and a timeline of events necessary to achieve compliance. Interim milestones shall be included in the plans where applicable such that both the Postal Service and the Commission can evaluate progress being made. The Commission needs to be informed of the Postal Service's plans and the progress being made, but intends to provide the Postal Service the flexibility to manage its plans without Commission interference.

The Postal Service's request for temporary waivers shall be filed with the Commission no later than September 10, 2010.[18] The Postal Service shall provide status reports on achieving the milestones of its implementation plans with the filing of quarterly performance reports.

The public has until October 1, 2010 to submit comments on requests for temporary waivers. Comments directed towards areas of the Postal Service's plans that are in jeopardy of not meeting the full compliance deadline will be most helpful.

The Commission will issue a ruling shortly thereafter. For any requests that may be unjustified or implementation plans that may appear unreasonable, the Commission intends to direct the Postal Service to make improvements to its plans or the request may be denied.

Interim reporting. This order provides illustrative examples of data reporting charts for annual and quarterly service performance and customer satisfaction reporting. The Postal Service may adopt these formats, or independently develop similar formats, for reporting data. All annual and quarterly reports shall be presented using complete data reporting tables. Where data are available, it shall be provided. Where data are not available, an appropriate notation shall be made where the data should have appeared indicating that the data are not

[17] The Commission requests that the Postal Service contact the Comnmission's Dockets supervisor at the time of filing to establish a new rulemaking "RM" docket for this filing.

[18] The Commission requests that the Postal Service contact the Comnmission's Dockets supervisor at the time of filing to establish a new rulemaking "RM" docket for this filing.

yet available. This will provide a clear indication of the progress being made towards full compliance with the reporting requirements.

D. Continuing Oversight

Many comments address the need for some form of continuing oversight of service performance measurements by the Commission. Bank of America encourages the Commission to provide "an ongoing and active role in ensuring timely, representative, and high quality reporting." Bank of America Comments at 6.

Valpak contends that implementing a service performance system is an ongoing process, and suggests that the Commission revisit the reporting rules after experience is gained, making adjustments as necessary. Valpak Comments at 7–8. It further suggests planning for subsequent discrete service performance measurement reporting dockets, apart from the annual compliance review process where service performance may take on a minor role. Valpak Reply Comments at 6–7.

Bank of America argues that mail prepared using full–service IMb may not be representative of the product as a whole. Thus, it urges the Commission to implement regular third–party auditing of service performance measurement systems using IMb to ensure accurate and representative measurements. Bank of America Comments at 7.

PostCom/DMA also expresses concern with the adequacy of full–service IMb adoption rates to provide geographically and statistically representative service performance measurements. They urge the Commission to monitor adoption rates, and evaluate the related rate incentive plans.[19] PostCom/DMA Comments at 4–6.

Bank of America urges the Commission to review appropriate quality control and data cleaning procedures, specifically in the area of Confirm service. Bank of America Comments at 7. PostCom/DMA expresses similar concerns. PostCom/DMA Comments at 14.

PostCom/DMA urges the Commission to establish a formal annual review of service performance standards and targets with an eye towards improving the standards and targets. *Id.* at 15–16.

Each of these arguments expresses concerns with the ability of the hybrid IMb–based measurement system approved by the Commission to provide reliable service performance measurements. The Commission has an ongoing role in monitoring customer satisfaction and service performance. Primary oversight will be through the Annual Compliance Report/Annual Compliance Determination process. This is the appropriate time to look at customer satisfaction and service performance, including but not limited to all aspects of data quality, potential auditing of systems, adequacy of the data being provided, sufficiency of the measurement systems, monitoring of adoption rates, and proposals for improvement.

Individual dockets may be initiated as required to consider improvements to the rules as implemented, or to consider innovative new approaches to evaluating both customer satisfaction and service performance. Additional, continuous visibility into the Postal Service's progress will be obtained through the quarterly reporting requirements.

The Postal Service has established baseline service performance standards and targets. The Commission has limited authority to establish service performance standards and targets on its own, which is implied by the PostCom/DMA suggestion to annually review the service performance standards and targets with a goal of improvement. However, the Commission will have an indirect role in reviewing Postal Service initiated performance standard and target changes to these baselines as this may affect the nature of the underlying service, or the rates associated with the service in regard to the price cap.

V. Service Performance Measurements Reporting

A. Annual Reporting

This rulemaking incorporates the rules for annual reporting of service performance measurements (or achievements) into new subpart A—Annual Reporting of Service Performance Achievements, of Part 3055—Service Performance and Customer Satisfaction Reporting. Table 2—Illustrative Annual Report Data Reporting Charts shown in the Appendix provides illustrative examples of data reporting charts.

Rules 3055.2, .3, .5 and .7 concerning the Contents of the Annual Report of Service Performance Achievements; Reporting Exceptions; Changes to Measurement Systems, Service Standards Service Goals or Reporting Methodologies; and Special Study are the subject of actionable comments, and are addressed below.[20]

1. Rule 3055.2—Contents of the Annual Report of Service Performance Achievements

Rule 3055.2 describes the contents of the annual report of service performance achievements. Subsection (b) directs the reader to specific reporting requirements applicable to each product within a specific class or group. Subsections (c) through (g) direct the Postal Service to describe the service standards, performance goals, measurement systems, and statistical methodologies for each product. Subsection (h) now requires an explanation where specific service standards are not met. Subsection (i) requires the identification of each product, or component of a product, granted an exception from reporting pursuant to rule 3055.3, along with a certification that the rationale for originally granting the exception remains valid. Subsections (j) and (k) (proposed subsections (i) and (j)) in effect require the Postal Service to demonstrate how it performs each aggregation/disaggregation of data, both between and among the various reports, and over the various timeframes. This would include providing volumes and other weighting factors as necessary to perform the required calculations.

Objections to documentation requirements. The Postal Service believes that the documentation requirements specified by rule 3055.2 (and similarly rules 3055.31 and 3055.32) are unnecessary, in major respects unworkable, and should be eliminated. Postal Service Comments at 22–28. The Postal Service's specific comments, however, only focus on the description of the aggregation methodologies within and between various reports as required by proposed rules 3055.2(i) and (j).[21]

The Postal Service contends that the requirements of proposed rules 3055.2(i) and (j) are akin to requirements seen under the previous ratemaking regime,

[19] DMA believes that full–service IMb provides a low cost solution for service performance measurement, but current incentives are not high enough to elicit large enough quantities of mail for the system to work. It argues for increasing the discounts to increase volume, as opposed to funding an external measurement system that does not rely on full–service IMb. DMA Reply Comments at 2. The Commission also is concerned with IMb adoption rates. However, potential incentive plans are beyond the scope of this order.

[20] Order No. 292 at 14–18 describes all rules appearing in subpart A. The descriptions have not been repeated in the final order unless pertinent to the discussion.

[21] Although the Postal Service only specifically mentions the aggregation methodologies within and between various reports as required by proposed rules 3055.2(i) and (j), the Postal Service's comments also could be interpreted to implicate the documentation requirements of rules 3055.2(c) through (g). The Commission's conclusions apply equally to proposed rules 3055.2(i) and (j), and to rules 3055.2(c) through (g).

and are "overkill" in the context of the PAEA where interested third parties do not have to be provided with previous levels of due process. *Id.* at 26. It argues that the requirements will create an unwarranted financial burden for the documentation of some products, and for certain other products, the Postal Service contends that the complexity of the systems prevent providing documentation in the formats anticipated by the rules. *Id.* at 26–27.

The Postal Service contends that some level of assurance should be provided in the analysis because many of the calculations are performed independent of the Postal Service by contractors. The Postal Service also notes that assurance should be provided because, pursuant to 39 U.S.C. 3652(a), the Inspector General of the Postal Service is required to conduct regular audits of the performance measurement systems.[22]

As an alternative, the Postal Service suggests that it is always available to the Commission to answer questions about the derivation of estimates. As a second alternative, the Postal Service proposes to submit a certification from a qualified auditor to attest to the accuracy of the estimates. *Id.* at 22–28.

Bank of America and PostCom/DMA support the rules which require the Postal Service to describe the measurement system for each product, including the process used to aggregate data. Bank of America Comments at 3; PostCom/DMA Comments at 13–14. However, PostCom/DMA also expresses concern with additional costs, and suggests clarification of what is to be provided, including addressing massive IMb data sets and consideration of potentially sensitive data. *Id.*

The Commission previously described the intent of proposed rules (i) and (j):

> Subsections (i) and (j) of this section in effect require the Postal Service to demonstrate how it performs each aggregation/disaggregation of data, both between and among the various reports, and over the various timeframes. The goal is to provide independent parties the information necessary to be able to replicate the aggregations/disaggregations made by the Postal Service between and among the various reports, and over the various timeframes. For example, this should include the ability to aggregate the data provided in the quarterly reports up to the level of data provided in the annual reports. It also should include the ability to aggregate data provided at the District level, to the Postal Administrative Area level, and to the National level. The Commission expects that data will be provided in electronic format (Excel files are anticipated at this time), with electronic links and formulas that can be followed in order to duplicate the Postal Service's aggregation methodologies. This would include providing volumes and other weighting factors as necessary to perform the required calculations.

Order No. 292 at 15 (footnote omitted).

The Commission finds that this requirement is a critical component in allowing third parties to understand the data being presented by the Postal Service. Without an understanding of this process, third parties cannot properly interpret the service performance data, which renders the data meaningless.[23]

The Commission assumes that the methodologies involved for service performance measurements, including aggregation methodologies, is information that the Postal Service or its subcontractors has available and which has been documented. Otherwise, it would be difficult to consistently apply these methodologies when analyzing and transforming raw data into presentable form. It also would not be possible for any third party (an independent auditor or the Inspector General of the Postal Service as suggested by the Postal Service) to audit and verify the Postal Service's systems without this documentation.

The Commission further assumes that the Postal Service did not allow its contractors unconstrained latitude in developing performance measurement systems. For the contractors to efficiently carry out their tasks, they should have been provided with the parameters of the systems that they were expected to deliver. In return, the contractors should have provided documentation to the Postal Service explaining what they had developed for the Postal Service. For these reasons, the Commission concludes that documentation can be provided in compliance with the documentation rule with little additional burden to the Postal Service.

There is no single answer as to what may be a sufficient level of documentation, or what level of underlying data must be presented in support of the data filings. The Postal Service seems to indicate that for certain products it is possible to provide complete documentation. For other products, the Postal Service indicates that it will be difficult, because of the complexities of the measurement systems, to provide complete documentation. The Commission finds that the level of documentation provided must be consistent with its previously stated goals, and to allow parties to reasonably understand and analyze the Postal Service performance measurement systems. The Commission only is interested in the Postal Service's underlying raw data sets to the extent necessary to understand how raw data is transformed into presentable form. It expects generally to examine data sets that are already in some aggregate form. The Commission is not asking that the Postal Service's raw databases be made publicly available.

Assuming that the Postal Service is able to substantially comply with documentation requirements, it still may be necessary to consult informally with the Postal Service to understand more fully how its systems operate. This potentially could include a series of technical conferences to explain to all parties the performance measurement systems. The Commission will make its staff available as necessary to assist the Postal Service to determine how it can best comply with the documentation requirements.

Alternative documentation proposal. The Public Representative proposes that the Postal Service only fully document its service performance measurement system in the first annual report after these rules go into effect, instead of having to fully document its service performance measurement system each year. He proposes that the Postal Service then be required to document only changes to these systems in future reports. He asserts this change mimics the reporting requirements established under the existing periodic reporting rules using the analytical principles concept. Public Representative Comments at 7–9, and Attachment A, rules 3055.1(c) and 3055.2(e).

The Commission does not adopt the Public Representative's proposal. The measurement and data reporting systems are in a nascent phase and are currently under development. The Commission anticipates many potentially significant changes over the next few years. It may become extremely cumbersome to track these changes without establishing a new baseline on an annual basis. The only additional burden placed upon the Postal Service by this rule is the requirement to re–file, verbatim, previously filed material where no changes have occurred. Once the measurement and data reporting systems stabilize, this proposal may be reconsidered.

Proposal to require explanations. Bank of America requests an addition to

[22] The Postal Service also expresses concern with public disclosure of certain data that otherwise potentially could have been packaged and sold to interested mailers, thereby depriving the Postal Service of an additional revenue source. *Id.* at 28, n.16.

[23] Bank of America provides an excellent example of the effects of weighting on the presentation of data and a third–party's ability to interpret the data. *See* Bank of America Comments at 3–4.

rule 3055.2 which requires the Postal Service to explain, in instances where specific service standards are not met, why they are not met, and to require the Postal Service to provide a plan for meeting service standards in the future. Bank of America Comments at 3, n.7.

The Postal Service opposes this suggestion arguing that this is a purpose of the Annual Compliance Report/ Annual Compliance Determination process. Postal Service Reply Comments at 34. It contends that the Commission is authorized to seek additional information as might be necessary at that time.

The Commission agrees with the Postal Service that the Annual Compliance Report/Annual Compliance Determination process is the most appropriate time for reviewing postal services that do not meet their service standards or goals. The Postal Service also is correct in recognizing that the Commission may seek this information if it is not provided. However, this process will be facilitated by the Postal Service providing explanations at the time it files its Annual Compliance Report, and not waiting for a Commission request. Clarifying rule 3055.2 to specify that providing explanations is required will serve as a reminder to the Postal Service to provide this information at the time of filing, and may eliminate the delay involved with issuing information requests. Because this information should be provided anyway, and if not it would be requested, the Commission does not find this to be a material change to the proposed rule.

The following requirement will be added to rule 3055.2:

(h) For each product that does not meet a service standard, an explanation of why the service standard is not met, and a plan describing the steps that have or will be taken to ensure that the product meets or exceeds the service standard in the future.

Minor wording change. The Public Representative proposes a minor language change to clarify proposed rule 3055.2(i). He proposes to change the word "next" to "preceding" when describing related levels of aggregation/ disaggregation. Public Representative Comments at 11–12, and Attachment A, rule 3055.2(i).

Although the Commission believes the intent of the rules is clear, it finds that the language can be improved. The wording in rules 3055.2(j) and 3055.31(d) will be modified to read: "Documentation showing how data reported at a given level of aggregation were derived from data reported at greater levels of disaggrgation."

2. Rule 3055.3—Reporting Exceptions

Rule 3055.3 provides an avenue for the Postal Service to seek exceptions from the general requirement to report on service performance in instances where reports would be cost prohibitive in relation to the revenue generated from the service, it defies meaningful measurement, or in the case of certain negotiated service agreements.

Clarification of "component" of a product terminology. The Postal Service expresses several concerns with rule 3055.3 Reporting exceptions. It asks clarification of the terminology "component" of a product. It opines that this terminology could apply to the various levels of aggregation required by the rules, or to the absence of certain elements of required information for an entire product. Postal Service Comments at 19.

Rule 3055.3 provides that "[t]he Postal Service may petition the Commission to request that a product, or component of a product, be excluded from reporting * * *. The Commission had two applications in mind for the terminology "component of a product." The first applies where "component" refers to a standalone service provided by the Postal Service that is grouped under an umbrella product for administrative purposes only. For example, Ancillary Services is a product within Special Services. Stamped Cards would be a component of the Ancillary Services product. The Postal Service may wish to seek an exception from reporting on the Stamped Cards component of Ancillary Services if it believes one or more of the exceptions are applicable.

The second is where "component" refers to a feature or service provided as part of a recognized product. For example, the Single–Piece Letters/ Postcards product within First–Class Mail includes forwarding and return service. Some have argued that forwarding and return service should be independently measured. The Commission could consider forwarding and return service a component of the Single–Piece Letters/Postcards product susceptible to a request for exception from reporting.[24]

Proposal to expand allowable exceptions. The Postal Service also argues that the exceptions should be expanded in three ways: (1) To apply to failure to meet the documentation requirements of rules 3055.2 and 3055.31; (2) to apply to reports on customer satisfaction; and (3) to encompass the transition period when the Postal Service fails to provide specific reports while the measurement systems are brought up to speed. A further suggestion is to provide an "other reasons" catchall category of exceptions for items not specifically addressed. *Id.* at 21.

The Commission intended only limited exceptions, and has not been persuaded that additional exceptions should be provided. Temporary waivers for near term failure to meet the documentation requirements or events encountered during the transition period are addressed in the discussion of an implementation plan in section IV.C. This speaks to the Postal Service's immediate concern. The Commission is not aware of any specific reason to extend reporting exception rules to the customer satisfaction requirements. Most, if not all, customer satisfaction reporting requirements are based on Postal Service systems already in place, or from data that it routinely collects. The Postal Service has, as it has frequently done in the past, the ability to formulate requests for waivers in the form of a motion to address future issues that may not be apparent at this time. The Commission does not find a need to expand the exceptions rule at this time.

Exceptions procedures. Finally, the Postal Service comments that the rules are silent on specific procedures for executing the exception mechanism. The Postal Service's view is that the exceptions procedures need not become a forum for any other purpose than permitting the Postal Service to explain why reporting requirements are not being met. *Id.* at 21–22. PSA contends that rule 3055.3 should include a provision allowing interested parties to comment on proposed exceptions. PSA Reply Comments at 3.

The Commission has concluded that it will seek comments and issue an appropriate ruling on the initial round of exception requests. *See* section IV.C. The Commission will reconsider if a more formal process is warranted at a later date. Interested persons always have an opportunity to comment on exceptions during the Annual Compliance Report/Annual Compliance Determination process. Further opportunity for interested persons to seek reconsideration of exceptions is provided pursuant to 39 U.S.C. 3652(e)(2)(B).

3. Rule 3055.5–Changes to Measurement Systems, Service Standards, Service Goals or Reporting Methodologies

Rule 3055.5 requires the Postal Service to apprise the Commission of all

[24] The Commission is not prejudging the success or failure of making any of these arguments in obtaining an exception.

changes to measurement systems, service standards, service goals, and reporting methodologies. The Commission may institute a proceeding to consider change proposals if it appears that the changes might have a material impact on the accuracy, reliability, or utility of the reported measurement, or if the changes might have a material impact on the characteristics of the underlying product.

Bank of America and PostCom/DMA voice general support for these rules. Bank of America Comments at 3; PostCom/DMA Comments at 15.

Standard of review. The Public Representative contends that 39 U.S.C. 3652 requires the same standard of review for service performance as it does for costs, revenues and rates. He equates internal (including hybrid) service performance measurement systems and methodologies for data reporting (including the use of proxies) with analytical principles as defined in rule 3050.1 of the periodic reporting rules. As such, the Public Representative proposes to incorporate the more restrictive rules for changes in accepted analytical principles into the rules for service performance. *See* 39 CFR 3050 *et seq.* The Public Representative also would extend the Postal Service's advance notification requirement from 30 to 60 days, and differentiate between internal and external measurement systems. Public Representative Comments at 3–6, 9–11, and Attachment A, rules 3055.1(b) and 3055.5.

The Postal Service opposes the Public Representative's proposal arguing that the Commission's approach is both adequate and appropriate. Postal Service Reply Comments at 15–18.

The periodic reporting rules, along with the concept of "analytical principles," are intended for reporting on technical areas of rate analysis which have evolved over 30 years. Over this time the associated data measurement systems, analytical methodologies, and forms of data presentation have matured and become fairly stable. Recent changes to analytical principles typically account for recent changes in the data reporting systems, or are meant to incorporate new ways of looking at information generated through these systems.

By contrast, the periodic reporting of service performance is a new requirement of the PAEA. The data measurement systems, analytical methodologies, and forms of data presentation are currently under development and are, for practical purposes, untested. Many adjustments are anticipated before these systems become mature. At this early stage, the Postal Service must have the flexibility to take the lead in developing these systems. While the Commission does not intend to insert itself into the day–to–day development decisions, it still must be kept apprised of changes to proposed systems to ensure that they produce and report reliable, useful information. 39 U.S.C. 3652(a)(1). The Commission finds that the rules as proposed serve this function. Thus, the Commission does not adopt the proposal to impose the more restrictive periodic cost reporting procedures in the case of service performance measurements at this time.

Commission oversight of service standards and service goals. The Postal Service opposes the portions of rule 3055.5 which imply that the Commission has limited oversight over service standards and service goals. By statute, it argues that 39 U.S.C. 3691 reserves to postal management all authority over the establishment or revision of service standards, and uncodified section 302 provides postal management authority to establish service goals. It asserts that these areas are core management functions. *Id.* at 18–22.

The Commission does not intend to specify service standards or service goals for new products, or, on its own, to initiate review of existing products with the purpose of requiring changes to established service standards or service goals. However, the Postal Service's authority in this area is not without limit. Accurate, up–to–date information is necessary for the Commission to carry out its responsibilities to monitor and report on quality of service under the PAEA. This only can be accomplished if the Postal Service provides notice and continuously keeps the Commission apprised of all changes.

The Commission also finds that service performance standard or goal changes that might have a material impact on the characteristics of an underlying product must be reviewed for possible product classification change issues. They also must be reviewed for rate and rate cap implications. For example, a reduction in service without a reduction in price may imply that customers are getting less for their money, *i.e.,* experiencing a *de facto* rate increase. The review of rate changes and establishing rules that delineate how such cases are to be considered by the Commission are well within the purview of the Commission. *See* 39 U.S.C. 3622. The Commission's rules of practice are clear when the Postal Service directly proposes rate changes, but may be less clear when rates that are in effect are changed indirectly. Providing (1) a notice requirement, and (2) establishing the possibility of a proceeding in rule 3055.5 to remove any ambiguity that the Postal Service must officially notify the Commission of Postal Service actions that may indirectly affect rates.[25]

Minor wording change. Upon review of the wording of rule 3055.5, the Commission determined that it may be unclear as to when the Commission may initiate a proceeding. For clarity, the Commission will add the words "at any time" to the rule. This is consistent with Commission authority to initiate proceedings at any time pursuant to 39 U.S.C. 3652(e)(2), and authority to establish modern rate regulation pursuant to 39 U.S.C. 3622.[26] In some instances, it parallels a customer's ability to file a complaint pursuant to 39 U.S.C. 3662, request a proceeding pursuant to 39 U.S.C. 3652(e)(2), or provide comment pursuant to 39 U.S.C. 3653(a). In some instances, it parallels the Postal Service's obligation to file a nature of service case pursuant to 39 U.S.C. 3661. However, the Commission's intent is to make a preliminary determination of whether or not a proceeding is warranted within the 30–day notification period, and notify the Postal Service immediately of any determinations to initiate a proceeding.

4. Rule 3055.7–Special Study

The measurement systems that the Postal Service propose do not appear to capture certain information on delivery performance; for example, from the processing facility in Anchorage, Alaska to the outer reaches of Alaska; from Honolulu to the neighbor islands of Hawaii; or from San Juan to more distant locations in the Caribbean district.

Proposed rule 3055.7 contemplates the Postal Service conducting a special study, every 2 years, to evaluate final delivery service performance in these remote locations.

The Postal Service contends that a special study is not necessary because transit time measurements already include single–piece, bulk, and international First–Class Mail, Standard Mail, and Package Services to and from

[25] A parallel argument can be made for when a service goal or service standard changes the nature of a product, that effectively amounts to a classification change.

[26] The Commission views service standard and service goal changes as potentially affecting the value of a service to the customer. Thus, service standard or service goal changes may be equated wtih rate changes.

all ZIP Codes in these areas. Parcels having Delivery Confirmation are currently measured from start–the–clock through delivery to final destination. Finally, Periodicals measurements will be extended to these areas when the hybrid measurement approach replaces the Red Tag/Del–Trak measurement system. Postal Service Comments at 44-45.

The intent of obtaining special studies is to allow evaluation of the unique aspects of providing service to the less populous/more remote areas of these districts, and compare how this service differs from the districts as a whole. Beyond the service performance implications, this will add to the understanding of universal service in these areas. The Postal Service states it now is able to measure all ZIP Codes in these areas. This may provide the necessary information for the special study. However, if the intent of the Postal Service was only to aggregate information obtained from these ZIP Codes to obtain a district level result, this would not provide the insight as required into the unique aspects of service to the less populous/more remote areas.

The special study shall remain in the final rule. If the result of the special study indicates that the more remote/less populous areas of these districts receive essentially the same service as the less remote/more populous areas of these districts, the Postal Service may, in the future, petition the Commission to eliminate this requirement from future reports.

B. Quarterly Reports

This rulemaking incorporates the rules for quarterly reporting of service performance measurements into a new Subpart B—Periodic Reporting of Service Performance Achievements, of Part 3055—Service Performance and Customer Satisfaction Reporting. Table 3—Illustrative Quarterly Report Data Reporting Charts shown in the Appendix provides a visualization of the quarterly data reporting elements specified by the rules through illustrative examples of data reporting charts.

Rules 3055.31, .32 and .50 concerning the Contents of the Quarterly Report of Service Performance Achievements; Measurement Systems Using a Delivery Factor; and Standard Mail are the subject of actionable comments, and are addressed below.[27]

1. Rule 3055.31—Contents of the Quarterly Report of Service Performance Achievements

Rule 3055.31 specifies the contents of each quarterly report. Subsection (b) directs the reader to specific reporting requirements applicable to each product within a specific class or group. Subsection (c) requires identification of each product, or component of a product, granted an exception from reporting pursuant to rule 3055.3, along with a certification that the rationale for originally granting the exception remains valid. Finally, subsections (d) and (e) direct the Postal Service to demonstrate how it aggregates/disaggregates data to different reporting levels.

Aggregation of data. Bank of America supports the demonstration of the aggregation of data, rule 3055.31(d)–(e). Specifically, Bank of America stresses the importance of weighting to allow meaningful analysis of data, and the impact that weighting has on reported performance. Bank of America Comments at 3–4.

The Postal Service contends that the documentation requirements specified by rule 3055.31 should be eliminated, arguing that it is unnecessary and in major respects unworkable.[28] *See* Postal Service Comments at 22–28.

The Commission previously addressed this issue when discussing rule 3055.2 and did not find the Postal Service's arguments persuasive. The rule shall not be modified based on the Postal Service's arguments.

Minor wording change. The Public Representative proposes the same minor language change to add clarity to rule 3055.31(d), as he proposed for rule 3055.2(j). In both places, he proposes to change the word "next" to "preceding" when describing related levels of aggregation/disaggregation. Public Representative Comments at 11–13, and Attachment A, rules 3055.2(j) and 3055.31(d).

The Commission previously found that the clarity of these rules can be improved. Consistent with the wording modifications to rule 3055.2(j), the Commission also modifies rule 3055.31(d) to read:

> Documentation showing how data reported at a given level of aggregation were derived from data reported at greater levels of disaggregation. Such documentation shall be in electronic format with all data links preserved. It shall show all formulas used, including volumes and other weighting factors.

2. Rule 3055.32—Measurement Systems Using a Delivery Factor

Rule 3055.32 requires the Postal Service to independently report delivery factors when used in computing End–to–End service performance.

The Postal Service contends that the documentation requirements specified by rule 3055.32 should be eliminated arguing that it is unnecessary and in major respects unworkable.[29] *See* Postal Service Comments at 22–28.

The Commission previously addressed this issue when discussing rule 3055.2 and did not find the Postal Service's arguments persuasive. The rule shall not be modified based upon the Postal Service's arguments.

3. Rule 3055.50—Standard Mail

Rule 3055.50 specifies the quarterly reporting requirements for all products within the Standard Mail class.

Destination Entry service standard day groupings. The Postal Service established 2–day through 10–day service standards for Destination Entry Standard Mail. The proposed rule separates Destination Entry mail into two groups for reporting purposes. It proposes reporting an aggregation of mail subject to the 2–day through 4–day service standards and an aggregation of mail subject to the 5-–day through 10–day service standards. Destination Entry 2–day through 4–day service standard mail roughly coincides with destination delivery units (DDU) and destination sectional center facility (DSCF) entered mail. Destination Entry 5–day through 10–day service standard mail roughly coincides with destination bulk mail center (DBMC) and bulk mail center (BMC) entered mail.

Valpak proposes slightly different Standard Mail day aggregations for Destination Entry mail. It contends that its proposal makes the reporting of Destination Entry mail more meaningful. It proposes separate reporting of 2–day mail which roughly reflects DDU–entered mail, aggregating 3– to 4–day mail which roughly reflects DSCF–entered mail, and aggregating 5– to 10–day mail which roughly reflects DBMC– and BMC–entered mail.

Valpak also proposes an alternative in case its preferred aggregations prove impossible or too costly to implement. It proposes aggregating 2– to 3–day mail which reflects all DDU–entered mail and over 99 percent of all DSCF–entered mail, and aggregating 4– to 10–day mail which reflects DBMC and remote

[27] Order No. 292 at 19–23 describes all rules appearing in subpart B. The descriptions have not been repeated in the final order unless pertinent to the discussion.

[28] The Postal Service's specific arguments objecting to rule 3055.31 are incorporated into its arguments objecting to rule 3055.2 and are addressed in the discussion of rule 3055.2.

[29] The Postal Service's specific arguments objecting to rule 3055.32 are incorporated into is arguments objecting to rule 3055.2 and are addressed in the discussion of rule 3055.2.

destinating mail entered at the appropriate BMC, plus any DSCF Virgin Islands mail. Valpak Comments at 6–7.

PostCom/DMA also proposes different Standard Mail day aggregations for Destination Entry mail. It proposes aggregating the 2– to 5–day mail and aggregating the 6– to 10–day mail. PostCom/DMA Comments at 12.

The Postal Service appears to support the rule as proposed. It contends that increasing the number of reporting groups could have a negative effect on the representativeness of the underlying data, and the statistical validity of the reported result. Postal Service Reply Comments at 27–29.

The Commission adopts Valpak's proposal which separates reporting of 2–day mail, 3– to 4–day mail, and 5– to 10–day mail. Valpak's proposal improves upon the Commission's proposal in the notice of rulemaking by effectively providing separate reporting for BMC (now network distribution center (NDC))– and DSFC–entered mail. The Commission acknowledges the Postal Service's concerns about the representativeness of data and statistical validity. However, this is a concern regardless of which proposal is adopted, and a final resolution of appropriate aggregations will not be possible until measurement and reporting systems are further developed, and actual mail volumes are considered.

End–to–End service standard day groupings. The Postal Service established 3–day through 22–day service standards for End–to–End Standard Mail. The proposed rule separates End–to–End mail into two groups for reporting purposes. It proposes reporting an aggregation of mail subject to the 3–day through 5–day service standards and an aggregation of mail subject to the 6–day through 22–day service standards. End–to–End 3–day through 5–day service standard mail roughly coincides with sectional center facility turnaround, area distribution center turnaround, and intra–BMC area mail. End–to–End 6–day through 22–day service standard mail roughly coincides with all other End–to–End mail subject to greater transportation needs.

PostCom/DMA proposes slightly different End–to–End Standard Mail day aggregations. It proposes aggregating 3– to 5–day mail, aggregating 6– to 10–day mail, and aggregating 11– to 22–day mail. This is designed to improve the visibility of non–contiguous United States mail, monitor performance due to NDC changes, and monitor the broader Postal Service network through the four Tier 3 NDCs. PostCom/DMA Comments at 12.

The Postal Service's comments presented above for Destination Entry mail apply equally to End–to–End mail. Postal Service Reply Comments at 27–29.

The Commission adopts the PostCom/DMA proposal which separates reporting of 3– to 5–day mail, 6– to 10–day mail, and 10– to 22–day mail. This proposal effectively provides increased visibility for mail coming to and going from the contiguous United States, and is an improvement over the aggregations proposed in the notice of rulemaking. The same caveats apply concerning the representativeness of data, and statistical validity of the service performance measurement process.

Aggregating service standard days. PostCom/DMA and Valpak ask the Commission to clarify which service standards are applicable to the data that is being aggregated. PostCom/DMA Comments at 12; Valpak Comments at 4–5.

PostCom/DMA correctly assumes that when aggregating a range of days for reporting purposes, mail for each individual day will be measured against that day's standard, and not against the maximum standard of the group. *See* PostCom/DMA Comments at 12. For example, a single number will be reported for 3– to 4–day service standard Destination Entry mail. All 3–day service standard mail will be measured individually and compared with respect to the 3–day service standard. All 4–day service standard mail will be measured individually and compared with respect to the 4–day service standard. The 3–day result then will be combined with the 4–day result, weighted by an appropriate factor, and reported as the result for 3– to 4–day service standard Destination Entry mail. Three–day service standard mail will not be measured with respect to a 4–day service standard.

A similar process will be used for reporting on all products that have multiple service standard days. The process is applicable to both on–time service performance measurements and mail service variance reports. If reported using the illustrative data tables appearing in the Appendix, this single number would be reported in the "% On–Time" column. For annual reports, this number will be compared against the "Target," which is the service goal, not the service standard. *See* Valpak Comments at 9.

4. Rule 3055.65—Special Services

In Order No. 292, the Commission proposed an approach to measuring the service performance of green card Return Receipt service within the Special Services, Ancillary Services product. Order No. 292 at 26–28. Requirements specifying the form for reporting these measurements were incorporated into proposed rule 3055.65(b). The Postal Service was directed to respond to these proposals.

The Postal Service's response informs the Commission that it will incorporate the requirements proposed by the Commission into a special study concerning green card Return Receipt service that it intends to undertake in FY 2010. Postal Service Comments at 43–44.

The Commission will review the Postal Service's special study methodology and initial results during the FY 2010 Annual Compliance Report/Annual Compliance Determination process.

C. Proposals to Expand the Scope of the Service Performance Rules

Forwarding and return of First–Class Mail. In Order No. 140, the Commission asks the Postal Service to explore the cost of periodically conducting studies of service performance for forwarded and returned First–Class Mail, and to consider whether it is possible to incorporate pieces delivered to post office boxes and pieces requiring forwarding and return into its current EXFC measurement system design. Order No. 140 at 21, 24.

In response, the Postal Service concludes that it is not feasible to use EXFC, and that estimated costs and challenges stand as compelling barriers to the development of special studies to measure forwarding and return performance.[30] *See* Postal Service Supplemental Comments.

In the instant docket, the Public Representative again suggests including service performance reporting of forwarded First–Class Mail. Public

[30] Additionally, the Postal Service contends it "does not consider that section 3691 can fairly be read to impose any obligation to establish service standards of measurement reporting for mail within a product on the basis of it being subject to one or a variety of applicable mail flows or processing technologies, or whether such mail is forwarded, returned to sender or subject to different modes address correction." Postal Service Supplemental Comments, Attachment at 1, n.1. The Commission respectfully disagrees with the Postal Service's interpretation. It might lead to the conclusion that only one performance characteristic could be measured for each product. The Postal Service itself recognized that this is not the case. It proposes separate reporting within Standard Mail for destination entry and End–to–End mail due to differences in mail flows. Within First–Class Mail, rational arguments can be made for measuring forwarded and returned mail separately from properly addressed mail, as opposed to the Postal Service's approach of excluding this segment of First-Class Mail from measurement or alternatively to include this mail in overall First–Class Mail product reporting.

Representative Comments at 15–17. He submits that the Postal Service has a statutory obligation to measure the service performance of this mail. He further requests that the Postal Service be directed to measure service performance using EXFC, special studies, or a combination of the two. Alternatively, the Public Representative asks that the Postal Service provide partial measurements by capturing existing operational data. Public Representative Supplemental Comments at 2.

At this time, the Commission will not require reporting on forwarded or returned mail. The Commission likely will revisit this in the future because forwarding and return is an important characteristic of First–Class Mail which affects the service performance of each product within that class. At that time, the Commission will find it helpful for the Postal Service to attempt to develop ideas for attaining meaningful measurements instead of focusing on potential impediments to doing so.

Tail of the Mail. Bank of America and PostCom/DMA suggest reporting mail service variances as a cumulative percentage of mail delivered each day for mail exceeding their respective service standards until 99 percent of the mail entering the system is accounted for. Bank of America Comments at 3, n.5; PostCom/DMA Comments at 9–10. The variance reports as proposed generally only provide data on the percentages of mail delivered within 1 day, 2 days or 3 days of the applicable service performance standard.

The Commission addressed this issue in Order No. 140 at 43–44, where it did not recommend expanding variance reporting beyond the 1–day, 2–day, and 3–day reporting as proposed by the Postal Service. Although the Commission recognizes potential benefits to mailers of more detailed reporting, the Commission remains unconvinced of a need to provide variance reporting beyond the proposed 3 days to fulfill its regulatory functions. Reporting at the 1–day, 2–day, and 3–day level should provide an indication of the Postal Service's consistency in meeting its service performance requirements, and provide an indication of potential tail of the mail problems. However, this issue is subject to re–evaluation once measurement systems begin generating actual data and specific problems are identified.

Remittance mail. Bank of America argues that the Postal Service should measure and report service performance for remittance mail containing payments separately from other First–Class Mail. Bank of America Comments at 4–5.

The Postal Service opposes this suggestion arguing that neither the statute nor the proposed rules require reporting of service performance at a subproduct level. The Postal Service also agrees with the Commission's position expressed in Order No. 140 which does not require the separate reporting of remittance mail. Postal Service Reply Comments at 34–35.

The Commission expressed its position in Order No. 140.

> The Commission distinguishes separate reporting of remittance mail from treating remittance mail as a distinct category of First–Class Mail. The Postal Service has indicated to the Commission in consultations that it is considering ways to separately measure the performance of remittance mail, which indicates a future potential for separate reporting of remittance mail. However, treating remittance mail as a distinct category of First–Class Mail raises classification issues that are beyond the scope of this discussion.

Order No. 140 at 146.

The rules will not be modified at this time to require the separate reporting of remittance mail from other First–Class Mail.

Critical Entry Times (CETs). Bank of America suggests expanding rule 3055.2 to report on CETs, and to subject CETs to the change notice provisions of rule 3055.5. Bank of America Comments at 3, n.7.

The Postal Service approves of the Commission's conclusions reached in Order No. 140 at 17. It believes that requiring reporting of CETs would amount to an inappropriate and unauthorized intrusion on the management function. Postal Service Reply Comments at 33.

The Commission expressed its position in Order No. 140.

> The Commission perceives start–the–clock as a detailed and difficult issue, and urges the Postal Service to continue working with the mailing community in developing a working, user friendly, information system. The Commission supports the Postal Service's proposal to document CETs and encourages it to develop systems to make this information publicly available in the very near future.

Order No. 140 at 17.

The Commission accepts the Postal Service's representation that it will document CETs on a facility–by–facility basis in a central location. Unless it is shown that CETs are being unreasonably manipulated to influence the performance measurement system, the Postal Service needs the flexibility to establish CETs based on its business requirements. Subjecting CETs to the notice provisions of rule 3055.5 now would needlessly restrict this flexibility. Individual CETs do not have to be reported to the Commission.

Actionable, raw data. Bank of America and PostCom/DMA argue that they have business needs for service performance reporting beyond what the Commission requires to perform its regulatory function. Bank of America suggests that the Commission encourage the Postal Service to provide mailers access to aggregate raw data. Bank of America Comments at 2. PostCom/DMA also contends that customers have a need for access to actionable service performance data. PostCom/DMA Comments at 8–9.

The Commission is not persuaded to modify its previous position on this topic.

> The Commission observes that business needs of some mailers may vastly exceed the needs of the regulator to perform its functions. Although the Commission may well specify reporting in a greater level of detail over time, it is not anticipated that the level of reporting will reach the provision of near real time data envisioned by some mailers. The Postal Service should be allowed time to explore the business needs of its customers and propose information products to meet those needs outside the context of the regulatory requirements.

Order No. 140 at 42.

Year–to–year comparisons. Valpak suggests a requirement for the Postal Service to provide year–to–year comparisons of data. For example, percentage on–time (last year) data could be compared with percentage on–time (current year) and a percentage on–time change could be calculated. Valpak Comments at 10.

All data will be available for interested persons to make comparisons of their own choosing. The Postal Service may choose to make comparisons in its reports to the Commission if it finds a comparison style format helpful. However, until experience is gained with the reporting of service measurement data, the Commission will not require the Postal Service to provide year–to–year comparisons.

Improving the transparency of service performance information. PostCom/DMA express frustration with the form and content of service performance information the Postal Service posts on its Web site. They ask the Commission to work with the Postal Service to improve the transparency and accessibility of service standards, service performance targets, and service performance reports. PostCom/DMA Comments at 16–17.

The Postal Service controls what it posts to its Web site. The Commission can only suggest that the Postal Service

work with its customers in improving the quality and usefulness of the information it posts. The Commission, however, will post all public sections of both annual and quarterly service performance and customer satisfaction reports to its Web site as they are filed by the Postal Service. This will improve the transparency of the reporting systems and will provide more detailed information than what currently is posted on the Postal Service's Web site.

Including variance reports in the Annual Report. Valpak contends that 39 U.S.C. 3652(a)(2)(B)(i) requires annual variance reports as a measure of a product's reliability. It asserts that providing this information is a Postal Service statutory requirement that the Commission cannot waive even though the Commission is capable of compiling this report using information obtained through quarterly reports. Valpak Comments at 14–17.

The Postal Service suggests that this information potentially could be provided as part of the annual report. Postal Service Reply Comments at 27.

The rules as adopted require the provision of variance reports as part of each quarterly report, but not as part of the annual report. The proposed quarterly reporting rules also require the Postal Service to aggregate quarterly reports up to an annual level. Thus, Valpak will have access to the information it seeks under the rules as proposed. Both quarterly reports and the annual report will be available for analysis under the Annual Compliance Determination process. Under these circumstances there is no reason to require the separate entry Valpak seeks.

VI. Reporting of Customer Satisfaction

A. General Considerations

This rulemaking incorporates the rules for reporting customer satisfaction into new Subpart C—Annual Reporting of Customer Satisfaction, of Part 3055—Service Performance and Customer Satisfaction Reporting. Table 4—Illustrative Customer Satisfaction Data Reporting Charts shown in the Appendix provides a visualization of the annual data reporting elements specified by the rules through illustrative examples of data reporting charts.[31]

Rule 3055.90 specifies the general requirement for the Postal Service to file a report on customer satisfaction as part of its Annual Compliance Report unless more frequent reporting is specifically requested. *See* 39 U.S.C. 3652(a)(2)(B)(ii).

The Postal Service comments generally that 39 U.S.C. 3652(a)(2)(B)(ii) provides little guidance on Congressional intent regarding what would constitute appropriate reports on customer satisfaction. Nevertheless, the Postal Service contends that the rules as proposed go further than necessary, intrude upon matters more appropriately left to postal management, and may exceed the intended statutory authority for the Commission to specify such reporting. Postal Service Comments at 45–47.

The Commission also recognizes that little guidance is provided by statute concerning the measurement of customer satisfaction and the relationship of customer satisfaction to other aspects of the statute. However, the Commission disagrees that the rules go further than necessary or intrude upon postal management. Congress clearly intended the Commission to have a role in both considering and improving visibility into customer satisfaction, as evidenced by Congress including the statutory provisions concerning customer satisfaction in the PAEA. This includes the development of reporting requirements concerning this new and relatively unexplored area through the current rulemaking process.

B. Rule 3055.91—Consumer Access to Postal Services

Rule 3055.91 requires the Postal Service to provide information encompassing four areas of customer access. First, it requests information on the number, type, and status of post offices servicing the public. Second, it seeks information pertaining to the number and type of delivery points accessed by the Postal Service. Third, it requests information pertaining to the number of collection boxes accessed by the Postal Service. Finally, it seeks information on customer wait time in line for retail services.

The Postal Service contends that reporting of consumer access as required by rule 3055.91 does not provide direct evidence of customer satisfaction, falls outside the scope of information Congress intended the Postal Service to report, and is outside the scope of information the Commission is authorized to require in reports on quality of service. Thus, it contends that the provisions specified in rule 3055.91 should be eliminated. *Id.* at 50–51.

Valpak contends that requiring the Postal Service to report on consumer access to postal services as part of measuring the degree of customer satisfaction lacks statutory basis and should be withdrawn.[32] It argues that the information sought does not relate to how customers feel about postal services and can only be used by the Commission to "attempt to determine how the Commission feels that consumers might feel." Valpak Comments at 17–18.

The Public Representative contends that data on customer access and Mystery Shopper Program information are important measures of customer satisfaction and service quality, even if they are indirect measures. He argues that the requirement to report on consumer access to postal services is directly responsive to Congressional intent in establishing modern service standards to "preserve regular and effective access to postal services in all communities, including those in rural areas or where post offices are not self–sustaining." *See* 39 U.S.C. 3691(b)(1)(B). Public Representative Reply Comments at 10–12.

The Commission agrees with the Postal Service that the data required by the customer access rule does not provide a direct indication of customer satisfaction. However, it finds that several of these reporting requirements are relevant to an analysis of customer satisfaction. For example, if a customer cannot access a needed postal service, that customer cannot be satisfied with that service. At some point, access may become so limited that service is effectively unavailable. Quantifying specific modes of customer access is a first step in the analysis, which asks what level of access is available. Information quantifying post offices, delivery points, and collection boxes should be readily available to management and can be provided with little burden. Changes in the levels of access over time then can be correlated with customer satisfaction. The Commission finds that measuring customer access to postal services is likely to be an important aspect of customer satisfaction, as well as a critical aspect of evaluating universal service. Thus, the Commission shall retain the customer access provisions in the final rule.

In Docket No. N2009–1, the Postal Service provided information on alternative access channels for obtaining postage and certain postal services. The Postal Service provided percentages of revenues obtained through various "brick and mortar" and alternative

[31] Order No. 292 at 29–34 describes all rules appearing in subpart C. The descriptions have not been repeated in this order unless pertinent to the discussion.

[32] Its argument is directed at the requirements to report on post offices, delivery points, and collection boxes, but not towards the requirement to report wait time in line.

access channels,[33] and a comparison of products that can be purchased in brick and mortar facilities and products that can be purchased online.[34]

In Order No. 292, the Commission concluded that the Postal Service may find that reporting of information on alternative access channels will provide a more balanced view of the current status of customer access to postal services, and that such reports also may provide another avenue to promote the use of alternative access channels. The Commission sought comments on the benefits of reporting this aspect of customer access and any proposal that the Postal Service may have on what and how any related data items can be reported.

The Commission did not receive responsive comments addressing this subject. The Commission eventually may want to expand evaluation of different types of access to postal services, but it shall not establish reporting requirements on alternative access channels in this rulemaking.

The Postal Service specifically asks the Commission to delete the requirement to report wait time in line as required by rule 3055.91(d). It contends that this measurement would not necessarily allow one to draw particular conclusions about customer satisfaction. Furthermore, wait time in line (as a component of the Mystery Shopper Program) should remain within the purview of the Postal Service as an internal management diagnostic tool. Postal Service Comments at 56–57.

If the Postal Service's concern is with the confidentiality of the Mystery Shopper Program data, the Commission is not requiring the Postal Service to use data from this program to develop wait time in line statistics. The Postal Service may develop an independent system for generating data. However, the Commission is of the opinion that using Mystery Shopper Program data as the basis for reporting wait time in line would be the most economical for the Postal Service.

The Commission infers from previous Postal Service presentations that the Postal Service has determined an acceptable wait time in line is less than 5 minutes. If the Postal Service has any studies that it could share with the Commission which sheds light on a customer's perception of wait time in line, the Commission would find those studies most helpful. This will help the qualitative aspect of analyzing wait time in line as it relates to customer satisfaction.

The Postal Service asks for clarification of rule 3055.91(a) pertaining to reporting the number of post offices. The explanatory note contained in Order No. 292 specifies that the responsive information must be "disaggregated by the types of post offices as appearing in the Postal Service's Annual Report." Order No. 292 at 30. The Postal Service explains that the disaggregation in the annual report is by facility type, not by types of post offices. These are Post Offices, Classified Stations, Branches and Carrier Annexes; Contract Postal Units; and Community Post Offices. The Postal Service argues that if the intent is to reflect the locations at which customers may access retail services, it would seem unnecessary to include Carrier Annexes. Postal Service Comments at 47–48.

The Commission's intent is to encompass both retail and commercial customer access points. The Commission's understanding is that some Carrier Annex locations accept mail from commercial customers. The term "post office" is used in the generic sense in the rule to indicate customer access points. In this instance, it is consistent with the Postal Service characterization of reporting on facility types. Thus, Carrier Annexes are to be included in reporting.

Customer access is to be reported annually. In Order No. 292, the Commission asked that for the immediate future the Postal Service voluntarily provide these reports on a quarterly basis. Order No. 292 at 30–31. The Commission again requests that this information be provided voluntarily.

C. Rule 3055.92—Customer Experience Measurement Surveys

Rule 3055.92 requires the Postal Service to file with the Commission a copy of each type of Customer Experience Measurement Survey instrument used in the preceding fiscal year, and to report a summary of the information obtained on an annual basis. Where the Postal Service solicits information through multiple choice questions, it is required to provide additional detail by providing the number of responses obtained for each possible response. The summary of information obtained also must include a description of the customer type targeted by each distinct type of survey instrument, statistics on the number of surveys initiated, and the number of surveys returned to the Postal Service.

The Postal Service previously informed the Commission that it intends to redesign its Customer Satisfaction Measurement Survey to meet the requirements of the PAEA and to generate customer satisfaction data on a product–by–product basis.[35] The Postal Service anticipated that it will be transitioning from the former Customer Satisfaction Measurement system to a newly named Customer Experience Measurement system during FY 2010. The Postal Service recently informed the Commission that the transition to the new Customer Experience Measurement system is complete. The final rule has been updated to reflect this name change, and to account for potential future name changes.

The Public Representative states that the Customer Experience Measurement program was developed without Commission consultation. Thus, it argues that the Commission is currently unable to determine whether the Customer Experience Measurement program will satisfy the statutory requirements. The Public Representative asks the Commission to conclude that the Customer Experience Measurement program is an internal measurement system that has not been approved by the Commission pursuant to 39 U.S.C. 3691(B)(2). He then asks that the Commission request public comment on the information that should be included in this program for measuring customer satisfaction. Public Representative Reply Comments at 12–15.

The Customer Experience Measurement survey is an internal Postal Service management tool, which also may be of use for reporting customer satisfaction. The Postal Service may develop internal management tools with or without Commission approval. The Commission provided guidance during the consultation process to increase the likelihood that future consumer surveys, including the Customer Experience Measurement survey, would produce reliable and meaningful information. Order No. 292 at 32. The Postal Service did not believe that the Commission should be involved in the actual survey process. Postal Service Comments at 51–53.

As a starting point in developing a customer satisfaction measurement system, the Commission defers to the Postal Service's expertise in developing this form of survey. After experience is

[33] Docket No. N2009–1, Responses of United States Postal Service Witness VanGorder to Public Representative Interrogatories PR/USPS–T1–1–5, and 7(c–d), 8, July 27, 2009.

[34] Docket No. N2009–1, United States Postal Servce Notice of Errata in Filing of Response of Witness VanGorder to Public Representative Interrogatory PR/USPS–T1–1(a) [Errata], July 28, 2009.

[35] Docket No. PI2008–1, Reply Comments of the United States Postal Service, February 1, 2008, at 11.

gained, the Commission may identify topics on which additional information is needed. The Postal Service will be responsible for developing appropriate means for producing this information. The Commission does not adopt the Public Representative's proposal.

D. Rule 3055.93—Mystery Shopper Program

Proposed rule 3055.93 seeks information obtained from the Mystery Shopper Program. It requires the Postal Service to file a copy of the National Executive Summary Report (which summarizes data from the Mystery Shopper Program) on a quarterly basis, along with each type of survey instrument used in preparing each report. The Commission understands that the Mystery Shopper Program is a management tool for developing proprietary information and is aware of the necessity that the "mystery" of the program be maintained.

The Postal Service argues that the requirement to file copies of the National Executive Summary Report generated by the Mystery Shopper Program is unwarranted and should be eliminated. The Postal Service explains that the program is primarily designed to help local retail managers retain business in a competitive marketplace. The Postal Service contends that the information generated by this program is commercially sensitive and proprietary in nature. Furthermore, the program consists of objective observations about the conditions in postal facilities and operational practices, and does not provide direct evidence of customer satisfaction within the meaning of the statute. *Id.* at 53–56.

The usefulness of using Mystery Shopper Program data in the evaluation of customer satisfaction is best explained by example. The Commission finds the effect of wait time in line to mail a parcel requiring counter service relevant to customer satisfaction with the overall product. If mailers have to wait an excessively long time to enter parcels into the system, they will become dissatisfied and place less value on using the product.

Nonetheless, the Commission agrees that the detailed operational information gathered by the Mystery Shopper Program is designed to assist local managers to identify and correct problems rather than to capture the attitudes of customers. Therefore, the Commission will eliminate proposed rule 3055.93 from the final rules on service performance measurement.

E. Suggested Data Reporting Item

The Public Representative proposes that customer satisfaction reporting can be improved by requiring the reporting of Call Center and other customer inquiry data. Public Representative Comments at 17–20. The Postal Service opposes incorporating requirements to include Call Center and other customer inquiry data. It argues that this data is compiled for management and diagnostic purposes and should not be reported. Postal Service Reply Comments at 36–37.

The Commission will not accept the Public Representative's proposal. The potential benefits and limitations of this type of information have not been sufficiently explored in this docket for an informed decision to be made.

Concurring Opinion of Commissioner Dan G. Blair and Vice Chairman Tony L. Hammond

We concur with the regulations establishing reporting requirements for measuring the level of service performance for market dominant products as required by 39 U.S.C. 3652. We do not, however, agree that section VI of this order meets the intent and spirit of the Postal Accountability and Enhancement Act (PAEA), Pub. L. 109–143, 120 Stat. 3218 (2006).

Section 3652 requires that the Postal Service include in an annual report to the Commission an analysis of the quality of service "for each market–dominant product provided in such year" by providing "(B) measures of the quality of service afforded by the Postal Service in connection with such product, including—(i) the level of service (described in terms of speed of delivery and reliability) provided; and (ii) the degree of customer satisfaction with the service provided."

Section VI of this order includes reporting rules on customer satisfaction. However, this reporting is not tied to any specific market dominant product. Rather, these reporting requirements focus on the number, type, and status of post offices serving the public; the number and type of delivery points accessed by the Postal Service; and the number of collection boxes provided by the Postal Service. Access to postal services are provided through means beyond brick and mortar facilities such as those on the internet, at retail stores, or at kiosks, just to name a few. While this information has relevance in a broader context of postal operations, *see* 39 U.S.C. 3651, the reporting requirements are not related to specific market dominant products.

In addition, the rules require the submission of data compiled from Customer Experience Measurement surveys. We recognize such surveys are a useful management tool. However, the information sought is not directly tied to market dominant service level performance. We find it significant that while 39 U.S.C. 3652 requires that the Annual Compliance Report include information on the degree of customer satisfaction, 39 U.S.C. 3653 does not specify customer satisfaction as a topic on which a finding of compliance or noncompliance must be made. These reporting requirements may place an unnecessary burden on the Postal Service at a time when it has limited resources.

VII. Ordering Paragraphs

It is ordered:

1. The Commission amends its rules of practice and procedure by adding new part 3055—Service Performance Measurement and Customer Satisfaction Reporting. This part is subdivided into Subpart A—Annual Reporting of Service Performance Achievements, Subpart B—Periodic Reporting of Service Performance Achievements, and Subpart C—Reporting of Customer Satisfaction.

2. The Postal Service's initial request for semi–permanent exceptions from reporting shall be filed with the Commission no later than June 25, 2010. Interested persons may file comments concerning this request until July 16, 2010.

3. The Postal Service's request for temporary waivers from reporting, including its implementation plans, shall be filed with the Commission no later than September 10, 2010. Interested persons may file comments concerning this request until October 1, 2010.

4. The Secretary shall arrange for publication of this notice in the **Federal Register.**

List of Subjects

39 CFR Part 3050

Administrative practice and procedure, Postal Service, Reporting and recordkeeping requirements.

39 CFR Part 3055

Administrative practice and procedure, Postal Service, Reporting and recordkeeping requirements.

By the Commission.

Shoshana M. Grove,

Secretary.

■ For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3050—PERIODIC REPORTING

■ 1. The authority citation for part 3050 continues to read as follows:

Authority: 39 U.S.C. 503; 3651, 3652.

§§ 3050.50 through 3050.53 [Removed]

■ 2. Remove reserved §§ 3050.50 through 3050.53.

■ 3. Add part 3055 to read as follows:

PART 3055—SERVICE PERFORMANCE AND CUSTOMER SATISFACTION REPORTING

Subpart A—Annual Reporting of Service Performance Achievements

Sec.
3055.1 Annual reporting of service performance achievements.
3055.2 Contents of the annual report of service performance achievements.
3055.3 Reporting exceptions.
3055.4 Internal measurement systems.
3055.5 Changes to measurement systems, service standards, service goals or reporting methodologies.
3055.6 Addition of new market dominant products or changes to existing market dominant products.
3055.7 Special study.
3055.20 First–Class Mail.
3055.21 Standard Mail.
3055.22 Periodicals.
3055.23 Package Services.
3055.24 Special Services.
3055.25 [Reserved]

Subpart B—Periodic Reporting of Service Performance Achievements

Sec.
3055.30 Periodic reporting of service performance achievements.
3055.31 Contents of the Quarterly Report of service performance achievements.
3055.32 Measurement systems using a delivery factor.
3055.45 First–Class Mail.
3055.50 Standard Mail.
3055.55 Periodicals.
3055.60 Package Services.
3055.65 Special Services.
3055.70 [Reserved]

Subpart C–Reporting of Customer Satisfaction

Sec.
3055.90 Reporting of customer satisfaction.
3055.91 Consumer access to postal services.
3055.92 Customer Experience Measurement Surveys.

Authority: 39 U.S.C. 503, 3622(a), 3652(d) and (e); 3657(c).

Subpart A— Annual Reporting of Service Performance Achievements

§ 3055.1 Annual reporting of service performance achievements.

For each market dominant product specified in the Mail Classification Schedule in part 3020, appendix A to subpart A of part 3020 of this chapter, the Postal Service shall file a report as part of the section 3652 report addressing service performance achievements for the preceding fiscal year.

§ 3055.2 Contents of the annual report of service performance achievements.

(a) The items in paragraphs (b) through (k) of this section shall be included in the annual report of service performance achievements.

(b) The class or group–specific reporting requirements specified in §§ 3055.20 through 3055.25.

(c) The applicable service standard(s) for each product.

(d) The applicable service goal(s) for each product.

(e) A description of the measurement system for each product, including:

(1) A description of what is being measured;

(2) A description of the system used to obtain each measurement;

(3) A description of the methodology used to develop reported data from measured data;

(4) A description of any changes to the measurement system or data reporting methodology implemented within the reported fiscal year; and

(5) Where proxies are used, a description of and justification for the use of each proxy.

(f) A description of the statistical validity and reliability of the results for each measured product.

(g) A description of how the sampled data represents the national geographic mail characteristics or behavior of the product.

(h) For each product that does not meet a service standard, an explanation of why the service standard is not met, and a plan describing the steps that have or will be taken to ensure that the product meets or exceeds the service standard in the future.

(i) The identification of each product, or component of a product, granted an exception from reporting pursuant to § 3055.3, and a certification that the rationale for originally granting the exception remains valid.

(j) Documentation showing how data reported at a given level of aggregation were derived from data reported at greater levels of disaggregation. Such documentation shall be in electronic format with all data links preserved. It shall show all formulas used, including volumes and other weighting factors.

(k) For each product, documentation showing how the reports required by subpart A of this part were derived from the reports required by subpart B of this part. Such documentation shall be in electronic format with all data links preserved. It shall show all formulas used, including volumes and other weighting factors.

§ 3055.3 Reporting exceptions.

(a) The Postal Service may petition the Commission to request that a product, or component of a product, be excluded from reporting, provided the Postal Service demonstrates that:

(1) The cost of implementing a measurement system would be prohibitive in relation to the revenue generated by the product, or component of a product;

(2) The product, or component of a product, defies meaningful measurement; or

(3) The product, or component of a product, is in the form of a negotiated service agreement with substantially all components of the agreement included in the measurement of other products.

(b) The Postal Service shall identify each product or component of a product granted an exception in each report required under subparts A or B of this part, and certify that the rationale for originally granting the exception remains valid.

§ 3055.4 Internal measurement systems.

Service performance measurements obtained from internal measurement systems or hybrid measurement systems (which are defined as systems that rely on both an internal and an external measurement component) shall not be used to comply with any reporting requirement under subparts A or B of this part without prior Commission approval.

§ 3055.5 Changes to measurement systems, service standards, service goals, or reporting methodologies.

The Postal Service shall file notice with the Commission describing all changes to measurement systems, service standards, service goals or reporting methodologies, including the use of proxies for reporting service performance, 30 days prior to planned implementation. The Commission may initiate a proceeding at any time to consider such changes if it appears that the changes might have a material impact on the accuracy, reliability, or utility of the reported measurement, or if the changes might have a material impact on the characteristics of the underlying product.

§ 3055.6 Addition of new market dominant products or changes to existing market dominant products.

Whenever the Postal Service proposes the addition of a new market dominant product or a change to an existing

market dominant product, it also shall propose new or revised (as necessary) service performance measurement systems, service standards, service goals, data reporting elements, and data reporting methodologies.

§ 3055.7 Special study.

Included in the second section 3652 report due after this rule becomes final, and every 2 years thereafter, the Postal Service shall provide a report, by class of mail, on delivery performance to remote areas of the Alaska, Caribbean, and Honolulu districts.

§ 3055.20 First–Class Mail.

(a) *Single–Piece Letters/Postcards, Bulk Letters/Postcards, Flats, and Parcels.* For each of the Single–Piece Letters/Postcards, Bulk Letters/Postcards, Flats, and Parcels products within the First–Class Mail class, report the on–time service performance (as a percentage rounded to one decimal place), disaggregated by mail subject to the overnight, 2–day, and 3/4/5–day service standards.

(b) *Outbound Single–Piece First–Class Mail International and Inbound Single–Piece First–Class Mail International.* For each of the Outbound Single–Piece First–Class Mail International and Inbound Single–Piece First–Class Mail International products within the First–Class Mail class, report the on–time service performance (as a percentage rounded to one decimal place).

§ 3055.21 Standard Mail.

For each product within the Standard Mail class, report the on–time service performance (as a percentage rounded to one decimal place).

§ 3055.22 Periodicals.

For each product within the Periodicals class, report the on–time service performance (as a percentage rounded to one decimal place).

§ 3055.23 Package Services.

For each product within the Package Services class, report the on–time service performance (as a percentage rounded to one decimal place).

§ 3055.24 Special Services.

For each product within the Special Services group, report the percentage of time (rounded to one decimal place) that each product meets or exceeds its service standard.

§ 3055.25 Nonpostal products [Reserved]

Subpart B—Periodic Reporting of Service Performance Achievements

§ 3055.30 Periodic reporting of service performance achievements.

For each market dominant product specified in the Mail Classification Schedule in part 3020, appendix A to subpart A of part 3020 of this chapter, the Postal Service shall file a Quarterly Report with the Commission addressing service performance achievements for the preceding fiscal quarter (within 40 days of the close of each fiscal quarter).

§ 3055.31 Contents of the Quarterly Report of service performance achievements.

(a) The items in paragraphs (b) through (e) of this section shall be included in the quarterly report of service performance achievements.

(b) The class or group–specific reporting items specified in §§ 3055.45 through 3055.70.

(c) The identification of each product, or component of a product, granted an exception from reporting pursuant to § 3055.3, and a certification that the rationale for originally granting the exception remains valid.

(d) Documentation showing how data reported at a given level of aggregation were derived from data reported at greater levels of disaggregation. Such documentation shall be in electronic format with all data links preserved. It shall show all formulas used, including volumes and other weighting factors.

(e) A year–to–date aggregation of each data item provided in each Quarterly Report due for the reported fiscal year, where applicable, including volumes and other weighting factors provided in electronic format, with formulas shown and data links preserved to allow traceability to individual Quarterly Reports.

§ 3055.32 Measurement systems using a delivery factor.

For measurements that include a delivery factor, the duration of the delivery factor also shall be presented independent of the total measurement.

§ 3055.45 First–Class Mail.

(a) *Single–Piece Letters/Postcards, Bulk Letters/Postcards, Flats, and Parcels.* For each of the Single–Piece Letters/Postcards, Bulk Letters/Postcards, Flats, and Parcels products within the First–Class Mail class, report the:

(1) On–time service performance (as a percentage rounded to one decimal place), disaggregated by mail subject to the overnight, 2–day, and 3/4/5–day service standards, provided at the District, Postal Administrative Area, and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by mail subject to the overnight, 2–day, and 3/4/5–day service standards, provided at the District, Postal Administrative Area, and National levels.

(b) *Outbound Single–Piece First–Class Mail International and Inbound Single–Piece First–Class Mail International.* For each of the Outbound Single–Piece First–Class Mail International and Inbound Single–Piece First–Class Mail International products within the First–Class Mail class, report the:

(1) On–time service performance (as a percentage rounded to one decimal place), provided at the Postal Administrative Area and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, provided at the Postal Administrative Area and National levels.

§ 3055.50 Standard Mail.

(a) For each product within the Standard Mail class, report the on–time service performance (as a percentage rounded to one decimal place), disaggregated by the Destination Entry (2–day), Destination Entry (3–day through 4–day), Destination Entry (5–day through 10–day), End–to–End (3–day through 5–day), End–to–End (6–day through 10–day), and End–to–End (11–day through 22–day) entry mail/service standards, provided at the District, Postal Administrative Area, and National levels.

(b) For each product within the Standard Mail class, report the service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by the Destination Entry (2–day), Destination Entry (3–day through 4–day), Destination Entry (5–day through 10–day), End–to–End (3–day through 5–day), End–to–End (6–day through 10–day), and End–to–End (11–day through 22–day) entry mail/service standards, provided at the District, Postal Administrative Area, and National levels.

§ 3055.55 Periodicals.

(a) *Within County Periodicals.* For the Within County Periodicals product within the Periodicals class, report the:

(1) On–time service performance (as a percentage rounded to one decimal place), provided at the Postal Administrative Area and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, provided at the Postal Administrative Area and National levels.

(b) *Outside County Periodicals.* For the Outside County Periodicals product within the Periodicals class, report the:

(1) On–time service performance (as a percentage rounded to one decimal place), disaggregated by the Destination Entry and End–to–End entry mail, provided at the Postal Administrative Area and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by the Destination Entry and End–to–End entry mail, provided at the Postal Administrative Area and National levels.

§ 3055.60 Package Services.

(a) *Single–Piece Parcel Post.* For the Single–Piece Parcel Post product within the Package Services class, report the:

(1) On–time service performance (as a percentage rounded to one decimal place), disaggregated by mail subject to the 2–day through 4–day and 5–day through 20–day service standards, provided at the District, Postal Administrative Area, and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by mail subject to the 2–day through 4–day and 5–day through 20–day service standards, provided at the District, Postal Administrative Area, and National levels.

(b) *Bound Printed Matter Flats, Bound Printed Matter Parcels, and Media Mail/Library Mail.* For each of the Bound Printed Matter Flats, Bound Printed Matter Parcels, and Media Mail/Library Mail products within the Package Services class, report the:

(1) On–time service performance (as a percentage rounded to one decimal place), disaggregated by the Destination Entry and End–to–End entry mail, provided at the District, Postal Administrative Area, and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by the Destination Entry and End–to–End entry mail, provided at the District, Postal Administrative Area, and National levels.

(c) *Inbound Surface Parcel Post (at UPU rates).* For the Inbound Surface Parcel Post (at UPU rates) product within the Package Services class, report the:

(1) On–time service performance (as a percentage rounded to one decimal place), provided at the Postal Administrative Area and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, provided at the Postal Administrative Area and National levels.

§ 3055.65 Special Services.

(a) For each product within the Special Services group, report the percentage of time (rounded to one decimal place) that each product meets or exceeds its service standard, provided at the National level.

(b) *Additional reporting for Ancillary Services.* For the Certified Mail, electronic Return Receipt, Delivery Confirmation, Insurance, and an aggregation of all other services within the Ancillary Services product, individually report the percentage of time (rounded to one decimal place) that each service meets or exceeds its service standard. For green card Return Receipt report:

(1) The number of EXFC seed mailpieces sent;

(2) The percentage of green cards properly completed and returned;

(3) The percentage of green cards not properly completed, but returned;

(4) The percentage of mailpieces returned without a green card signature; and

(5) The percentage of the time the service meets or exceeds its overall service standard.

(c) *Additional reporting for Post Office Box Service.* For Post Office Box Service, report the percentage of time (rounded to one decimal place) that the product meets or exceeds its service standard, provided at the District and Postal Administrative Area levels.

§ 3055.70 NONPOSTAL PRODUCTS [RESERVED]

Subpart C—Reporting of Customer Satisfaction

§ 3055.90 Reporting of customer satisfaction.

For each market dominant product specified in the Mail Classification Schedule in part 3020, appendix A to subpart A of part 3020 of this chapter, the Postal Service shall file a report as part of the section 3652 report, unless a more frequent filing is specifically indicated, addressing customer satisfaction achievements for the preceding fiscal year. The report shall include, at a minimum, the specific reporting requirements presented in §§ 3055.91 through 3055.92.

§ 3055.91 Consumer access to postal services.

(a) The following information pertaining to post offices shall be reported, disaggregated by type of post office facility, and provided at the Postal Administrative Area and National levels:

(1) The number of post offices at the beginning of the reported fiscal year;

(2) The number of post offices at the end of the reported fiscal year;

(3) The number of post office closings in the reported fiscal year;

(4) The number of post office emergency suspensions in effect at the beginning of the reported fiscal year;

(5) The number of post office emergency suspensions in the reported fiscal year; and

(6) The number of post office emergency suspensions in effect at the end of the reported fiscal year.

(b) The following information pertaining to delivery points shall be reported, disaggregated by delivery point type, provided at the Postal Administrative Area and National levels:

(1) The number of residential delivery points at the beginning of the reported fiscal year;

(2) The number of residential delivery points at the end of the reported fiscal year;

(3) The number of business delivery points at the beginning of the reported fiscal year; and

(4) The number of business delivery points at the end of the reported fiscal year.

(c) The following information pertaining to collection boxes shall be reported, provided at the Postal Administrative Area and National levels:

(1) The number of collection boxes at the beginning of the reported fiscal year;

(2) The number of collection boxes at the end of the reported fiscal year;

(3) The number of collection boxes removed during the reported fiscal year; and

(4) The number of collection boxes added to new locations during the reported fiscal year.

(d) The average customer wait time in line for retail service shall be reported. Data shall be provided for the beginning of the reported fiscal year and for the close of each successive fiscal quarter at the Postal Administrative Area and National levels.

§ 3055.92 Customer Experience Measurement Surveys.

(a) The report shall include a copy of each type of Customer Experience Measurement instrument, or any similar instrument that may supersede the Customer Experience Measurement instrument used in the preceding fiscal year.

(b) The report shall include information obtained from each type of Customer Experience Measurement instrument, or any similar instrument that may supersede the Customer Experience Measurement instrument including:

(1) A description of the customer type targeted by the survey;

(2) The number of surveys initiated and the number of surveys received; and

(3) Where the question asked is subject to a multiple choice response, the number of responses received for each question, disaggregated by each of the possible responses.

[FR Doc. 2010–16178 Filed 7–2–10; 8:45 am]

BILLING CODE 7710–FW–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2010–0156; FRL–9170–6]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to the Iowa State Implementation Plan (SIP). The purpose of this revision is to update the Polk County Board of Health Rules and Regulations, Chapter V, Air Pollution. These revisions reflect updates to the Iowa statewide rules previously approved by EPA and will ensure consistency between the applicable local agency rules and Federally-approved rules. This rulemaking also ensures Federal enforceability of the applicable parts of the local agency's "Air Pollution" rules.

DATES: This direct final rule will be effective September 7, 2010, without further notice, unless EPA receives adverse comment by August 5, 2010. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2010–0156, by one of the following methods:

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

2. *E-mail: casburn.tracey@epa.gov.*

3. *Mail or Hand Delivery:* Tracey Casburn, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2010–0156. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Tracey Casburn at (913) 551–7016, or by e-mail at *casburn.tracey@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to EPA. This section provides additional information by addressing the following questions:

I. What is being addressed in this document?
II. What revisions is EPA approving?
III. What action is EPA taking?
IV. What action is EPA not taking?
V. Statutory and Executive Order Reviews

I. What is being addressed in this document?

The State requested EPA approval of the 2009 revisions to the local agency's Rules and Regulations, Chapter V, "Air Pollution," as a revision to the SIP. In order for the local program's "Air Pollution" rules to be incorporated into the Federally-enforceable SIP, on behalf of the local agency, the State must submit the formally adopted regulations and control strategies, which are consistent with State and Federal requirements, to EPA for inclusion in the SIP. The regulation adoption process generally includes public notice of a public comment period and a public hearing, and formal adoption of the rule by the State authorized rulemaking body. In this case that rulemaking body is the local agency. After the local agency formally adopts the rule, the local agency submits the rulemaking to the State, and then the State submits the rulemaking to EPA for consideration for formal action (inclusion of the rulemaking into the SIP). EPA must provide public notice and seek additional public comment regarding

the proposed Federal action on the State's submission.

EPA received the request from the State to adopt the 2009 local air agency rule revisions into the SIP on September 14, 2009. The revisions were adopted by the local agency on July 28, 2009, and were effective August 6, 2009. EPA is approving the requested revisions to the Iowa SIP. The State's request specifically excluded Article VI, subsections 5–16 (n), (o), (p), and Article VIII from consideration by EPA.

II. What revisions is EPA approving?

EPA is approving the 2009 revisions to the Polk County Board of Health Rules and Regulations, Chapter V, "Air Pollution." The local agency routinely revises its "Air Pollution" regulations to be consistent with the Federally-approved Iowa Administrative Code. The local agency's "Air Pollution" rules were revised as follows:

Article I, section 5–1 was revised to include cross references to approved State rules. Section 5–2 of the same Article was revised to include amended definitions of "Allowable emissions," "EPA reference method," "Disaster," "Mobile Internal Combustion Engine," and "Volatile Organic Compounds" (VOCs). These revisions are consistent with State and Federal regulations.

Article II, section 5–4 was revised to include a cross reference to the existing State rule, 567 IAC 23.1(2) which outlines New Source Performance Standard data reporting requirements and responsibilities. This revision is consistent with State and Federal regulations.

Article III, section 5–7 was amended to include revisions to "Open Burning" regulations. The revisions include the addition of a cross reference to the existing State rules in 567 IAC Chapter 23 explaining that the burning of any structure or demolished structure shall be in accordance with 40 CFR 61.145, the National Emission Standards for Hazardous Air Pollutants (NESHAPs) "Standard for Demolition and Renovation" for asbestos control. This revision is consistent with State and Federal regulations.

Article IV, section 5–10 was revised to include a cross reference to the existing State rule at 567 IAC 29.1, the Federal method for visual determination of opacity of emissions. This revision is consistent with State and Federal regulations.

Article VII, subsections 5–18 (a)(3), 5–18(b)(5)(i) and 5–18(b)(7) are revised to include cross references to existing State rules in 567 IAC Chapter 25. A revision to 5–18(b)(7) also includes the adoption date of the most recent Federally promulgated Acid Rain continuous emissions monitoring requirements. These revisions are consistent with State and Federal regulations.

Article IX, subsections 5–23(1), 5–23(2), and 5–23(3) were revised to include methods for the containment and control of fugitive dust, and subsections 5–23(7) and 5–23(8) were added to include methods for the containment and control of fugitive dust. Changes to Section 5–25 clarify that no person shall cause, allow, or permit fugitive dust material to become airborne in such quantities and concentrations that it remains visible in the ambient air, or is deposited beyond the lot line of the property on which it originates. These revisions are consistent with State regulations and Federal requirements. The local agency also added language to subsection 5–26(1) which explains activities that are considered by the local agency as "ordinary travel", which is exempted from the fugitive dust restrictions. This is a clarification of the exemption and does not affect the stringency of the restriction.

Article X, section 5–33, and subsections 5–33(9) and 5–39(a)(4) were revised to include cross references to approved State and Federal regulations. Subsections 5–33(17) and 5–39(a)(11) were revised to include a construction and operating permit exemption threshold for retail gasoline and diesel fuel handling facilities. The local agency revised the exemption to include only those facilities with a throughput of less than 10,000 gallons per month (based on thirty-day rolling average usage records). The local agency retained the right to review project plans to substantiate the permit exemption to determine that individual sources qualify for the exemption and would not adversely impact air quality. The local agency made this revision as it is more stringent than the existing SIP-approved exemption and is aligned with 40 CFR part 63 subpart CCCCCC. The Iowa Administrative Code currently does not provide for exemptions for retail gasoline stations of any size so that all sources in the source category in Polk County remain subject to the state permitting rule. In any event, the revision addressed in this rulemaking in the county rule makes the exemption more stringent, and is therefore approvable.

Also in Article X, subsections 5–33(55) and 5–39(a)(48) were revised to add a construction and operating permit exemption for cold solvent cleaning machines that are not in-line cleaning machines. Subsections 5–33(56) and 5–39(a)(49) were revised to add a construction and operating permit exemption for emissions from mobile agricultural and construction internal combustion engines that are operated only for repair or maintenance purposes at equipment repair shops or equipment dealerships. Subsection 5–35(d) was revised to reduce the amount of time the owner or operator has to notify the local program prior to the movement of portable equipment for which an operating permit has been issued. The notification time was reduced from 30 to 14 days. Subsections 5–36(1)(a) and 5–36(1)(a)(1) were revised to clarify what the owner or operators' responsibilities are when applying for a conditional operating permit. These revisions are consistent with SIP-approved State regulations.

Section 5–49 was added to Article X to allow for electric utilities in Polk County to operate generators at a utility substation, with a total combined capacity not to exceed 2 megawatts in capacity, for a period of not longer than 10 days and only for the purpose of providing electricity generation in the event of a sudden and unforeseen disaster that has disabled standard transmission of electricity to the public. EPA previously approved this allowance in a statewide rule after EPA determined that this allowance would result in insignificant emissions increases. We believe the Polk County revision is also approvable.

III. What action is EPA taking?

EPA is approving these revisions to the Polk County Board of Health Rules and Regulations, Chapter V, Air Pollution. These changes are consistent with the Federally-approved Iowa SIP.

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. The revisions meet the substantive SIP requirements of the Clean Air Act (CAA), including section 110 and implementing regulations.

EPA is processing this action as a direct final action because the revisions make changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

IV. What action is EPA not taking?

The State requested that EPA take action to approve the local agency's revisions to Article XVI section 5–75. Section 5–75 outlines the local agency's enforcement of criminal and civil penalties. As EPA does not rely on the local agency's authority, but relies on its own authority, to implement and enforce the requirements of the CAA, EPA is not taking action on the requested revisions to Article XVI section 5–75.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this 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 CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 7, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 18, 2010.

Karl Brooks,

Regional Administrator, Region 7.

■ 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 Q—Iowa

■ 2. In § 52.820 the table in paragraph (c) is amended by revising the entry for "Chapter V" under the heading "Polk County" to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

EPA—APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Explanation
Iowa Department of Natural Resources, Environmental Protection Commission [567]				

EPA—APPROVED IOWA REGULATIONS—Continued

Iowa citation	Title	State effective date	EPA approval date	Explanation
*	*	*	*	*
		Polk County		
CHAPTER V	Polk County Board of Health Rules and Regulations Air Pollution Chapter V.	08/06/09	07/06/10 [*insert FR page number where the document begins*].	Article I, Section 5–2, definition of "variance"; Article VI, Sections 5–16(n), (o) and (p); Article VIII; Article IX, Sections 5–27(3) and (4); Article X, Section 5–28, subsections (a) through (c); Article XIII and Article XVI, Section 5–75 are not a part of the SIP.

* * * * *

[FR Doc. 2010–16235 Filed 7–2–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 447 and 457

[CMS–2244–CN]

RIN 0938–AP73

Medicaid Program; Premiums and Cost Sharing; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS

ACTION: Correction of final rule with comment period.

SUMMARY: This document corrects technical errors that appeared in the final rule with comment period published in the **Federal Register** on May 28, 2010 entitled "Medicaid Program; Premiums and Cost Sharing." The May 28, 2010, final rule revised a November 25, 2008, final rule entitled, "Medicaid Programs; Premiums and Cost Sharing" which addressed public comments received during reopened comment periods, and reflected relevant statutory changes made in the American Recovery and Reinvestment Act of 2009. The November 2008 document revised final rule implemented and interpreted section 1916A of the Social Security Act.

DATES: *Effective Date:* This correction document is effective July 1, 2010.

FOR FURTHER INFORMATION CONTACT: Christine Gerhardt, (410) 786–0693.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2010–12954 of May 28, 2010 (75 FR 30244), there were two technical errors that are identified and corrected in the "Correction of Errors" section below. The provisions in this correction notice are effective as if they had been included in the document published May 28, 2010. Accordingly, the corrections are effective July 1, 2010.

II. Summary of Errors

On page 30255, in the preamble under Section III, "Provisions of the Revised Final Rule," we set forth the definition of "Indian health care provider." On page 30256, we specify that the definition is added to a new paragraph (b) under § 447.50. However, on page 30261, we inadvertently omitted the definition of "Indian health care provider" from § 447.50 (b) of the regulations text.

On page 30264, we inadvertently omitted a statutory exception to the policy specified in the amended paragraph (b) under § 447.74 of the regulations text. According to section 1916A(e)(2) of the Social Security Act (the Act), the limitation to 20 percent of the State Medicaid agency's payment for alternative cost sharing imposed on individuals with family income more than 150 percent of the Federal poverty level (FPL) does not apply to non-emergency services furnished in a hospital emergency department.

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

With respect to our proposal to add a definition of "Indian health care provider" as a new paragraph (b)(2) in § 447.50 of the regulations text, we inadvertently omitted this definition from the revised final rule. In the preamble under Section III, Provisions of the Revised Final Rule, we gave the new definition on page 30255. Also, on page 30256, we mentioned that the definition of "Indian health care provider" is added to a new paragraph (b) under § 447.50. Because the intended content of the regulation is clear when the document is read as a whole, we believe further process is unnecessary. We further believe that correction of the error is in the public interest because it would avoid confusion. Therefore, we find good cause to waive a notice of proposed rulemaking and delayed effective date.

With respect to our proposal to add an exception to the policy specified in the amended paragraph (b) under § 447.74, section 1916A(e)(2) of the Act makes clear that the limitation to 20 percent of the State Medicaid agency's payment for alternative cost sharing imposed on individuals with family income more than 150 percent of the Federal poverty level (FPL) does not apply to non-emergency services furnished in a hospital emergency department. Since this change is necessary to accurately reflect the statutory requirements, we believe that correction of this error is in the public interest because it will prevent confusion as to those

requirements. Therefore, we find good cause to waive a notice of proposed rulemaking and delayed effective date in order to comply with the statutory exemption of this service from the requirements specified in § 447.74(b).

IV. Correction of Errors

Regulations Text

■ Accordingly, CMS amends 42 CFR part 447, as amended in FR Doc. 2010–12954 of May 28, 2010 (75 FR 30244), effective July 1, 2010, by making the following corrections:

PART 447—PAYMENTS FOR SERVICES

■ 1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. In § 447.50, a new paragraph (b)(2) is added to read as follows:

§ 447.50 Cost sharing: Basis and purpose.

* * * * *

(b) * * *

(2) *Indian health care provider* means a health care program operated by the Indian Health Service (IHS) or by an Indian Tribe, Tribal Organization, or Urban Indian Organization (otherwise known as an I/T/U) as those terms are defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603).

* * * * *

■ 3. In § 447.74, revise paragraph (b) to read as follows:

§ 447.74 Alternative premium and cost sharing protections for individuals with family incomes above 150 percent of the FPL.

* * * * *

(b) Cost sharing may be imposed under the State plan on individuals whose family income exceeds 150 percent of the FPL if the cost sharing does not exceed 20 percent of the payment the agency makes for the item or service (including a non-preferred drug but not including non-emergency services furnished in a hospital emergency department), with the following exception: In the case of States that do not have fee-for-service payment rates, any copayment that the State imposes for services provided by an MCO to a Medicaid beneficiary, including a child covered under a Medicaid expansion program for whom enhanced match is claimed under title XXI of the Act, may not exceed $3.40 per visit for Federal FY 2009. Thereafter, any copayment may not exceed this amount as updated each October 1 by the percentage increase in the medical care component of the CPI–U for the period of September to September ending in the preceding calendar year and then rounded to the next highest 5-cent increment.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: June 29, 2010.

Dawn L. Smalls,

Executive Secretary to the Department.

[FR Doc. 2010–16272 Filed 6–30–10; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–8137]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension

date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region IV				
Alabama:				
Hurtsboro, Town of, Russell County	010185	January 20, 1976, Emerg; January 6, 1982, Reg; July 22, 2010, Susp.	July 22, 2010	July 22, 2010.
Phenix City, City of, Lee and Russell Counties.	010184	May 24, 1976, Emerg; September 16, 1981, Reg; July 22, 2010, Susp.	.....do*	Do.
Georgia:				
Claxton, City of, Evans County	130210	December 19, 1974, Emerg; August 19, 1986, Reg; July 22, 2010, Susp.	.....do	Do.
Hagan, City of, Evans County	130311	August 7, 2009, Emerg; July 22, 2010, Reg; July 22, 2010, Susp.	.....do	Do.
Hilltonia, Town of, Screven County	130385	January 30, 1990, Emerg; July 1, 1991, Reg; July 22, 2010, Susp.	.....do	Do.
Oconee, City of, Washington County	130415	June 25, 1975, Emerg; June 3, 1986, Reg; July 22, 2010, Susp.	.....do	Do.
Rocky Ford, Town of, Screven County	130162	July 22, 1992, Emerg; May 1, 1994, Reg; July 22, 2010, Susp.	.....do	Do.
Sandersville, City of, Washington County.	130228	August 14, 1975, Emerg; September 1, 1986, Reg; July 22, 2010, Susp.	.....do	Do.
Tennille, City of, Washington County	130416	July 16, 1975, Emerg; July 17, 1986, Reg; July 22, 2010, Susp.	.....do	Do.
Warren County, Unincorporated Areas	135262	March 27, 2006, Emerg; July 22, 2010, Reg; July 22, 2010, Susp.	.....do	Do.
Warrenton, City of, Warren County	130187	June 23, 1975, Emerg; July 23, 1982, Reg; July 22, 2010, Susp.	.....do	Do.
Wilkes County, Unincorporated Areas	135263	March 25, 2002, Emerg; July 22, 2010, Reg; July 22, 2010, Susp.	.....do	Do.
Kentucky:				
Guthrie, City of, Todd County	210214	June 26, 1975, Emerg; April 30, 1986, Reg; July 22, 2010, Susp.	.....do	Do.
Pulaski County, Unincorporated Areas	210197	May 29, 1984, Emerg; July 16, 1990, Reg; July 22, 2010, Susp.	.....do	Do.
South Carolina:				
Allendale County, Unincorporated Areas.	450201	N/A, Emerg; June 17, 1986, Reg; July 22, 2010, Susp.	.....do	Do.
Fairfax, Town of, Allendale County	450010	July 19, 1995, Emerg; July 1, 2003, Reg; July 22, 2010, Susp.	.....do	Do.
Sycamore, Town of, Allendale County	450011	June 27, 2000, Emerg; February 1, 2002, Reg; July 22, 2010, Susp.	.....do	Do.
Ulmer, Town of, Allendale County	450012	August 19, 1976, Emerg; June 3, 1986, Reg; July 22, 2010, Susp.	.....do	Do.
Region V				
Ohio:				
Darbyville, Village of, Pickaway County	390712	August 25, 1981, Emerg; August 16, 1988, Reg; July 22, 2010, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Dennison, Village of, Tuscarawas County.	390542	July 11, 1975, Emerg; December 18, 1986, Reg; July 22, 2010, Susp.	.....do	Do.
Dover, City of, Tuscarawas County	390543	May 27, 1975, Emerg; July 16, 1987, Reg; July 22, 2010, Susp.	.....do	Do.
Frankfort, Village of, Ross County	390484	July 11, 1975, Emerg; September 24, 1984, Reg; July 22, 2010, Susp.	.....do	Do.
New Holland, Village of, Fayette and Pickaway Counties.	390448	July 25, 1975, Emerg; January 18, 1980, Reg; July 22, 2010, Susp.	.....do	Do.
New Philadelphia, City of, Tuscarawas County.	390545	July 2, 1975, Emerg; January 2, 1987, Reg; July 22, 2010, Susp.	.....do	Do.
Newcomerstown, Village of, Tuscarawas County.	390544	February 5, 1975, Emerg; January 2, 1987, Reg; July 22, 2010, Susp.	.....do	Do.
Port Washington, Village of, Tuscarawas County.	390664	June 12, 1975, Emerg; January 15, 1988, Reg; July 22, 2010, Susp.	.....do	Do.
South Bloomfield, Village of, Pickaway County.	390449	August 7, 1974, Emerg; June 15, 1979, Reg; July 22, 2010, Susp.	.....do	Do.
Williamsport, Village of, Pickaway County.	390866	April 20, 1979, Emerg; November 23, 1984, Reg; July 22, 2010, Susp.	.....do	.....do
Zoar, Village of, Tuscarawas County	390752	April 7, 1977, Emerg; September 4, 1987, Reg; July 22, 2010, Susp.	.....do	Do.
Wisconsin:				
Appleton, City of, Calumet and Outagamie Counties.	555542	April 23, 1971, Emerg; April 6, 1973, Reg; July 22, 2010, Susp.	.....do	Do.
Bear Creek, Village of, Outagamie County.	550526	August 16, 1978, Emerg; August 19, 1986, Reg; July 22, 2010, Susp.	.....do	Do.
Birnamwood, Village of, Marathon and Shawano Counties.	550413	May 2, 1975, Emerg; August 19, 1985, Reg; July 22, 2010, Susp.	.....do	Do.
Black Creek, Village of, Outagamie County.	550584	November 13, 1975, Emerg; March 2, 1981, Reg; July 22, 2010, Susp.	.....do	Do.
Brokaw, Village of, Marathon County	550247	January 16, 1975, Emerg; June 1, 1988, Reg; July 22, 2010, Susp.	.....do	Do.
Hatley, Village of, Marathon County	550251	June 2, 1975, Emerg; September 27, 1985, Reg; July 22, 2010, Susp.	.....do	Do.
Hortonville, Village of, Outagamie County.	550529	April 17, 1975, Emerg; July 2, 1981, Reg; July 22, 2010, Susp.	.....do	Do.
Kaukauna, City of, Outagamie County ..	550305	July 22, 1975, Emerg; July 16, 1981, Reg; July 22, 2010, Susp.	.....do	Do.
Kronenwetter, Village of, Marathon County.	550193	N/A, Emerg; October 7, 2008, Reg; July 22, 2010, Susp.	.....do	Do.
Marathon City, Village of, Marathon County.	550252	June 24, 1975, Emerg; August 15, 1980, Reg; July 22, 2010, Susp.	.....do	Do.
Marathon County, Unincorporated Areas.	550245	April 9, 1971, Emerg; February 1, 1979, Reg; July 22, 2010, Susp.	.....do	Do.
Mosinee, City of, Marathon County	555567	May 7, 1971, Emerg; December 16, 1973, Reg; July 22, 2010, Susp.	.....do	Do.
Outagamie County, Unincorporated Areas.	550302	January 14, 1972, Emerg; September 30, 1977, Reg; July 22, 2010, Susp.	.....do	Do.
Rothschild, Village of, Marathon County	555577	April 2, 1971, Emerg; May 11, 1973, Reg; July 22, 2010, Susp.	.....do	Do.
Schofield, City of, Marathon County	555579	April 16, 1971, Emerg; July 13, 1973, Reg; July 22, 2010, Susp.	.....do	Do.
Seymour, City of, Outagamie County ...	550534	February 18, 1975, Emerg; November 9, 1979, Reg; July 22, 2010, Susp.	.....do	Do.
Stratford, Village of, Marathon County ..	550256	March 24, 1975, Emerg; May 1, 1987, Reg; July 22, 2010, Susp.	.....do	Do.
Wrightstown, Village of, Brown and Outagamie Counties.	550025	September 29, 1976, Emerg; May 19, 1981, Reg; July 22, 2010, Susp.	.....do	Do.
Region VI				
Louisiana:				
Elton, Town of, Jefferson Davis Parish	220096	May 6, 1975, Emerg; February 3, 1982, Reg; July 22, 2010, Susp.	.....do	Do.
Independence, Town of, Tangipahoa Parish.	220209	July 25, 1975, Emerg; July 5, 1977, Reg; July 22, 2010, Susp.	.....do	Do.
Tangipahoa Parish, Unincorporated Areas.	220206	April 18, 1975, Emerg; February 2, 1983, Reg; July 22, 2010, Susp.	.....do	Do.
Tickfaw, City of, Tangipahoa Parish	220214	July 30, 1975, Emerg; June 28, 1977, Reg; July 22, 2010, Susp.	.....do	Do.
Welsh, Town of, Jefferson Davis Parish	220100	December 5, 1974, Emerg; July 16, 1981, Reg; July 22, 2010, Susp.	.....do	Do.
Oklahoma:				

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Canadian, Town of, Pittsburg County	400272	February 25, 1977, Emerg; May 15, 1985, Reg; July 22, 2010, Susp.	.....do	Do.
Haileyville, City of, Pittsburg County	400167	June 25, 1976, Emerg; August 5, 1985, Reg; July 22, 2010, Susp.	.....do	Do.
Hartshorne, City of, Pittsburg County	400387	November 23, 1976, Emerg; August 5, 1985, Reg; July 22, 2010, Susp.	.....do	Do.
Idabel, City of, McCurtain County	400108	August 15, 1975, Emerg; July 16, 1980, Reg; July 22, 2010, Susp.	.....do	Do.
Krebs, City of, Pittsburg County	400169	May 19, 1978, Emerg; August 5, 1985, Reg; July 22, 2010, Susp.	.....do	Do.
Pittsburg, Town of, Pittsburg County	400171	April 14, 1976, Emerg; October 15, 1985, Reg; July 22, 2010, Susp.	.....do	Do.
Pittsburg County, Unincorporated Areas	400494	November 26, 2002, Emerg; November 1, 2007, Reg; July 22, 2010, Susp.	.....do	Do.
Quinton, Town of, Pittsburg County	400172	August 11, 1975, Emerg; August 5, 1985, Reg; July 22, 2010, Susp.	.....do	Do.
Wright City, City of, McCurtain County	400109	November 29, 1976, Emerg; May 17, 1989, Reg; July 22, 2010, Susp.	.....do	Do.
Region VII				
Missouri:				
Hannibal, City of, Marion and Ralls Counties.	290223	August 13, 1971, Emerg; August 1, 1978, Reg; July 22, 2010, Susp.	.....do	Do.
Marion County, Unincorporated Areas	290222	June 28, 1973, Emerg; May 16, 1977, Reg; July 22, 2010, Susp.	Do.	Do.
Palmyra, City of, Marion County	290224	N/A, Emerg; March 4, 2009, Reg; July 22, 2010, Susp.	.....do	Do.
Region VIII				
Montana:				
Custer County, Unincorporated Areas	300147	August 7, 1979, Emerg; September 1, 1987, Reg; July 22, 2010, Susp.	.....do	Do.
Denton, Town of, Fergus County	300020	February 12, 1979, Emerg; July 19, 1982, Reg; July 22, 2010, Susp.	.....do	Do.
Fergus County, Unincorporated Areas	300019	April 13, 1978, Emerg; December 1, 1982, Reg; July 22, 2010, Susp.	.....do	Do.
Lewistown, City of, Fergus County	300022	July 19, 1974, Emerg; July 19, 1982, Reg; July 22, 2010, Susp.	.....do	Do.
Miles City, City of, Custer County	300014	May 29, 1975, Emerg; February 1, 1980, Reg; July 22, 2010, Susp.	.....do	Do.
Moore, Town of, Fergus County	300100	May 11, 1977, Emerg; July 19, 1982, Reg; July 22, 2010, Susp.	.....do	Do.
South Dakota:				
Sanborn County, Unincorporated Areas	460074	April 21, 1975, Emerg; November 15, 1985, Reg; July 22, 2010, Susp.	.....do	Do.
Woonsocket, City of, Sanborn County	460075	May 28, 1975, Emerg; November 15, 1985, Reg; July 22, 2010, Susp.	.....do	Do.

*-do- = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: June 22, 2010.

Edward L. Connor,

Acting Federal Insurance and Mitigation Administrator, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–16243 Filed 7–2–10; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 75, No. 128
Tuesday, July 6, 2010

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0588 Airspace Docket No. 10–AAL–16]

Proposed Revision of Class E Airspace; Tanana, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revise Class E airspace at Tanana, AK. The amendment of Standard Instrument Approach Procedures (SIAPs) at Ralph M. Calhoun Memorial Airport have made this action necessary to enhance safety and management of Instrument Flight Rules (IFR) operations.

DATES: Comments must be received on or before August 20, 2010.

ADDRESSES: Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–0588/Airspace Docket No. 10–AAL–16 at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, 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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0588/Airspace Docket No. 10–AAL–16." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at Ralph M. Calhoun Memorial Airport, in Tanana, AK, to accommodate amended SIAPs at Ralph M. Calhoun Memorial Airport. This Class E airspace would provide adequate controlled airspace upward from 700 feet and 1,200 feet above the surface, for the safety and management of IFR operations at Ralph M. Calhoun Memorial Airport.

The Class E airspace areas designated as 700/1,200 foot transition areas are published in paragraph 6005 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 designations listed in this document would be subsequently published in the Order.

The FAA has determined that this proposed 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,

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 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 proposes to revise Class E airspace at Ralph M. Calhoun Memorial Airport, Tanana, AK, 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).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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 to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Tanana, AK [Revised]

Ralph M. Calhoun Memorial Airport, AK
(Lat. 65°10′28″ N., long. 152°06′34″ W.)
Tanana VOR/DME
(Lat. 65°10′38″ N., long. 152°10′39″ W.)
Bear Creek NDB
(Lat. 65°10′26″ N., long. 152°12′22″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Ralph M. Calhoun Memorial Airport, AK, and within 4 miles north and 8 miles south of the 250° bearing of the Bear Creek NDB extending from the Bear Creek NDB to 16 miles west of the Bear Creek NDB, and within 1.4 miles north of the Tanana VOR/DME 276° radial extending from the 6.4-mile radius to 8.8 miles west of the airport; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Ralph M. Calhoun Memorial Airport, AK.

Issued in Anchorage, AK, on June 22, 2010.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. 2010–16249 Filed 7–2–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0509]

RIN 1625–AA00

Safety Zone; IJSBA World Finals; Lower Colorado River, Lake Havasu, AZ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a temporary safety zone on the navigable waters of Lake Havasu on the lower Colorado River in support of the IJSBA World Finals. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this temporary safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before August 5, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0509 using any one of the following methods:

(1) *Federal Rulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Petty Officer Krista Stacey, USCG, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7263, e-mail *Krista.M.Stacey@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0509), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the

"submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–0509" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0509" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one July 26, 2010 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Krista Stacey at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Basis and Purpose

The International Jet Sports Boating Association is sponsoring the IJSBA World Finals. The event will consist of 300 to 750 personal watercrafts racing in a circular course. The race will be broken down into heats of one to 20. The sponsor will provide five course marshall and rescue vessels, as well as four perimeter safety boats for the duration of this event. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway.

Discussion of Proposed Rule

The Coast Guard proposes establishing a temporary safety zone that would be effective from 12:01 a.m. October 3, 2010 through 11:59 p.m. October 10, 2010. The temporary safety zone will be enforced during race days, beginning 6:30 a.m. until light no longer allows for racing activities. The Coast Guard will notify the public of enforcement of the safety zone established by this section to be made by all appropriate means to the affected segments of the public. Such means of notification will include, but is not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. The temporary safety zone will encompass all waters of Havasu on the lower Colorado River, within a 800-yard by 400-yard rectangle. The rectangle will be bounded by the points beginning at: 34°28.49′ N, 114°21.33′ W; 34°28.55′ N, 114°21.56′ W; 34°28.43′ N, 114°21.81′ W; 34°28.32′ N, 114°21.71′ W; along the shoreline to 34°28.49′ N, 114°21.33′ W (NAD 83).

This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size and location of the safety zone. Commercial vessels would not be hindered by the safety zone. Recreational vessels would not be allowed to transit through the designated safety zone during the specified times unless authorized to do so by the Captain of the Port or his designated representative.

Small Entities

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

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

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the lower Colorado River at Lake Havasu from October 3, 2010 through October 10, 2010.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic can pass safely around the safety zone. Before the activation of the zone, the Coast Guard would publish a local notice to mariners (LNM).

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Krista Stacey, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at 619–278–7263. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 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 made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of a temporary safety zone. Based on our preliminary determination, there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 figure 2–1, paragraph (34)(g) of the Instruction and neither an environmental assessment nor a environmental impact statement is required.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T11–182 to read as follows:

§ 165.T11–182 Safety Zone; IJSBA World Finals; Lower Colorado River, Lake Havasu, AZ

(a) *Location.* The limits of the proposed safety zone are as follows: all waters of Havasu on the lower Colorado River, within a 800 yard by 400 yard rectangle. The rectangle will be bounded by the points beginning at: 34°28.49′ N, 114°21.33′ W; 34°28.55′ N, 114°21.56′ W; 34°28.43′ N, 114°21.81′ W; 34°28.32′ N, 114°21.71′ W; along the shoreline to 34°28.49′ N, 114°21.33′ W (NAD 83).

(b) *Effective Period.* This section will be effective from 12:01 a.m. October 3, 2010 through 11:59 p.m. October 10, 2010. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners. The temporary safety zone will be enforced during race days, beginning 6:30 a.m. until light no longer allows for racing activities. The Coast Guard will notify the public of enforcement of the safety zone established by this section to be made by all appropriate means to the affected segments of the public. Such means of notification will include, but is not limited to, Broadcast Notice to Mariners and Local Notice to Mariners.

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

(d) *Regulations.* (1) In accordance with § 165.23 of this part, entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

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

(5) The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: June 14, 2010.

T.H. Farris,

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

[FR Doc. 2010–16268 Filed 7–2–10; 8:45 am]

BILLING CODE 9110–04–P

POSTAL REGULATORY COMMISSION

39 CFR 3055

[Docket No. RM2010–11; Order No. 481]

Periodic Reporting Exceptions

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is establishing a docket for consideration of matters related to Postal Service–proposed semi–permanent exceptions to certain rules on periodic reporting of service performance measurement.

DATES: Comments are due: July 16, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on alternatives to electronic filing.

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

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Ordering Paragraphs

I. Introduction

On June 25, 2010, the Postal Service filed a request for semi–permanent exceptions from periodic reporting of service performance measurement for various market dominant postal services, or components of postal services, pursuant to Commission Order No. 465 and 39 CFR 3055.3.[1]

Rule 3055.3 provides the Postal Service an opportunity to request that a product, or component of a product, be excluded from service performance measurement reporting upon demonstration that:(1) The cost of implementing a measurement system would be prohibitive in relation to the revenue generated by the product, or component of a product;(2) the product, or component of a product, defies meaningful measurement; or(3) the product, or component of a product, is in the form of a negotiated service agreement with substantially all components of the agreement included in the measurement of other products.

The Postal Service seeks semi–permanent exceptions for Standard Mail High Density, Saturation, and Carrier Route Parcels, Inbound International Surface Parcel Post (at UPU Rates), hard–copy Address Correction Service, various Special Services, Within County Periodicals, and various negotiated service agreements. Request at 1.

The Commission establishes Docket No. RM2010–11 for consideration of matters related to the proposed semi–permanent exceptions from periodic reporting of service performance measurement identified in the Postal Service's Request.

Interested persons may submit comments on whether the Postal Service's Request is consistent with the policies of 39 U.S.C. 3652(a)(2) and 39 CFR 3055.3. Comments are due no later than July 16, 2010. The Postal Service's Request can be accessed via the Commission's Web site *(http://www.prc.gov).*

The Commission appoints Emmett Rand Costich to serve as Public Representative in the captioned proceedings.

II. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2010–11 for consideration of matters raised by the Postal Service's Request.
2. Comments by interested persons in these proceedings are due no later than July 16, 2010.
3. Pursuant to 39 U.S.C. 505, Emmett Rand Costich is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
4. The Secretary shall arrange for publication of this order in the **Federal Register.**

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–16304 Filed 7–2–10; 8:45 am]

BILLING CODE 7710–FW–S

[1] United States Postal Service Response to Order No. 465 and Request for Semi–Permanent Exceptions from Periodic Reporting of Service Performance Measurement, June 25, 2010 (Request); *see also* Order Establishing Final Rules Concerning Periodic Reporting of Service Performance Measurements and Customer Satisfaction, May 25, 2010, at 22 (Order No. 465).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2010–0156; FRL–9170–5]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve a revision to the Iowa State Implementation Plan (SIP). The purpose of this revision is to update the Polk County Board of Health Rules and Regulations, Chapter V, "Air Pollution." These revisions reflect updates to the Iowa statewide rules previously approved by EPA and will ensure consistency between the applicable local agency rules and Federally-approved rules. This rulemaking also ensures Federal enforceability of the applicable parts of the local agency's "Air Pollution" rules.

DATES: Comments on this proposed action must be received in writing by August 5, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2010–0156 by one of the following methods:

1. *http://www.regulations.gov:* Follow the online instructions for submitting comments.
2. *E-mail: casburn.tracey@epa.gov.*
3. *Mail:* Tracey Casburn, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. *Hand Delivery or Courier:* Deliver your comments to Tracey Casburn, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business is Monday through Friday, 8 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Tracey Casburn at (913) 551–7016, or by e-mail at *casburn.tracey@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, *see* the direct final rule which is located in the rules section of this **Federal Register.**

Dated: June 18, 2010.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2010–16228 Filed 7–2–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 100503209–0215–01]

RIN 0648–AY85

Pacific Halibut Fisheries; Limited Access for Guided Sport Charter Vessels in Alaska

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations that would amend the limited access program for charter vessels in the guided sport fishery for Pacific halibut in the waters of International Pacific Halibut Commission Regulatory Area 2C (Southeast Alaska) and Area 3A (Central Gulf of Alaska). If approved, the proposed action would revise the method for assigning angler endorsements to charter halibut permits to more closely align each endorsement with the greatest number of charter vessel anglers reported for each vessel that a charter business used to qualify for a charter halibut permit. This action is necessary to achieve the halibut fishery management goals of the North Pacific Fishery Management Council.

DATES: Comments must be received no later than August 5, 2010.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by "RIN 0648–AY85," by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at *http://www.regulations.gov*.
- Mail: P. O. Box 21668, Juneau, AK 99802.
- Fax: 907–586–7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK 99801.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. No comments will be posted for public viewing until after the comment period has closed. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Electronic copies of the Categorical Exclusion, the Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) prepared for this action are available from *http://www.regulations.gov* or from the NMFS Alaska Region website at *http://alaskafisheries.noaa.gov*. The Environmental Assessment, RIR, and Final Regulatory Flexibility Analysis for the charter halibut limited access program are available from the NMFS Alaska Region website at *http://alaskafisheries.noaa.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS (at above address) and by e-mail to *David_Rostker@omb.eop.gov* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Rachel Baker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations governing the Pacific halibut

fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, D.C., on March 29, 1979). Regulations developed by the IPHC are subject to approval by the Secretary of State with concurrence from the Secretary of Commerce (Secretary). After approval by the Secretary of State and the Secretary, the IPHC regulations are published in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62. The most recent IPHC regulations were published March 18, 2010 (75 FR 13024). IPHC regulations affecting sport fishing for halibut and charter vessels in IPHC Areas 2C and 3A may be found in sections 3, 25, and 28 of the March 18 final rule.

The Halibut Act, at sections 773c(a) and (b), provides the Secretary with general responsibility to carry out the Convention and the Halibut Act. In adopting regulations that may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act, the Secretary is directed to consult with the Secretary of the department in which the U.S. Coast Guard is operating.

Section 773c(c) of the Halibut Act also authorizes the North Pacific Fishery Management Council (Council) to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations. Such Council-developed regulations may be implemented by NMFS only after approval by the Secretary. The Council has exercised this authority most notably in the development of its commercial fishery Individual Fishing Quota Program, codified at 50 CFR part 679, subsistence halibut fishery management measures, codified at 50 CFR 300.65, and the limited access program for charter vessels in the guided sport fishery, codified at 50 CFR 300.67.

Charter Halibut Limited Access Program

In March 2007, the Council recommended a limited access program for charter vessels in IPHC Areas 2C and 3A. The intent of the program was to curtail growth of fishing capacity in the charter sector by limiting the number of charter vessels that may participate in the guided sport fishery for halibut in Areas 2C and 3A. NMFS published a final rule implementing the program on January 5, 2010 (75 FR 554). Under the program, NMFS will issue a charter halibut permit to a licensed charter fishing business owner based on his or her past participation in the charter halibut fishery. Portions of the limited access program final rule related to eligibility criteria, the permit application process, and other administrative procedures became effective on February 4, 2010. The requirement to have a charter halibut permit on board a charter vessel fishing for halibut will become effective on February 1, 2011. This schedule enables NMFS to complete most administrative procedures and issue charter halibut permits in 2010, in preparation for fishing under the program in 2011.

Qualifications for Charter Halibut Permit

An applicant must demonstrate participation in the charter halibut fishery during a historic qualifying period and during a recent participation period to receive an initial allocation of a charter halibut permit. The historic qualifying period is the sport fishing season established by the IPHC in 2004 and 2005 (February 1 through December 31). Minimum participation criteria need be met in only one of these years–2004 or 2005. The recent participation period is the sport fishing season established by the IPHC in 2008 (February 1 through December 31). This year was selected as the recent participation period because, at the time of program implementation, it was the most recent year for which NMFS had a complete record of saltwater charter vessel logbook data from the Alaska Department of Fish and Game (ADF&G).

The basic unit of participation for receiving a charter halibut permit will be a logbook fishing trip. A logbook fishing trip is an event that was reported to ADF&G in a saltwater charter vessel logbook in accordance with the time limit required for reporting such a trip that was in effect at the time of the trip.

The minimum participation qualifications include documentation of at least five logbook fishing trips during one of the qualifying years–2004 or 2005–and at least five logbook fishing trips during 2008. Meeting these minimum participation qualifications could qualify an applicant for a non-transferable charter halibut permit. The minimum participation qualifications for a transferable charter halibut permit include documentation of at least 15 logbook fishing trips during one of the qualifying years–2004 or 2005–and at least 15 logbook fishing trips during 2008.

Angler Endorsements

Each charter halibut permit will have an angler endorsement number. The angler endorsement number on the permit is the maximum number of charter vessel anglers that may catch and retain halibut on board the vessel. The term "charter vessel angler" is defined by regulation at 50 CFR 300.61 to include all persons, paying or non-paying, who use the services of the charter vessel guide. The angler endorsement assigned to a charter halibut permit would not limit the number of persons that an operator may carry, only the number that may catch and retain halibut.

A permit holder may use a charter halibut permit on board any vessel that meets federal and state requirements to operate as a charter vessel in the guided sport fishery for halibut in Areas 2C and 3A. A vessel operator will be able to use multiple permits to increase the number of charter vessel anglers on board. For example, if a vessel operator has two charter permits on board, one with an angler endorsement of four and one with an endorsement of six, then the vessel operator can have a maximum of 10 charter vessel anglers on board who are catching and retaining halibut, if the operator is otherwise authorized to carry 10 persons. If other restrictions, such as United States Coast Guard safety regulations, prevent 10 anglers from being on board the vessel, the charter halibut permits will not authorize the vessel operator to violate those provisions of law.

Under the final rule implementing the limited access program (75 FR 554, January 5, 2010), the angler endorsement assigned to a charter halibut permit for all qualified businesses would be equal to the greatest number of anglers reported for any vessel the business used for at least one logbook fishing trip in the qualifying period, subject to a minimum endorsement of four. All permits issued to an applicant would have the same angler endorsement. For example, if a business qualified for three charter halibut permits using three vessels, each permit issued to the business would be assigned the same angler endorsement, even if the greatest number of charter vessel anglers reported was different for each vessel the business used in the qualifying period.

The Proposed Action

In February 2010, the Council expressed concern about the method of assigning angler endorsements to the second and subsequent charter halibut permits issued to businesses receiving

more than one permit. The Council noted that in some cases, the greatest number of charter vessel anglers reported for a vessel could be greater than the number of anglers reported on other vessels the business used to qualify for charter halibut permits. For example, if an applicant used three vessels to qualify for three permits, and reported a maximum of six charter vessel anglers for one vessel's trips, a maximum of four charter vessel anglers for the second vessel, and a maximum of three charter vessel anglers for the third vessel in the qualifying period, under the final rule the applicant would be issued three charter halibut permits, each with an angler endorsement of six. The Council was concerned about this method of assigning angler endorsements because the total number of angler endorsements the applicant would receive on all permits combined could be greater than the total number of charter vessel anglers the business reported for all of the vessels it used in the qualifying period. The Council also was concerned that the method of assigning angler endorsements under the final rule could result in an increase in fishing capacity the Council did not intend. The total number of angler endorsements that would be assigned to permits under the final rule potentially could enable a greater number of charter vessel anglers to catch and retain halibut under the limited access program than qualifying charter operators reported during the qualifying period.

The Council initiated this proposed action to more closely align angler endorsements assigned to the second and subsequent permits issued to a business with a permit recipient's vessel-specific activity during the qualifying period. Using the previous example in which the applicant would receive three charter halibut permits, under this action, each permit's angler endorsement would be derived from the number of charter vessel anglers reported for each vessel the applicant used in the qualifying period, with a minimum endorsement of four. The applicant would receive one permit with an angler endorsement of six, and two permits with an angler endorsement of four.

In recommending the proposed action, the Council clarified that the status quo method of assigning an angler endorsement to the first charter halibut permit received by a business receiving more than one permit, and to the only permit received by a business receiving one permit is consistent with its intent, because the angler endorsement assigned to these permits would be derived from the greatest number of anglers reported for any vessel the business used for at least one logbook fishing trip in the qualifying period. The proposed rule would maintain the status quo method for assigning angler endorsements to the first charter halibut permit issued to all qualifying applicants, and would only change the method used to assign angler endorsements to each subsequent permit received by qualified applicants.

Revised Method of Assigning Angler Endorsements

The Council reviewed the RIR/IRFA (see ADDRESSES) prepared for this action in April 2010, and selected a preferred alternative to revise the method of assigning angler endorsements to charter halibut permits issued to businesses receiving more than one permit for Area 2C, Area 3A, or both. Under the proposed rule, for applicants that qualify for more than one charter halibut permit, NMFS would determine the greatest number of charter vessel anglers the applicant reported for each vessel the applicant used in the qualifying period (2004 and 2005). Each of these numbers would equal a vessel-specific angler endorsement number that would be assigned to a charter halibut permit issued to the applicant. NMFS would assign a vessel-specific angler endorsement of four if the applicant's greatest number of reported anglers was fewer than four on that vessel in the qualifying period. A vessel-specific angler endorsement number would be used only once to assign an angler endorsement to a charter halibut permit, unless the applicant used the same vessel to qualify for a permit in Area 2C and Area 3A.

For each affected applicant, NMFS would assign the vessel-specific angler endorsement numbers for each area in descending order. The greatest vessel-specific angler endorsement number derived from any vessel the business used in the qualifying period would be assigned to the first transferable permit the applicant would receive. Once this vessel-specific angler endorsement number is assigned to a charter halibut permit, that number could not be assigned any additional angler endorsements for that area. The next greatest vessel-specific angler endorsement number would be assigned to the first subsequent transferable permit the applicant would receive, and this process of assigning endorsement numbers to transferable permits would continue until all transferable permits for an applicant were assigned an angler endorsement. When all transferable charter halibut permits have been assigned an angler endorsement, the next greatest vessel-specific angler endorsement number would be assigned to the first non-transferable permit that the applicant would receive. The same process would continue until all non-transferable permits were assigned an angler endorsement. If the applicant would receive charter halibut permits for both Area 2C and Area 3A, the process would be repeated using the vessel-specific angler endorsement numbers for the second area.

If the applicant would receive only one or more non-transferable charter halibut permits for an area, the greatest vessel-specific angler endorsement number would be assigned to the first non-transferable permit the applicant would receive. The next greatest vessel-specific angler endorsement number would be assigned to the next non-transferable permit, and this process would continue until all non-transferable permits issued to the business were assigned an angler endorsement, and repeated for a second area, if necessary.

This method of assigning angler endorsements was used in the Council's 2007 initial review and public review drafts of the RIR prepared for the charter halibut limited access program (see ADDRESSES) to illustrate the effects of the angler endorsement element and options. The angler endorsement assignment method was not stated explicitly in the Council motion in which it identified its preferred alternative in March 2007. However, the Council determined in April 2010 that this method was consistent with its intent for assigning angler endorsements to charter halibut permits.

Effects of the Proposed Action

The effects of the proposed action are discussed in detail in the RIR/IRFA prepared for this action (see ADDRESSES). The proposed action would affect only the number of angler endorsements that would be assigned to charter halibut permits initially issued to applicants that would receive more than one permit in an area. It would not affect the number of transferable and non-transferable charter halibut permits that will be initially issued under the limited access program prior to the start of the 2011 fishing season. The RIR prepared for this action (see ADDRESSES) estimates that approximately 89, or 39 percent, of apparently qualified charter business owners would qualify for more than one charter halibut permit in Area 2C and approximately 69, or 24 percent, of apparently qualified charter business

owners would qualify for more than one charter halibut permit in Area 3A. The Council's preferred alternative would result in approximately 2,618 angler endorsements assigned to 501 permits in Area 2C. This would be a reduction of approximately 13 percent from the 3,001 angler endorsements estimated to be assigned to charter halibut permits under the method used to assign angler endorsements in the final rule implementing the limited access program. In Area 3A, the Council's preferred alternative would result in approximately 3,122 angler endorsements assigned to 410 permits. This would be a reduction of approximately 11 percent from the 3,524 endorsements estimated to be assigned to permits under the final rule implementing the limited access program.

The proposed action would reduce the angler endorsement numbers assigned to some charter halibut permits, while leaving other angler endorsement numbers unaffected. A permit with fewer angler endorsements would authorize fewer charter vessel anglers to catch and retain halibut on a fishing trip. In general, this could reduce the revenue the charter halibut permit holder would receive from using that permit relative to the status quo. Transferable charter halibut permits with reduced angler endorsement numbers under the proposed action also likely would transfer for a lower value.

A charter halibut permit applicant receiving one or more charter halibut permits with a reduced angler endorsement under the proposed action would be adversely impacted. Future holders of affected permits likely would not be affected: while they would be able to generate less revenue from a charter halibut permit with a lower angler endorsement number, the purchase price of the permit likely would be less. Absent unexpected events, the reduced charter halibut permit value likely would be balanced by the reduced purchase costs of affected permits. A charter halibut permit recipient whose angler endorsement number would not be changed under the proposed action should not incur any costs from this action.

The Council intended for NMFS to revise angler endorsements before initially issuing charter halibut permits prior to the 2011 charter season. The proposed rule would increase administrative costs for NMFS because it would require an appeals process (see Implementation of the Proposed Action section below), in addition to the process established for charter halibut permits under the limited access program final rule (75 FR 554, January 5, 2010). This appeals process would result in NMFS initially issuing charter halibut permits closer to the anticipated start of the 2011 charter season on February 1 than it intended under the status quo. This later permit issuance schedule could create some uncertainty for affected charter halibut permit applicants with respect to planning for the 2011 season, particularly for those applicants who already have indicated they accepted the angler endorsement numbers assigned to their permits under the current regulations.

Although the proposed action would have distributional impacts on individual charter business owners, revising the method of assigning angler endorsements to charter halibut permits likely would not impact current charter industry capacity and the sector's ability to meet angler demand. The RIR (see ADDRESSES) estimates that the number of angler endorsements that would be issued under the proposed action would provide sufficient charter capacity to meet current angler demand, and even potentially some increase in demand. Similarly, the proposed action is not expected to have a large impact on angler demand for charter vessel trips or the harvest of halibut by charter vessel anglers because of the action's limited impact on capacity in the charter vessel sector.

Implementation of the Proposed Action

To implement the proposed action, NMFS would create an official record of charter business participation in Areas 2C and 3A during the qualifying period and the recent participation period. The official record would be based on data from ADF&G, and would link each logbook fishing trip to an ADF&G Business Owner License and to the person-individual, corporation, partnership, or other entity-that obtained the license. Thus, the official record would include information from ADF&G on the person(s) who obtained ADF&G Business Owner Licenses in the qualifying period, and in the recent participation period; the logbook fishing trips in those years that met the State of Alaska's legal requirements; the Business Owner License that authorized each logbook fishing trip; and the vessel that made each logbook fishing trip. The official record also would include the angler endorsement assigned to each charter halibut permit using the method implemented by the proposed regulatory amendment.

If the proposed rule is approved, NMFS would notify all affected business owners of the revised angler endorsement(s) assigned to the charter halibut permit(s) they would be issued after the effective date of the rule. Affected business owners would have 30 days to challenge NMFS' determination. Charter business owners could submit documentation or further evidence in support of their claim during this 30–day evidentiary period. If NMFS accepts the business owner's documentation as sufficient to change the agency determination, NMFS would change the official record and issue a charter halibut permit with a revised angler endorsement accordingly. If NMFS does not agree that the further evidence supports the participant's claim, NMFS would issue an initial administrative determination (IAD) denying the participant's claim, and issue the participant's charter halibut permit(s) consistent with the official record. The IAD would describe why NMFS is initially denying some or all of an applicant's claim and would provide instructions on how to appeal the IAD.

Charter business owners would be able to appeal an IAD through the NOAA Office of Administrative Appeals (OAA). The OAA is a separate unit within the office of the Regional Administrator for the Alaska Region of NMFS. The OAA is charged with developing a record and preparing a formal decision on all appeals. Unless the Regional Administrator intervenes, the OAA decision becomes the Final Agency Action 30 days after the decision is issued. An applicant who is aggrieved by the Final Agency Action may then appeal to the U.S. District Court. Regulations at 50 CFR 679.43 provide a regulatory description of the existing appeals process. NMFS would issue interim permits to applicants who filed timely applications and whose appeal is accepted by NOAA.

Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the Council, and the Secretary. Section 5 of the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters, as long as those regulations do not conflict with IPHC regulations. This action is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Alaska.

Executive Order 12866

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

Executive Order 12962

This proposed rule is consistent with Executive Order 12962 as amended September 26, 2008, which requires federal agencies to ensure that recreational fishing is managed as a sustainable activity, and is consistent with existing law.

Regulatory Flexibility Act

An IRFA was prepared as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action may be found at the beginning of this preamble. A summary of the IRFA follows. Copies of the IRFA are available from NMFS (see ADDRESSES).

The entities directly regulated by this action are guided charter businesses that would qualify to receive more than one charter halibut permit in IPHC Areas 2C and 3A. NMFS estimates that under the status quo, 89 firms would qualify to receive more than one charter halibut permit in Area 2C, and 69 firms would qualify to receive more than one charter halibut permit in Area 3A. While quantitative information on individual charter business revenues is lacking, almost all of these firms are believed to be small entities under the terms of the Regulatory Flexibility Act. The only exceptions may be some lodge-based operations in Southeast Alaska.

The Small Business Administration (SBA) specifies that for marinas and charter/party boats, a small business is one with annual receipts less than $6.0 million. The largest of these charter operations, which are lodges, may be considered large entities under SBA standards, but that cannot be confirmed because NMFS does not collect economic data on lodges. All of the other charter operations likely would be considered small entities based on SBA criteria, because they would be expected to have gross revenues of less than $6.0 million on an annual basis.

The analysis prepared for the proposed action did not identify any new projected reporting, recordkeeping and other compliance requirements on directly regulated entities. If the proposed rule is approved, NMFS would notify affected applicants of the change to the angler endorsement assigned to a charter halibut permit that would be issued to an applicant.

NMFS has not identified other federal rules that may duplicate, overlap, or conflict with the proposed rule.

An IRFA is required to describe significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable statutes and that would minimize any significant economic impact of the proposed rule on small entities.

The status quo alternative does not achieve the Council's objectives for determining the number of angler endorsements assigned to charter halibut permits. The objective of this action is to more closely align angler endorsements assigned to the second and subsequent charter halibut permits issued to a business with the actual greatest number of anglers for each vessel that a business used to qualify for charter halibut permits. The Council's preferred alternative for this action would reduce the total number of angler endorsements assigned to charter halibut permits from the number of endorsements that would be assigned under the status quo alternative.

As noted above, all or most of the entities that would be directly impacted by this regulation are small entities. This action likely would have an insignificant adverse impact on some of these entities relative to the status quo alternative, by reducing the number of angler endorsements assigned to charter halibut permits they would be initially issued. A reduction in the number of angler endorsements assigned to a charter halibut permit generally would reduce the potential for profit from that permit, because a permit with fewer endorsements would authorize fewer charter vessel anglers on any given fishing trip. However, the RIR/IRFA (see ADDRESSES) prepared for this action notes that individual charter halibut permits could be used more or less intensively by charter vessel operators to meet angler demand. Charter vessel operators that receive a reduced number of angler endorsements under the proposed action could counteract this reduction by increasing the average number of anglers on a charter vessel fishing trip, or by increasing the average number of charter vessel fishing trips associated with an individual permit. Changes in the average number of anglers on an individual charter vessel fishing trip likely would produce relatively modest changes in the operator's costs and revenues for the trip. On balance, these changes are unlikely to have a significant economic impact on an individual charter vessel operator.

The Council considered two options to the preferred alternative. One option would have determined a vessel-specific angler endorsement for businesses receiving more than one charter halibut permit for all vessels used in only one year of the qualifying period, rather than considering all vessels in both 2004 and 2005. Another option would have used the same one-year restriction for determining angler endorsements, but applied the proposed action to all businesses that would qualify to receive charter halibut permits, rather than limiting the action only to charter businesses that would qualify to receive more than one charter halibut permit. The Council rejected these options because they would result in changes to the status quo method of assigning angler endorsements to the first charter halibut permit issued to affected businesses, in addition to changing the status quo method of assigning angler endorsements to the second and subsequent charter halibut permit issued to affected businesses. In recommending the preferred alternative, the Council clarified that it intended to revise the status quo method of assigning an angler endorsement only to the second and subsequent charter halibut permits received by a business receiving more than one permit. The Council did not intend to revise the status quo method of assigning an angler endorsement to the first charter halibut permit received by a business receiving one or more charter halibut permits. Therefore, the preferred alternative accomplishes the distributional objectives of the Council with the least adverse impact on directly regulated entities.

Data on cost structure, affiliation, and operational procedures and strategies in the halibut charter vessel sector are unavailable, and NMFS is unable to quantify the economic impacts of the proposed action on affected small entities for any of the options analyzed. The qualitative analysis in the RIR/IRFA (see ADDRESSES) estimates that none of the options considered under the proposed action would be expected to have a significant impact on small entities. While there may be some costs imposed on small entities through impacts on permit flexibility and implementation expenses, these impacts are likely to be small, because of the limited impact of the proposed action on the operational efficiency of an individual charter operator.

Collection of Information

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), which

has been approved by the Office of Management and Budget (OMB) under control number 0648–0592. Public reporting burden estimate per response for the charter halibut permit application is two hours. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSEES) and by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: June 29, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 300, subpart E, as follows:

PART 300–INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

2. In § 300.67:

a. Redesignate paragraphs (e)(1) and (e)(2) as paragraphs (e)(5) and (e)(6), respectively;

b. Revise paragraph (e) introductory text;

c. Add paragraphs (e)(1) through (e)(4); and

d. Revise newly redesignated paragraph (e)(5) to read as follows:

§ 300.67 Charter halibut limited access program.

* * * * *

(e) *Angler endorsement.* A charter halibut permit will be endorsed as follows:

(1) The angler endorsement number for the first transferable permit for an area issued to an applicant will be the greatest number of charter vessel anglers reported on any logbook trip in the qualifying period in that area.

(2) The angler endorsement number for each subsequent transferable permit issued to the same applicant for the same area will be the greatest number of charter vessel anglers reported by the applicant on any logbook trip in the qualifying period for a vessel not already used in that area to determine an angler endorsement, until all transferable permits issued to the applicant are assigned an angler endorsement.

(3) The angler endorsement number for the first non-transferable permit for an area issued to an applicant will be the greatest number of charter vessel anglers reported on any logbook trip in the qualifying period for a vessel not already used to determine an angler endorsement in that area.

(4) The angler endorsement number for each subsequent non-transferable permit issued to the same applicant for the same area will be the greatest number of charter vessel anglers reported by the applicant on any logbook trip in the qualifying period for a vessel not already used in that area to determine an angler endorsement, until all non-transferable permits issued to the applicant are assigned an angler endorsement.

(5) The angler endorsement number will be four (4) if the greatest number of charter vessel anglers reported on any logbook fishing trip for an area in the qualifying period is less than four (4), or no charter vessel anglers were reported on any of the applicant's logbook fishing trips in the applicant-selected year.

* * * * *

[FR Doc. 2010–16358 Filed 7–2–10; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 75, No. 128

Tuesday, July 6, 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

Office of the Secretary

USDA Reassigns Domestic Cane Sugar Allotments and Increases the Fiscal Year 2010 Raw Sugar Tariff-Rate Quota

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: The Secretary of Agriculture today announced a reassignment of surplus sugar under domestic cane sugar allotments of 300,000 short tons raw value (STRV) to imports, and increased the fiscal year (FY) 2010 raw sugar tariff-rate quota (TRQ) by the same amount.

DATES: Effective Date: July 6, 2010.

FOR FURTHER INFORMATION CONTACT: Angel F. Gonzalez, Import Policies and Export Reporting Division, Foreign Agricultural Service, AgStop 1021, U.S. Department of Agriculture, Washington, DC 20250–1021; or by telephone (202) 720–2916; or by fax to (202) 720–0876; or by e-mail to: *angel.f.gonzalez@fas.usda.gov.*

SUPPLEMENTARY INFORMATION: USDA's Commodity Credit Corporation (CCC) today announced the reassignment of projected surplus cane sugar marketing allotments and allocations under the FY 2010 (October 1, 2009–September 30, 2010) Sugar Marketing Allotment Program. The FY 2010 cane sector allotment and cane State allotments are larger than can be fulfilled by domestically produced cane sugar. This surplus was reassigned to raw sugar imports as required by law. Upon review of the domestic sugarcane processors' sugar marketing allocations relative to their FY 2010 expected raw sugar supplies, CCC determined that all sugarcane processors had surplus allocation. Therefore, all sugarcane States' sugar marketing allotments are reduced with this reassignment. The new cane State allotments are Florida, 1,796,451 STRV; Louisiana, 1,575,563 STRV; Texas, 142,777 STRV; and Hawaii, 201,101 STRV. The FY 2010 Sugar Marketing Allotment Program will not prevent any domestic sugarcane processors from marketing all of their FY 2010 sugar supply.

On September 25, 2009, USDA established the FY 2010 TRQ for raw cane sugar at 1,231,497 STRV (1,117,195 metric tons raw value, MTRV*), the minimum to which the United States is committed under the World Trade Organization Uruguay Round Agreements. On April 27, 2010, the Secretary increased the FY 2010 TRQ for raw cane sugar by 200,000 STRV (181,437 MTRV) to a total of 1,431,497 STRV (1,298,632 MTRV).

Pursuant to Additional U.S. Note 5 to Chapter 17 of the U.S. Harmonized Tariff Schedule (HTS) and Section 359(k) of the Agricultural Adjustment Act of 1938, as amended, the Secretary of Agriculture today increased the quantity of raw cane sugar imports of the HTS subject to the lower tier of duties during FY 2010 by 300,000 STRV (272,155 MTRV). With this increase, the overall FY 2010 raw sugar TRQ is now 1,731,497 STRV (1,570,787 MTRV). Raw cane sugar under this quota must be accompanied by a certificate for quota eligibility and may be entered under subheading 1701.11.10 of the HTS until September 30, 2010. The Office of the U.S. Trade Representative will allocate this increase among supplying countries and customs areas.

This action is being taken after a determination that additional supplies of raw cane sugar are required in the U.S. market. USDA will closely monitor stocks, consumption, imports and all sugar market and program variables on an ongoing basis, and may make further program adjustments during FY 2010 if needed.

* Conversion factor: 1 metric ton = 1.10231125 short tons.

Dated: June 29, 2010.

Tom Vilsack,

Secretary of Agriculture.

[FR Doc. 2010–16348 Filed 7–2–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's intention to request an extension for a currently approved information collection in support of the program for 7 CFR part 4284, subpart G.

DATES: Comments on this notice must be received by September 7, 2010 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Andrew Jermolowicz, Assistant Deputy Administrator, Rural Business-Cooperative Service, USDA, STOP 3220, 1400 Independence Ave., SW., Washington, DC 20250, Telephone: (202) 720–8460.

SUPPLEMENTARY INFORMATION:

Title: Rural Business Opportunity Grants.

OMB Number: 0570–0024.

Expiration Date of Approval: October 31, 2010.

Type of Request: Extension of a currently approved information collection.

Abstract: The objective of the Rural Business Opportunity Grant (RBOG) program is to promote sustainable economic development in rural areas. This purpose is achieved through grants made by the Rural Business-Cooperative Service (RBS) to public and private non-profit organizations and cooperatives to pay costs of economic development planning and technical assistance for rural businesses. The regulations contain various requirements for information from the grant applicants and recipients. The information requested is necessary for RBS to be able to process applications in a responsible manner, make prudent program decisions, and effectively monitor the grantees' activities to ensure that funds obtained from the Government are used appropriately. Objectives include gathering information to identify the applicant, describe the applicant's

experience and expertise, describe the project and how the applicant will operate it, and other material necessary for prudent Agency decisions and reasonable program monitoring.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 9 hours per response.

Respondents: Non-profit corporations, public agencies, and cooperatives.

Estimated Number of Respondents: 248.

Estimated Number of Responses per Respondent: 8.

Estimated Number of Responses: 1,863.

Estimated Total Annual Burden on Respondents: 17,104.

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

Comments:

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

Dated: June 29, 2010.

Curtis A. Wiley,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2010–16346 Filed 7–2–10; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–FV–10–0018; FV–10–328]

Domestic Origin Verification System Questionnaire and Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Related Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the Agricultural Marketing Service (AMS) to request an extension and revision of a currently approved information collection that will combine a number of forms issued under inspection and grading services under the Agricultural Marketing Act of 1946 and section 8e of the Agricultural Marketing Agreement Act of 1937. AMS is combining all burden hours with this submission.

DATES: Comments may be submitted on or before September 7, 2010.

Additional Information or Comments: Interested persons are invited to submit comments. Comments must be sent to Chere L. Shorter, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, 1400 Independence Avenue, SW., Washington, DC 20250–0247; fax (202) 690–1527; or can be submitted to *http://www.regulations.gov.* Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection at the above office during regular business hours. Please be advised that all comments submitted in response to this notice will be included in the record and will be made available to the public on the Internet via *http://www.regulations.gov.* Also, the identity of the individuals or entities submitting the comments will be made public.

SUPPLEMENTARY INFORMATION: *Title:* "Domestic Origin Verification System Questionnaire and Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Related Products–7 CFR Part 52."

OMB Number: 0581–0234.

Expiration Date of Approval: Three years from date of approval.

Type of Request: Request for extension and revision of currently approved information collections to be merged into one collection, the addition of two new forms, and revision of one form.

Abstract: Merger of two currently approved information collections.

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) directs and authorizes the Department to develop standards of quality, grades, grading programs, and other services to facilitate trading of agricultural products and assure consumers of quality products which are graded and identified under USDA programs. Section 203(h) of the Act specifically directs and authorizes the Secretary of Agriculture to inspect, certify, and identify the grade, class, quality, quantity, and condition of agricultural products under such rules and regulations as the Secretary may prescribe, including assessment and collection of fees for the cost of the service.

The grading and certification of processed fruit and vegetable services under 7 CFR part 52 contains provisions for the collection of fees from users of the Processed Product Branch services that equal the cost of providing the requested services to the closest extent possible. In order for the Agency to satisfy those requests for service, the Agency must request certain information from those who apply for service. An application for service is a request for AMS to perform such services and requests such information as the applicant name, address, and product to be inspected. AMS also provides other types of voluntary services under the same regulations, e.g., contract and specification acceptance services, facility assessment services, certifications of quantity and quality, import product inspections, and export certification.

The "Domestic Origin Verification" (DOV) program's application for service is FV–DOV–1. This information collection is currently approved under OMB No. 0581–0234. The DOV program is an assessment program designed to provide validation of the applicant's domestic origin verification program prior to bidding on contracts to supply food products to the Department of Agriculture's (USDA's) Domestic Feeding programs, and/or may be conducted after a contract is awarded.

The DOV Program assists companies in meeting the domestic origin requirement for the USDA Purchase Program efficiently and eliminates redundancy in trace paperwork for USDA contracts.

Affected public may include any partnership, association, business trust, corporation, organized group, and state, county or municipal government, and any authorized agent that has a financial

interest in the commodity involved and requests service. AMS intends to merge these two separate collections into one OMB control number.

Estimate of Burden: Public reporting burden for these two collections combined; the additional two new forms, and the revised form is estimated to average 0.33 hours per response. (6,192 total hours divided by 18,862 total annual responses).

Respondents: Applicants who are applying for grading and inspection services.

Estimated Number of Respondents: 1,142.

Estimated Number of Responses: 18,862.

Estimated Number of Responses per Respondent: 20.

Estimated Total Annual Burden on Respondents: 6,192.

The following are two new forms to be added to this information collection: Form FV–16, Notice for Hold for Re-Examination and FV–358, Request for Surety Bond.

Notice for Hold for Re-Examination (FV–16)

When foreign material or Grade Not Certified (GNC) product is found in an original sample submitted for inspection in excess of AMS requirements or FDA defect action levels, an inspector will notify an applicant and make arrangements with the applicant for re-examination, if desired. The top part of Form FV–16 is completed by the inspector.

Each "hold" lot must be conspicuously marked and distinguished from other lots as to code mark(s) and location when recording information on inspection documents, so that the lot may be easily found and identified. If the applicant disposes of GNC product immediately, Form FV–16 is not issued, and inspection records are marked accordingly.

Applicants have a number of options available, such as, segregation, reworking, destruction, or disposal for non-food use under AMS supervision. The option taken is reported to the inspector within two weeks from the date shown on the FV–16. The applicant indicates their desired option on the FV–16 form, and dates and signs the form.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.083 hours per response (1 total hour divided by 12 total annual responses).

Respondents: Applicants who use grading and inspection services.

Estimated Number of Respondents: 12.

Estimated Number of Responses: 12.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1.

Request for Surety Bond (FV–358)

The information collected on the "Request for Surety Bond" form assures the inspection service that fees and charges for any inspection service are paid by the interested party making the application for such service in accordance with the applicable provisions of the regulation. The inspection service payments are guaranteed by either an advance of funds prior to rendering inspection service or a suitable surety bond. Applicants that enter into a contract or an agreement for inspection service must provide acceptable surety. Form FV–358 sets forth the agreement for surety and provides for the amount to be paid.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.20 hours per response (5.0 total hours divided by 25 total annual responses).

Respondents: Applicants who request grading and inspection services.

Estimated Number of Respondents: 25.

Estimated Number of Responses: 1.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 5.

Application for Inspection and Certification of Sampling (FV–356)

Form FV–356 is revised to include additional data required for inspection of products and services and combined under the same OMB control number. These include export certification, inspection of section 8e import products, and applicant submittal of unofficial samples.

The revised form includes additional data elements for section 8e import product inspection. The information required for this type of inspection pertains to imported canned ripe olives, raisins, and dates which are required to be inspected by AMS, subject to exemptions listed in the applicable Marketing Orders, Import Regulations (7 CFR parts 944.401, 999.300, and 999.1). Section 8e regulations are issued under section 608e–1 of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 608e–1). The revised request includes such information as: Importer of record; port of entry; name of vessel, container number, country of origin, customs entry number, bill of lading number, broker reference number, date of entry, harmonized tariff code, consignee number, and Food Canning Establishment (FCE) Number obtained from the FDA.

The revised application also includes information collected for the inspection of unofficially submitted samples of food products. This was previously Form FV–159 on the previous collection of OMB 581–0123. Form FV–159 will become obsolete as a result of the revision of this form.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.33 hours per response (6124 total hours divided by 18,560 total annual responses).

Respondents: Applicants requesting grading and inspection services.

Estimated Number of Respondents: 1,160.

Estimated Number of Responses: 18,560.

Estimated Number of Responses per Respondent: 16.

Estimated Total Annual Burden on Respondents: 6,192.

Forms FV–468, FV–356, and FV–358 will be made available in hard copy form. Applicants also may submit information by telephone, facsimile, or by e-mail. Forms FV–DOV–1, FV–468, FV–356, FV–16 and FV–358 are accessible at *http://eforms.ams.usda.gov/#CustomersFV.* Presently, form FV–DOV–1 may be accessed on the Internet at *http://www.ams.usda.gov/AMSv1.0/DOV.*

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

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

Dated: June 29, 2010.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–16329 Filed 7–2–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Intermountain Region, Boise, Payette, and Sawtooth National Forests; ID; Amendment to the 2003 Land and Resource Management Plans: Wildlife Conservation Strategy (Forested Biological Community)

AGENCY: Forest Service, USDA.

ACTION: Third correction of notice of intent (NOI) to prepare an environmental impact statement (EIS).

SUMMARY: On September 14, 2007, the Forest Service published an NOI to prepare an EIS to disclose the environmental effects of proposed non-significant amendments to the three Southwest Idaho Ecogroup (SWIE) 2003 Land and Resource Management Plans (Forest Plans). The September 2007 NOI noted that amendments to the 2003 Forest Plans for the Boise, Payette, and Sawtooth National Forests (NFs) will add and/or modify existing management direction, as needed, to implement a comprehensive, Forest Plan-level, wildlife conservation strategy (WCS). A correction to the September 14, 2007 NOI was published on December 8, 2008. The December 2008 correction was published to reflect a delay of more than a year in filing the draft EIS. The December 2008 correction also provided notice of a change in the approach to the amendment process, dividing the WCS and amendment process into four phases, each with an individual environmental impact statement. The December 8, 2008 NOI was corrected on April 22, 2009 to reflect that three EISs will be prepared (one for each Forest) instead of one EIS addressing all three Forests. This NOI corrects the April 22, 2009 NOI to reflect a change in the level of documentation from an EIS to an environmental assessment (EA) and Finding of No Significant Impact (FONSI) for the analysis of the proposed amendment for the Sawtooth Forest Plan. Analysis for the Boise and Payette Plan amendments will continue to be documented in individual EIS's.

DATES: Comments concerning this correction must be received within 30 days following the date of publication of this NOI. The final EIS for the Boise Forest and the draft EIS for the Payette Forest are expected to be available in the summer of 2010. The EA and FONSI for the Sawtooth NF are expected to be available in the late summer/early fall of 2010.

ADDRESSES: Send written comments to Sharon LaBrecque, Planning Staff Officer, Sawtooth National Forest; 2647 Kimberly Road East, Twin Falls, ID 83301; or by fax at (208) 737–3236; or you may hand-deliver your comments to the Sawtooth Forest Supervisor's Office, located at 2647 Kimberly Road East, Twin Falls, during normal business hours from 8 a.m. to 5 p.m., Monday through Friday, excluding Federal holidays. Electronic comments must be submitted in a format such as an e-mail message, plain text (.txt), rich text format (.rtf), or Word (.doc) to: *comments-intermtn-sawtooth@fs.fed.us.*

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the respondent with standing to appeal the subsequent decision.

FOR FURTHER INFORMATION CONTACT: Sharon LaBrecque, Planning Staff Officer, Sawtooth National Forest, 2647 Kimberly Road East, Twin Falls, ID 83301, telephone 208–737–3200. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Separate RODs for revised Forest Plans were issued in July 2003 for the Boise, Payette, and Sawtooth NFs. The RODs implemented Alternative 7, as identified in the single 2003 final EIS that disclosed the environmental effects of the seven alternatives. Implementation of the three revised Forest Plans began in September 2003. Assessments supporting the 2003 Forest Plan revision identified more habitat areas in need of restoration for a variety of species within each planning unit than could be moved toward desired conditions by natural processes or management activities within the 10- to 15-year planning period. As a result, the 2003 Forest Plans for the Boise, Payette, and Sawtooth NFs identified that maintaining and restoring habitats for species of concern should be prioritized based upon the greatest risks to the persistence of certain species (Boise and Payette Forest Plans, p. 11–10 and Sawtooth Forest Plan, p. 11–9). To address this need, each Forest Plan included a wildlife objective, WIOB03, to prioritize wildlife habitat to be restored at a mid- or Forest-scale, using information from sources such as species habitat models and fine scale analyses. On September 14, 2007, the Forest Service published an NOI to prepare an EIS to disclose the environmental effects of proposed non-significant amendments to the three SWIE 2003 Forest Plans (**Federal Register**, Vol. 72, No. 178, pp. 52540–52542). The intent of the amendments was to address wildlife objective WIOB03 to prioritize wildlife habitat to be restored at a mid- or Forest-scale. A correction to the September 14, 2007 NOI was published on December 8, 2008 to reflect a delay of more than a year in filing the draft EIS. Given the complexity of species and associated habitats found across the three Forests, the December 2008 correction also provided notice of a change in the approach to the amendment process, dividing the WCS amendments into four phases. The first phase addresses the forested biological community, with subsequent phases slated to address rangeland; unique combinations of rangeland and forest; and riparian/wetland biological communities. The WCS amendments will include a prioritization framework for implementation of the 2003 Forest Plan direction that managers can use to help focus limited resources and funds for restoration on areas most important to species of concern. The December 2008 NOI correction stated that one EIS would be published for each phase of the WCS. On April 22, 2009, a correction to the December 2008 NOI was published to reflect that three EISs will be prepared (one for each Forest) instead of one EIS addressing all three Forests.

Assessments completed to date for the forested biological community WCS indicate that fewer changes to the Sawtooth Forest Plan direction are needed to implement a prioritized WCS than the Boise and Payette forest plans will require. This is in part due to that fact that the Sawtooth does not have the low elevation pine forests found on the Boise and Payette. Across southwest Idaho, it is the low elevation pine forests that are the most highly departed from historic conditions; pose the highest need for restoration; and affect the greatest need for change in management direction to be addressed in the forested biological community WCS plan amendments. The mid- to high elevation forests more typical of the Sawtooth National Forest are less departed. The Sawtooth Forest Plan did not include the MPC (Management prescription Category) 5.2 allocation unit that emphasized commodity production that resulted in forest conditions substantially outside their historic range of variation. And finally, management direction in the 2003

Sawtooth Forest Plan already provides most of the specific restoration objectives for many of the Forest's species of greatest conservation concern associated with the forested biological communities. Because of this, the Sawtooth Forest Plan will require only the identification of priority watersheds for restoration and minor amendments to management direction. Preliminary assessment results indicate that the effects of implementing the proposed plan amendment should have only minor environmental effects to the forested biological community on the Sawtooth NF, as well as outputs and services envisioned under the 2003 Forest Plan.

Dated: June 28, 2010.

Terence O. Clark, III,

Acting Sawtooth National Forest Supervisor.

[FR Doc. 2010–16275 Filed 7–2–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Rehabilitation of Floodwater Retarding Structure No. 10 of the Mountain Creek Watershed, Ellis County, TX

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the rehabilitation of Floodwater Retarding Structure No. 10 of the Mountain Creek Watershed, Ellis County, Texas.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 101 South Main, Temple, Texas 76501–7682, Telephone (254) 742–9800.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project. The project will rehabilitate Floodwater Retarding Structure No. 10 to maintain the present level of flood control benefits and comply with the current performance and safety standards.

Rehabilitation of the site will require the dam to be modified to meet current performance and safety standards for a high hazard dam. The modification will consist of raising the net elevation of the top of dam elevation 3.1 feet to 602.4 feet, install a new two-stage principal spillway (standard drop inlet type) with a port at elevation 575.14 feet and crest at elevation 576.8 feet, install a new 42 inch pipe, and install an impact basin to replace the existing plunge pool. The new principal spillway crest elevation will be raised by 1.5 feet. Flatten the back slope to a 3½:1 slope, lime treat the embankment slopes, and install a new toe drain system along back toe of dam. Lower the crest of the auxiliary spillway 1.4 feet to elevation 592.6 feet and reshape the outlet section of the auxiliary spillway. All disturbed areas will be planted to adapted native and/or introduced plant species. The proposed work will not have a significant effect on any prime farmland, endangered or threatened species, wetlands, or cultural resources.

Federal assistance will be provided under authority of the Small Watershed Rehabilitation Amendments of 2000 (Section 313, Pub. L. 106–472). Total project cost is estimated to be $2,805,600, of which $1,981,100 will be paid from the Small Watershed Rehabilitation funds and $824,500 from local funds.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Donald W. Gohmert, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: June 28, 2010.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 2010–16240 Filed 7–2–10; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ashley National Forest, UT, High Uintas Wilderness—Colorado River Cutthroat Trout Habitat Enhancement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Ashley National Forest in cooperation with Utah Division of Wildlife Resources (UDWR) proposes to restore genetically pure Colorado River cutthroat trout (CRCT; *Onchorhynchus clarki pleuriticus*) populations to suitable habitats within the High Uintas Wilderness. Implementation of this proposal would require the use of rotenone (a fish toxicant) to remove competing and hybridizing nonnative fish species from selected streams and lakes within the High Uintas Wilderness on the Roosevelt/Duchesne Ranger District. Nonnative fish species to be removed are primarily brook trout (*Salvelinus fontinalis*), Yellowstone cutthroat trout *(Onchorhynchus clarki bouvieri*) and hybridized cutthroat trout. Removal of nonnative fish is necessary to enhance habitat and restore genetically pure CRCT populations to suitable habitats within the High Uintas Wilderness.

Headwater subdrainages and basins proposed to be treated and monitored over a period of ten or more years include selected lakes and associated stream segments in the Garfield Basin and Swasey Hole in the Yellowstone River drainage, Fish Creek (a tributary to Moon Lake), Ottoson Basin and Oweep Creek in the Lake Fork River drainage, and Fall Creek in the Rock Creek drainage.

DATES: Comments concerning the scope of the analysis must be received by August 5, 2010. The draft environmental impact statement is expected February 2011 and the final environmental impact statement is expected June 2011.

ADDRESSES: Send written comments to Ron Brunson, Roosevelt/Duchesne Ranger District, P.O. Box 981, Duchesne, Utah 84021. Comments may also be sent via e-mail to *rbrunson@fs.fed.us,* or via facsimile to (435) 781–5215.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

FOR FURTHER INFORMATION CONTACT: Ron Brunson at (435) 781–5202 or e-mail *rbrunson@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The High Uintas Wilderness contains historic range and some of the most remote and pristine habitat suitable for CRCT. However, nonnative trout species threaten the continued existence of CRCT populations within these headwater basins. Lakes and streams within headwater basins were stategically selected based on essential habitat characteristics. These characteristics primarily include the presence of good spawning habitat which allows the persistance of self-sustaining trout populations and the ability of the selected area to resist re-invasion of nonnative trout species from reaches downstream through the presence of migration barriers.

CRCT are currently cooperatively managed as a conservation species among the states of Colorado, Wyoming and Utah, the U.S. Forest Service (USFS), U.S. Bureau of Land Management (BLM), U.S. Fish and Wildlife Service (USFWS) and the Ute Tribe Fish and Game Department. The CRCT is designated as a species of special concern by Colorado and Wyoming, and a Tier I specie in Utah (those species that are either federally listed or for which a conservation agreement has been implemented). The CRCT is classified as a sensitive species by Regions 2 and 4 of the USFS and by the BLM in Colorado, Wyoming and Utah.

Expanding populations of nonnative brook trout, remnant populations of Yellowstone cutthroat trout and cutthroat trout hybrids continue to threaten populations of native CRCT within the High Uintas Wilderness on the Ashley National Forest. Brook trout continue to displace CRCT within suitable habitat and Yellowstone cutthroat trout and their hybrids threaten genetically pure populations of CRCT with hybridization.

The underlying need for action is to remove competing brook trout and preserve the integrity of genetically pure populations of native CRCT. This would be accomplished by treating lakes and streams within selected drainage basins with the piscicide rotenone to remove the threat of competition and hybridization of nonnative trout. Following treatment of selected waters, CRCT would be reintroduced through stocking of fingerlings obtained from the well developed South Slope brood population maintained in Sheep Creek Lake.

The purpose statement includes goals to be achieved while meeting the need for the project. These goals are used to evaluate alternatives proposed to meet the need. The Forest Service will use the following purposes to select among the alternatives:

- The Forest Service is a partner and signatory to the Colorado River Cutthroat Trout Conservation Agreement and Strategy. This action would help the Forest Service demonstrate support and commitment to Colorado River cutthroat trout conservation efforts.
- Enhances administrative efficiency and cost-effectiveness.
- Avoids and minimizes adverse environmental impacts.
- Provides the potential to achieve the following biological objectives:
  - Preserve genetic integrity and enhance habitat for pure CRCT populations in the High Uintas Wilderness.
  - Eliminate from headwater lakes and their outflow streams, in a timely manner, hybrid cutthroat trout and brook trout that threaten genetic integrity and out compete CRCT.

Proposed Action

The Utah Division of Wildlife Resources in cooperation with the Ashley National Forest propose to implement a long-term strategy to treat selected lakes and streams within the High Uintas Wilderness with piscicide (rotenone) to remove competing and hybridizing nonnative trout species. The proposed project area encompasses three drainages within the High Uintas Wilderness, including the Yellowstone River, Lake Fork River and Rock Creek drainages. Within these drainages, strategically selected lakes and streams would be treated.

Lead and Cooperating Agencies

Utah Division of Wildlife Resources—Cooperating Agency.

Responsible Official

Regional Forester—Intermountain Region (R4)

Nature of Decision To Be Made

The decisions to be made include the approval of proposed activities within the High Uintas Wilderness, the use of piscicides (fish toxicants) within designated wilderness on National Forest System Lands, seasonal and long-term timing of the action and method of transport for materials, equipment, and personnel to treatment areas. Because the majority of lakes and streams occur within wilderness, methodologies and activities selected for implementation must conform to special land use restrictions as much as possible. Based on the environmental analyses presented in this document, the U.S. Forest Service (FS) will decide whether to approve the use of fish toxins within wilderness and whether to approve the short-term use of aircraft, outboard motors, pumps, and mixers in the wilderness area.

Preliminary Issues

- Impacts to quality of fisheries and angling opportunities may be caused by the proposed action. What is the extent and duration of such impacts?
- Will the proposed action affect aquatic-dependent organisms such as plankton, insects, and amphibians? Will threatened, endangered, and sensitive species be impacted?
- How will dead fish impact lake habitat and wildlife?
- Will the use of fish toxins impact water quality in the watershed, including drinking water for humans and animals?
- Is the use of fish toxins appropriate in the management of wilderness areas?
- Should the use of aircraft, outboard motors, or any other motorized/mechanized equipment in wilderness be authorized under the administrative exemption clause to expedite the process?
- What economic impacts will be sustained by commercial outfitters? What will be the short- and long-term effects to the local tourism industry?

Permits or Licenses Required

The proposed use of rotenone takes place on National Forest System (NFS) lands on the Duchesne Ranger District of the Ashley National Forest. Forest Service directives require that use of pesticides on NFS lands be approved by the Forest Service and that a Pesticide Use Proposal be submitted to and approved by the Forest Service.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. In addition, a public

notice requesting scoping comments was published in the newspaper of record (Salt Lake Tribune) on May 3, 2010. On April 27, 2010, the Ashley National Forest mailed a scoping letter and a project area map to affected landowners, tribes, concerned citizens, special interest groups, local governments, and any other interested parties to comment on the scope of the proposed action. This information is also available on our Web site *http://www.fs.fed.us/r4/ashley/projects/.*

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Dated: June 21, 2010.

Kevin B. Elliott,

Forest Supervisor.

[FR Doc. 2010–16325 Filed 7–2–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou, OR Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou, OR Resource Advisory Committee will meet in Grants Pass, Oregon. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to review and recommend projects submitted for funding under Title II of The Secure Rural Schools and Community Self-Determination Act of 2000, review existing projects, and elect a chairperson.

DATES: The meeting will be held July 20, 2010, 9 a.m.

ADDRESSES: The meeting will be held at 101 NW. A Street, Grants Pass, OR in the Grants Pass City Council Chambers. Written comments should be sent to Paul Galloway, Medford Interagency Office, 3040 Biddle Road, Medford, OR 97504.

Comments may also be sent via e-mail to *pgalloway@fs.fed.us,* or via facsimile to 541–618–2143.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Medford Interagency Office, 3040 Biddle Road, Medford, OR 97504. Visitors are encouraged to call ahead to 541–618–2113 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Paul Galloway, Acting Public Affairs Officer, Rogue River-Siskiyou National Forest, 541–618–2113, *pgalloway@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: Elect new chair, review status of FY2009 and FY2010 projects selected by the Siskiyou, OR Resource Advisory Committee, review and recommend FY2011 projects to the Designated Federal Official. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. A public input session will be provided during the meeting and individuals who are present will have the opportunity to address the Committee during that session.

Dated: June 24, 2010.

Scott D. Conroy,

Forest Supervisor, Rogue River-Siskiyou National Forest.

[FR Doc. 2010–16064 Filed 7–2–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Amador County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Amador County Resource Advisory Committee will meet in Sutter Creek, California. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The RAC will review operating guidelines, review a list of Forest Service projects that are ready for RAC review, establish a public process for receiving project proposals, and set future meeting dates.

DATES: The meeting will be held on July 13, 2009 at 6 p.m.

ADDRESSES: The meeting will be held at 10877 Conductor Blvd., Sutter Creek, CA JULY 13, 2010, 6 p.m.

Written comments should be sent to Frank Mosbacher; Forest Supervisor's Office; 100 Forni Road, Placerville, CA 95667. Comments may also be sent via e-mail to *fmosbacher@fs.fed.us,* or via facsimile to 530–621–5297.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 100 Forni Road, Placerville, CA 95667. Visitors are encouraged to call ahead to 530–622–5061 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Frank Mosbacher, Public Affairs Officer, Eldorado National Forest Supervisors Office, (530) 621–5268.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: At that meeting, the RAC will review operating guidelines, review a list of Forest Service projects that are ready for RAC review, establish a public process for receiving project proposals, and set future meeting dates. More information will be posted on the Eldorado National Forest Web site *@www.fs.fed.us/r5/eldorado.* A public comment opportunity will be made available following the business activity. Future meetings will have a formal public input period for those following the yet to be developed public input process.

Dated: *June 29, 2010.*

John Sherman,

Acting Forest Supervisor.

[FR Doc. 2010–16298 Filed 7–2–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

El Dorado County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The El Dorado County Resource Advisory Committee will meet in Placerville, California. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The agenda

for the meeting includes electing a committee chair and vice chair, establishing group norms and operating guidelines, learn about successful RACs, discuss criteria for project proposals, and establish methods for soliciting project proposals.

DATES: The meeting will be held on July 19, 2010 at 6 p.m.–9 p.m.

ADDRESSES: The meeting will be held at the El Dorado Center of Folsom Lake College, Community Room, 6699 Campus Drive, Placerville, CA 95667 . Written comments should be sent to Frank Mosbacher; Forest Supervisor's Office; 100 Forni Road, Placerville, CA 95667. Comments may also be sent via e-mail to *fmosbacher@fs.fed.us,* or via facsimile to 530–621–5297.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 100 Forni Road, Placerville, CA 95667. Visitors are encouraged to call ahead to 530–622–5061 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Frank Mosbacher, Public Affairs Officer, Eldorado National Forest Supervisors Office, (530) 621–5268.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: elect a chair and vice chair, discuss RAC norms and operating guidelines, learn about successful RACs, discuss criteria for project proposals and establish methods for soliciting proposals. More information will be posted on the Eldorado National Forest Web site *@www.fs.fed.us/r5/eldorado.* A public comment opportunity will be made available following the business activity. Future meetings will have a formal public imput period for those following the yet to be developed public imput process.

Dated: *June 29, 2010.*

John Sherman,

Acting Forest Supervisor.

[FR Doc. 2010–16299 Filed 7–2–10; 8:45 am]

BILLING CODE 3410–11–P

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 August 16, 2010 at the City of Sonora Fire Department, in Sonora, California. The purpose of the meeting is to vote on projects, determine the need for an August 23rd meeting, and schedule meetings and topics for 2011.

DATES: The meeting will be held August 16, 2010, from 9 a.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) Discussion and voting on projects; (2) determine need for an August 23rd meeting; (3) schedule meetings/topics for 2011; (4) public comment on meeting proceedings. This meeting is open to the public.

Dated: June 25, 2010.

Susan Skalski,

Forest Supervisor.

[FR Doc. 2010–16327 Filed 7–2–10; 8:45 am]

BILLING CODE 3410–ED–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National Advisory Council on Maternal, Infant and Fetal Nutrition: Notice of Meeting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council on Maternal, Infant and Fetal Nutrition.

Date and Time: July 27–29, 2010, 9 a.m.–5:30 p.m.

Place: The meeting will be held at the Food and Nutrition Service, 3101 Park Center Drive, Room 204 A & B, Alexandria, VA 22302.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Maternal, Infant and Fetal Nutrition will meet to continue its study of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), and the Commodity Supplemental Food Program (CFSP). The agenda will include updates and a discussion of WIC Reauthorization, Breastfeeding Promotion, the new WIC food packages, WIC funding, Electronic Benefits Transfer (EBT), CSFP Farm Bill provisions, and current research studies.

Status: Meetings of the National Advisory Council on Maternal, Infant and Fetal Nutrition are open to the public. Members of the public may participate, as time permits. Members of the public may e-mail or file written statements with the contact person named below before or after the meeting.

Contact Person for Additional Information: Sandra Clark, Supplemental Food Programs Division, Food and Nutrition Service, Department of Agriculture, (703) 305–2746 or e-mail at *Sandra.Clark@fns.usda.gov.* If members of the public need special accommodations, please notify Anita Cunningham by July 13, 2010, at (703) 305–0986, or e-mail at *Anita.Cunningham@fns.usda.gov.*

Dated: June 24, 2010.

Julia Paradis,

Administrator.

[FR Doc. 2010–16331 Filed 7–2–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–FV–10–0036; FV10–996–1 N]

Notice of the Peanut Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; request for nominations.

SUMMARY: The Farm Security and Rural Investment Act of 2002 requires the Secretary of Agriculture to establish a Peanut Standards Board (Board) for the purpose of advising the Secretary on quality and handling standards for domestically produced and imported peanuts. The initial Board was appointed by the Secretary and announced on December 5, 2002. USDA seeks nominations for individuals to be considered for selection as Board members for terms of office ending June 30, 2011, June 30, 2012 and June 30, 2013. USDA values diversity. In an effort to obtain nominations of diverse

candidates, USDA encourages the nomination of men and women of all racial and ethnic groups. Selected nominees sought by this action would fill two currently vacant industry representative positions for the remainder of terms of office ending June 30, 2011, six producer and industry representatives who are currently serving for the term of office that ended June 30, 2009, and six producer and industry representatives who are currently serving for the term of office that will end June 30, 2010. The Board consists of 18 members representing producers and industry representatives. USDA had previously requested nominations for the two vacancies (terms ending June 30, 2011) and the six producer and industry representatives positions (terms ended June 30, 2009) in a Request for Nominations that was published in the **Federal Register** on April 29, 2009. USDA is reissuing the notice in an effort to expand outreach to interested individuals.

DATES: Written nominations must be received on or before July 16, 2010.

ADDRESSES: Nominations should be sent to Dawana J. Clark, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737: Telephone: (301) 734–5247; Fax: (301) 734–5275; E-mail: *Dawana.Clark@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Section 1308 of the Farm Security and Rural Investment Act of 2002 (Farm Bill) requires the Secretary of Agriculture to establish a Peanut Standards Board (Board) for the purpose of advising the Secretary regarding the establishment of quality and handling standards for all domestic and imported peanuts marketed in the United States. The Farm Bill requires the Secretary to consult with the Board before the Secretary establishes or changes quality and handling standards for peanuts.

The Farm Bill provides that the Board consist of 18 members, with three producers and three industry representatives from the States specified in each of the following producing regions: (a) Southeast (Alabama, Georgia, and Florida); (b) Southwest (Texas, Oklahoma, and New Mexico); and (c) Virginia/Carolina (Virginia and North Carolina).

For the initial appointments, the Farm Bill required the Secretary to stagger the terms of the members so that: (a) One producer member and peanut industry member from each peanut producing region serves a one-year term; (b) one producer member and peanut industry member from each peanut producing region serves a two-year term; and (c) one producer member and peanut industry member from each peanut producing region serves a three-year term. The term "peanut industry representatives" includes, but is not limited to, representatives of shellers, manufacturers, buying points, marketing associations and marketing cooperatives. The Farm Bill exempted the appointment of the Board from the requirements of the Federal Advisory Committee Act. The initial Board was appointed by the Secretary and announced on December 5, 2002.

USDA invites those individuals, organizations, and groups affiliated with the categories listed above to nominate individuals for membership on the Board. Nominees sought by this action would fill two currently vacant industry representative positions for the remainder of terms of office ending June 30, 2011, one from the Southeast and one from the Virginia-Carolina peanut producing regions. Nominees sought by this action would also replace twelve positions, two producers and two industry members from each peanut producing region who served for the term of office that ended June 30, 2009 and who served for the term of office that will end June 30, 2010. New members filling the two current vacancies would serve the remaining 3-year term of office ending June 30, 2011. New members filling the positions expiring on June 30, 2009, and June 30, 2010, would serve for 3-year terms of office ending June 30, 2012 and June 30, 2013. USDA had previously requested nominations for the two vacancies (terms ending June 30, 2011) and the six producer and industry representatives positions (terms ended June 30, 2009) in a Request for Nominations that was published in the **Federal Register** on April 29, 2009. USDA is reissuing the notice in an effort to expand outreach to interested individuals.

Nominees should complete a Peanut Standards Board Background Information form and submit it to Mrs. Clark at the address provided in the **ADDRESSES** section above. Copies of this form may be obtained at the Internet site: *http://www.ams.usda.gov/PeanutStandardsBoard,* or from Mrs. Clark. USDA seeks a diverse group of members representing the peanut industry.

Equal opportunity practices will be followed in all appointments to the Board in accordance with USDA policies. To ensure that the recommendations of the Board have taken into account the needs of the diverse groups within the peanut industry, membership shall include, to the extent practicable, individuals with demonstrated abilities to represent the interests of racial and ethnic minorities, women, persons with disabilities, and limited resource agriculture producers.

Authority: 7 U.S.C. 7958.

Dated: June 29, 2010.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–16333 Filed 7–2–10; 8:45 am]

BILLING CODE P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment to the 2010 Tariff Preference Level (TPL) for Nicaragua Under the Central America-Dominican Republic-United States Free Trade Agreement (CAFTA–DR)

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Amending the 2010 TPL for Nicaragua.

DATES: *Effective Date:* July 6, 2010.

SUMMARY: This notice reduces the 2010 TPL for Nicaragua to 99,238,862 square meters equivalent to account for the shortfall in meeting the one-to-one commitment for cotton and man-made fiber woven trousers exported from Nicaragua to the United States

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Annex 3.28 of the CAFTA–DR; Section 1634(a)(2) and (c)(2) of the Pension Protection Act of 2006 (Pub. L. 109–280); Presidential Proclamation 8111 of February 28, 2007.

Background

Annex 3.28 of the CAFTA–DR establishes a TPL for non-originating apparel goods of Nicaragua. Section 1634(a)(2) of the Pension Protection Act references the exchange of letters between the United States and Nicaragua, which establishes the one-to-one commitment for cotton and man-made fiber trousers. Section 1634(c)(2) of the Pension Protection Act authorizes the President to proclaim a reduction in the overall limit in the TPL if the President determines that Nicaragua has failed to comply with the one-to-one commitment. In Presidential Proclamation 8111, the President delegated to CITA the authority to

determine whether Nicaragua had failed to comply with the one-to-one commitment and to reduce the overall limit in the TPL.

In an exchange of letters dated March 24 and 27, 2006, Nicaragua agreed that for each square meter equivalent of exports of cotton and man-made fiber woven trousers entered under the TPL, Nicaragua would export to the United States an equal amount of cotton and man-made fiber woven trousers made of U.S. formed fabric of U.S. formed yarn. This commitment for cotton woven trousers applies to the first 50 million square meters equivalent in 2009, the fourth year after the date of entry into force of the CAFTA–DR. Further, any shortfall in meeting this commitment that was not rectified by April 1 of the succeeding year would be applied against the TPL for the succeeding year. For 2009, the shortfall in meeting the one-to-one commitment is 761,138 square meters equivalent. This amount is being deducted from the 2010 TPL, resulting in a new TPL level for 2010 of 99,238,862 square meters equivalent.

Kim Glas,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2010–16353 Filed 7–2–10; 8:45 am]

BILLING CODE 3510–DS–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: U.S. Census Bureau.

Title: Business and Professional Classification Report.

OMB Control Number: 0607–0189.

Form Number(s): SQ–CLASS(00).

Type of Request: Revision of a currently approved collection.

Burden Hours: 14,519.

Number of Respondents: 67,000.

Average Hours per Response: 13 minutes.

Needs and Uses: The Economic Census and current business surveys represent the primary source of facts about the structure and function of the U.S. economy, providing essential information to government and the business community in making sound decisions. This information helps build the foundation for the calculation of Gross Domestic Product (GDP) and other economic indicators. Crucial to its success is the accuracy and reliability of the Business Register data, which provides the Economic Census and current business surveys with their establishment lists.

Critical to the quality of data in the Business Register is that establishments are assigned an accurate economic classification, based on the North American Industry Classification System (NAICS). The primary purpose of the "Business and Professional Classification Report" or SQ–CLASS(00), is to meet this need for the services sector of the economy. The services sector includes establishments classified in retail trade; wholesale trade; finance and insurance; real estate and rental and leasing; transportation and utilities; and other services-related industries. Establishments will be mailed five-year Economic Census forms specifically tailored to their industry based on the classification information we collect from the SQ–CLASS survey. In addition, the SQ–CLASS report is used to collect information needed to update the services sector sampling frame.

To keep current with rapid changes in the marketplace caused by businesses births, deaths, and changes in company organization, the Census Bureau samples establishments with newly assigned Employer Identification Numbers (EINs) obtained from the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Each EIN unit can only be selected once for the survey. EIN units selected for the sample are asked to provide data on the establishment(s) associated with the new EIN. The completed SQ–CLASS form provides sales, receipts, or revenue data; company organization status; new or refined NAICS codes; and other key information needed to maintain proper coverage of the business universe.

Based on information collected on the SQ–CLASS form, EIN units meeting the criteria for inclusion in the Census Bureau's current services sector surveys are eligible for a second phase of sampling. The retail and wholesale EIN units selected in this second sampling are placed on a panel to report on monthly surveys. Additional selected units are included on a panel to report on annual surveys. The other selected services sector EIN units report on an annual and/or quarterly basis.

There are minimal changes to the SQ–CLASS form. An inquiry will be added to determine not-for-profit status, which will be used for data collection purposes. This will ensure that the proper current survey form is sent to the business if it is selected into a survey. Minimal changes will be made to the wording and organization of existing questions and instructions. Also, for the first time, respondents will have the option to respond electronically via the Internet.

The Census Bureau selects a first phase sample of EINs recently assigned by the IRS. Selected EIN units are mailed a SQ–CLASS form to determine measure of size (based on sales, receipts, or revenue); industry classification; company organization; wholesale inventories and type of operation data; not-for-profit status; and other useful information. EIN units not affiliated with previously selected units are eligible for second phase sampling, with selected sampling units added to a survey panel. This methodology updates the current surveys' sampling frame with a sample of new firms entering the services sector. The information obtained from the SQ–CLASS form is also used in tabulating data for small businesses in succeeding economic censuses (because small businesses are not mailed an economic census report form), and for the Census Bureau's County Business Patterns program, which is conducted on an annual basis.

Although no statistical tables are prepared or published, the operations of this business birth survey directly and critically affect the quality of the estimates published for the Advance Monthly Retail Trade and Food Services Survey (OMB Approval 0607–0104); Monthly Wholesale Trade Survey (OMB 0607–0190); Services Annual Survey (OMB Approval 0607–0422); Annual Retail Trade Survey (OMB Approval 0607–0013); Annual Wholesale Trade Survey (OMB Approval 0607–0195); and Quarterly Service Survey (OMB Approval 0607–0907), since this business birth survey keeps the sample universe current.

Affected Public: Business or other for-profit; Not-for-profit Institutions.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 182 and 193.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

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 6616, 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 Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: June 29, 2010.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–16293 Filed 7–2–10; 8:45 am]

BILLING CODE 3510–07–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: U.S. Census Bureau.

Title: Generic Clearance for Questionnaire Pretesting Research.

OMB Control Number: 0607–0725.

Form Number(s): Various.

Type of Request: Extension of a currently approved collection.

Burden Hours: 16,500.

Number of Respondents: 5,500.

Average Hours per Response: 1 hour.

Needs and Uses: In recent years, there has been an increased interest among Federal agencies and others in the importance of testing questionnaires. In response to this recognition, new methods have come into popular use, which are useful for identifying questionnaire and procedural problems, suggesting solutions, and measuring the relative effectiveness of alternative solutions.

The Census Bureau received a generic clearance which enables the Census Bureau to quickly begin conducting extended cognitive and questionnaire design research as part of testing for its censuses and surveys. At this time, the Census Bureau is seeking another three-year renewal of the generic clearance for pretesting. This will enable the Census Bureau to continue providing support for pretesting activities, which is important given the length of time required to plan the activities.

The methods proposed for use in questionnaire development are as follows: Field test, Respondent debriefing questionnaire, Split sample experiments, Cognitive interviews, Usability Interviews, and Focus groups.

Since the types of surveys included under the umbrella of the clearance are so varied, it is impossible to specify at this point what kinds of activities would be involved in any particular test. But at a minimum, one of the types of testing described above or some other form of cognitive pretesting would be incorporated into the testing program for each survey.

We will provide OMB with a copy of questionnaires, protocols and debriefing materials in advance of any testing activity. Depending on the stage of questionnaire development, this may be the printed questionnaire from the last round of a survey or a revised draft based on analysis of other evaluation data. When the time schedule for a single survey permits multiple rounds of testing, the questionnaire(s) for each round will be provided separately. When split sample experiments are conducted, either in small group sessions or as part of a field test, all the questionnaires to be used will be provided. For a test of alternative procedures, the description and rationale for the procedures would be submitted. A brief description of the planned field activity will also be provided. Requests for information or comments on substantive issues may be raised by OMB within 10 working days of receipt.

The Census Bureau will send OMB an annual report at the end of each year summarizing the number of hours used, as well as the nature and results of the activities completed under this clearance.

The information collected in this program of developing and testing questionnaires will be used by staff from the Census Bureau and sponsoring agencies to evaluate and improve the quality of the data in the surveys and censuses that are ultimately conducted. None of the data collected under this clearance will be published for its own sake.

Because the questionnaires being tested under this clearance are still in the process of development, the data that result from these collections are not considered official statistics of the Census Bureau or other Federal agencies. Data will be included in research reports prepared for sponsors inside and outside of the Census Bureau. The results may also be prepared for presentations related to survey methodology at professional meetings or publications in professional journals.

Affected Public: Individuals or households, businesses, farms.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Legal Authority: Data collection for this project is authorized under the authorizing legislation for the questionnaire being tested. This may be Title 13, Sections 131, 141, 161, 181, 182, 193, and 301 for Census Bureau sponsored surveys, and Title 13 and 15 for surveys sponsored by other Federal agencies.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

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 6616, 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 Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: June 29, 2010.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–16294 Filed 7–2–10; 8:45 am]

BILLING CODE 3510–07–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: Northeast Regional Ocean Council Information Social Network Analysis.

OMB Control Number: None.

Form Number(s): None.

Type of Request: Regular submission (New information collection).

Number of Respondents: 45.

Average Hours per Response: 10 minutes.

Burden Hours: 8.

Needs and Uses: The Northeast Regional Ocean Council (NROC) is a State and Federal partnership with the goal of engaging in regional protection, and balanced use, of ocean and coastal resources. NROC's coordinated approach reaches across state boundaries to find and implement solutions to the region's most pressing ocean and coastal issues. NROC's membership includes New England coastal state agencies and federal agencies. The work of the Council focuses primarily on coastal hazards resilience and ocean energy planning

and management. NROC's members come from varied expertise and work on these issues in many capacities. A social network analysis will serve to identify the network of people working on NROC's key issues, both within and outside of the organization. NROC members will voluntary complete a survey regarding their communications on NROC issues and value derived from membership. The resulting information can be used to evaluate the efficiency of the network, where gaps may exist, and to suggest additional partnerships that would benefit the Council's work. This collection of information supports the intent of the Coastal Zone Management Act, 16 U.S.C 1451 *et seq.*

Affected Public: State, local or tribal governments.

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 29, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–16297 Filed 7–2–10; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Generic Clearance for Customer Satisfaction Research

AGENCY: U.S. Census Bureau.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before September 7, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Joanne C. Dickinson, 301–763–4094, U.S. Census Bureau, HQ–8H187, Washington, DC 20233–0500 (or via the Internet at *joanne.dickinson@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is requesting an extension of the generic clearance to conduct customer satisfaction research which may be in the form of mailed or electronic questionnaires and/or focus groups, telephone interviews, or personal interviews.

The Census Bureau has ranked a customer-focused environment as one of its most important strategic planning objectives. The Census Bureau routinely needs to collect and analyze customer feedback about its products and services to better align them to its customers' needs and preferences. Several programs, products, and distribution channels have been designed and/or redesigned based on feedback from its various customer satisfaction research efforts.

Each research design is reviewed for content, utility, and user-friendliness by a variety of appropriate staff (including research design and subject-matter specialists). The concept and design are tested by internal staff and a select sample of respondents to confirm its appropriateness, user-friendliness, and to estimate burden (including hours and cost) of the proposed collection of information. Collection techniques are discussed and included in the research concept design discussion to define the most time-, cost-efficient and accurate collection media.

The clearance operates in the following manner: a block of hours is reserved at the beginning of each year, and the particular activities that will be conducted under the clearance are not specified in advance. The Census Bureau provides information to the Office of Management and Budget (OMB) about the specific activities on a flow basis throughout the year. At the end of each year, a report is submitted to OMB that summarizes the number of hours used as well as the nature and results of the activities completed under the clearance.

II. Method of Collection

This research may be in the form of mailed or electronic questionnaires and/or focus groups, or telephone or personal interviews.

III. Data

OMB Control Number: 0607–0760.

Form Number: Various.

Type of Review: Regular submission.

Affected Public: Individuals or households, State or local governments, farms, business or other for-profit organizations, federal agencies or employees, and not-for-profit institutions.

Estimated Number of Respondents: 90,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 7,500.

Estimated Total Annual Cost: There is no cost to respondents, except for their time to answer the questions.

Respondents Obligation: Voluntary.

Legal Authority: Executive Order 12862.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 29, 2010.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–16292 Filed 7–2–10; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 100427199–0266–01]

RIN 0648–XW22

Endangered and Threatened Wildlife and Plants; 90–Day Finding for a Petition to List Puget Sound Coho Salmon as Endangered or Threatened

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

ACTION: Notice of petition finding.

SUMMARY: We, NMFS, have received a petition to list Puget Sound populations of coho salmon (*Oncorhynchus kisutch*) as an endangered or threatened species and to designate critical habitat under the Endangered Species Act (ESA). We determine that the petition does not present substantial evidence to indicate that the petitioned action may be warranted. Accordingly, we will not initiate a status review of the species at this time.

ADDRESSES: Requests for copies of the petition and comments regarding Puget Sound coho salmon should be submitted to Chief, Protected Resources Division, NMFS, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232. The petition and supporting data are available for public inspection, by appointment, Monday through Friday at this address.

FOR FURTHER INFORMATION CONTACT: Eric Murray, NMFS, Northwest Region, (503) 231–2378 or Marta Nammack, NMFS, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the ESA contains provisions allowing interested persons to petition the Secretary of the Interior or the Secretary of Commerce (Secretary) to add a species to or remove a species from the List of Endangered and Threatened Wildlife and to designate critical habitat. On February 23, 2010, we received a petition from Mr. Sam Wright of Olympia, Washington, to list and designate critical habitat for Puget Sound populations of coho salmon.

Section 4(b)(3)(A) of the Endangered Species Act (16 U.S.C. 1531 1544) requires that we determine whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. In making this determination, we consider information submitted with and referenced in the petition, and all other information readily available in our files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**.

In evaluating a petition, we consider whether it (1) describes past and present numbers and distribution of the species and any threats faced by the species (50 CFR 424.14(b)(2)(ii)); (2) provides information regarding the status of the species over all or a significant portion of its range (50 CFR 424.14(b)(2)(iii)); and (3) is accompanied by appropriate supporting documentation (50 CFR 424.14(b)(2)(iv)).

The ESA defines "species" to include subspecies and any distinct population segment of a vertebrate species which interbreeds when mature (16 U.S.C. 1532(16)). To identify distinct population segments of salmon, we follow our Policy on Applying the Definition of Species under the ESA to Pacific Salmon (56 FR 58612; November 20, 1991). This policy states that we consider evolutionarily significant units (ESU) of salmon to be distinct population segments under the ESA. We consider populations of salmon to be an ESU if they are substantially reproductively isolated from other populations of the same species and represent an important component in the evolutionary legacy of the species. The petitioner requested listing the "populations of Puget Sound coho salmon." We evaluated whether the information provided or cited in the petition met the ESA's standard for "substantial information." We also reviewed other information readily available to us (currently within our files).

Previous Status Review of Puget Sound Coho Salmon

We announced our completion of a coastwide status review of coho salmon in a **Federal Register** document dated July 25, 1995 (60 FR 38011). In that document, we delineated several ESUs of coho salmon throughout the west coast, including a Puget Sound/Strait of Georgia ESU. We proposed several ESUs of coho salmon as threatened under the ESA, but determined that listing the Puget Sound/Strait of Georgia ESU was not warranted. In making this finding, we determined that, "relative to the other coho salmon ESUs, populations in the Puget Sound/Strait of Georgia ESU are abundant, and with some exceptions, run sizes and natural spawning escapements have been generally stable."

In this previous **Federal Register** document we identified the Puget Sound/Strait of Georgia ESU to include coho salmon populations from drainages in Puget Sound and Hood Canal, the eastern Olympic Peninsula (east of Salt Creek), and the Strait of Georgia from the eastern side of Vancouver Island and the British Columbia mainland (north to and including Campbell and Powell rivers), excluding the upper Fraser River. While we expressed some uncertainty about including the Strait of Georgia populations, we concluded "that at least until further information is developed, the geographic boundaries of this ESU extend into Canada to include drainages from both sides of the Strait of Georgia as far as the north end of the Strait."

In the 1995 status review report we found that abundance in the Canadian populations in the ESU had declined more severely than in the U.S. populations. Available data showed a long-term decline in coho abundance on Vancouver Island and along the south-central British Columbia coast (excluding the Fraser River) over the entire historical period of record for the species, based on comparison of 1800s abundance with 1953–1992 average abundance. Abundance decline for these areas was also apparent over the most recent shorter term period (1953–1992). On Vancouver Island, coho salmon escapements had declined from more than 300,000 in the mid–1950s to about 150,000 through the time of the status review. Along the south-central coast, escapement declines in the same period were more dramatic, from about 500,000 in the mid–1950s to less than 100,000 through the early 1990s. By contrast, estimated average run sizes of coho salmon in the U.S. portion of the ESU were comparable to the estimated historical (1896) abundance of 1.25 million (although at least half of these were hatchery-origin coho salmon).

Of the U.S. populations examined in the 1995 status review report, two had significant downward trends, five had significant upward trends, and the remaining 10 had no significant trend. Only three populations had long-term data sets (over 50 years) available for review. Two declined in the 1960s and 1970s, with some evidence of recovery in the 1980s. The third neither increased nor decreased in abundance. Long-term (1896–1992) abundance trends for naturally-reproducing Puget Sound coho salmon were not statistically significant, but a marked short-term decline in abundance trends

was observed within this period (between 1935 and 1975)

The 1995 status review report also evaluated potential threats to the viability of the ESU, including overharvest in fisheries and hatchery operations. Prior to 1995, overall ocean exploitation rates on the U.S. portion of the ESU (as estimated from coded wire tag data) were relatively high but showed no apparent trend. Harvest rates on naturally-reproducing populations were substantially lower than harvest rates on hatchery-dominated populations. We expressed considerable concern that over half of the U.S. portion of the run was hatchery fish. Little information was available about hatchery contributions to the Canadian portion of the ESU, except that hatchery production had rapidly increased relative to low historical levels. The average size of adult coho salmon in the Puget Sound/Strait of Georgia ESU had also decreased (this was observed beginning in the 1950s, but documented first in the 1970s) along with fecundity (Weitkamp et al., 1995). The decrease in size and fecundity was expected to decrease productivity in the ESU as a whole. Other threats identified in the assessment included widespread habitat degradation, droughts, and changes in ocean productivity, all of which were expected to reduce ESU productivity.

Despite the threats facing this ESU in the described 1995 status review report, we noted that total abundance of naturally-reproducing fish was fairly high and apparently stable. For this reason, we concluded that listing was not warranted (60 FR 38011; July 25, 1995). However, because of the threats to the overall health of this ESU, we added it to the Candidate List (later to become known as the "Species of Concern List"). The Species of Concern List can aid in the conservation of species by highlighting needed research and stewardship opportunities. We did not conduct a new status review until we were petitioned because we did not have information in our files to indicate that the species might warrant ESA protection.

Analysis of Petition

When reviewing a petition to list a species under the ESA, we consider information provided in the petition as well as information readily available in agency files. We first review information from the petition and our files regarding delineation of the Puget Sound/Strait of Georgia coho salmon ESU, and next review information from the petition and our files regarding the status of coho salmon in Puget Sound.

The petition states that "any connectivity [of the Puget Sound coho salmon populations] with Canadian stocks has been effectively severed by 35 years of managing the entire Nooksack River system as a Hatchery Salmon Management Zone. The Skagit River system now forms the northern boundary of a much smaller and isolated viable ESU that now has its southern boundary formed by the Snohomish river system." The petitioner refers to this proposed, truncated Puget Sound population (representing a smaller proportion of the ESU than that delineated and reviewed by NMFS in 1995) as being a "new and much smaller viable ESU." Without agreeing with the petitioner that creation of a truncated Puget Sound coho ESU is warranted, the petition is correct that Nooksack River coho continue to be managed for hatchery production, a management approach unchanged from the strategy in effect when we reviewed the status of the ESU in 1995. The Nooksack River watershed represents just one of seven coho management units making up the ESU, five of which are managed for wild coho production. We determined in 1995 that, based on the relatively healthy viability status of these wild coho populations and considering the standing of threats to their viability, hatchery production in the Nooksack River did not constitute a significant threat to the ESU as a whole. This previous finding is further supported by new scientific evidence indicating the tendency for hatchery-origin coho salmon not to successfully interbreed with native Nooksack watershed coho salmon (Small et al., 2004). These researchers reached this conclusion through comparison of microsatellite DNA variation in wild-spawning and hatchery-strain coho salmon from the Nooksack River. Significant heterogeneity in genotype frequencies was detected between wild-spawning coho salmon from the upper North Fork Nooksack River and Kendall Creek Hatchery coho salmon, which were descendants of primarily native Nooksack River broodstock. These findings suggest that a distinct Nooksack River wild coho salmon population persists, amidst continued management of the watershed for hatchery coho production, and that the wild population contributes positively to the abundance, diversity, and spatial structure of the ESU. Considering this new information, and that the petition presents no new information regarding threats to ESU viability associated with hatchery fish management in the Nooksack watershed, we reach the same conclusion that we reached in 1995, that hatchery management in the Nooksack does not pose a significant threat to the ESU.

Genetics data available in our files since our last review do suggest that a change in ESU configuration may be warranted. That information suggests that coho salmon in Canadian and U.S. rivers may be reproductively isolated and therefore represent different ESUs. Even if that is the case, before initiating a status review we must determine whether the petitioned action of listing a potential coho ESU in Puget Sound may be warranted. We, therefore, consider information in the petition and our files to determine whether it indicates that listing of a Puget Sound ESU may be warranted.

The petition claims that Puget Sound coho salmon face a variety of threats including: (1) the Washington Department of Fish and Wildlife, which has deliberately planned for overfishing on many populations and has failed to set escapement goals for many populations; (2) the decrease in size of adult coho salmon in the State of Washington; and (3) pre-spawning mortality associated with land use practices. With the exception of pre-spawning mortality, the petition presents no new information on these threats beyond what we considered in our 1995 review. As previously mentioned, the petitioner indicates that a different ESU configuration may exist; however, there is no information available to indicate that the severity of threats or ESU viability would increase if a smaller, Puget Sound ESU was established. In fact, the opposite may be true. In our 1995 review, we noted that declines in abundance in the Canadian portion of the Puget Sound/Strait of Georgia ESU were much more severe than in the U.S. portion of the ESU. If the ESU was reconfigured to include stocks only within Puget Sound, it is likely that overall ESU viability would improve and the severity of threats facing this smaller ESU would decrease.

Regarding the high harvest rates that were highlighted in our last assessment, the petition fails to provide any recent data to indicate whether these trends have continued and therefore still present risks to the ESU. A review of data available in our files suggests that the risk from harvest has decreased in recent years. With the near complete cessation of coho salmon fisheries by Canada on the West Coast of Vancouver Island since the time of our last status review, overall fisheries exploitation rates for all key naturally-reproducing coho populations in Puget Sound have been markedly reduced. For example,

total harvest rates for Skagit naturally-reproducing coho salmon have been reduced from an average of 51 percent in the early to mid 1990s, to an average of 30 percent for the period 1999--2008. Similarly, average total fishery harvest rates have been reduced from 57 percent to 21 percent for Stillaguamish naturally-reproducing coho; 57 percent to 22 percent for Snohomish naturally-reproducing coho; 57 percent to 35 percent for Hood Canal naturally-reproducing coho; and 39 percent to 8 percent for Strait of Juan de Fuca naturally-reproducing coho (L. LaVoy, NMFS Sustainable Fisheries Division data, pers. comm., April 9, 2010). Harvest rates have also been substantially reduced on Deschutes River coho salmon (from 85 percent to 45 percent), a population the petition mentions in particular.

Regarding the decrease in size of adult coho, we considered this decrease in our 1995 review. The petitioner provides no details and no new information since our previous review nor do we have any additional information in our files on this matter.

Regarding pre-spawning mortality, the petition includes a 2004 report titled "Land Use and Coho Pre-spawning Mortality in the Snohomish Watershed, Washington." The petition does not demonstrate that this is a new phenomenon, and does not explain how this information affects the overall status of coho in Puget Sound in a way not considered in the 1995 review. The petition also includes smolt (juvenile salmon) production data for Big Beef Creek, describing it as representing a decline. In contrast to the petition's characterization of the data as showing a decline, it actually suggests that recent smolt production is comparable to or exceeds that of previous years. Although we did not explicitly consider effects of pre-spawning mortality in the 1995 review, there is no information in the petition or our files indicating that this mortality is different from what it was in 1995.

Petition Finding

After reviewing the petition, as well as information readily available to us, we have determined that the petition does not present substantial scientific information indicating the petitioned action may be warranted. The petition correctly states that the scientific information used in NMFS' previous review is at least 15 years old. However, the petition does not offer adequate new information on the status, trends, and threats to the Puget Sound/Strait of Georgia ESU of coho salmon to warrant the initiation of a status review at this time. Moreover, information available to us does not suggest that listing may be warranted.

If new information becomes available to suggest that the Puget Sound populations of coho salmon may warrant listing under the ESA, we will reconsider conducting a species status review.

References

A complete list of all references cited herein is available upon request (see **ADDRESSES** section).

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701; 16 U.S.C. 1361 *et seq.*

Dated: June 29, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2010–16361 Filed 7–2–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1688]

Expansion of Foreign-Trade Zone 89 Las Vegas, NV

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Nevada Development Authority, grantee of Foreign-Trade Zone 89, submitted an application to the Board for authority to expand FTZ 89 to include a site in the City of North Las Vegas, Nevada, within the Las Vegas Customs and Border Protection port of entry (FTZ Docket 48–2009, filed 11/09/09);

Whereas, notice inviting public comment has been given in the **Federal Register** (74 FR 59131–59132, 11/17/09) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 89 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and further subject to a sunset provision that would terminate authority on June 30, 2017 for Site 9 where no activity has occurred under FTZ procedures before that date.

Signed at Washington, DC, this 22nd day of June 2010.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST: _____

Elizabeth Whiteman,
Acting Executive Secretary.

[FR Doc. 2010–16356 Filed 7–2–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic from the People's Republic of China: Extension of Time Limit for the Final Results of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 6, 2010.

FOR FURTHER INFORMATION CONTACT: Lingjun Wang, 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) 482–2316.

Background

On April 27, 2010, the Department of Commerce (the Department) issued the preliminary results of the new shipper review of fresh garlic from the People's Republic of China for Qingdao Sea–line International Trade Co. Ltd. (Qingdao Sea–line), covering the period of review of November 1, 2008 through April 30, 2009. *See Fresh Garlic from the People's Republic of China: Preliminary Results of New Shipper Review*, 75 FR 24578 (May 5, 2010).

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(i)(1), provides that the Department will issue the preliminary results of a new shipper review of an antidumping duty order within 180 days after the day on which the review was initiated, and final results of review within 90 days after the date on which the preliminary results were issued. However, if the Secretary concludes that a new shipper review is extraordinarily

complicated, the Secretary may extend the 180–day period to 300 days, and may extend the 90- day period to 150 days. See 19 CFR 351.214(i)(2).

Extension of Time Limit for Final Results

The Department determines that this new shipper review involves extraordinarily complicated methodological issues, including the continued evaluation of the UbonaU UfideU nature of the company's sales. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the Department is extending the time limit for the final results from 90 days to 150 days. Therefore the final results will now be due no later than September 24, 2010.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act.

Dated: June 29, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–16355 Filed 7–2–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a public meeting of the Commerce Spectrum Management Advisory Committee (Committee). The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on spectrum management policy matters.

DATES: The meeting will be held on July 27, 2010 from 9 a.m. to 12 p.m., Mountain Daylight Time.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, National Telecommunications and Information Administration, Institute for Telecommunication Sciences, 325 Broadway, Room 1107, Boulder, Colorado. Public comments may be mailed to Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue, NW., Room 4725, Washington, DC 20230 or e-mailed to *spectrumadvisory@ntia.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Joe Gattuso, Designated Federal Officer, at (202) 482–0977 or *jgattuso@ntia.doc.gov;* and/or visit NTIA's Web site at *http://www.ntia.doc.gov/advisory/spectrum.*

SUPPLEMENTARY INFORMATION:

Background: The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on needed reforms to domestic spectrum policies and management in order to: License radio frequencies in a way that maximizes their public benefits; keep wireless networks as open to innovation as possible; and make wireless services available to all Americans (*See* charter, at *http://www.ntia.doc.gov/advisory/spectrum/csmac_charter.html*). This Committee is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. 904(b). The Committee functions solely as an advisory body in compliance with the FACA. For more information about the Committee visit: *http://www.ntia.doc.gov/advisory/spectrum.*

Matters To Be Considered: The Committee will consider draft reports from one or more of its subcommittees and will review work plans of two new subcommittees. NTIA will post a detailed agenda on its Web site, *http://www.ntia.doc.gov,* prior to the meeting. There also will be an opportunity for public comment at the meeting.

Time and Date: The meeting will be held on July 27, 2010, from 9 a.m. to 12 p.m., Mountain Daylight Time. The times and the agenda topics are subject to change. The meeting may be Webcast or made available via audio link. Please refer to NTIA's Web site, *http://www.ntia.doc.gov,* for the most up-to-date meeting agenda and access information.

Place: The meeting will be held at the U.S. Department of Commerce, National Telecommunications and Information Administration, Institute for Telecommunication Sciences, 325 Broadway, Room 1107, Boulder, Colorado. For more information regarding directions to the Boulder facility please consult *http://www.boulder.nist.gov/maps.htm.* The meeting will be open to the public and press on a first-come, first-served basis. Space is limited. The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Mr. Gattuso, at (202) 482–0977 or *jgattuso@ntia.doc.gov,* at least five (5) business days before the meeting.

Status: Interested parties are invited to attend and to submit written comments with the Committee at any time before or after a meeting. Parties wishing to submit written comments for consideration by the Committee in advance of this meeting should send them to NTIA's Washington, DC office at the above-listed address and must be received by close of business on July 20, 2010, to provide sufficient time for review. Comments received after July 20, 2010 will be distributed to the Committee but may not be reviewed prior to the meeting. It would be helpful if paper submissions also include a compact disc (CD) in HTML, ASCII, Word or WordPerfect format (please specify version). CDs should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. Alternatively, comments may be submitted electronically to *spectrumadvisory@ntia.doc.gov.* Comments provided via electronic mail also may be submitted in one or more of the formats specified above.

Records: NTIA maintains records of all Committee proceedings. Committee records are available for public inspection at NTIA's Washington, DC office at the address above. Documents including the Committee's charter, membership list, agendas, minutes, and any reports are available on NTIA's Committee Web page at *http://www.ntia.doc.gov/advisory/spectrum.*

Dated: June 30, 2010.

Kathy Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2010–16330 Filed 7–2–10; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Nomination of Existing Marine Protected Areas to the National System of Marine Protected Areas

AGENCY: NOAA, Department of Commerce (DOC).

ACTION: Public notice and opportunity for comment on the list of nominations received from federal, state and territorial marine protected area programs to join the National System of Marine Protected Areas.

SUMMARY: NOAA and the Department of the Interior (DOI) invited federal, state, commonwealth, and territorial marine protected area (MPA) programs with potentially eligible existing MPAs to nominate their sites to the National System of MPAs (national system). The national system and the nomination process are described in the *Framework for the National System of Marine Protected Areas of the United States* (Framework), developed in response to Executive Order 13158 on Marine Protected Areas. The final Framework was published on November 19, 2008, (73 FR 69608) and provides guidance for collaborative efforts among federal, state, commonwealth, territorial, tribal and local governments and stakeholders to develop an effective and well coordinated national system of MPAs that includes existing MPAs meeting national system criteria as well as new sites that may be established by managing agencies to fill key conservation gaps in important ocean areas.

DATES: Comments on the nominations to the national system of MPAs are due August 5, 2010.

ADDRESSES: Comments should be sent to Joseph A. Uravitch, National Oceanic and Atmospheric Administration, National Marine Protected Areas Center, 1305 East West Highway, N/ORM, Silver Spring, MD 20910. Fax: (301) 713–3110. E-mail: *mpa.comments@noaa.gov.* Comments will be accepted in written form by mail, e-mail, or fax.

FOR FURTHER INFORMATION CONTACT: Lauren Wenzel, NOAA, at 301–713–3100, ext. 136 or via e-mail at *mpa.comments@noaa.gov.* An electronic copy of the list of nominated MPAs is available for download at *http://www.mpa.gov.*

SUPPLEMENTARY INFORMATION:

Background on National System

The national system of MPAs includes member MPA sites, networks and systems established and managed by federal, state, tribal and/or local governments that collectively enhance conservation of the nation's natural and cultural marine heritage and represent its diverse ecosystems and resources. Although participating sites continue to be managed independently, national system MPAs also work together at the regional and national levels to achieve common objectives for conserving the nation's important natural and cultural resources, with emphasis on achieving the priority conservation objectives of the Framework. Executive Order 13158 defines an MPA as: "any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein." As such, MPAs in the national system include sites with a wide range of protections, including multiple use areas that manage a broad spectrum of activities and no-take reserves where all extractive uses are prohibited. Although sites in the national system may include both terrestrial and marine components, the term MPA as defined in the Framework refers only to the marine portion of a site (below the mean high tide mark).

Benefits of joining the national system of MPAs, which are expected to increase over time as the system matures, include a facilitated means to work with other MPAs in the region, and nationally on issues of common conservation concern; fostering greater public and international recognition of MPAs, MPA programs, and the resources they protect; priority in the receipt of available training and technical support, MPA partnership grants with the National Fish and Wildlife Foundation, cooperative project participation, and other support for cross-cutting needs; and the opportunity to influence federal and regional ocean conservation and management initiatives (such as integrated ocean observing systems, systematic monitoring and evaluation, targeted outreach to key user groups, and helping to identify and address MPA research needs). In addition, the national system provides a forum for coordinated regional planning about place-based conservation priorities that does not currently exist.

Joining the national system does not restrict or require changes affecting the designation process for new MPAs or management of existing MPAs. It does not bring state, territorial or local sites under federal authority. It does not establish new regulatory authority or interfere with the exercise of existing agency authorities. The national system is a mechanism to foster greater collaboration among participating MPA sites and programs to enhance stewardship in the marine waters of the United States.

Nomination Process

The Framework describes two major focal areas for building the national system of MPAs—a nomination process to allow existing MPAs that meet the entry criteria to become part of the system and a collaborative regional gap analysis process to identify areas of significance for natural or cultural resources that may merit additional protection through existing federal, state, commonwealth, territorial, tribal or local MPA authorities. The first call for nominations was issued in November 2008, resulting in the acceptance of 225 charter sites to the national system of MPAs in April 2009. The second nomination process for the national system began in August 2009, resulting in the admission of 29 additional sites accepted into the national system in May 2010. This notice is for the third round of nominations to the national system.

There are three entry criteria for existing MPAs to join the national system, plus a fourth for cultural heritage. Sites that meet all pertinent criteria are eligible for the national system.

1. Meets the definition of an MPA as defined in the Framework.

2. Has a management plan (can be site-specific or part of a broader programmatic management plan; must have goals and objectives and call for monitoring or evaluation of those goals and objectives).

3. Contributes to at least one priority conservation objective as listed in the Framework.

4. Cultural heritage MPAs must also conform to criteria for the National Register for Historic Places.

The MPA Center used existing information in the MPA Inventory to determine which MPAs meet the first and second criteria. The inventory is online at *http://www.mpa.gov/helpful_resources/inventory.html,* and potentially eligible sites are posted online at *http://mpa.gov/pdf/national-system/allsitesumsheet809.pdf.* As part of the nomination process, the managing entity for each potentially eligible site is asked to provide information on the third and fourth criteria.

List of MPAs Nominated to the National System

The following four MPAs have been nominated by NOAA, in consultation with the Mid-Atlantic Fishery Management Council (Council), to join the national system of MPAs. The public was invited to provide comments regarding the Council's proposed MPA sites at the October and December 2009 Council meetings. At the December 2009 meeting, the Council voted to unanimously recommend the inclusion of the four Tilefish Gear Restricted Areas. A list providing more detail for each site is available at *http://www.mpa.gov.*

Federal Marine Protected Areas

Fishery Management Gear Restricted Areas (Under Tilefish Fishery Management Plan):

Oceanographer Canyon
Lydonia Canyon
Veatch Canyon
Norfolk Canyon

Review and Approval

Following this public comment period, the MPA Center will forward public comments to the relevant managing entity or entities, which will reaffirm or withdraw (in writing to the MPA Center), the nomination. After final MPA Center review, mutually agreed upon MPAs will be accepted into the national system and the List of National System MPAs will be posted at *http://www.mpa.gov.*

Dated: June 29, 2010.

Holly Bamford,

Acting, Deputy Assistant Administrator.

[FR Doc. 2010–16313 Filed 7–2–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW98

Marine Mammals; File No. 15430

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that the Louisville Zoological Garden, 1100 Trevilian Way, P.O. Box 37250, Louisville, KY 40233 has been issued a permit to import one South African fur seal (*Arctocephalis pusillus*) for public display.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Kristy Beard, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On March 31, 2010, notice was published in the **Federal Register** (75 FR 16077) that a request for a public display permit to import one female adult South African fur seal from the Toronto Zoo, Ontario, Canada to the Louisville Zoological Garden, had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: June 29, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–16377 Filed 7–2–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–850]

Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Japan: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 29, 2009, the U.S. Department of Commerce ("the Department") published a notice of initiation of an administrative review of the antidumping duty order on certain large diameter carbon and alloy seamless standard, line, and pressure pipe from Japan. The review covers four manufacturers/exporters: JFE Steel Corporation ("JFE Steel"); Nippon Steel Corporation; NKK Tubes; and Sumitomo Metal Industries, Ltd. ("SMI"). The period of review ("POR") is June 1, 2008, through May 31, 2009. Following the receipt of a certification of no shipments from all four of the potential respondents, we notified all interested parties of the Department's intent to rescind this review and provided an opportunity to comment on the rescission. We received no comments. Therefore, we are rescinding this administrative review.

DATES: *Effective Date:* Insert date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Kolberg, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1785.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2009, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on carbon and alloy seamless standard, line, and pressure pipe (over 4½ inches) from Japan for the period June 1, 2008, through May 31, 2009. *See Antidumping or Countervailing Duty Order, Finding or Suspended Investigation; Opportunity To Request Administrative Review,* 74 FR 26202 (June 1, 2009). On June 30, 2009, United States Steel Corporation ("U.S. Steel"), a domestic producer of the subject merchandise, made a timely request that the Department conduct an administrative review of JFE Steel, Nippon Steel Corporation, NKK Tubes, and SMI. On July 29, 2009, in accordance with section 751(a) of the Tariff Act of 1930, as amended ("the Act"), the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review,* 74 FR 37690 (July 29, 2009). On August 13, 25, and 28, 2009, JFE Steel, NKK Tubes, and SMI, respectively, submitted letters to the Department, certifying that each company made no shipments or entries for consumption in the United States of the subject merchandise during the POR. On September, 23, 2009, the Department issued its antidumping duty questionnaire to Nippon Steel Corporation. On October 2, 2009, Nippon Steel Corporation submitted a letter to the Department, certifying that the company made no shipments or entries for consumption in the United States of the subject merchandise during the POR.

Scope of the Order

The products covered by this review are large diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes produced, or equivalent, to the American Society for Testing and Materials (ASTM) A–53, ASTM A–106,

ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and the American Petroleum Institute ("API") 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this review also includes all other products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification, with the exception of the exclusions discussed below. Specifically included within the scope of this review are seamless pipes greater than 4.5 inches (114.3 mm) up to and including 16 inches (406.4 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to this review are currently classifiable under the subheadings 7304.10.10.30, 7304.10.10.45, 7304.10.10.60, 7304.10.50.50, 7304.19.10.30, 7304.19.10.45, 7304.19.10.60, 7304.19.50.50, 7304.31.60.10, 7304.31.60.50, 7304.39.00.04, 7304.39.00.06, 7304.39.00.08, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.51.50.15, 7304.51.50.45, 7304.51.50.60, 7304.59.20.30, 7304.59.20.55, 7304.59.20.60, 7304.59.20.70, 7304.59.60.00, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, and 7304.59.80.70 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Specifications, Characteristics, and Uses: Large diameter seamless pipe is used primarily for line applications such as oil, gas, or water pipeline, or utility distribution systems. Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers ("ASME") code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification. Seamless water well pipe (ASTM A–589) and seamless galvanized pipe for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple or quadruple certified pipes in large diameters is for use as oil and gas distribution lines for commercial applications. A more minor application for large diameter seamless pipes is for use in pressure piping systems by refineries, petrochemical plants, and chemical plants, as well as in power generation plants and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

The scope of this review includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the exclusions discussed below, whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of this review. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of this review.

Specifically excluded from the scope of this review are: A. Boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. B. Finished and unfinished oil country tubular goods ("OCTG"), if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. C. Products produced to the A–335 specification unless they are used in an application that would normally utilize ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications. D. Line and riser pipe for deepwater application, *i.e.,* line and riser pipe that is: (1) Used in a deepwater application, which means for use in water depths of 1,500 feet or more; (2) intended for use in and is actually used for a specific deepwater project; (3) rated for a specified minimum yield strength of not less than 60,000 psi; and (4) not identified or certified through the use of a monogram, stencil, or otherwise marked with an API specification (*e.g.,* "API 5L").

With regard to the excluded products listed above, the Department will not instruct U.S. Customs and Border Protection ("CBP") to require end-use certification until such time as petitioner or other interested parties

provide to the Department a reasonable basis to believe or suspect that the products are being utilized in a covered application. If such information is provided, we will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in a covered application as described above. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A–335 specification is being used in an A–106 application, we will require end-use certifications for imports of that specification. Normally we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise subject to this scope is dispositive.

Rescission of the Administrative Review

As noted above, all four of the potential respondents submitted letters to the Department indicating that they did not make any shipments or entries of subject merchandise to the United States during the POR. In response to the Department's query to CBP, CBP data showed subject merchandise manufactured by one of the respondent companies, SMI, was entered for consumption into the United States during the POR from third countries. On December 31, 2009, the Department placed on the record of this review copies of the entry documents in question.

Additionally, on December 31, 2009, the Department sent a letter to SMI requesting that SMI further substantiate its claim of no shipments. On January 28, 2010, SMI responded that it had no knowledge of the entries in question. In its response, SMI explained in detail how its claim of no knowledge is supported by the record evidence. *See* Memorandum to the File, from Mary Kolberg, International Trade Compliance Analyst, "Intent to Rescind the Antidumping Duty Administrative Review on Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Japan," March 12, 2010 ("Intent to Rescind Memo"). On the basis of these documents and SMI's submission, the Department concluded that there is no evidence on the record that, at the time of the sale, SMI had knowledge that any of these entries of subject merchandise entered the United States during the POR. Specifically, subject merchandise produced by SMI entered the United States during the POR under its antidumping case number, but without the company's knowledge by way of intermediaries.

On March 12, 2010, the Department notified interested parties of its intent to rescind this administrative review and gave parties until March 22, 2010 to provide comments. No comments were received. *See* Intent to Rescind Memo.

Subsequent to that, in response to the Department's earlier no shipments inquiry, CBP notified us on March 31, 2010, of additional POR entries of consumption of subject merchandise, shipped from a third country that were manufactured by respondent company, JFE Steel. On April 14, 2010, the Department placed on the record copies of these entry documents and asked JFE Steel to comment on the company's no shipment claim in light of the CBP data. On May 13, 2010, JFE Steel responded to the Department. In its response, JFE Steel addressed each entry in detail, explained how JFE Steel's claim of no knowledge is supported by the evidence on record, and reiterated that JFE Steel had no knowledge of the entries in question. *See* Memorandum to the File, from Mary Kolberg, International Trade Compliance Analyst, "Reiteration of Intent to Rescind the Antidumping Duty Administrative Review on Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Japan," June 3, 2010 ("Reiteration of Intent to Rescind Memo").

On the basis of these documents and JFE Steel's submission, the Department concluded that there is no evidence on the record that, at the time of the sale, JFE Steel had knowledge that those entries were destined for the United States, nor is there evidence that JFE Steel had knowledge that any of these entries of subject merchandise entered the United States during the POR. Specifically, subject merchandise produced by JFE Steel entered the United States during the POR under its antidumping case number, but without the company's knowledge by way of intermediaries.

The Department reiterated this intent to rescind on June 3, 2010, giving parties until June 14, 2010 to provide comments. Again, no comments were received. *See* Reiteration of Intent to Rescind Memo.

Thus, the Department finds that the respondents' claims of no shipments or entries for consumption to be substantiated. Based upon the certifications and the evidence on the record, we are satisfied that no respondent had shipments of subject merchandise to the United States during the POR. Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. Therefore, the Department is rescinding this review in accordance with 19 CFR 351.213(d)(3).

The Department intends to instruct CBP 15 days after the publication of this notice to liquidate such entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2).

We are issuing and publishing this notice in accordance with sections 751(a)(1) 777 (i) of the Act and 19 CFR 351.213(d)(4).

Dated: June 29, 2010.

John M. Andersen

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–16354 Filed 7–2–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU03

Takes of Marine Mammals Incidental to Specified Activities; Manette Bridge Replacement in Bremerton, Washington

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the Washington State Department of Transportation (WSDOT), to incidentally harass, by Level B harassment only, small numbers of marine mammals during the specified activity.

DATES: This authorization is effective from June 29, 2010, through June 28, 2011.

ADDRESSES: A copy of the IHA and the application are available by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application may be obtained by writing to this address, by telephoning the contact listed here (*FOR FURTHER INFORMATION CONTACT*) or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext 137.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1371 (a)(5)(D)) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking by harassment of small numbers of marine mammals of a species or population stock, for periods of not more than one year, by United States citizens who engage in a specified activity (other than commercial fishing) within a specific geographic region if certain findings are made and, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

NMFS received an application on December 24, 2009, from WSDOT for the taking, by harassment, of marine mammals incidental to construction and demolition work related to the Manette Bridge replacement in Bremerton, Washington, starting in early June 2010.

The Manette Bridge is located within the Puget Sound of Washington State, at the outlet to the Port Washington Narrows. The Port Washington Narrows provides the only outlet from Dyes Inlet to Sinclair Inlet, and connection to the greater Puget Sound. The Manette Bridge is determined to be a functionally obsolete and structurally deficient bridge that requires replacement, and the WSDOT is planning to have it replaced. The proposed bridge replacement work includes the following activities:

- Construction of temporary work trestles, which involves steel pile installation using both vibratory and impact driving methods;
- Construction of new bridge piers, which involves excavation of benthic material;
- Barge anchoring and usage;
- Removal of existing bridge; and
- Removal of temporary work platforms.

Since marine mammal species and stocks in the proposed action area could be affected by the proposed bridge replacement activities, the WSDOT is seeking an IHA that would allow the incidental, but not intentional, take of marine mammals by Level B behavioral harassment during the construction of the new Manette Bridge and removal of the existing bridge. The WSDOT states that small numbers of three species of marine mammals could potentially be taken by pile driving or other construction activities associated with the bridge replacement work. However, with the required mitigation and monitoring measures, the numbers and levels of marine mammal takes would be reduced to the least amount practicable.

Description of the Specific Activity

WSDOT will conduct construction and demolishing activities associated with the Manette Bridge replacement project in Bremerton, WA, starting from June 2010 and lasting for approximately three years. However, no in-water activities will be planned between March 1 and June 14 in water below the ordinary high water line.

NMFS provided a detailed overview of the activity in the notice of the proposed IHA (75 FR 13502, March 22, 2010) and in the WSDOT's IHA application. No changes have been made to the proposed activities.

The following is a summarized description of the sequence of anticipated work activities associated with the Manette Bridge replacement project.

1. Construction of Work Trestles and Falsework Towers

Separate work trestles would be constructed for the new bridge construction and existing bridge removal processes. The south trestles for access to the new bridge site would be constructed prior to the installation of the north trestles for bridge removal. The work trestles and associated falsework towers would be supported on steel pilings with diameters of 24 to 36 in. (0.61 to 0.91 m). The construction of the work trestles is estimated to take up to 9 months. The work trestles and falsework towers would be in place throughout the project duration, approximately 3 years.

The trestles would be located a few feet above the high water mark, with the exact height determined by the contractor and work site conditions. The trestles would be supported by steel girders attached to the piles and the deck would be composed of timbers. The new bridge construction work trestle would be supported by up to 360 piles and could cover an area of up to 40,000 ft^2 (3,716 m^2). The bridge removal work trestle will be supported by up to 170 piles and could cover an area of up to 15,900 ft^2 (1,477 m^2). Up to 12 additional piles may be used for project related moorage.

All piles would be installed using a vibratory hammer unless an impact hammer is needed to drive a pile through consolidated material or meet bearing. Currently, pile driving is scheduled to occur July 1 to August 20, 2010, and October 6, 2010, to January 31, 2011, with an estimated 45 minutes

per pile and 410 total hours of pile driving using a vibratory hammer. Pile driving activities would occur daily two hours after sunrise to two hours before sunset between April 1 and September 15, 2010. No pile driving will occur during nighttime hours.

2. Barge Anchoring and Usage

Barges would be used extensively throughout the project duration to provide access to work areas, support machinery, deliver and stage materials, and as a collection surface for spoils, construction debris, and materials from demolition. The actual number and dimensions of barges to be used would be determined by the contractor and work site conditions. However, it is estimated that up to 6 barges would be used at one time. A typical barge dimension is approximately 290 ft (88.4 m) in length and 50 ft (15.2 m) in width. Typical barge draft is 4 to 8 ft (1.22 to 2.44 m) and typical freeboard is 3 to 6 ft (0.91 to 1.83 m). Barges would be used throughout the construction period, approximately 3 years.

During working hours, barges would be attached to mooring lines, the work trestles, or to other portions of the project area, depending on the construction and access needs. Up to 6 temporary buoys may be installed to moor barges during non-working hours. These buoys would be attached to one or more anchors, which may need to be driven, or excavated, due to hard ground and strong currents in the project area. If the contractor chooses to deploy a dynamic barge positioning system, it is expected that the hours the system is in use would coincide closely with pile driving activities.

3. Construction of New Piers

Eight piers would support the new bridge, six in-water and two upland. The existing bridge has 13 piers, nine in-water and three upland. The total footprint of the piers would be 1,416 ft^2 (131.6 m^2). The footprint of the nine in-water piers supporting the existing bridge is 8,726 ft^2 (810.7 m^2).

Piers 1 and 8 are the bridge abutments and are located well above the mean high water line (MHW). Piers 2 through 7 are located below the MLLW line. The construction of the in-water piers (2 through 7) would take up to 18 months. The construction of the abutment piers (1 and 8) would occur during the bridge closure period (targeted duration of 3 months). The construction of each would include excavation of up to 3 shafts to support each pier, concrete pouring of each shaft, and construction of piers on top of new shafts.

Shaft casings would be installed and the shafts will be excavated using equipment positioned on the work trestles or barges.

To create a drilled shaft, a steel casing approximately 6 to 10 ft (1.8 to 3 m) in diameter is driven into the substrate using a vibratory hammer, and the material inside the casing is excavated using an auger or a clamshell dredge. During excavation a premixed bentonite or synthetic polymer slurry is sometimes added to stabilize the walls of the shaft. Spoils from shaft excavation would be placed in a large steel containment box located on a barge or on the work trestle for offsite transport. During the drilling, polymer slurry is typically placed into the hole to keep side walls of the shaft from caving.

After completion of the excavation, a steel reinforcing cage is placed into the hole to specified elevations. Concrete is then pumped into the hole using a tremie tube placed at the bottom of the excavation. As concrete is placed the tremie tube is raised but is maintained within the concrete. As the concrete is pumped into the hole, the slurry is displaced upward and removed from the top concrete using a vacuum hose. The slurry is pumped from the hole into large tanks located on the work trestle or on a barge, which is either recycled for use in the next shaft or transported off site. This procedure would be used on all shafts at each pier.

After shafts are completed, pre-cast concrete, stay-in-place forms would be stacked on top of the shafts up to the crossbeam elevation. A steel reinforcing cage would be placed inside the concrete forms and the columns would be filled with concrete. A pre-cast concrete crossbeam or a cast-in-place crossbeam, or some combination of both would be constructed on top of the columns. Girders would be fabricated off site and would be shipped to the site on barges. The girders would then be placed on the piers and falsework towers between piers 2 and 7.

After completion of the girder placement and casting of diaphragms connecting the girders, post-tensioning strands would be placed into ducts cast in the girders. The post-tensioning strands will then be stressed. The roadway deck would then be formed and cast between piers 2 and 7.

4. Installation of Girders and Decking

Girders and decking would be installed using the work trestles, falsework towers, and cranes deployed on work barges. The roadway deck would be made of concrete and would be poured in place. This work is expected to take 3 to 4 months.

5. Reconfiguration of Abutments and Roadway Approaches

The existing bridge abutments would be removed, along with the associated retaining walls. New retaining walls and abutments would be constructed. These activities, and associated construction access would require the temporary disturbance of 0.75 acre of land, of which 0.15 acre are vegetated, and permanent removal of 0.15 acre of vegetation. This work, all in upland areas, includes 2000 cubic yards of fill. Once the abutments are complete, the new bridge approach roadways will be constructed. Disturbed areas on the east shore of the Port Washington Narrows would be restored with a mix of native trees and shrubs including marine riparian vegetation and shoreline enhancement.

6. Demolition of Existing Bridge

The demolition of the existing bridge would occur in phases over a period of 18 months. After the central portion of the new bridge is constructed, the outermost spans and abutments of the existing bridge would be demolished. Once the new abutments and outer spans are constructed, the demolition of the remainder of the existing bridge will proceed. Conceptual demolition plan sheets are included in Appendix D of the WSDOT IHA application.

The bridge structure above the water line would be cut into manageable sections, using conventional concrete and metal cutting tools, or a wire saw, and placed on barges for transport to approved waste or recycling sites. The portions of the piers below the water line would be cut into pieces using a wire saw. All slurry from wire cutting operations above the water line would be contained and removed. All slurry from wire cutting operations below the water line would be dispersed by the current. Piers would be cut off at the ground level except for one, Pier 4. Pier 4 was built up to encapsulate original creosote treated timbers. Complete removal of the pier is not feasible and if it is cut at the ground level, many creosote treated timbers may be exposed. To minimize the risk of contamination, Pier 4 would be cut two feet above ground level.

7. Removal of Falsework Towers and Work Trestles

Once the demolition of the existing bridge is complete, the falsework towers and work trestles would be removed. Decking and girders would be placed on barges for transportation off-site. Piles

would be removed using vibratory hammers, based on barges. The removal of the falsework towers and work trestles is expected to occur over 4 to 6 months.

Vibratory extraction is a common method for removing steel piling. The pile is unseated from the sediments by engaging the hammer and slowly lifting up on the hammer with the aid of the crane. Once unseated, the crane would continue to raise the hammer and pull the pile from the sediment. When the pile is released from the sediment, the vibratory hammer is disengaged and the pile is pulled from the water and placed on a barge for transfer upland.

Comments and Responses

NMFS published a notice of receipt of the WSDPT application and proposed IHA in the **Federal Register** on March 22, 2010 (75 FR 13502). During the 30–day comment period, NMFS received a letter from the Marine Mammal Commission (Commission) and a private citizen. Both the Commission and the private citizen recommended that NMFS issue the requested authorization. The Commission further states that the authorization should be issued provided that the required monitoring and mitigation measures are carried out (e.g., establishing of the safety zones and take zones, marine mammal monitoring during in-water construction activities, and ramp-up for pile driving) as described in NMFS' March 22, 2010 (75 FR 13502), notice of the proposed IHA and the application. All measures proposed in the initial **Federal Register** notice are included in the authorization and NMFS has determined that they will effect the least practicable impact on the species or stocks and their habitats.

Description of Marine Mammals in the Area of the Specified Activity

Six marine mammal species/stocks occur in the area where the proposed Manette Bridge replacement work is planned. These six species/stocks are: Pacific harbor seal (*Phoca vitulina richardsi*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias ubatus*), transient and Southern Resident killer whales (*Orcinus orca*), and gray whale (*Eschrichtius robustus*). All these marine mammals have been observed in southern Puget Sound during certain periods of the year and may occur in Sinclair Inlet, Port Washington Narrows and Dyes Inlet, although direct observation in the vicinity of the Manette Bridge may not be documented. General information on these marine mammal species can be found in Caretta *et al.* (2008), which is available at the following URL: *http://www.nmfs.noaa.gov/pr/pdfs/sars/po2009.pdf*. Refer to that document for information on these species.

To further gather information on the occurrence of these marine mammal species in the vicinity of the proposed project area, the WSDOT contracted ten surveys between the months of July 2006 and January 2007. This time period was chosen for sampling because it represents the time period when most in-water work activities would occur. Two pinniped species and zero cetaceans were observed. Thirty four harbor seals, one California sea lion and one unidentified pinniped, likely a California sea lion, were observed over the six month period. In general, cetacean observations are infrequent in the Puget Sound (Calambokidis and Baird 1994, Jefferies 2007). During ten surveys for marine mammals in Sinclair Inlet and Port Washington Narrows between July 2006 and January 2007, no cetaceans were observed. No marine mammals were observed during two of the ten surveys. Detailed results of the surveys are provided in a final report, which is included in Appendix E of the WSDOT IHA application.

Additional information on these species, particularly in relation to their occurrence in the proposed project area, is provided in the March 22, 2010, **Federal Register** notice (75 FR 13502). Please refer to that document for this information.

Potential Effects on Marine Mammals and Their Habitat

Anticipated impacts resulting from the Manette Bridge Replacement project include disturbance from increased human presence and marine traffic if marine mammals are in the vicinity of the proposed project area, Level B harassment by noises generated from the construction work such as pile driving and dredging activities, and the effect of the new bridge and stormwater system on water quality. A detailed discussion of these effects from various construction and demolishing activity components is provided in the March 22, 2010, **Federal Register** notice (75 FR 13502). These potential effects are expected to be localized and short-term. In addition, none of these potential impacts is believed to be biologically significant to the survival and reproduction of marine mammals and their habitat in the vicinity of the proposed project. Please refer to that document for this information.

Mitigation Measures

In order to issue an incidental take authorization under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

For the proposed Manette Bridge replacement project, the WSDOT worked with NMFS and formulated the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity as a result of the construction activities.

1. Overall Construction Activities

All construction shall be performed in accordance with the current WSDOT Standard Specifications for Road, Bridge, and Municipal Construction. Special Provisions contained in contracts are used in conjunction with, and supersede, any conflicting provisions of the Standard Specifications.

WSDOT activities are subject to state and local permit conditions. WSDOT shall use the best guidance available (e.g., best management practices and conservation measures) to accomplish the necessary work while avoiding and minimizing environmental impacts to the greatest extent possible.

The WSDOT contractor is expected to be responsible for the preparation of a Spill Prevention, Control, and Countermeasures plan to be used for the duration of the project. The plan would be submitted to the WSDOT Project Engineer prior to the commencement of any construction activities. A copy of the plan with any updates will be maintained at the work site by the contractor. A detailed discussion of the plan is provided in the WSDOT's IHA application.

2. Equipment Noise Standards

To mitigate noise levels and, therefore, impacts to marine mammals, all the construction equipment shall comply with applicable equipment noise standards of the U.S. Environmental Protection Agency, and all construction equipment shall have noise control devices no less effective than those provided on the original equipment.

3. Timing Windows

Timing restrictions are used to avoid construction activities that generate relatively intense underwater noises

(i.e., pile driving, dredging, and dynamic positioning) when ESA-listed species are most likely to be present. If an ESA-listed marine mammal species is detected in the vicinity of the project area, pile driving and dredging operations shall be halted and stationing construction vessels will turn off dynamic positioning systems. WSDOT shall comply with all in-water timing restrictions as determined through the MMPA take authorization. Pile driving activities shall only be conducted during daylight hours. If the safety zone (see below) is obscured by fog or poor lighting conditions, impact pile driving will not be initiated until the entire safety zone is visible. In addition, no in-water work shall be conducted between March 1 and June 14 in water below the ordinary high water line.

4. Establishment of Zones of Safety and Influence

For impact pile driving, the safety zones are defined as the areas where received SPLs from the noise source exceed 180 dB re 1 μPa (rms) for cetaceans or 190 dB re 1 μPa (rms) for pinnipeds. Repeated and prolonged exposure to SPLs above these values may cause TTS to cetaceans and pinnipeds, respectively. The radii of the safety zones shall be determined through empirical measurements of acoustic data. Prior to acquiring acoustic data, the safety zones shall be established based on the worst-case scenario measured from impact pile driving of 36–inch (0.91 m) steel pile conducted elsewhere, such as the Anacortes or Mukiteo ferry terminals. Acoustic measurements indicate that source levels are approximately 201 dB re 1 μPa (rms) at 10 m for both pile driving activities for Anacortes and Mukiteo ferry terminal constructions when the 36–inch (0.91 m) piles were hammered in (Laughlin 2007; Sexton 2007). Approximation of the received levels of 180 and 190 dB re 1 μPa (rms) by using an acoustic propagation spreading model between spherical and cylindrical propagation,

$TL = 15\log(R_l/R_{SL})$,

where TL is the transmission loss (in dB), RRL is the distance at received levels (either 180 or 190 dB), and RSL is the distance (10 m) at source level (201 dB). The results show that the distances for received levels 180 and 190 dB re 1 μPa (rms) are approximately 251 m and 54 m, respectively. NMFS expects that the modeled safety zones are reasonably conservative as the propagation model does not take into consideration other transmission loss factors such as sound absorption in the water column.

Once impact pile driving begins, NMFS requires that the contractor adjust the size of the safety zones based on actual measurements of SPLs at various distances to determine the most conservative (the largest) safety zones at which the received levels are 180 and 190 dB re 1 μPa (rms).

Since the source levels for vibratory pile driving are expected to be under 180 dB re 1 μPa (rms) at 10 m, no safety zones would be established for vibratory pile driving.

In addition, WSDOT and its contractor shall establish zones of influence (ZOIs) at received levels of 160 and 120 dB re 1 μPa (rms) for impulse noise (noise from impact pile driving) and non-impulse noise (such as noise from vibratory pile driving and dynamic positioning system), respectively. These SPLs are expected to cause Level B behavioral harassment to marine mammals. The model based approximation for the distance at 160 dB received level is 5,412 m from pile driving based on the most conservative measurements from the Anacortes or Mukiteo ferry terminal construction (201 dB re 1 μPa (rms) at 10 m; Laughlin 2007; Sexton 2007), using the same spreading model discussed above. Once impact pile driving starts, the contractor shall conduct empirical acoustic measurements to determine the most conservative distance (the largest distance from the pile) where the received levels begin to fall below 160 dB re 1 μPa (rms).

As far as non-pulse noises are concerned, for which the Level B behavioral harassment is set at a received level of 120 dB re 1 μPa, no simple modeling is available to approximate the distance (though direct calculation using the spreading model puts the 120 dB received level at 100 km, this simple approximation no longer works at this long distance due to range-dependent propagation involving complex sound propagation behavior that cannot be ignored). NMFS uses the empirical underwater acoustic measurements from vibratory pile driving of 42 48–inch (1.06 1.22 m) diameter piles at the San Francisco-Oakland Bay Bridge construction as a model and expects that the distance at a received level of 120 dB is less than 1,900 m from the pile (CALTRANS 2009). Likewise, WSDOT and its contractor shall conduct empirical acoustic measurements to determine the actual distance of 120 dB re 1 μPa (rms) from the pile.

All safety and influence zones shall be monitored for marine mammals prior to and during construction activities. Please refer to the Monitoring and Reporting Measures section for a detailed description of monitoring measures.

5. Shutdown Measures

To prevent marine mammals from exposure to intense sounds that could potentially lead to TTS (i.e., received levels above 180 dB and 190 dB re 1 μPa (rms) for cetaceans and pinnipeds, respectively), no impact pile driving shall be initiated when marine mammals are detected within these safety zones. In addition, during impact driving, when a marine mammal is detected within the respective safety zones or is about to enter the safety zones, impact pile driving shall be halted and shall not be resumed until the animal is seen to leave the safety zone on its own, or 30 minutes has elapsed until the animal is last seen.

Pile driving and dredging activities shall be suspended when ESA-listed marine mammals (Steller sea lion and killer whale) are detected within the zone of behavioral harassment (160 dB re 1 μPa for impulse sources and 120 dB re 1 μPa for non-impulse sources) and that all vessels' dynamic positioning systems would be turned off. Therefore, no take of ESA-listed marine mammal species or stocks is expected.

6. "Soft Start" Impact Pile Driving or Ramp-up

Although marine mammals will be protected from Level A harassment by establishment of an air-bubble curtain during impact pile driving and marine mammal observers monitoring a safety zone, monitoring may not be 100 percent effective at all times in locating marine mammals. Therefore, a "soft-start" technique shall be used at the beginning of each day's in-water pile driving activities or if pile driving has ceased for more than one hour to allow any marine mammal that may be in the immediate area to leave before pile driving reaches full energy.

For vibratory pile driving, the soft start requires contractors to initiate noise from vibratory hammers for 15 seconds at reduced energy followed by a one minute waiting period. The procedure shall be repeated two additional times. If an impact hammer is used on a pile greater than 10 inches in diameter, contractors shall be required to provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a one minute waiting period, then two subsequent 3–strike sets. This should expose fewer animals to loud sounds both underwater and above water noise. This would also ensure that, although not expected, any pinnipeds and

cetaceans that are missed during safety zone monitoring will not be injured.

7. Sound Attenuation Measures

All steel piles shall be installed using a vibratory hammer until an impact hammer is needed for bearing or if a pile encounters consolidated material. If vibratory installation is not possible due to the substrate, an impact pile driver would be used. An air bubble curtain(s) shall be employed during impact installation of all steel piles. Detailed description and specification of the air bubble curtain system is provided in Appendix C of the WSDOT's IHA application.

WSDOT shall provide bubble curtain performance criteria to the contractor, which include:

• Piling shall be completely engulfed in bubbles over the full depth of the water column at all times when an impact pile driver is in use.

• The lowest bubble ring shall be in contact with the mud line for the full circumference of the ring. The weights attached to the bottom ring shall ensure complete mud line contact. No parts of the ring or other objects shall prevent the full mud line contact.

• Bubblers shall be constructed of minimum 2–inch (5.1–cm) inside diameter aluminum pipe with 1/16–inch (0.16–cm) diameter bubble release holes in four rows with 3/4–inch (1.9–cm) spacing in the radial and axial directions. Bubblers shall be durable enough to withstand repeated deployment during pile driving and shall be constructed to facilitate underwater setup, knockdown, and reuse on the next pile.

• One or more compressors shall be provided to supply air in sufficient volume and pressure to self-purge water from the bubblers and maintain the required bubble flux for the duration of pile driving. Compressors shall be of a type that prevents the introduction of oil or fine oil mist by the compressed air into the water. If there is presence of oil film or sheen on the water surface in the vicinity of the operating bubbler, the contractor shall immediately stop work until the source of oil film or sheen is identified and corrected.

• The system shall provide a bubble flux of 3.0 cubic meters (m3) per minute per linear meter of pipe in each layer (32.91 cubic feet, or 0.93 m3, per minute per linear foot of pipe in each layer). The total volume of air per layer is the product of the bubble flux and the circumference of the ring:

Vt=3.0 m^3/min/m x Circum of the aeration ring in meters.

or

Vt=32.91 ft^3/min/ft x Circum of the aeration ring in meters.

• The bubble ring manifold shall incorporate a shut off valve, flow meter, and a throttling globe valve with a pressure gauge for each bubble ring supply.

• Prior to first use of the bubble curtain during pile driving, the fully-assembled system shall be test-operated to demonstrate proper function and to train personnel in the proper balancing of the air flow to the bubblers. The test shall also confirm the calculated pressures and flow rates at each manifold ring. The Contractor shall submit an inspection/performance report to WSDOT within 72 hours following the performance test.

The WSDOT Office of Air Quality and Noise has prepared a noise monitoring plan for the Manette Bridge Replacement Project (Appendix H). To comply with the provisions of the plan, the State will conduct hydroacoustic monitoring during construction to evaluate in water noise levels.

8. Ensure Regulation Compliance

Finally, a WSDOT inspector shall be on site during construction. The role of the inspector is to ensure contract compliance. The inspector and the contractor each have a copy of the Contract Plans and Specifications on site and are aware of all requirements. The inspector is also trained in environmental provisions and compliance.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

• the manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals

• the proven or likely efficacy of the specific measure to minimize adverse impacts as planned

• the practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS or recommended by the public, NMFS has determined that the required mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting Measures

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR § 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present. The requireed monitoring and reporting measures for the Manette Bridge replacement project are provided below.

1. Marine Mammal Observers

A minimum of two qualified and NMFS-approved marine mammal observers (MMOs) would be present on site at all times during steel pile driving. In order to be considered qualified, WSDOT lists the following requirements for prospective MMOs:

• Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance. MMOs shall use binoculars to correctly identify the target.

• Advanced education in biological science, wildlife management, mammalogy or related fields (Bachelors degree or higher is preferred).

• Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience).

• Experience or training in the field identification of marine mammals (cetaceans and pinnipeds), including the identification of behaviors.

• Sufficient training, orientation or experience with the construction operation to provide for personal safety during observations.

• Writing skills sufficient to prepare a report of observations.

• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

2. Marine Mammal Monitoring

WSDOT has developed a monitoring plan (Appendix G of the WSDOT IHA

application) in conjunction with NMFS that will collect sighting data for each distinct marine mammal species observed during the proposed Manette Bridge replacement construction activities that generate intense underwater noise. These activities include, but are not limited to, impact and vibratory pile driving, use of dynamic positioning system by construction and supporting vessels, and sediment dredging. Marine mammal behavior, overall numbers of individuals observed, frequency of observation, and the time corresponding to the daily tidal cycle will also be included. An example of a marine mammal sighting form is included in Appendix I of the WSDOT's IHA application.

In addition, for impact pile driving, the following Marine Mammal Monitoring Plan and shut down procedures shall be implemented:

- At least two MMOs shall be on site to monitor the safety and influence zones by using a range finder or hand held global positioning system (GPS) device. The zone will be monitored by driving a boat along and within the radius while visually scanning the area, and/or monitored from shore if there is a vantage point that will allow full observation of the zone.
- If the safety zone is obscured by fog or poor lighting conditions, pile driving shall not be initiated until the entire safety zone is visible.
- The safety zone shall be monitored for the presence of marine mammals for 30 minutes prior to impact pile driving, during pile driving, and 20 minutes after pile driving activities.
- No impact pile driving shall be started if a marine mammal is detected within the respective safety zones. Pile driving may begin if a marine mammal is seen leaving the safety zone, or 30 minutes has elapsed since the marine mammal is last seen inside the safety zone.
- If marine mammals are observed, their location in relation to the safety and influence zones, and their reaction (if any) to pile driving activities shall be documented.

3. Reporting

WSDOT shall submit weekly marine mammal monitoring reports from the time when in-water construction activities are commenced to NMFS Office of Protected Resources (OPR). These weekly reports shall include a summary of the previous week's monitoring activities and an estimate of the number of marine mammals that may have been disturbed as a result of in-water construction activities.

In addition, WSDOT shall provide NMFS OPR with a draft final report within 90 days after the expiration of the IHA. This report should detail the in-water construction and demolishing activities being conducted, empirically measured safety zones for pile driving, and the monitoring protocol; summarize the data recorded during monitoring; and estimate the number of marine mammals that may have been harassed due to the construction activities. If no comments are received from NMFS OPR within 30 days, the draft final report will be considered the final report. If comments are received, a final report must be submitted within 30 days after receipt of comments.

Estimated Take by Incidental Harassment

As mentioned earlier in the March 22, 2010, **Federal Register** (75 FR 13502), the potential effects to marine mammals from the proposed activities include disturbance from increased human presence and marine traffic and from noises generated from the construction work such as pile driving and dredging activities. The required mitigation measures of using air bubble curtain systems would prevent marine mammals from onset of TTS by impact pile driving and reduce Level B behavioral harassment due to the effective attenuation by the air bubble systems. Therefore, the following analyses focus on potential noise impacts that could cause Level B behavioral harassment, based on the WSDOT contracted surveys for the entire proposed project area (WSDOT 2009).

1. Harbor Seal

There are no harbor seal haulouts within 3 miles (4.8 km) of the project. The nearest haulout is in Dyes Inlet and animals must move through the Port Washington Narrows to access Sinclair Inlet and the greater Puget Sound. Individual harbor seals moving between Sinclair and Dyes Inlets would be exposed to project activities.

A total of 34 harbor seals were detected during ten surveys conducted during the same time of year pile driving will occur, between July and January. The age, sex and reproductive condition of the animals was not determined. For the proposed Manette Bridge replacement activities, it is reasonable to assume that similar numbers of animals would be encountered during an average 10–day period. WSDOT anticipates that for every day of construction activities, between 3 and 4 harbor seals may be encountered, although it is possible that some of these animals will be the same individuals. If in-water construction activities occur every day of the year (258 days between June 15 and February 28), approximately 877 harbor seals (or about 6% of the Washington inland waters stock of harbor seals) could be encountered in the vicinity of the proposed bridge replacement work. However, it is not likely that every harbor seal would be taken by Level B behavioral harassment since not every animal would be exposed to received levels above 160 dB re 1 μPa (rms) from an impulse source (such as impact pile driving) or above 120 dB re 1 μPa (rms) from a non-impulse source (such as vibratory pile driving or dredging). Likewise, not every single harbor seal would respond to the sight of human or vessel traffic in the vicinity of the project area. Therefore, the estimated number of 877 represents the upper-limit of the number of harbor seals that could be affected by Level B behavioral harassment as a result of exposure to Manette Bridge replacement related construction activities.

2. California Sea Lion

There are no California sea lion haulouts within three miles of the project. The nearest haulout is in Rich Passage, east of the Port Washington Narrows in more open water. Individual California sea lions moving between Sinclair and Dyes Inlets could be exposed to project activities.

A total of one, possibly two California sea lions were detected during ten surveys conducted during the same time of year pile driving would occur, between July and January. The age, sex and reproductive condition of the animals was not determined. For the proposed Manette Bridge replacement activities, it is reasonable to assume that similar numbers of animals would be encountered during an average 10–day period. WSDOT anticipates that for every 10 days of construction activities, between 1 and 2 California sea lions may be encountered, although it is possible that some of these animals will be the same individuals. If in-water construction activities occur every day of the year (258 days between June 15 and February 28), up to 516 California sea lions (or about 0.2% of the US stock of California sea lions) could be encountered in the vicinity of the proposed bridge replacement work. However, it is not likely that every California sea lion would be taken by Level B behavioral harassment since not every animal would be exposed to received levels above 160 dB re 1 μPa (rms) from an impulse source (such as impact pile driving) or above 120 dB re

1 μPa (rms) from a non-impulse source (such as vibratory pile driving or dredging). Likewise, not every single California sea lion would respond to the sight of human or vessel traffic in the vicinity of the project area. Therefore, the estimated number of 516 represents the upper-limit of the number of harbor seals that could be affected by Level B behavioral harassment as a result of exposure to Manette Bridge replacement related construction activities.

3. Steller Sea Lion

As stated earlier, the nearest Steller sea lion haulout is approximately 12 miles (19.3 km) northeast of the proposed project area in Shilshole Bay on the east side of the Puget Sound, adjacent to the city of Seattle. No Steller sea lions were sighted during the ten surveys contracted by WSDOT, and NMFS considers it is very unlikely that a Steller sea lion would occur in the vicinity of the proposed project area. The implementation of the aforementioned mitigation measures, including halting all pile driving and dredging activities and turning off construction vessels' dynamic positioning systems when a Steller sea lion is detected about to enter the zone of influence (received levels at or above 160 dB re 1 μPa (rms) for impulse noise or 120 dB re 1 μPa (rms) for non-impulse noise). Therefore, NMFS does not believe Steller sea lions would be affected.

4. Killer Whale

Killer whales (southern resident) have been documented in the project vicinity once in the last ten years (WSDOT 2009). No killer whales were sighted during the ten surveys contracted by WSDOT, and NMFS considers it rare that a killer whale would occur in the vicinity of the proposed project area. The implementation of the aforementioned mitigation measures, including halting all pile driving and dredging activities and turning off construction vessels' dynamic positioning systems when a killer whale is detected about to enter the zone of influence (received levels at or above 160 dB re 1 μPa (rms) for impulse noise or 120 dB re 1 μPa (rms) for non-impulse noise). Therefore, NMFS does not believe killer whales would be affected.

5. Gray Whale

Individual gray whales have been observed near the project area in four of the last eight years (WSDOT 2009). No gray whales were sighted during the ten surveys contracted by WSDOT, and NMFS considers it rare that a gray whale would occur in the vicinity of the proposed project area. Most grays whales spend winters in their breeding/calving grounds around Baja California and summers in feeding grounds around the Bering Sea and the Arctic. The few gray whales that occur in the vicinity of the proposed project area are likely the ones visiting the area on their north-south migration route. Based on past occurrence of gray whales in the area and using conservative probability estimate, NMFS considers that no more than 2 individuals of gray whales (0.01% of the Eastern North Pacific gray whale population) would be exposed to underwater construction noise SPL that could cause Level B behavioral harassment annually as a result of the proposed Manette Bridge replacement project.

Negligible Impact and Small Numbers Analysis and Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be "taken" by the specified activities (i.e., takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a "negligible impact" on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination.

In addition to considering estimates of the number of marine mammals that might be "taken" through behavioral harassment, NMFS considers other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat.

The WSDOT's specified activities have been described based on best estimates of the planned Manette Bridge replacement project within the proposed project area. Some of the noises that would be generated as a result of the proposed bridge replacement project, such as impact pile driving, are high intensity. However, WSDOT plans to use vibratory pile driving and to avoid using impact pile driving as much as possible, therefore eliminating the intense impulses that could cause TTS to marine mammals when repeatedly exposed in close proximity. In addition, WSDOT indicates that if impact pile driving is to be conducted, an air bubble curtain system would be used to attenuate the noise level. Furthermore, shutdown of pile driving would be implemented when a marine mammal is spotted within the 180 dB and 190 dB re 1 μPa (rms) safety zones for cetaceans and pinnipeds, respectively. Therefore, NMFS does not expect that any animals would receive Level A (including injury) harassment or Level B TTS from being exposed to intense construction noise.

Animals exposed to construction noise associated with the proposed bridge replacement work would be limited to Level B behavioral harassment only, i.e., the exposure of received levels for impulse noise between 160 and 180 dB re 1 μPa (rms) (from impact pile driving) and for non-impulse noise between 120 and 180 dB re 1 μPa (rms) (from vibratory pile driving, dredging, and dynamic positioning of construction vessels). In addition, the potential behavioral responses from exposed animals are expected to be localized and short in duration. The modeled 160 dB isopleths from impact pile driving is 5,412 m from the pile, and the estimated 120 dB isopleths from vibratory pile driving is approximately 1,900 m from the pile. However, the actual zone of influence from impact pile driving is expected to be much smaller due to other sound attenuation factors not considered in the spreading model. Furthermore, although in-water construction activities are expected to be conducted everyday during daylight hours between June 15 and February 28, the total duration for pile driving is expected to be approximately 410 hours, or 41 working days based on 10 hours of daylight for each working day. WSDOT also plans to use barge anchoring instead of dynamic positioning systems for construction vessels, thus further reducing noise input into the water column. Therefore, the underwater noise impacts from the proposed Manette Bridge replacement construction is expected to have a low level of noise intensity, and be of short duration and localized. These low intensity, localized, and short-term noise exposures, when received at distances of Level B behavioral harassment (i.e., 160 dB re 1 μPa (rms)

from impulse sources and 120 dB re 1 μPa (rms) from non-impulse sources), are expected to cause brief startle reactions or short-term behavioral modification by the animals. These brief reactions and behavioral changes are expected to disappear when the exposures cease. Therefore, these levels of received underwater construction noise from the proposed Manette Bridge replacement project are not expected to affect marine mammal annual rates of recruitment or survival.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required mitigation and monitoring measures, NMFS finds that the Manette Bridge replacement project will result in the incidental take of small numbers of Pacific harbor seals, California sea lions, and gray whales by Level B harassment only, and that the total taking from harassment will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

There are two marine mammal species and two fish species that are listed as endangered or threatened under the ESA with confirmed or possible occurrence in the study area: Eastern North Pacific Southern Resident killer whale, Eastern U.S. Steller sea lion, Chinook salmon, and steelhead trout. Under section 7 of the ESA, the Federal Highway Administration (FHWA) and WSDOT have consulted with NMFS Northwest Regional Office (NWRO) on the proposed Manette Bridge replacement project. In a memo issued with its August 3, 2009, Biological Opinion, NMFS NWRO stated that the proposed bridge replacement may affect, but is not likely to adversely affect the listed marine mammal species and stocks. On May 28, 2010, FHWA requested the reinitiation of section 7 consultation with NMFS NWRO on the newly ESA-listed three Puget Sound rockfish species. The consultation is expected to be completed in July 2010.

The issuance of an IHA to WSDOT constitutes an agency action that authorizes an activity that may affect ESA-listed species and, therefore, is subject to section 7 of the ESA. As the effects of the activities on listed marine mammals and salmonids were analyzed during a formal consultation between the FHWA and NMFS, and as the underlying action has not changed from that considered in the consultation, the discussion of effects that are contained in the Biological Opinion and accompanying memo issued to the FHWA on August 3, 2009, pertains also to this action. Therefore, NMFS has determined that issuance of an IHA for this activity would not lead to any effects to listed marine mammal species apart from those that were considered in the consultation on FHWA's action. Although the reinitiation of section 7 consultation by FHWA on three Puget Sound rockfish species is still on-going, NMFS does not expect that the outcome would affect NMFS' action in issuing an IHA for the incidental take of marine mammals.

National Environmental Policy Act (NEPA)

To meet NMFS' NEPA requirements for the issuance of an IHA to the WSDOT, NMFS has prepared an Environmental Assessment (EA) that is specific to the construction and demolishing activities associated with the Manette Bridge replacement project in Bremerton, WA. NMFS has prepared an EA titled *Issuance of an Incidental Harassment Authorization to the Washington State Department of Transportation to Take Marine Mammals by Harassment Incidental to Manette Bridge Replacement Project in Bremerton, Washington*, that evaluates the impacts on the human environment of NMFS' authorization of incidental Level B harassment resulting from the specified activity in the specified geographic region. The NMFS has made a Finding of No Significant Impact (FONSI) and, therefore, it is not necessary to prepare an environmental impact statement for the issuance of an IHA to WSDOT for this activity. A copy of the EA and the NMFS FONSI for this activity is available upon request (see **ADDRESSES**).

As a result of these determinations, NMFS has issued an IHA to the WSDOT to conduct construction and demolishing activities associated with the Manette Bridge replacement project in Bremerton, WA, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: June 29, 2010.

Helen Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–16370 Filed 7–2–10; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, July 7, 2010; 2 p.m.–3 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: June 29, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–16499 Filed 7–1–10; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, July 7, 2010, 10 a.m.–12:30 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED:

1. Decisional Matters: (a) Accreditation for Third Party Conformity Assessment Bodies for Testing for Children's Products: Carpets and Rugs; and (b) Accreditation for Third Party Conformity Assessment Bodies for Testing for Children's Products: Vinyl Plastic Film.
2. Cribs—Notice of Proposed Rulemaking (NPR).
3. Interim Policy and Partial Lifting of the Stay on Component Testing and Certification of Children's Toys and Child Care Articles to the Phthalates Limits.

A live Webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the

Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: June 29, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–16501 Filed 7–1–10; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2010–0018]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Air Force is proposing to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on August 5, 2010, unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Shedrick at (703) 696–6488.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCPPF, 1800 Air Force Pentagon, Washington, DC 20330–1800.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: June 30, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F010 AFSPC A

SYSTEM NAME:

Telecommunications Notification System (January 14, 2010; 75 FR 2117).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "30 Space Communications Squadron, Building 12000, Room 104, 867 Washington Ave, Suite 205, Vandenberg Air Force Base, CA 93437–6117.

Air Force installations that have access to this system. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Command Post Superintendent, 30 Space Wing Command, Post 867 Washington Ave, Suite 205, Vandenberg Air Force Base, CA 93437–6117.

Individuals at the 45 SW seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the 45 Space Wing Command Post, Patrick Air Force Base, FL 32925–3002.

Requests must contain the individual's full name and office."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves should address written inquiries to Command Post Superintendent, 30 Space Wing Command Post 867 Washington Ave, Suite 205, Vandenberg Air Force Base, CA 93437–6117.

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F010 AFSPC A

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Air Force installations that have access to this system. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Air Force Active Duty Service members, civilians, and government contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

First and last name, home, work and cell phone numbers, employee type, office and unit name, home and work email address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; Air Force Instruction (AFI) 10–218, Personnel Accountability in Conjunction with Natural Disasters or National Emergencies; Air Force Policy Directive (AFPD); 10–2 Readiness, Air Force Policy Directive 10–4, Operations Planning, and Air Force Policy Directive 10–25, Emergency Management.

PURPOSE(S):

To provide notification, via electronic mail and telephone, for personnel recalls and real world and exercise threat conditions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

Data is retrieved by first name, last name and office.

SAFEGUARDS:

Records may be accessed by the System Administrator, Command Post, and authorized designated Unit Control Representatives. They must have a Government Common Access Card (CAC) and associated Personal Identification Number (PIN) in addition to user identification and password for system access.

RETENTION AND DISPOSAL:

The paper records produced by this system will be reviewed to determine alert notification and acknowledgement times. The paper records produced will be shredded immediately after use and will not be retained longer than 1 month. Electronic records are archived annually.

SYSTEM MANAGER(S) AND ADDRESS:

Command Post Superintendent, 30 Space Wing Space Communications Squadron, 867 Washington Avenue, Suite 200–1, Vandenberg Air Force Base, CA 93437–6120.

NOTIFICATION PROCEDURE:

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Requests must contain the individual's full name and office.

CONTESTING RECORDS PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332, 32 CFR part 806b, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From Department of Defense military, civilian and contract personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–16326 Filed 7–2–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Overview Information; Strengthening Institutions Program (SIP) ; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.031A.

Dates:

Applications Available: July 6, 2010.

Deadline for Transmittal of Applications: August 5, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The SIP provides grants to eligible institutions of higher education (IHEs) to help them become self sufficient and expand their capacity to serve low-income students, by providing funds to improve and strengthen the institution's academic quality, institutional management and fiscal stability.

Priorities: Under this competition we are particularly interested in applications that address the following priorities.

Invitational Priorities: For FY 2010, there are four invitational priorities for this program. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1.

Support activities that will improve the institution's persistence and graduation rates.

Invitational Priority 2.

Work with the appropriate State agencies to develop strategies for using State longitudinal data systems to track outcomes for students attending the grantee institution, including the extent to which the students complete certificates, two-year degrees, and four-year degrees at other institutions.

Invitational Priority 3.

Develop academic programs to improve course completion rates or develop innovative support programs that are designed to increase completion rates.

Invitational Priority 4.

Develop dual enrollment programs that facilitate the transition between high school and college or career pathway programs that integrate basic academic instruction with technical or professional occupational training to advance individuals, particularly adult learners, on a career path toward high-wage occupations in high-demand industries.

Program Authority: 20 U.S.C. 1057—1059d (Title III, Part A of the Higher Education Act of 1965 (HEA).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 607.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $17,830,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2011 from the list of unfunded applicants from this competition.

Program name and type of award	Maximum award amount	Estimated number of awards	Estimated average award amount
Strengthening Institutions Program (84.031A).			
5-year Development Grants	$400,000	47	$365,000
5-year Cooperative Arrangement Development Grants	$500,000	1	$400,000

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months for development grants and cooperative arrangement development grants.

III. Eligibility Information

1. *Eligible Applicants:* This program is authorized by Title III, Part A, of the HEA. To qualify as an eligible institution under any Title III, Part A program, an institution must, among other requirements—

(1) Be accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered;

(2) Be legally authorized by the State in which it is located to be a junior college or to provide an educational program for which it awards a bachelor's degree;

(3) Be designated as an "eligible institution" by demonstrating that it: (A) Has an enrollment of needy students as described in 34 CFR 607.3; and B) has low average educational and general expenditures per full-time equivalent (FTE) undergraduate student as described in 34 CFR 607.4.

Relationship between the Title III, Part A programs and the Hispanic-Serving Institutions (HSI) program.

Note 1: A grantee under the Developing Hispanic-Serving Institutions (HSI) program, which is authorized under Title V of the HEA, may not receive a grant under any HEA, Title III, Part A program. The Title III, Part A programs include SIP, Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-serving Institutions, Asian American and Native American Pacific Islander-serving Institutions, and Native American-serving Nontribal Institutions. Further, a current HSI program grantee may not give up its HSI grant to receive a grant under any Title III, Part A program.

Note 2: An eligible HSI that does not fall within the limitation described in Note 1 (*i.e.,* is not a current grantee under the HSI program) may apply for a FY 2010 grant under all Title III, Part A programs for which it is eligible, as well as receive consideration for a grant under the HSI program. However, a successful applicant may receive only one grant.

Note 3: An eligible IHE that submits more than one application may only be awarded one individual development grant *or* one cooperative arrangement development grant in a fiscal year. We will not award a second cooperative arrangement development grant to an otherwise eligible IHE for the same award year as the IHE's existing cooperative arrangement development grant award.

Note 4: The Department will make five-year awards for individual development grants and five-year awards for cooperative arrangement development grants in rank order from the funding slate according to the average score received from a panel of three readers.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching unless the grantee uses a portion of its grant for establishing or improving an endowment fund. If a grantee uses a portion of its grant for endowment fund purposes, it must match those grant funds with non-Federal funds (20 U.S.C. 1059c(c)(3)(B)).

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Grant funds shall be used so that they supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant and in no case supplant those funds (34 CFR 607.30(b)).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application via the Internet using the following address: *http://e-grants.ed.gov.* If you do not have access to the Internet, please contact Imogene Byers or Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513. You may contact the individuals at the following e-mail addresses and telephone numbers:

Imogene.byers@ed.gov; (202) 502–7672.

Darlene.collins@ed.gov; (202) 502–7576.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limits: We have established mandatory page limits for the applications to be submitted under this notice. You must limit your application to the equivalent of no more than 50 pages for an individual development grant, and 70 pages for a cooperative arrangement development grant, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1 inch margins at the top, bottom, and both sides. Page numbers and an identifier may be outside the 1″ margin.
- Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, quotations, references, captions and all text in charts, tables, figures, and graphs. Charts, tables, figures, and graphs in the application narrative may be single spaced and will count toward the page limit.
- Use a font that is either 12 point or larger, and no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. Applications submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.
- The page limit does not apply to Part I, Application for Federal Assistance (SF–424); the Supplemental Information for SF–424 Form required by the Department of Education; Part II, the Budget Information Summary Form (ED Form 524); and Part IV, the assurance and certifications. The page limit also does not apply to the one-page abstract, the table of contents, the resumes, and the bibliography. If you include any attachments or appendices, these items will be counted as part of the Program Narrative (Part III of the application) for purposes of the page limit requirement. You must include your complete response to the selection criteria in the program narrative.
- We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: July 6, 2010.

Deadline for Transmittal of Applications: August 5, 2010.

Applications for grants under this program 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 in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference the regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

Applicability of Executive Order 13202. Applicants that apply for construction funds under the Title III, Part A programs, must comply with Executive Order 13202 signed by former President George W. Bush on February 17, 2001, and amended on April 6, 2001. This Executive Order provides that recipients of Federal construction funds may not "require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other construction project(s)" or "otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations, on the same or other construction project(s)." However, the Executive Order does not prohibit contractors or subcontractors from voluntarily entering into these agreements. Projects funded under this program that include construction activity will be provided a copy of this Executive Order and will be asked to certify that they will adhere to it.

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 the SIP 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 SIP—CFDA number 84.031A, 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 program 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 the e-Application system 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: Imogene Byers or Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW., 6th floor, Washington, DC 20006–8513. FAX: (202) 502–7861.

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 84.031A), 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 84.031A), 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 and suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you notification of receipt of your grant application. If you do not receive the grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 607.22, paragraphs (a)–(g). Applicants must address each of the following selection criteria (separately for each proposed activity). The total weight of the selection criteria is 100 points; the maximum score for each criterion is noted in parentheses. The complete language of the selection criteria is in the application package for this competition.

(a) Quality of The Applicant's Comprehensive Development Plan (Maximum 25 Points).

(b) Quality of Activity Objectives (Maximum 15 Points).

(c) Quality of Implementation Strategy (Maximum 20 Points).

(d) Quality of Key Personnel (Maximum 7 Points).

(e) Quality of Project Management Plan (Maximum 10 Points).

(f) Quality of Evaluation Plan (Maximum 15 Points).

(g) Budget (Maximum 8 Points).

2. *Review and Selection Process:* Awards will be made in rank order according to the average score received from a panel of three readers.

Tie-breaker for Development Grants. In tie-breaking situations for development grants, 34 CFR 607.23(b) of the regulations requires that we award one additional point to an application from an IHE that has an endowment fund of which the current market value, per full time equivalent (FTE) enrolled student, is less than the average current market value of the endowment funds, per FTE enrolled student at similar type

institutions. We award one additional point to an application from an IHE that had expenditures for library materials per FTE enrolled student that are less than the average expenditure for library materials per FTE enrolled student at similar type institutions. We also add one additional point to an application from an IHE that proposes to carry out one or more of the following activities—

(1) Faculty development;

(2) Funds and administrative management;

(3) Development and improvement of academic programs;

(4) Acquisition of equipment for use in strengthening management and academic programs;

(5) Joint use of facilities; and

(6) Student services.

For the purpose of these funding considerations, we use 2007–2008 data.

If a tie remains after applying the tie-breaker mechanism above, priority will be given in the case of applicants for: (a) Individual development grants to applicants that have the lowest endowment values per FTE enrolled student; and (b) cooperative arrangement development grants to applicants in accordance with section 394(b) of the HEA, if the Secretary determines that the cooperative arrangement is geographically and economically sound or will benefit the applicant institution.

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 in 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 in 34 CFR 75.118 and 34 CFR 607.31. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the Title III, Part A SIP:

a. The percentage change, over the 5-year period, of the number of full-time degree-seeking undergraduates enrolled at SIP institutions. Note that this is a long-term measure, which will be used to periodically gauge performance, beginning in FY 2009;

b. The percentage of first-time, full-time degree-seeking undergraduate students at 4-year SIP institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same SIP institution;

c. The percentage of first-time, full-time degree-seeking undergraduate students at 2-year SIP institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same SIP institution;

d. The percentage of first-time, full-time degree-seeking undergraduate students enrolled at 4-year SIP institutions graduating within 6 years of enrollment; and

e. The percentage of first-time, full-time degree-seeking undergraduate students enrolled at 2-year SIP institutions graduating within 3 years of enrollment.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Imogene Byers or Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513. You may contact these individuals at the following e-mail addresses and telephone numbers:

Imogene.byers@ed.gov; (202) 502–7672.

Darlene.collins@ed.gov; (202) 502–7576.

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format *(e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: June 30, 2010.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. 2010–16366 Filed 7–2–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.031P]

Predominantly Black Institutions Formula Grant Program

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2010; Correction.

SUMMARY: On June 21, 2010, we published in the **Federal Register** (75 FR 34994) a notice inviting applications for new awards for FY 2010 for the Predominantly Black Institutions Formula Grant Program (PBI Notice). The PBI Notice incorrectly indicated that this program was subject to intergovernmental review under Executive Order 12372 and 34 CFR part 79, and established deadlines for the completion of intergovernmental review.

SUPPLEMENTARY INFORMATION:

Correction

This notice corrects the PBI Notice by removing the deadlines for intergovernmental review and revising language about the applicability of provisions regarding intergovernmental review to this program. Accordingly, the Department is making the following corrections to the PBI Notice:

1. On page 34994, second column, the *Deadline for Intergovernmental Review* heading and date are removed.

2. On page 34995, second column, the *Deadline for Intergovernmental Review* heading and date are removed.

3. On page 34995, second column, the two sentences under the heading 4. *Intergovernmental Review,* are removed and the following sentence is substituted in its place:

"This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79."

FOR FURTHER INFORMATION CONTACT: Sara Starke, Teacher and Student Development Programs Service, U.S. Department of Education, 1990 K Street, NW., room 6019, Washington, DC 20006–8524. Telephone: (202) 502–7688, or by e-mail: *sara.starke@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.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: June 30, 2010.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. 2010–16376 Filed 7–2–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC10–580–001]

Commission Information Collection Activities (FERC Form No. 580) Request; Submitted for OMB Review; Correction

June 29, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice; correction.

SUMMARY: The Federal Energy Regulatory Commission published in the **Federal Register** of June 21, 2010, a notice regarding its submission of information collection to the Office of Management and Budget for review of information collection requirements.

DATES: *Effective Date:* July 6, 2010.

FOR FURTHER INFORMATION CONTACT: Michael Miller, Office of the Deputy Chief Information Officer, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8415.

SUPPLEMENTARY INFORMATION: In FR Document 2010–14953, published June 21, 2010 (75 FR 35003) make the following corrections to two tables in the notice which provide estimates of reporting burdens:

On page 35006, column 3, change the Total from "4150" to "4050."

On page 35006, columns 2 and 3, in the table providing Form 580 data, change total from "4150" to "4050" and change the figure of "$275,104" to "$268,456."

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–16295 Filed 7–2–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13722–000]

Douglas County, OR; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

June 24, 2010.

On May 5, 2010, Douglas County, Oregon, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Douglas County Wave and Tidal Energy Power Project, in the Pacific Ocean, off the coast of Douglas County, Oregon. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) An approximately 600-foot-long, 30-foot-wide, 46-foot-high cassion to house the oscillating water column collecting system (OWCCS); (2) an OWCCS consisting of 15 oscillating water column chambers, each containing two, 110-kilowatt turbine/generator units; and (3) a 1.9- to 2.3-mile-long transmission line, depending on the final location and selection of the transmission line. The project would have a total installed capacity of 1 megawatt (MW) to 3 MW, and an estimated annual generation of 3.4 gigawatt-hours (GWh) to 10.2 GWh. The OWCSS is operated by external wave action, which causes water to oscillate up and down within an underwater chamber. As the air in the chamber above the water is compressed and decompressed, air is forced through a turbine/generator unit. There are four locations under evaluation for the proposed project installation.

Applicant Contacts: Ronald S. Yockim, 430 SE. Main Street, P.O. Box 2456, Roseburg, OR 97470; phone: (541) 957–5900. Paul Meyer, County Counsel, Douglas County Board of Commissioners, 1036 SE. Douglas, Roseburg, OR 97470; phone: (541) 440–4391.

FERC Contact: Jennifer Harper, phone: (202) 502–6136.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *(http://www.ferc.gov/docs-filing/ferconline.asp)* under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages

electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13722) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–16276 Filed 7–2–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13666–000]

Reedsport OPT Wave Park, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

June 24, 2010.

Reedsport OPT Wave Park, LLC filed on February 2, 2010 and amended on May 27, 2010, an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Reedsport OPT Wave Park Phase III Project located in the Pacific Ocean about 2.5 miles west of Reedsport, Oregon. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) 100 PowerBuoys having a total installed capacity of 50 megawatts; (2) an approximately 2.5-mile-long, subsea transmission cable; (3) an approximately 3-mile-long transmission line connecting to an existing substation; and (4) appurtenant facilities. The project would have an estimated average annual generation of 138,000 megawatt-hours.

Applicant Contact: Mr. Phillip J. Pellegrino, Oregon Wave Energy Partners I, LLC, 1590 Reed Road, Pennington, NJ 08534.

FERC Contact: Jim Hastreiter, (503) 552–2760, or via e-mail at *james.hastreiter@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *(http://www.ferc.gov/docs-filing/ferconline.asp)* under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13666) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–16277 Filed 7–2–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–459–000]

ETC Tiger Pipeline, LLC; Notice of Application

June 25, 2010.

Take notice that on June 15, 2010, ETC Tiger Pipeline, LLC (ETC Tiger), 711 Louisiana Street, Suite 900, Houston, Texas 77002, filed an application in Docket No. CP10–459–000 pursuant to section 7(c) of the Natural Gas Act (NGA), and Part 157, Subpart A of the Commission's regulations requesting: (1) Authorization to construct, own, operate and maintain approximately 20.5 miles of 42-inch diameter natural gas pipeline and 30,565 horsepower of compression located in Louisiana capable of transporting up to 400,000 Mcf/day (Expansion Project); (2) a pre-determination of rolled-in rate treatment for the costs associated with the Expansion Project; and (3) approval of incremental fuel charges for transportation service provided by the proposed facilities, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Any questions regarding the applications should be directed to Joey Mahmoud, Vice President, Energy Transfer Partners, L.P., 711 Louisiana Street, Suite 900, Houston, Texas 77002, 832–668–1242, *Joey.Mahmoud@energytransferpartners.com* or Lisa M. Tonery, Fulbright & Jaworski L.L.P., 666 Fifth Avenue, New York, New York 10103, 212–318–3009, *ltonery@fulbright.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission 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 commentors 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 commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors 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 in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: July 16, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–16282 Filed 7–2–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12740–003]

Jordan Hydroelectric Limited Partnership; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

June 28, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major Original License.

b. *Project No.:* P–12740–003.

c. *Date filed:* July 13, 2009.

d. *Applicant:* Jordan Hydroelectric Limited Partnership.

e. *Name of Project:* Flannagan Hydroelectric Project.

f. *Location:* On the Pound River, in the Town of Clintwood, in Dickenson County, Virginia. The project would occupy Federal land managed by 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:* Mr. James B. Price, W.V. Hydro, Inc., P.O. Box 903, Gatlinburg, TN 37738 (865) 436–0402.

i. *FERC Contact:* Gaylord Hoisington, (202) 502–6032 or *gaylord.hoisington@FERC.gov.*

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance date of this notice; reply comments are due 105 days from issuance date of this notice.

All documents 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 (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments click on "Quick Comment." For assistance, please contact FERC Online support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filings, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is now ready for environmental analysis.

l. The proposed project would utilize the existing U.S. Army Corps of Engineers' (Corps) Flannagan dam, intake tower, outlet works, and reservoir and would consist of: (1) Three new turbine generating units located within the existing intake tower having a total installed capacity of 3 megawatts; (2) a new control booth on the intake tower; (3) a new substation near the Corps' existing service bridge; (4) new transmission leads connecting the generating units to Appalachian Power Company's existing transmission line; and (5) appurtenant facilities. The average annual generation is estimated to be 9.5 gigawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item (h) above.

All filings must (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain

copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notices of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

o. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of wavier of water quality certification.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–16280 Filed 7–2–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–455–000]

Tennessee Gas Pipeline Company; Notice of Application

June 24, 2010.

Take notice that on June 11, 2010, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed in the above referenced docket an application pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting authorization to abandon in place and by removal an inactive supply lateral, designated as Line No. 524C–600. The Supply Lateral consists of approximately 16.2 miles of 12-inch diameter pipeline and associated appurtenances located in the Bay Marchand area of State waters, Lafourche Parish, Louisiana, and in the South Timbalier area in Federal offshore waters of the Outer Continental Shelf. Tennessee states that the subject facilities have been out of service due to damages received by Hurricane Ike in September 2008, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing 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 at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Any questions concerning this application may be directed to Thomas G. Joyce, Manager, Certificates, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, by telephone at (713) 420–3299, by facsimile at (713) 420–1473, or by e-mail at *tom.joyce@elpaso.com;* Susan T. Halbach, Senior Counsel, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, by telephone at (713) 420–5751, by facsimile at (713) 420–1601, or by e-mail at *susan.halbach@elpaso.com;* or Debbie Kalisek, Regulatory Analyst, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, by telephone at (713) 420–3292, by facsimile at (713) 420–1473, or by e-mail at *debbie.kalisek@elpaso.com.*

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 in the proceeding with the Commission and must mail a copy to the applicant and to every other party. 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.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: July 15, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–16278 Filed 7–2–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–41–000]

PELICO Pipeline, LLC; Notice of Baseline Filing

June 28, 2010.

Take notice that on June 22, 2010, PELICO Pipeline, LLC submitted a baseline filing of its Statement of Operating Conditions for services provided under section 311 of the Natural Gas Policy Act of 1978 (NGPA).

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must

file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Monday, July 12, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–16285 Filed 7–2–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–43–000]

Copano Pipelines/Upper Gulf Coast, L.P.; Notice of Baseline Filing

June 28, 2010.

Take notice that on June 24, 2010, Copano Pipelines/Upper Gulf Coast, L.P. submitted a baseline filing of its Statement of Operating Conditions for services provided under section 311 of the Natural Gas Policy Act of 1978 (NGPA).

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Monday, July 12, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–16288 Filed 7–2–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–42–000]

DCP Raptor Pipeline, LLC; Notice of Baseline Filing

June 28, 2010.

Take notice that on June 22, 2010, DCP Raptor Pipeline, LLC submitted a baseline filing of its Statement of Operating Conditions for services provided under section 311 of the Natural Gas Policy Act of 1978 (NGPA).

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Monday, July 12, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–16287 Filed 7–2–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 25, 2010.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10–48–000.
Applicants: Eagle Creek Hydro Power, LLC.
Description: Self-Certification of EG of Eagle Creek Hydro Power, LLC under EG10–48.
Filed Date: 06/24/2010.
Accession Number: 20100624–5146.
Comment Date: 5 p.m. Eastern Time on Thursday, July 15, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER08–1318–001.
Applicants: Pacific Gas and Electric Company.
Description: Compliance Electric Refund Report of Pacific Gas and Electric Company.
Filed Date: 06/24/2010.
Accession Number: 20100624–5112.
Comment Date: 5 p.m. Eastern Time on Thursday, July 15, 2010.

Docket Numbers: ER09–1064–002.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits compliance filing.
Filed Date: 06/21/2010.
Accession Number: 20100622–0202.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: ER09–1581–004.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits the Amended and Restated Generator Interconnection Agreement.
Filed Date: 06/18/2010.
Accession Number: 20100618–0205.
Comment Date: 5 p.m. Eastern Time on Friday, July 9, 2010.

Docket Numbers: ER10–642–003; ER10–310–003; ER10–643–003.
Applicants: Algonquin Tinker Gen Co.; Algonquin Energy Services Inc.; Algonquin Northern Maine Gen Co.
Description: Algonquin Tinker Gen Co *et al.* resubmits Substitute Second *et al.* to FERC Electric Tariff, Fourth Revised Volume 1.
Filed Date: 06/23/2010.
Accession Number: 20100624–0204.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 14, 2010.

Docket Numbers: ER10–1479–000.
Applicants: Carolina Power & Light Company.
Description: Carolina Power & Light Company submits revisions to the Network Integration Transmission Service Agreement with North Carolina Eastern Municipal Power Agency, to be effective 7/1/10.
Filed Date: 06/18/2010.
Accession Number: 20100618–0208.
Comment Date: 5 p.m. Eastern Time on Friday, July 9, 2010.

Docket Numbers: ER10–1517–000.
Applicants: American Electric Power Service Corporation.
Description: American Electric Power Service Corp on behalf of Ohio Power Co *et al.* submits the Twenty-Third Revised Interconnection and Local Delivery Service Agreement.
Filed Date: 06/22/2010.
Accession Number: 20100622–0205.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 13, 2010.

Docket Numbers: ER10–1538–000.
Applicants: Entergy Nuclear Indian Point 2, LLC.
Description: Entergy Nuclear Indian Point 2, LLC submits tariff filing per 35.12: Baseline Filing of ENIP2 to be effective 6/24/2010.
Filed Date: 06/24/2010.
Accession Number: 20100624–5073.
Comment Date: 5 p.m. Eastern Time on Thursday, July 15, 2010.

Docket Numbers: ER10–1545–000.
Applicants: PPL Electric Utilities Corporation.
Description: PECO Energy Company submits Notice of Cancellation of an Interconnection Facilities Agreement.
Filed Date: 06/24/2010.
Accession Number: 20100624–0208.
Comment Date: 5 p.m. Eastern Time on Thursday, July 15, 2010.

Docket Numbers: ER10–1548–000.
Applicants: PPL Electric Utilities Corporation.
Description: PECO Energy Company submits Transmission Facilities Interconnection Agreement.
Filed Date: 06/24/2010.
Accession Number: 20100624–0209.
Comment Date: 5 p.m. Eastern Time on Thursday, July 15, 2010.

Docket Numbers: ER10–1552–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits revisions to the Midwest ISO's Generator Interconnection Procedures, which is Attachment X of the Midwest ISO's Open Access Transmission etc.
Filed Date: 06/23/2010.
Accession Number: 20100624–0210.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 14, 2010.

Docket Numbers: ER10–1553–000.
Applicants: Entergy Nuclear Generation Company.
Description: Entergy Nuclear Generation Company submits tariff filing per 35.12: Baseline Filing of ENGC to be effective 6/24/2010.
Filed Date: 06/24/2010.
Accession Number: 20100624–5133.
Comment Date: 5 p.m. Eastern Time on Thursday, July 15, 2010.

Docket Numbers: ER10–1554–000.
Applicants: Mid-Continent Area Power Pool.
Description: Mid-Continent Area Power Pool submits Notice of Cancellation of MAPP's Inadvertent Settlement Tariff, FERC Electric Tariff, Original Volume 3, effective July 1, 2010 under ER10–1554.
Filed Date: 06/24/2010.
Accession Number: 20100625–0202.
Comment Date: 5 p.m. Eastern Time on Thursday, July 15, 2010.

Docket Numbers: ER10–1555–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits four executed Wholesale Market Participation Agreements with Green Valley Hydro, LLC under ER10–1555.
Filed Date: 06/24/2010.
Accession Number: 20100625–0203.
Comment Date: 5 p.m. Eastern Time on Thursday, July 15, 2010.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10–50–000.
Applicants: Kingsport Power Company.
Description: Application of Kingsport Power Company under Section 204 of the Federal Power Act for Authorization to Issue Securities.
Filed Date: 06/24/2010.
Accession Number: 20100624–5110.
Comment Date: 5 p.m. Eastern Time on Thursday, July 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.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–16305 Filed 7–2–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 28, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–76–000.

Applicants: Vantage Wind Energy LLC.

Description: Vantage Wind Energy LLC submits their Application for Authorization Under Section 203 of the Federal Power Act and Request for Waivers and Expedited Action.

Filed Date: 06/25/2010.

Accession Number: 20100625–5140.

Comment Date: 5 p.m. Eastern Time on Friday, July 16, 2010.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10–49–000.

Applicants: Synergics Roth Rock Wind Energy, LLC.

Description: Self-Certification of EWG Status of Synergics Roth Rock Wind Energy, LLC.

Filed Date: 06/28/2010.

Accession Number: 20100628–5084.

Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–48–016.

Applicants: Powerex Corp.

Description: Powerex Corp submits errata to its Dec 11, 2009 notice of change in status.

Filed Date: 06/24/2010.

Accession Number: 20100625–0031.

Comment Date: 5 p.m. Eastern Time on Thursday, July 15, 2010.

Docket Numbers: ER01–2217–010.

Applicants: Sunrise Power Company, LLC.

Description: Errata to June 25, 2010 Market Based Rate Update of Sunrise Power Company, LLC.

Filed Date: 06/28/2010.

Accession Number: 20100628–5066.

Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER01–2233–007.

Applicants: GWF Energy LLC.

Description: Triennial Market-Based Rate Update of GWF Energy LLC.

Filed Date: 06/25/2010.

Accession Number: 20100625–5162.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 24, 2010.

Docket Numbers: ER03–753–006.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc submits notice that ELL and EGSL have entered into a transaction pursuant to Service Schedule MSS–4 of the Entergy System Agreement.

Filed Date: 06/24/2010.

Accession Number: 20100625–0201.

Comment Date: 5 p.m. Eastern Time on Thursday, July 15, 2010.

Docket Numbers: ER07–758–000.

Applicants: Inland Empire Energy Center, L.L.C.

Description: Triennial Market Power Analysis of Inland Empire Energy Center, LLC.

Filed Date: 06/24/2010.

Accession Number: 20100624–5145.

Comment Date: 5 p.m. Eastern Time on Monday, August 23, 2010.

Docket Numbers: ER04–1244–002.

Applicants: NorthPoint Energy Solutions Inc.

Description: Notification of Non-Material Change in Status of NorthPoint Energy Solutions Inc.

Filed Date: 06/25/2010.

Accession Number: 20100625–5144.

Comment Date: 5 p.m. Eastern Time on Friday, July 16, 2010.

Docket Numbers: ER10–1230–001.

Applicants: The Detroit Edison Company.

Description: The Detroit Edison Company submits clean and redline versions of the revised Service Agreement.

Filed Date: 06/24/2010.

Accession Number: 20100625–0204.

Comment Date: 5 p.m. Eastern Time on Thursday, July 01, 2010.

Docket Numbers: ER10–1563–000.

Applicants: California Independent System Operator Corporation

Description: California Independent System Operator Corporation submits tariff filing per 35.12: 2010–06–28 CAISO Baseline Filing to be effective 6/28/2010.

Filed Date: 06/28/2010.

Accession Number: 20100628–5071.

Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1564–000.

Applicants: Cabrillo Power I LLC.

Description: Cabrillo Power I LLC submits tariff filing per 35.12: Cabrillo I—FERC Electric Tariff to be effective 6/28/2010.

Filed Date: 06/28/2010.

Accession Number: 20100628–5075.

Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1565–000.

Applicants: Cabrillo Power II LLC.

Description: Cabrillo Power II LLC submits tariff filing per 35.12: Cabrillo Power II—FERC Electric Tariff to be effective 6/28/2010.

Filed Date: 06/28/2010.

Accession Number: 20100628–5097.

Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1566–000.

Applicants: El Segundo Power LLC.

Description: El Segundo Power LLC submits tariff filing per 35.12: El Segundo Power—FERC Electric Tariff to be effective 6/28/2010.

Filed Date: 06/28/2010.

Accession Number: 20100628–5100.
Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1568–000.
Applicants: Long Beach Generation LLC.
Description: Long Beach Generation LLC submits tariff filing per 35.12: Long Beach Generation—FERC Electric Tariff to be effective 6/28/2010.
Filed Date: 06/28/2010.
Accession Number: 20100628–5102.
Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1569–000.
Applicants: NRG Power Marketing LLC.
Description: NRG Power Marketing LLC submits tariff filing per 35.12: NRG PML—FERC Electric Tariff to be effective 6/28/2010.
Filed Date: 06/28/2010.
Accession Number: 20100628–5103.
Comment Date: 5 p.m. Eastern Time on Monday, July 19, 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.

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.

Kimberly D. Bose,
Secretary.
[FR Doc. 2010–16296 Filed 7–2–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM07–16–000; RM01–5–000]

Filing Via the Internet; Electronic Tariff Filings Notice of Display of Time on Commission's Electronic Filing System

June 28, 2010.

Take notice that the Commission will now display on its electronic filing system the time used by the Commission to mark officially the time that eFilings and eTariff submissions are made with the Commission. This time also will be used to determine whether filings have been made timely. The time display will assist users in ensuring that their filings are timely filed, *i.e.,* are filed in advance of the Commission's 5 p.m. Eastern time deadline for filing on that day.

The time will display to the second on all screens after log-in, including those for eTariff submissions. The time a filing is made is established when the last file uploaded appears in the table at the bottom of the File Upload screen. [1] Filings made after the Commission's 5 p.m. Eastern time deadline are considered as having been filed on the following day. *See* 18 CFR 375.105 (2010).

Filers, particularly those filing requests for rehearing where the deadline for filing is set by statute and cannot be waived, are strongly encouraged to file well in advance of 5 p.m. to minimize the possibility that unexpected problems may delay the filing beyond the 5p.m. Eastern time deadline for filing.

Kimberly D. Bose,
Secretary.
[FR Doc. 2010–16284 Filed 7–2–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–194–000]

Central New York Oil and Gas Company, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed North-South Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting and Onsite Environmental Reviews

June 24, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the North-South Project, involving construction and operation of facilities by Central New York Oil and Gas Company, LLC (CNYOG) in Bradford County, Pennsylvania and Tioga County, New York. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be

[1] The Commission encourages electronic submissions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Also, Filing Procedures For Electronically Filed Tariffs, Rate Schedules And Jurisdictional Agreements has been posted on the eTariff Web site (*http://www.ferc.gov/docs-filing/etariff.asp*) under Commission Orders and Notices at *http://www.ferc.gov/docs-filing/etariff/com-order.asp.*

evaluated in the EA. Please note that the scoping period will close on July 26, 2010.

Comments may be submitted in written form or verbally. Further details on how to submit written comments are provided in the Public Participation section of this notice. In lieu of or in addition to sending written comments, the Commission invites you to attend the public scoping meeting scheduled as follows:

FERC Public Scoping Meeting
North-South Project July 15, 2010, at 7 p.m. Treadway Inn and Conference Center 1100 State Route 17C Owego, New York 13827

The Commission staff will also conduct two environmental site reviews of the proposed compressor station locations in Bradford County, Pennsylvania and Tioga County, New York. All interested parties planning to attend must provide their own transportation. Those attending should meet at the following locations:

FERC Environmental Site Reviews North-South Project
Compressor Station NS2—Bradford County, Pennsylvania July 14, 2010, at 2 p.m. Tennessee Gas Pipeline's Station 319 (driveway) Turkey Path Road (State Route 1004) Wyalusing, Pennsylvania 18853 Compressor Station NS1—Tioga County, New York July 15, 2010, at 8 a.m. Treadway Inn and Conference Center (Lobby) 1100 State Route 17C Owego, New York 13827

This notice is being sent to the Commission's current environmental mailing list for the proposed project. State and local government representatives are asked to notify their constituents of this project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice CNYOG provided to landowners. This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site *(http://www.ferc.gov).*

Summary of the Proposed Project

CNYOG proposes to construct and operate one new compressor station in both Tioga County, New York (NS1) and Bradford County, Pennsylvania (NS2). The North-South Project is associated with CNYOG's existing Stagecoach Storage Project and would increase the firm throughput capacity of CNYOG's North Lateral to 560 million cubic feet per day (MMcf/d) and South Lateral to 728 MMcf/d. According to CNYOG, its project would provide service between receipt and delivery points at the existing interconnects as well as from intermediate receipt points along both laterals.

The North-South Project would consist of the following facilities:

- One electric-driven 13,400-horsepower (hp) centrifugal compressor at the NS1 compressor station;
- One electric-driven 15,300-hp Solar C45 centrifugal compressor at the NS2 compressor station;
- Expansion of metering facilities at the interconnects between CNYOG's North and South Laterals and Millennium Pipeline Company's pipeline and Tennessee Gas Pipeline Company's (TGP) Line 300 pipeline, respectively,
- Two 30-inch natural gas pipelines about 900 feet long from NS2 to the interconnect with TGP.
- An electric substation at the NS1 compressor station; and
- An 1,800-foot-long nonjurisdictional powerline at the NS2 compressor station.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would temporarily disturb about 54.3 acres of land for the proposed compressor stations and powerline. Following construction, 5 acres would be maintained for permanent operation of the NS1 compressor station in Tioga County, and 5 acres would be maintained for permanent operation of the NS2 compressor station in Bradford County. About 2 acres would be maintained for access roads, about 1 acre would be utilized for pipeline right-of-way, and about 7 acres would be utilized for the powerline right-of-way. The remaining land would be restored and allowed to revert to former uses.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA, we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species; and
- Public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] "We", "us", and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

public. A comment period will be allotted if the EA is published for review. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section below.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations, we are using this notice to solicit the views of the public on the project's potential effects on historic properties.[3] We will document our findings on the impacts on cultural resources and summarize the status of consultations under section 106 of the National Historic Preservation Act in our EA.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before July 26, 2010.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances, please reference the project docket number (CP10–194–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the Quick Comment feature, which is located at *http://www.ferc.gov* under the link called "Documents and Filings". A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the "eFiling" feature that is listed under the "*Documents and Filings*" *link.* eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file to your submission. New eFiling users must first create an account by clicking on the links called "Sign up" or "eRegister". You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's website.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *http://www.ferc.gov* using the "eLibrary" link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (i.e., CP10–194). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–16279 Filed 7–2–10; 8:45 am]

BILLING CODE 6717–01–P

[3] The Advisory Council on Historic Preservation's regulations are at title 36, Code of Federal Regulations, part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP10–3–000; CP10–3–001; PF09–6–000]

Questar Overthrust Pipeline Company; Notice of Availability of the Environmental Assessment for the Proposed Mainline 133 Loop Expansion Project

June 25, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Mainline 133 Loop Expansion Project (Loop Expansion) in the above referenced docket. Questar Overthrust Pipeline Company (Overthrust) requests authorization to add up to 800,000 dekatherms per day of natural gas capacity from the existing Rock Springs Compressor Station southwest of Rock Springs in Sweetwater County, Wyoming westbound to Overthrust's existing Cabin 31 station in Uinta County, Wyoming.

The EA assesses the potential environmental effects of the construction and operation of the Loop Expansion Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The Bureau of Land Management (BLM) participated as a cooperating agency in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. The BLM will adopt and use the EA to consider the issuance of a right-of-way grant for the portion of the project on Federal lands.

Overthrust proposes to construct the following facilities:

- About 43 miles of 36-inch-diameter pipeline in Uinta and Sweetwater Counties, Wyoming;
- a bypass valve assembly tie-in at the Rock Springs Compressor Station in Rock Springs, Wyoming;
- a new crossover valve assembly at about milepost (MP) 43.7; and
- two 36-inch-diameter block valves at about MPs 19 and 39.

The EA has been placed in the public files of the FERC and is available for public viewing on the FERC's Web site at *http://www.ferc.gov* using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are properly recorded and considered prior to a Commission decision on the proposal, it is important that the FERC receives your comments in Washington, DC on or before July 26, 2010.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (CP10–3–000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the *Quick Comment* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on "*Sign up*" or "*eRegister.*" You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Although your comments will be considered by the Commission, simply filing comments will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC or on the FERC Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP10–3). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–16283 Filed 7–2–10; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2589–057—Michigan]

Marquette Board of Light and Power; Notice of Availability of Final Environmental Assessment

June 28, 2010.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission) regulations (18 CFR part 380), the Office of Energy Projects has prepared a Final Environmental Assessment (FEA) regarding Marquette Board of Light and Power's plan to repair the Tourist Park Dam of the Marquette Hydroelectric Project (FERC No. 2589) located on the Dead River in Marquette County, Michigan. This FEA concludes that the proposed repair, with staff's recommended mitigation measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Room 2–A of the Commission's offices at 888 First Street, NE., Washington, DC 20426. The FEA may also be viewed on the Commission's Internet 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. Additional information about the project is available from the Commission's Office of External Affairs, at (202) 502–6088, or on the Commission's website using the eLibrary link. For assistance with eLibrary, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676; for TTY contact (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–16286 Filed 7–2–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–892–000]

Southern Turner Cimarron I, LLC; Notice of Filing

June 25, 2010.

Take notice that on June 24, 2010, Southern Turner Cimarron I, LLC filed a supplement confirming passive ownership structure for informational purposes.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 6, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–16281 Filed 7–2–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPA–2007–0042; FRL–9171–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; National Oil and Hazardous Substances Pollution Contingency Plans (Renewal); EPA ICR No. 1664.07, OMB Control No. 2050–0141

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 5, 2010.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OPA–2007–0042 to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *superfund.docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, U.S. Environmental Protection Agency, EPA Docket Center, Superfund Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: William "Nick" Nichols, Office of Emergency Management, (5104A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–1970; fax number: 202–564–2625; e-mail address: *nichols.nick@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 14, 2010 (75 FR 19386) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OPA–2007–0042, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Superfund Docket is 202–566–0276.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view

public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: National Oil and Hazardous Substances Pollution Contingency Plans (Renewal).

ICR Numbers: EPA ICR No. Renewal ICR 1664.07, OMB Control No. 2050–0141.

ICR Status: This ICR is scheduled to expire on 08/31/2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 311(d)(2)(G) of the Clean Water Act (CWA), requires a Product Schedule (the Schedule), identifying "dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out" the National Contingency Plan (NCP). The authority of the President to implement the CWA is currently delegated to EPA by Executive Order 12777 (56 FR 54757, October 18, 1991). The use of dispersants, other chemical agents, and biological additives to respond to oil spills in U.S. waters is governed by Subpart J of the NCP (40 CFR 300.900).

To place a product on the Schedule, Subpart J requires that a product manufacturer conduct specific toxicity and effectiveness tests and submit the corresponding technical product data and other required information to the EPA Product Schedule Manager in the Office of Emergency Management (OEM). EPA has established an effectiveness threshold for listing dispersants (40 CFR 300.920(a)(2)). Only those dispersants that meet or exceed the established threshold will be listed on the Schedule. In addition, at 40 CFR 300.915(d), EPA requires respondents to test bioremediation agents for effectiveness, using the testing protocol contained in Appendix C to part 300. The Bioremediation Agent Effectiveness Test is used to compare the effectiveness of different bioremediation agents. The objective of the effectiveness testing protocol is to provide empirical laboratory evidence that evaluates a bioremediation agent's ability to enhance biodegradation compared to the degradation due to the natural population of oil degrading microbes.

Collection and submission to EPA of the toxicity and effectiveness tests and technical product data is mandatory if a manufacturer wants to place a product on the Schedule. All information is typically submitted on paper however, once a company contacts EPA, the Product Schedule Manager can allow some data and information to be submitted electronically. At 40 CFR 300.920(c), respondents may assert that certain information in the technical product data submissions is confidential business information. EPA will handle such claims pursuant to the provisions in 40 CFR part 2, subpart B. Such information must be submitted separately from non-confidential information, clearly identified, and clearly marked "Confidential Business Information." If the applicant fails to make such a claim at the time of submittal, EPA may make the information available to the public without further notice.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 28 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action include, but are not limited to, manufacturers of bioremediation agents, dispersants, surface collecting agents, surface washing agents and other chemical agents and biological additives used as countermeasures against oil spills.

Estimated Number of Respondents: 14 per year.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 390.

Estimated Total Annual Cost: $100,493 includes $82,800 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is no change of hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

Dated: June 29, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–16322 Filed 7–2–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9171–7]

National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a public teleconference of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice to the EPA Administrator on a broad range of environmental policy, technology, and management issues. NACEPT represents diverse interests from academia, industry, non-governmental organizations, and local, State, and tribal governments. The Council will be discussing comments it is developing on the draft EPA FY 2011–2015 Strategic Plan. The Council will also be discussing the workplans it is developing to respond to EPA's request for advice on workforce issues the Agency is facing and how EPA can best address the needs of vulnerable populations. A copy of the agenda for the meeting will be posted at *http://www.epa.gov/ocem/nacept/cal-nacept.htm.*

DATES: NACEPT will hold a public teleconference on Thursday, July 22, 2010 from 1 p.m.–4 p.m. Eastern Daylight Time.

ADDRESSES: The meeting will be held in the U.S. EPA East Building, 1201 Constitution Ave., NW., Room 1132, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Nancy New, Acting Designated Federal Officer, *new.nancy@epa.gov,* (202) 564–0464, U.S. EPA, Office of Cooperative Environmental Management (1601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments to NACEPT should be sent to Stephanie McCoy at (202) 564–2294 or *mccoy.stephanie@epa.gov* by Monday, July 19, 2010. The public is welcome to attend all portions of the meeting, but seating is limited and is allocated on a first-come, first-serve basis. Members of the public wishing to gain access to the conference room on the day of the meeting must contact Stephanie McCoy at (202) 564–2294 or *mccoy.stephanie@epa.gov* by July 19, 2010.

MEETING ACCESS: For information on access or services for individuals with disabilities, please contact Stephanie McCoy at (202) 564–2294 or *mccoy.stephanie@epa.gov.* To request accommodation of a disability, please contact Stephanie McCoy, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: June 28, 2010.

Nancy New,

Acting Designated Federal Officer.

[FR Doc. 2010–16328 Filed 7–2–10; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board

Sunshine Act; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 8, 2010, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. *Approval of Minutes*
- June 10, 2010

B. *New Business—Regulations*
- Proposed Rule—Lending and Leasing Limits and Risk Management

C. *Reports*
- Semi-Annual Report on OE Operations
- OE Quarterly Report on the Farm Credit System

Closed Session*

Reports
- Report on Institutions' Supervisory, Enforcement, and Oversight Activities

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Dated: June 30, 2010.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 2010–16459 Filed 7–1–10; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: June 7, 2010.

Pamela Johnson,

Regulatory Editing Specialist, Federal Deposit Insurance Corporation.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10246	Arcola Homestead Savings Bank	Arcola	IL	6/04/2010
10247	First National Bank	Rosedale	MS	6/04/2010
10248	TierOne Bank	Lincoln	NE	6/04/2010

[FR Doc. 2010–16318 Filed 7–2–10; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: June 28, 2010.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10251	First National Bank	Savannah	GA	6/25/2010
10252	High Desert State Bank	Albuquerque	NM	6/25/2010
10253	Peninsula Bank	Englewood	FL	6/25/2010

[FR Doc. 2010–16320 Filed 7–2–10; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: June 15, 2010.

Pamela Johnson

Regulatory Editing Specialist, Federal Deposit Insurance Corporation.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10249	Washington First International Bank	Seattle	WA	06/11/2010

[FR Doc. 2010–16319 Filed 7–2–10; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

DATE AND TIME: Thursday, July 1, 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.

Discussion of Audit Policies and Procedures.

Report of the Audit Division on the AFL–CIO COPE PCC.

Report of the Audit Division on CWA–COPE.

Report of the Audit Division on the Tennessee Republican Party Federal Election Account.

Report of the Audit Division on the Washington State Democratic Central Committee.

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, Deputy 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.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2010–16100 Filed 7–2–10; 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 July 20, 2010.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Patriot Financial Partners, GP, L.P.; Patriot Financial Partners, L.P.; Patriot Financial Partners Parallel, L.P.; Patriot Financial Partners, GP, LLC; Patriot Financial Managers, L.P.; Ira M. Lubert; W. Kirk Wycoff; and James J. Lynch, all of Philadelphia, Pennsylvania; to acquire voting shares of Palmetto Bancshares, Inc., and thereby indirectly acquire voting shares of The Palmetto Bank, both of Greenville, South Carolina.

Board of Governors of the Federal Reserve System, June 30, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–16315 Filed 7–2–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Trans No.	ET req status	Party name
26–APR–10	20100597	G	PBF Energy Partners LP.
		G	Valero Energy Corporation.
		G	The Premcor Refining Group Inc.
		G	The Premcor Pipeline Company.
	20100598	G	AEA Investors 2006 Fund L.P.
		G	HMG Holdings, LLC.
		G	HMG Holdings, LLC.
	20100602	G	Vallourec SA.
		G	Lime Rock Partners II, L.P.
		G	Serimax Holdings, S.A.S.
27–APR–10	20100454	G	David Black.
		G	Gannett Co., Inc.
		G	Hawaii Tourism, LLC.
		G	The Courier-Journal, Inc.
		G	Indiana Newspapers, Inc.
		G	Gannett Pacific Corporation, Inc.
		G	Gannett Satellite Information.
		G	Network, Inc.
	20100588	G	Apple Inc.
		G	Siri, Inc.
		G	Siri, Inc.
28–APR–10	20100606	G	AIG Credit Facility Trust.
		G	Prudential plc.
		G	Prudential Group Limited.
29–APR–10	20100566	G	Armor TPG Holdings LLC.
		G	Armstrong World Industries, Inc.
		G	Asbestos Personal Injury.
		G	Armstrong World Industries, Inc.
	20100605	G	Brookfield Special Situations II L.P.
		G	Ainsworth Lumber Co. Ltd.
		G	Ainsworth Lumber Co. Ltd.
	20100609	G	Halliburton Company.
		G	Boots & Coots, Inc.
		G	Boots & Coots, Inc.
30–APR–10	20100612	G	SandRidge Energy, Inc.
		G	Arena Resources, Inc.
		G	Arena Resources, Inc.
	20100614	G	Kinder Morgan Energy Partners, L.P.
		G	KinderHawk Field Services LLC.
		G	KinderHawk Field Services LLC.
	20100616	G	Quantum Resources A1, LP.
		G	Denbury Resources Inc.
		G	Encore Operating, L.P.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
	20100619	G	Rush Enterprises, Inc.
		G	Edward S. Pace.
		G	Lake City International Trucks.
		G	St. George, Inc.
		G	Lake City Trucks, LLC.
		G	Lake City Idealease, LLC.
		G	Lake City Companies, LLC.
		G	Red Rock Financial Services, LLC.
		G	RPBL Properties, LLC.
		G	BGS Investments, LLC.
		G	BGC Future, LLC.
		G	ESP Future, LLC.
	20100621	G	Mr. Li Shufu.
		G	Ford Motor Company.
		G	Volvo Cars of North America, LLC.
		G	Volvo Car Corporation.
	20100625	G	Banijay Holding S.A.S.
		G	Jonathan B. Murray.
		G	Bunim-Murray Productions.
		G	M Theory Entertainment, Inc.
		G	Mobility Production, Inc.
	20100626	G	OCP Trust.
		G	United States Infrastructure Holdings, Inc.
		G	United States Infrastructure Holdings, Inc.
03–MAY–10	20100581	G	MHT AG.
		G	GEF Clean Technology Fund, L.P.
		G	Unirac, Inc.
	20100628	G	Warburg Pincus Private Equity X, L.P.
		G	AmRest Holdings SE.
		G	AmRest Holdings SE.
	20100631	G	Apache Corporation.
		G	Mariner Energy, Inc.
		G	Mariner Energy, Inc.
05–MAY–10	20100603	G	Maxim Integrated Products, Inc.
		G	Golden Gate Capital Investment Fund II, L.P.
		G	Teridian Semiconductor Holdings Corporation.
	20100604	G	JANA Master Fund, Ltd.
		G	Questar Corporation.
		G	Questar Corporation.
07–MAY–10	20100608	G	Covenant Health.
		G	Morristown-Hamblen Hospital Association.
		G	Morristown-Hamblen Healthcare System.
	20100630	G	Emera Inc.
		G	Maine & Maritimes Corporation.
		G	Maine & Maritimes Corporation.
	20100636	G	Ceres Global Ag Corp.
		G	Whitebox Commodities Holding Corporation.
		G	Whitebox Commodities Holding Corporation.
	20100637	G	Oak Hill Capital Partners III L.P.
		G	Code Hennessy & Simmons IV LP.
		G	The Hillman Companies, Inc.
	20100639	G	Friedman Fleischer & Lowe Capital Partners, L.P.
		G	Friedman Fleischer & Lowe Capital Partners II, L.P.
		G	KS II Holdings, Inc.
	20100646	G	GTCR Fund IX/A, L.P.
		G	Johnson & Johnson.
		G	Artemis Medical, Inc.
		G	Ethicon Endo-Surgery.
	20100649	G	MDCPVI TU Holdings, LLC.
		G	TransUnion Corp.
		G	TransUnion Corp.
10–MAY–10	20100622	G	H.I.G. Bayside Debt & LBO Fund II, L.P.
		G	FCC Investors, LLC.
		G	First Capital Holdings, Inc.
	20100648	G	Stifel Financial Corp.
		G	Thomas Weisel Partners Group, Inc.
		G	Thomas Weisel Partners Group, Inc.
11–MAY–10	20100624	G	Constellation Energy Group, Inc.
		G	Navasota Funding Corporation.
		G	Navasota Wharton Energy LLC.
		G	Navasota Odessa Energy Partners LP.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Navasota Wharton Energy Partners LP.
		G	Navasota Odessa Energy LLC.
	20100643	G	QBE Insurance Group Limited.
		G	The Lightyear Fund, L.P.
		G	Lightyear NAU Acquisition, Inc.
	20100658	G	ZHA FLNG, LLC.
		G	Freeport LNG Development, L.P.
		G	Freeport LNG Development, L.P.
13–MAY–10	20100650	G	Aurora Resurgence Fund (C) L.P.
		G	Alexey Mordashov.
		G	Newco.
14–MAY–10	20090667	G	Agilent Technologies, Inc.
		G	Varian, Inc.
		G	Varian, Inc.
	20100493	G	MSCI Inc.
		G	RiskMetrics Group, Inc.
		G	RiskMetrics Group, Inc.
	20100655	G	Danaher Corporation.
		G	Thoratec Corporation.
		G	International Technidyne Corporation.
	20100659	G	Theodore J. Leonsis.
		G	Washington Sports & Equipment Limited Partnership.
		G	Washington Sports & Equipment Limited Partnership.
	20100662	G	Oak Hill Capital Partners III, L.P.
		G	Wellspring Capital Partners III, L.P.
		G	Dave & Buster's Holdings, Inc.
	20100663	G	Iconix Brand Group, Inc.
		G	The Edward W. Scripps Trust.
		G	Character Licensing, LLC.
	20100677	G	Thomas H. Lee Equity Fund VI, L.P.
		G	Sterling Financial Corporation.
		G	Sterling Financial Corporation.
	20100678	G	Thomas H. Lee Parallel Fund VI, L.P.
		G	Sterling Financial Corporation.
		G	Sterling Financial Corporation.
17–MAY–10	20100618	G	Adventist Health System Sunbelt Healthcare Corporation.
		G	University Community Hospital, Inc.
		G	University Community Hospital, Inc.
	20100665	G	The Procter & Gamble Company.
		G	John and Annie Rademakers.
		G	Natura Pet Products, Inc.
	20100679	G	Calpine Corporation.
		G	Pepco Holdings, Inc.
		G	Conectiv Energy Holding Company, LLC.
18–MAY–10	20100629	G	North Short-Long Island Jewish Health System, Inc.
		G	LHH Corporation.
		G	Lenox Hill Hospital.
	20100640	G	Symantec Corporation.
		G	PGP Corporation.
		G	PGP Corporation.
	20100660	G	L'Oreal S.A.
		G	Esther Sue Weingarten.
		G	Essie Cosmetics, Ltd.
	20100680	G	Shield Topco S.a.r.l.
		G	Sophos plc.
		G	Sophos plc.
21–MAY–10	20100568	G	Triumph Group, Inc.
		G	Carlyle Partners III, L.P.
		G	Vought Aircraft Industries, Inc.
	20100569	G	Carlyle Partners III, L.P.
		G	Triumph Group, Inc.
		G	Triumph Group, Inc.
	20100620	G	AMC Entertainment Holdings Inc.
		G	Providence Equity Partners IV L.P.
		G	ShowPlace Theatres Holding Company LLC.
	20100634	G	Columbus Topco Holdings, Inc.
		G	Fidelity Sedgwick Holdings, Inc.
		G	Fidelity Sedgwick Holdings, Inc.
	20100654	G	AIG Credit Facility Trust.
		G	MetLife, Inc.
		G	MetLife, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
	20100671	G	Industrial Alliance Insurance and Financial Services Inc.
		G	Thoma Cressey Fund VI, L.P.
		G	American-Amicable Holding, Inc.
	20100681	G	KAG Holding Corp.
		G	Kenan Advantage Group Holdings Corp.
		G	Kenan Advantage Group Holdings Corp.
	20100682	G	Court Square Partners II, L.P.
		G	RWD Technologies Holdings, LLC.
		G	RWD Technologies, LLC.
	20100688	G	Apollo Investment Fund VII, L.P.
		G	CKE Restaurants, Inc.
		G	CKE Restaurants, Inc.
	20100690	G	Platinum Equity Capital Partners II, L.P.
		G	MegaPath Inc.
		G	MegaPath Inc.
	20100697	G	Church & Dwight Co., Inc.
		G	Anthony Moravec.
		G	Blairex Laboratories, Inc.
	20100710	G	Michael W. Ferro, Jr.
			Merge Healthcare Incorporated.
			Merge Healthcare Incorporated.
24–MAY–10	20100684	G	Valeant Pharmaceuticals International.
		G	Princeton Pharma Holdings LLC.
		G	Princeton Pharma Holdings LLC.
	20100685	G	ABB Ltd.
		G	Trevor Lloyd.
		G	Ventyx Inc.
		G	Ventyx Software Inc.
		G	Ventyx Dutch Holdings B.V.
	20100703	G	Bank of America Corporation.
		G	Lorillard, Inc.
		G	Lorillard, Inc.
	20100719	G	CGI Group Inc.
		G	Stanley, Inc.
		G	Stanley, Inc.
26–MAY–10	20100695	G	Jones Apparel Group, Inc.
		G	Jones Apparel Group, Inc.
		G	Stuart Weitzman Holdings, LLC.
	20100711	G	ABRY Partners VI, L.P.
		G	Leeds Equity Partners IV, L.P.
		G	Instituto de Banca y Comercio, Inc.
		G	Leeds IV Advisors, Inc.
27–MAY–10	20100641	G	Cerberus Institutional Partners, L.P.
		G	DynCorp International Inc.
		G	DynCorp International Inc.
	20100661	G	Brown Shoe Company, Inc.
		G	Samuel and Louise Edelman.
		G	Edelman Shoe, Inc.
	20100683	G	Jack Henry & Associates, Inc.
		G	SEI V iPay AIV, L.P.
		G	iPay Technologies, LLC.
	20100704	G	Castle Harlan Partners V L.P.
		G	IDQ Holdings, Inc.
		G	IDQ Holdings, Inc.
28–MAY–10	20100686	G	Bank of America Corporation.
		G	Microsoft Corporation.
		G	Microsoft Corporation.
	20100706	G	Providence Equity Partners V L.P.
		G	Dayton-Cox Trust A.
		G	AutoTrader.com, Inc.
	20100707	G	Providence Equity Partners VI–A L.P.
		G	Dayton-Cox Trust A.
		G	AutoTrader.com, Inc.
	20100709	G	American Financial Group, Inc.
		G	UniGroup, Inc.
		G	Vanliner Group, Inc.
	20100713	G	Cincinnati Bell Inc.
		G	ABRY Partners V, L.P.
		G	Cyrus Networks, LLC.
	20100715	G	Newco, c/o Warburg Pincus LLC.
		G	Pearson plc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Interactive Data Corporation.
	20100716	G	JLL Partners Fund VI, L.P.
		G	The Huron Fund II, L.P.
		G	Red Holdings, Inc.
	20100717	G	Industrial Growth Partners III, L.P.
		G	Fred H. Stubblefield, Jr.
		G	Controls Southeast, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative or Renee Chapman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2010–16065 Filed 7–2–10; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration for Native Americans

AGENCY: Administration for Native Americans, ACF, HHS.

ACTION: Notice to Award Five Urgent Single-Source Grants.

CFDA Number: 93.612.

Legislative Authority: This award will be made pursuant to Section 803 of the Native American Programs Act of 1974.

Project Period: 7/1/2010–12/31/2010.

SUMMARY: This notice announces that the Administration for Children and Families (ACF), Administration for Native Americans (ANA) has awarded five single-source urgent grants to fund projects that are designed to mitigate the impact of the devastation caused by the tsunami that seriously damaged American Samoa on September 29, 2009. As a result of the devastating tsunami, 32 people were killed and 277 homes, schools, businesses, and transportation systems were destroyed. The event left the people of American Samoa traumatized and in need of assistance to re-start their lives. ACF/ANA is providing urgent financial assistance to four non-profit organizations and one local government agency to fund projects that will address a variety of recovery activities including the recording of accounts of the tsunami experience, developing a recovery plan, organizing youth cleanup activities, creating disaster preparedness programs, developing a community market, and building capacity through training of community members in traditional farming, handicraft making, and home businesses. All five grantees are located in American Samoa. The following projects are funded:

- *Catholic Social Services ($72,454).* This grant will create and implement training on traditional farming, handicraft making, and management of home businesses, and establish a community market to promote and sell the participants' produce and products.
- *Native American Samoa Advisory Council ($55,595*). This grant will design and implement training and capacity-building focused on traditional farming techniques. Through this project, the grantee will promote nutrition, food security, and social and economic stability.
- *Intersections, Inc. ($106,750).* This grant will begin to restore and rebuild the community's social well-being and self-confidence through support services, recording the stories of tsunami survivors, and developing a recovery plan.
- *Pacific Islands Center for Educational Development Youth Serving Samoa ($42,004).* This grant will support cleanup activities in six villages through youth-organized village beautification days and develop a youth campaign on disaster preparedness.
- *American Samoa Government Department of Parks and Recreation ($35,802).* This grant will work to restore social and emotional stability through the restoration of Amanave Beach Park. The restoration of the park will allow the children of the village to use play as a way to enjoy childhood while at the same time create a place for adults and elders to gather to support one another.

FOR FURTHER INFORMATION CONTACT: Carrie Fanueli, ANA Program Specialist, Administration for Native Americans, 370 L'Enfant Promenade, SW., Washington, DC 20047. Telephone: 877–922–9262. E-mail: *Carrie.Fanueli@acf.hhs.gov.*

Dated: June 29, 2010.

Lillian A. Sparks,

Commissioner for Native Americans, Administration for Native Americans.

[FR Doc. 2010–16312 Filed 7–2–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Acute Liver Failure Study.

Date: July 22, 2010.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *ls38z@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 29, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–16340 Filed 7–2–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Urogenital Development Program Project.

Date: July 26, 2010.

Time: 10:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–7791. *goterrobinsonc@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Urolithiasis Planning Grant.

Date: July 26, 2010.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Paul A. Rushing, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–8895. *rushingp@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Human Brown Adipose Tissue.

Date: July 30, 2010.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Robert Wellner, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 757, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–4721. *rw175w@nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Ancillary Studies to Major Ongoing Clinical Research Studies in Liver Diseases.

Date: August 3, 2010.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–7637. *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 29, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–16338 Filed 7–2–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 13, 2010, 8 a.m. to July 14, 2010, 5 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on June 14, 2010, 75 FR 33626–33627.

The meeting will be held July 14, 2010, 10 a.m. to July 15, 2010, 5 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: June 29, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–16336 Filed 7–2–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Auditory and Chronic Fatigue Syndrome.

Date: July 20, 2010.

Time: 1:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Lynn E Luethke, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 806–3323, *luethkel@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: AIDS Behavioral Sciences.

Date: July 28, 2010.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Hilary D Sigmon, PhD, Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, (301) 594–6377, *sigmonh@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 29, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–16334 Filed 7–2–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

National Advisory Council for Healthcare Research and Quality: Request for Nominations for Public Members

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of request for nominations for public members.

SUMMARY: Section 921 (now Section 941 of the Public Health Service Act (PHS Act)), 42 U.S.C. 299c, established a National Advisory Council for Healthcare Research and Quality (the Council). The Council is to advise the Secretary of HHS (Secretary) and the Director of the Agency for Healthcare Research and Quality (AHRQ) on activities proposed or undertaken to carry out the agency mission including providing guidance on (A) Priorities for health care research, (B) the field of health care research including training needs and information dissemination on health care quality and (C) the role of the Agency in light of private sector activity and opportunities for public private partnerships.

Seven current members' terms will expire in November 2010. To fill these positions in accordance with the legislative mandate establishing the Council, we are seeking individuals who are distinguished: (1) In the conduct of research, demonstration projects, and evaluations with respect to health care; (2) in the fields of health care quality research or health care improvement; (3) in the practice of medicine; (4) in other health professions; (5) in the fields of health care economics, information systems, law, ethics, business, or public policy; and (6) individuals who could represent the interests of patients and consumers of health care; and (7) the private health care sector (including health plans, providers, and purchasers) possibly including distinguished administrators of health care delivery systems., Individuals are particularly sought with experience and success in activities specified in the summary above.

DATES: Nominations should be received on or before 60 days after date of publication.

ADDRESSES: Nominations should be sent to Ms. Karen Brooks, AHRQ, 540 Gaither Road, Room 3006, Rockville, Maryland 20850. Nominations may also be e-mailed to mailto: *AHRQ National Advisory Council@AHRQ.hhs.gov* or faxed to (301) 427–1201.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Brooks, AHRQ, at (301) 427–1801.

SUPPLEMENTARY INFORMATION: Section 941 of the PHS Act, 42 U.S.C. 299c, provides that the Secretary shall appoint to the National Advisory council for Healthcare Research and Quality twenty one appropriately qualified individuals and specifies that at least seventeen members shall be representatives of the public and at least one member shall be a specialist in the rural aspects of one or more of the professions or fields listed in the above summary. In addition, the Secretary is directed to designate, as *ex officio* members, representatives from Federal agencies specified in the authorizing legislation, principally agencies that conduct or support health care research, as well as other Federal officials the Secretary may consider appropriate. The Council meets in the Washington, DC, metropolitan area, generally in Rockville, Maryland, approximately three times a year to provide broad guidance to the Secretary and AHRQ's Director, as described above, on the direction of and programs undertaken by AHRQ.

Seven individuals will be selected presently by the Secretary to serve on the Council beginning with the meeting in the spring of 2011. Members generally serve 3-year terms. Appointments are staggered to permit an orderly rotation of membership.

Interested persons may nominate one or more qualified persons for membership on the Council. Self-nominations are accepted. Nominations shall include: (1) A copy of the nominee's resume or curriculum vitae; and (2) a statement that the nominee is willing to serve as a member of the Council. Selected candidates will be asked to provide detailed information concerning their financial interests, consultant positions and research grants and contracts, to permit evaluation of possible sources of conflict of interest. Please note that once you are nominated, AHRQ may consider your nomination for future positions on the Council. In accordance with a Memorandum from the President dated June 18, 2010, Federally registered lobbyists are not eligible for positions on Federal advisory councils.

The Department seeks broad and diverse geographic representation on the Council. In addition, since AHRQ is mandated to conduct and support research concerning priority populations, which under 42 U.S.C. 299(c) includes: Low-income groups; minority groups; women; children; the elderly; and individuals with special health care needs, including individuals with disabilities and individuals who need chronic care or end-of-life health care, nominations of individuals with expertise in health care for these priority populations are encouraged.

Dated: June 25, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–16102 Filed 7–2–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 75 FR 22821–29, dated April 30, 2010) is amended to reflect the reorganization of the Division of Blood Disorders within the National Center on Birth Defects and Developmental Disabilities, Office of Noncommunicable Diseases, Injury and Environmental Health, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the title and function statement for the Office of the Director (CUBD1) and insert the following.

Office of the Director (CUBD1). (1) Provides leadership and guidance on strategic planning and implementation,

program priority setting, and policy development, to advance the mission of the Division of Blood Disorders, NCBDDD and CDC; (2) develops goals, objectives, and budget; monitors progress and allocation of resources, and reports accomplishments, future directions, and resource requirements; (3) facilitates scientific, policy and program collaboration among divisions and centers, and between CDC and other Federal/non-Federal partners; (4) promotes advancement of science throughout the division, supports program evaluation, and ensures that research meets the highest standards in the field; (5) provides medical expertise and consultation to planning, projects, policies and program activities; (6) advises the Office of the Director of NCBDDD on matters relating to prevention of complications due to blood disorders and coordinates division responses to requests for technical assistance or information on activities supported by the division; (7) develops and produces communications tools and public affairs strategies to meet the needs of division programs and mission; (8) represents the division at official professional and scientific meetings, both within and outside of CDC; (9) applies evaluation and prevention effectiveness functions in the assessment of blood disorder programs, projects and activities; (10) develops, implements and evaluates long term plans for surveillance, research and prevention activities pertaining to blood disorders; and (11) drafts and disseminates reports of future plans and needs to inform policy.

After the Office of the Director (CUBD1) Division of Blood Disorders, National Center on Birth Defects and Developmental Disabilities, Office of Noncommunicable Diseases, Injury and Environmental Health, Centers for Disease Control and Prevention, insert the following:

Epidemiology and Surveillance Branch (CUBDB). (1) Provides scientific leadership in the design and implementation of monitoring systems as well as designs and conducts epidemiologic and genetic research to identify causes, risk factors and complications of blood disorders in affected populations; (2) designs and manages surveillance systems to evaluate the incidence, morbidity, and mortality associated with blood diseases and disorders; (3) plans, develops and coordinates special surveys and populations studies to monitor and assess the complications of blood disorders; (4) designs and implements studies using surveillance data to identify risk factors for the complications of blood disorders, and evaluates the effectiveness of the prevention activities; (5) provides epidemiologic and medical consultation and technical assistance, including epidemic aids to State and local health departments, other governmental agencies, and other public and private institutions in the investigation of blood disorders and related complications; (6) designs and implements studies to evaluate the effectiveness of implemented prevention strategies in the treatment centers; (7) works closely with internal and external organizations in applying prevalence and incidence data to target and evaluate programs to prevent the complications of blood diseases and chronic hereditary disorders; (8) publishes findings and advances arising out of surveillance and epidemiologic research to the scientific and public health communities; (9) provides training services to States, localities, and other countries in investigation, diagnosis, prevention, and control of blood diseases and chronic hereditary disorders; (10) assists in designing, implementing, and evaluating prevention and counseling programs for persons and their families with chronic blood diseases and selected chronic hereditary disorders; (11) designs, implements and coordinates the prevention and surveillance activities of specialized Federally funded prevention centers organized to prevent the complications of blood diseases and chronic hereditary disorders; (12) conducts and supports both qualitative and quantitative research to expand the knowledge base related to blood disorders across the lifespan; and (13) collaborates with laboratory research branch and prevention research branch and incorporates the findings of these branches' activities which leads to prevention of complications of blood disorders.

Laboratory Research Branch (CUBDC). (1) Identifies new genetic markers of risk factors and clotting defects for affected groups; (2) provides reference laboratory diagnosis for multi-site epidemiologic and surveillance studies; (3) develops techniques and interpretation methods to improve molecular and coagulation diagnosis; (4) provides diagnostic support for epidemiologic studies and epidemic aids on emerging blood disorders and chronic hereditary disorders; (5) determines the mechanisms of pathogenesis and complications of blood disorders and chronic hereditary disorders; (6) conducts research and provides reference services on diagnostic techniques for blood disorders and chronic hereditary disorders; (7) conducts research to improve laboratory methodologies and materials; (8) where appropriate, maintains the national reference laboratory for blood disorders and chronic hereditary disorders; (9) works closely with entities and organizations within the agency and organizations external to the agency to provide laboratory services in support of projects whose primary aim is to prevent and reduce complications associated with blood disorders and chronic hereditary disorders; and (10) publishes findings and advances arising out of surveillance and epidemiologic research to the scientific and public health communities.

Prevention Research and Informatics Branch (CUBDD). (1) Performs health services research; (2) translates and evaluates the latest scientific advances from surveillance, epidemiology and laboratory support into enhanced delivery of care, prevention services, and information for affected populations; (3) develops, implements, evaluates and disseminates education and communication interventions that seek to identify and educate affected populations, providers and the public on health risks, protective factors and measures of effectiveness of health promotion activities and prevention of complications related to blood disorders; (4) collects, analyzes and prepares reports to document the prevalence and incidence of blood disorders and related complications and provides this information to affected populations through reports, publications, and public access data sets; (5) supports public health analysis to include facilitating data collection, data management, data manipulation, analysis, project reporting and presentation; (6) coordinates partnership activities; (7) assesses informatics needs and develops strategies to ensure accurate collection of data related to blood disorders and the division's activities; (8) conducts applied research to develop, evaluate, improve and standardize public information systems and educational modules which support the prevention of complications from blood disorders; (9) develops and maintains systems for collection, processing, validation, storage and dissemination of the highest quality information to study and monitor blood disorders; (10) disseminates findings and advances arising out of surveillance and epidemiologic research to the scientific and public health communities, and the

general public; (11) collaborates with and provides technical assistance, consultation, and training to local, State, Federal, and international agencies, universities and governmental and non-governmental organizations on blood disorders and health related issues; (12) collaborates with local, State, Federal, and international agencies, and appropriate governmental and non-governmental organizations to develop, review, and implement policies that advance the health of people with blood disorders across the lifespan; (13) collaborates with funded non-governmental agencies to disseminate best practices, identify areas of need, facilitate development and distribution of educational materials, and provide informational resources to States and affected populations and their caregivers; and (14) develops informatics related trainings and communicates informatics changes to external partners.

Dated: June 21, 2010.

William P. Nichols,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–16101 Filed 7–2–10; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HOMELAND SECURITY

[DHS Docket No. DHS–2009–0032]

Office for Civil Rights and Civil Liberties: Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCY: Office for Civil Rights and Civil Liberties, DHS.

ACTION: Notice; extension of comment period to July 17, 2010.

SUMMARY: The Department of Homeland Security is extending the public comment period until July 17, 2010, for proposed guidance to recipients of Federal financial assistance regarding Title VI's prohibition against national origin discrimination affecting limited English proficient persons. This proposed guidance is issued pursuant to Executive Order 13166 and is consistent with government-wide guidance previously issued by the Department of Justice.

DATES: Written comments are invited from interested persons and organizations no later than July 17, 2010.

ADDRESSES: Comments should be sent to:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Officer for Civil Rights and Civil Liberties, U.S. Department of Homeland Security, 245 Murray Lane, SW., Building 410, Washington, DC 20528, Mail Stop 0190. To ensure proper handling, please reference DHS Docket No. DHS–2009–0032 on the correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions. DHS will accept comments in alternate formats such as Braille, audiotape, etc. by mail.
- *E-Mail: crcl@dhs.gov.* The subject line should include "LEP Docket DHS–2009–0032."
- *TTY:* 202–401–0470, Toll Free TTY: 1–866–644–8361. TTY callers may also contact us through the Federal Relay Service TTY at (800) 877–8339. Other Federal Relay Service options are available at *www.gsa.gov/fedrelay.*
- *Facsimile:* (202) 401–4708 (not a toll-free number).

Instructions for filing comments: All submissions received must include the agency name and DHS docket number DHS–2009–0032. All comments received (including any personal information provided) will be posted without change to *http://www.regulations.gov.*

Reviewing comments: Public comments may be viewed online at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rebekah Tosado, Senior Advisor to the Officer for Civil Rights and Civil Liberties, Office for Civil Rights and Civil Liberties, Department of Homeland Security, 245 Murray Lane, SW., Building 410, Washington, DC 20528, Mail Stop 0190. Toll free: 1–866–644–8360 or TTY 1–866–644–8361. Local: 202–401–1474 or TTY: 202–401–0470.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security issued proposed guidance on June 17, 2010, for recipients of Federal financial assistance regarding Title VI's prohibition against national origin discrimination affecting limited English proficient persons. 75 FR 34465. Due to inadvertence, the date specified for receipt of comments did not permit a full 30 day comment period. Accordingly, the Department of Homeland Security is extending the comment period to July 17, 2010.

Margo Schlanger,

Officer for Civil Rights and Civil Liberties.

[FR Doc. 2010–16362 Filed 7–2–10; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Application—Alternative Inspection Services (SENTRI Application and FAST Commercial Driver Application)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0121.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application—Alternative Inspection Services including the SENTRI Application (CBP Form 823S) and the FAST Commercial Driver Application (CBP Form 823F). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before September 7, 2010, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn.: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, Attn.: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and

Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application—Alternative Inspection Services including the SENTRI Application and the FAST Commercial Driver Application.

OMB Number: 1651–0121.

Form Numbers: 823S (SENTRI) and 823F (FAST).

Abstract: This collection of information is to implement CBP's Trusted Traveler Programs, including the Secure Electronic Network for Travelers Rapid Inspection (SENTRI), which allows expedited entry at specified southwest land border ports of entry, and the Free and Secure Trade program (FAST), which provides expedited border processing for known, low-risk commercial drivers. The purpose of the Trusted Traveler programs is to provide prescreened travelers expedited entry into the United States. The benefit to the traveler is less time spent in line waiting to be processed by CBP. The Trusted Traveler programs are provided for in 8 CFR 235.7. Applicants may apply for these programs using paper forms available at *http://www.cbp.gov* or through the Global On-line Enrollment System (GOES) at *https://goes-app.cbp.dhs.gov.*

Current Actions: This submission is being made to revise the burden hours as a result of revised estimates for Forms 823S and 823F.

Type of Review: Extension with a change to the burden hours.

Affected Public: Businesses, Individuals.

SENTRI (Form 823S):

Estimated Number of Respondents: 63,415.

Estimated Number of Total Annual Responses: 63,415.

Estimated Time per Response: 40 minutes.

Estimated Total Annual Burden Hours: 42,488.

Estimated Costs: $1,585,375.

FAST (Form 823F):

Estimated Number of Respondents: 28,910.

Estimated Number of Total Annual Responses: 28,910.

Estimated Time per Response: 40 minutes.

Estimated Total Annual Burden Hours: 19,370.

Estimated Costs: $1,445,500.

Dated: June 30, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–16314 Filed 7–2–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Intent To Prepare Four Programmatic Environmental Impact Statements for the Northern Border Between the United States and Canada and To Conduct Public Scoping Meetings

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Notice of Intent to Prepare Programmatic Environmental Impact Statements; Request for Comments; and Notice of Public Scoping Meetings.

SUMMARY: U.S. Customs and Border Protection (CBP) intends to prepare four Programmatic Environmental Impact Statements (PEISs) to identify and assess potential impacts upon the human environment of ongoing and potential future border security activities for the Northern Border between the United States and Canada. The anticipated area of study will extend approximately 100 miles south of the Northern Border. The four PEISs will address regions encompassing New England, the Great Lakes, states east of the Rocky Mountains, and states west of the Rocky Mountains.

This notice initiates the public scoping process for preparation of the PEISs. The purpose of the scoping process is to solicit public comments regarding the potential environmental impacts that may be addressed. This notice announces that CBP is requesting written comments and conducting public scoping meetings.

Additionally, the scoping process will allow CBP to gather information and allow the public to participate in consideration of historic preservation activities pursuant to Section 106 of the National Historic Preservation Act for activities along the Northern Border.

DATES: The scoping comment period will be 30 days beginning on the date this document is published in the **Federal Register**. To ensure consideration, comments must be received by August 5, 2010. Comments may be submitted as set forth in the **ADDRESSES** section of this document. Public scoping meetings will be held on various dates in July, 2010, as described in the **ADDRESSES** section of this document.

ADDRESSES: The following electronic and physical addressees are available for the public and other interested parties to provide written comments on the scope of the PEISs or to obtain additional information on the PEISs. *See* **SUPPLEMENTARY INFORMATION** for additional instructions for submitting written comments. To avoid duplication, please use only one of the following methods for providing written comments:

(a) *Via the World Wide Web at: http://www.NorthernBorderPEIS.com;* or

(b) *Via e-mail at: comments@NorthernBorderPEIS.com;* or

(c) *Via mail:* CBP Northern Border PEIS, P.O. Box 3625, McLean, Virginia 22102; or

(d) *Via fax:* (703) 760–4899.

CBP will hold public scoping meetings to obtain comments regarding the PEISs at the following locations:

- New England PEIS
  (1) Augusta, ME on July 12, 2010
  (2) Swanton, VT on July 13, 2010
- Great Lakes PEIS
  (1) Rochester, NY on July 12, 2010
  (2) Erie, PA on July 13, 2010
  (3) Massena, NY on July 14, 2010
  (4) Detroit, MI on July 21, 2010
- East of the Rocky Mountains PEIS
  (1) Duluth, MN on July 19, 2010
  (2) Minot, ND on July 21, 2010
  (3) Havre, MT on July 22, 2010
- West of the Rocky Mountains PEIS
  (1) Bellingham, WA on July 19, 2010
  (2) Bonners Ferry, ID on July 21, 2010

CBP will announce notice of the exact locations and times of the public meetings as well as other information about PEIS process through local newspapers, media, and the project Web site: *http://www.NorthernBorderPEIS.com.*

FOR FURTHER INFORMATION CONTACT: Jennifer Hass, CBP, Office of Administration, telephone (202) 344–1929. You may also visit the Northern Border PEIS Web site at: *http://www.NorthernBorderPEIS.com.*

SUPPLEMENTARY INFORMATION:

Background

U.S. Customs and Border Protection (CBP) protects the nation's borders from terrorism, human and drug smuggling, illegal migration, and agricultural pests while simultaneously facilitating the flow of legitimate travel and trade. CBP does so by integrating modern technology, deploying highly trained law enforcement personnel, and developing public and private sector partnerships that advance its overall mission.

At 5,500 miles in length, the Northern Border of the United States stands as the longest common border in the world. The terrain ranges from densely forested lands on the west and east coasts to open plains in the middle of the country. To complement its efforts, CBP uses partnerships with other Federal,

state, and local law enforcement agencies to meet the challenges of ensuring security while facilitating legitimate trade and travel along this expansive and complex border area.

CBP leverages technology and partnerships to detect cross border incursions between the Ports of Entry (POEs) and, when necessary due to distances or challenging terrain, CBP uses an array of tools in interdiction efforts. At the POEs, CBP uses state of the art technology to efficiently screen the heavy volume of passengers and cargo transiting the U.S./Canada border to ensure that no illicit goods or travelers cross into the United States.

Throughout the next five to seven years, CBP anticipates that it will implement enhancements to its border security activities. These may include installing or enhancing sensing equipment networks; changing patrol levels and areas; improving relationships among partner law enforcement agencies; increasing manned and unmanned aerial and maritime surveillance activities; improving cargo scanning techniques; developing and using enhanced communication technologies; and enhancing comprehensive response, interdiction, and detention capabilities. CBP may use, maintain, upgrade, or deploy various physical facilities and infrastructure, including, POEs, checkpoints, stations, water and power utilities, roads, hangers and helipads, boat ramps and docks, kennels, and communication and surveillance systems towers. Vehicles used by CBP may include ATVs, snowmobiles, marine vessels, and aircraft. CBP plans to deploy the most appropriate mix of security enhancement measures for the Northern Border based on the threat and on the constraints of the operating environment.

In support of CBP's mission and with an interest in understanding the array of environmental considerations along the border, CBP intends to prepare four Programmatic Environmental Impact Statements (PEISs) to analyze the environmental effects of current and potential future CBP border security activities along the Northern Border between the United States and Canada. CBP will prepare draft PEISs initially, to be followed, after a period of public comment, with final PEISs. Because this effort is "programmatic" in nature, the study will not seek to define effects for a specific or planned action. Instead, it will analyze the overall effects of activities supporting the homeland security mission of CBP.

Purpose and Area of Study

CBP will use the PEISs to improve planning of future actions to meet its homeland security requirements. CBP plans to evaluate the potential environmental effects of its activities conducted along the Northern Border between the United States and Canada, including an anticipated area of study extending approximately 100 miles south of the Northern Border. Because of the diversity of conditions from east to west, CBP intends to prepare four regional PEISs, covering the border environment for the following areas:

(1) New England region (Maine, New Hampshire, and Vermont)
(2) Great Lakes region (New York, Pennsylvania, Ohio, Michigan, and Wisconsin)
(3) East of the Rocky Mountains region (Minnesota, North Dakota, and eastern Montana)
(4) West of the Rocky Mountains region (western Montana, Idaho and Washington)

CBP plans to use the information derived from the analysis in the PEISs in management, planning, and decision-making for its mission and its environmental stewardship responsibilities, as well as to establish a foundation for future impact analyses.

Public Scoping Process

This notice initiates the public scoping process in preparation of the PEISs. All interested parties are invited to participate in the scoping process. CBP invites agencies, organizations, and the general public to provide input to this process of scoping environmental issues for consideration in the PEISs. CBP welcomes input on potentially significant environmental issues associated with the uses of technologies, facilities, infrastructure, and personnel for border security described above in the Background section or other connected actions to be addressed in the PEISs. Comments may be in terms of broad areas or restricted to specific areas of concern. Written comments may be submitted as described in the **ADDRESSES** section of this document. When submitting comments, please identify the region or PEIS of concern to which your comments are related, as well as your name and address. Respondents may request to withhold names or street addresses, except for city or town, from public view or from disclosure under the Freedom of Information Act. Such a request must be stated prominently at the beginning of the comment. Such requests will be honored to the extent allowed by law. This request to withhold personal information does not apply to submissions from organizations or businesses, or from individuals identifying themselves as representatives or officials of organizations or businesses.

As part of the scoping process, CBP will hold 11 public scoping meetings. The purpose of these meetings is to obtain input concerning the range of environmental considerations for inclusion within the PEISs. These meetings will be held at locations near the Northern Border in the early evening at the locations listed under **ADDRESSES** above. The public is encouraged to communicate information and comments on issues it believes CBP should address in the PEISs. CBP will announce notice of the exact locations and times of the public meetings as well as other information about its Northern Border security activities through local newspapers, media, and the project Web site: *http://www.NorthernBorderPEIS.com.*

After the public scoping period is complete and CBP has reviewed the results, a compilation list of comments will be included in a scoping report, which will be made available on the project Web site: *http://www.NorthernBorderPEIS.com.* This report will not identify individual citizens' comments by name or address. The report will also be made available upon written request.

Public Involvement in Historic Preservation Activities Under Section 106 of the National Historic Preservation Act

Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) requires Federal agencies to review all actions which may affect resources listed on, or eligible for, the National Register of Historic Places in order to take into account the effects of their undertakings on historic properties and to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertakings. During the scoping process, CBP plans to gather information and allow the public to express views regarding the effects of CBP programs on cultural resources. During the process of public scoping and preparation of the PEISs for the Northern Border, CBP seeks to identify interested parties and obtain public comments on historic preservation issues related to CBP activities along the Northern Border.

Next Steps

This process is being conducted pursuant to NEPA, the Council on

Environmental Quality Regulations for Implementing the NEPA (40 CFR parts 1500–1508), and Department of Homeland Security Directive 023–01 (renumbered from 5100.1), *Environmental Planning Program of April 19, 2006.* CBP will continue to announce information on exact locations and times of public meetings as well as project information through local newspapers and the project Web site: *http://www.NorthernBorderPEIS.com.* In accordance with NEPA, the draft PEISs will be made available to the public for review and comment through a Notice of Availability (NOA) in the **Federal Register**. The NOA will provide directions for obtaining copies of the draft PEISs as well as dates and locations for any associated public participation meetings. After a public comment period on the draft PEIS, CBP will complete a final PEIS.

Dated: June 30, 2010.

Gregory Giddens,

Executive Director, Facilities Management and Engineering, Office of Administration.

[FR Doc. 2010–16392 Filed 7–2–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1900–DR; Docket ID FEMA–2010–0002]

Minnesota; 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 State of Minnesota (FEMA–1900–DR), dated April 19, 2010, and related determinations.

DATES: *Effective Date:* June 29, 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: The notice of a major disaster declaration for the State of Minnesota is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 19, 2010.

Nicollet County for Public Assistance.

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. 2010–16245 Filed 7–2–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2009–0112]

Privacy Act of 1974; Department of Homeland Security/ALL—029 Civil Rights and Civil Liberties Records System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue a Department of Homeland Security system of records titled, "Department of Homeland Security Office for Civil Rights and Civil Liberties—001 Matters System of Records," January 6, 2004. The system name is being changed to, "Department of Homeland Security/ALL—029 Civil Rights and Civil Liberties Records System of Records." This name change, along with other changes to the system, are made to capture the expansion of the overall system of records to include both the Department Office for Civil Rights and Civil Liberties, as well as all component offices that perform civil rights and civil liberties functions, and staff of components who do not have a designated civil rights and civil liberties office but who do perform related civil rights and civil liberties functions (collectively referred to as "civil rights and civil liberties staff"). The Department's civil rights and civil liberties staff advise Departmental and/or component leadership, personnel, and partners about civil rights and civil liberties issues, ensuring respect for civil rights and civil liberties in policy decisions and implementation of those decisions. Civil rights and civil liberties staff also review and assess information concerning abuses of civil rights, civil liberties, such as profiling on the basis of race, ethnicity, or religion, by employees and officials of the Department of Homeland Security. The Department's civil rights and civil liberties staff also ensure that all federally-assisted and federally-conducted programs or activities of the Department comply with the provisions of Title VI of the Civil Rights Act of 1964. The Department's civil rights and civil liberties staff investigate complaints, including: allegations that individuals acted under color of law or otherwise abused their authority; discrimination; profiling; violations of the confidentiality provisions of the Violence Against Women Act; conditions of detention; treatment; due process; and watch list issues.

As a result of the biennial review of this system, updates have been made to change the system name to "Department of Homeland Security/ALL—029 Civil Rights and Civil Liberties Records System of Records" to reflect that the system is a Department-wide system of records, as well as updates to the: categories of records; routine uses; retention and disposal; and Privacy Act exemptions.

Exclusion is made from this system for Office of Inspector General records relating to civil rights and civil liberties. Office of Inspector General records are covered by Department of Homeland Security/Office of Inspector General—002 Investigative Records System of Records, October 28, 2009.

This updated system will continue to be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before August 5, 2010. This new system will be effective August 5, 2010.

ADDRESSES: You may submit comments, identified by docket number [DHS–2009–0112] by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- Instructions: All submissions received must include the agency name and docket number for this rulemaking.

All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

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

FOR FURTHER INFORMATION CONTACT: For general questions please contact: For Headquarters: Complaints Manager (202–357–8178), Office for Civil Rights and Civil Liberties, Department of Homeland Security, 1201 New York Avenue, NW., Washington DC 20528. For components of DHS, the System Manager can be found at *http://www.dhs.gov/foia* under "contacts." For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Homeland Security's (DHS) civil rights and civil liberties staff, including components, as well as staff of components who do not have a designated civil rights and civil liberties office, but who do perform related functions (civil rights and civil liberties staff), rely on the DHS/Civil Rights and Civil Liberties (CRCL)–001 Matters System of Records (69 FR 70464, December 6, 2004) and other component specific systems of records, for the collection and maintenance of records that concern the Department's civil rights and civil liberties records. The system name is being changed to "DHS/ALL–029 Civil Rights and Civil Liberties Records System of Records" to reflect that the system is a Department-wide system of records and that all DHS civil rights and civil liberties records will now be covered by the DHS/ALL–029 Civil Rights and Civil Liberties Records System of Records. This name change, along with other changes to the system, are made to capture the expansion of the overall system of records including the Department's CRCL Office, as well as component civil rights and civil liberties staff, staff of components who do not have a designated civil rights and civil liberties office but who do perform related functions, and to meet investigative and reporting responsibilities related to civil rights and civil liberties. The DHS/ALL–029 Civil Rights and Civil Liberties Records System of Records is the baseline system for civil rights and civil liberties activities, as led by the DHS Officer for Civil Rights and Civil Liberties, for the Department.

Civil rights and civil liberties complaints are initially reviewed to determine if the Department has jurisdiction over the alleged complaint. If the Department has jurisdiction and accepts the complaint, basic information about the case is maintained and processed within the DHS/ALL–029 Civil Rights and Civil Liberties Records System of Records. Information in this system may include, but is not limited to: Name; social security number or other identifier; address; phone number; alien registration number and other identifying data as may be necessary to review the complaint. If the complainant provides more personally identifiable information (PII) than is necessary, the information is not captured, but may remain in the paper file as information provided by the complainant.

Civil rights and civil liberties records may be referred to the Office of Inspector General (OIG) for handling under the Inspector General Act of 1978, as amended. The OIG decides whether it will pursue the case, or decline to investigate it and refer it back to CRCL or component civil rights and civil liberties office, staff of components who do not have a designated civil rights and civil liberties office, but who do perform related functions, for appropriate action. Any resulting OIG records are excluded from this system and are part of the DHS/OIG–002 Investigative Records System of Records (74 FR 55569, October 28, 2009).

The data collected in component civil rights and civil liberties offices or by staff of components who do not have a designated civil rights and civil liberties office, but who do perform related functions, are part of this system of records and are managed on a component by component basis and may or may not be reviewed or maintained by the CRCL Office. Component civil rights and civil liberties offices, and staff of components who do not have a designated civil rights and civil liberties office, but who do perform related functions, may consult and advise the CRCL Office on civil rights and civil liberties issues within the component, but are handled at the component level unless formally elevated to the CRCL Office.

The purpose of this system is to allow the DHS Officer for Civil Rights and Civil Liberties, component civil rights and civil liberties staff, and staff of components who do not have a designated civil rights and civil liberties office but who do perform related functions, to maintain relevant information necessary to review complaints or comments about alleged civil rights or civil liberties violations, or racial, ethnic, or religious profiling related to the Department's activities. The system will also track and maintain investigative files and records of complaint resolution and other issues, and facilitate oversight and accountability of the Department's civil rights and civil liberties complaint resolution mechanisms. DHS is authorized to implement this program primarily through 6 U.S.C. 345; 5 U.S.C. 301; 49 U.S.C. 114; 44 U.S.C. 3101; section 803 of Public Law 110–53; E.O. 12958, as amended. This system has an effect on individual privacy that is balanced by the need to address civil rights and civil liberties issues and matters within the Department. Risk is mitigated by limiting access to civil rights and civil liberties staff and other officials who need the information in the course of performing their duties. Routine uses contained in this notice include sharing with the Department of Justice (DOJ) for legal advice and representation; to a congressional office at the request of an individual; to the National Archives and Records Administration (NARA) for records management; to contractors in support of their contract assignment to DHS; to federal, state, local and other governmental partners to enforce and prosecute laws and regulations; to agencies, organizations or individuals for the purpose of audit; to agencies, entities, or persons during a security or information compromise or risk, to another federal agency for labor and employment relations; to an agency, organization, or individual when there could potentially be a risk to an individual; to former employees of the Department while responding to inquiries; to the Office of Management and Budget (OMB), DOJ or other agencies for advice; to other agencies or organizations for redress; to the Department of Transportation (DOT) and its operating administrations for Transportation Security Administration (TSA) records and functions; and to the news media in the interest of the public. A review of this system is being conducted to determine if the system of records collects information under the Paperwork Reduction Act.

As a result of the biennial review of this system, updates have been made to change the system name to "Department of Homeland Security/ALL–029 Civil Rights and Civil Liberties Records System of Records" to reflect that the system is a Department-wide system of records; categories of records to reflect the addition of social security number; routine uses to reflect the addition of

sharing with the DOT for legacy TSA records; retention and disposal to reflect the NARA retention and disposal policy and description; and the addition of exemption (k)(3) under the Privacy Act to include records at the U.S. Secret Service in conjunction with the protection of the President of the United States.

Exclusion is made from this system for Office of Inspector General records relating to civil rights and civil liberties. Office of Inspector General records are covered by DHS/OIG–002 Investigative Records System of Records, October 28, 2009.

This updated system will continue to be included in the Department of Homeland Security's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to which their records are put, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/ALL–029 Civil Rights and Civil Liberties Records System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to OMB and to Congress.

System of Records

DHS/ALL–029

SYSTEM NAME:

Department of Homeland Security/ALL–029 Civil Rights and Civil Liberties Records System of Records.

SECURITY CLASSIFICATION:

Unclassified, sensitive, and classified.

SYSTEM LOCATION:

Records are maintained at the Department Office for Civil Rights and Civil Liberties (CRCL), component civil rights and civil liberties offices, and within offices of a component that does not have a designated civil rights and civil liberties office, but these functions are dispersed within other offices of the component, in Washington, DC and field locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include:

Persons who contact the CRCL or component civil rights and civil liberties staff, to allege abuses of civil rights and civil liberties, or to allege racial, ethnic, or religious profiling by DHS, its employees, contractors, grantees, or others acting under the authority of the Department; persons alleged to be involved in civil rights or civil liberties abuses or racial, ethnic, or religious profiling, victims or witnesses to such abuse; third parties not directly involved in the alleged incident, but identified as relevant persons to an investigation; and DHS employees and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in the system include:

Information relating to allegations of abuses of civil rights, civil liberties, and racial, ethnic, and religious profiling by Department employees and officials will be collected, as well as similar allegations relating to persons or entities under Department control (such as contractors or programs). Basic information about complainants will be collected, including, but not limited to:

- Complainant's name;
- Complainant's home and work mailing address;
- Complainant's home, cell and work telephone and fax numbers;
- Complainant's home and work e-mail address;
- Complainant's social security number or alien registration number, if necessary and appropriate;
- Name of representative filing a claim on behalf of a complainant;
- Allegation occurrence date and time;
- Allegation facility name and location;
- DHS component referenced;
- Information on a complainant's country of origin/race/religion (CRCL does not solicit this information, it is tracked if individuals provide it);
- Allegation details, primary and secondary issues, and primary and secondary basis;
- Other information that may appear in the system or in the file folder on a case-by-case basis might include:
  - Photographic facial images;
  - Bank account numbers;
  - Vehicle license plate information; and
  - Civil or criminal history information.
- Paper investigative files and documents depending on the particular investigation, but may include:
  - Letters, memoranda, and other documents alleging abuses of civil rights, civil liberties, and profiling from complainants;
  - Internal letters, memoranda, and other communications within DHS;
  - Results of an investigation of allegations;
  - Transcripts, interview notes, investigative notes;
  - Documentation concerning requests for additional information needed to complete the investigation;
  - Medical records;
  - Copy of passport;
  - Evidentiary documents and material, comments, and reports relating to the alleged abuses and to the resolution of the complaint; and
  - Similar information regarding witnesses, persons involved in the alleged incident, or any other persons with relevant information regarding the alleged abuses may also be collected.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 U.S.C. 345; 5 U.S.C. 301; 49 U.S.C. 114; 44 U.S.C. 3101; section 803 of Public Law 110–53; E.O. 12958, as amended.

PURPOSE(S):

The purpose of this system is to allow CRCL, component civil rights and civil liberties staff, and staff of components who do not have a designated civil rights and civil liberties office, but who do perform related functions, to maintain relevant information necessary to review complaints or comments about alleged civil rights or civil liberties violations, including racial, ethnic, or religious profiling related to

the Department's activities. The system will also track and maintain investigative files and records of complaint resolution and other issues, and facilitate oversight and accountability of the Department's civil rights and civil liberties complaint resolution mechanisms.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), (including United States Attorney Offices, or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. any employee of DHS in his/her official capacity;

3. any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use is subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To another federal agency with responsibility for labor or employment relations or other issues, including Equal Employment Opportunity issues, when that agency has jurisdiction over issues reported to CRCL, or component civil rights and civil liberties staff, and staff of components who do not have a designated civil rights and civil liberties office, but who do perform related functions.

I. To an organization or individual in either the public or private sector, either foreign or domestic, where there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, to the extent the information is relevant to the protection of life or property.

J. To a former employee of the Department for purposes of responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

K. To the Office of Management and Budget (OMB), the DOJ, or the Office of Special Counsel (OSC), to obtain advice regarding statutory and other requirements related to civil rights and civil liberties.

L. To a federal, state, territorial, tribal, local, international, or foreign government agency or entity for the purpose of consulting with that agency or entity: 1. To assist in making a determination regarding redress for an individual in connection with the operations of a DHS component or program; 2. for the purpose of verifying the identity of an individual seeking redress in connection with the operations of a DHS component or program; or 3. for the purpose of verifying the accuracy of information submitted by an individual who has requested such redress on behalf of another individual.

M. To a federal agency or entity that furnished a record or information for the purpose of permitting that agency or entity to make a decision regarding access to or correction of the record or information or to a federal agency or entity that has information relevant to the redress request for purposes of obtaining guidance, additional information, or advice from such federal agency or entity regarding the handling of this particular redress request.

N. To third parties lawfully authorized in connection with a federal government program, which is authorized by law, regulation, or rule, but only the information necessary and relevant to effectuate or to carry out a particular redress result for an individual and disclosure is appropriate to enable these third parties to carry out their responsibilities related to the federal government program, such as when the name and appropriate associated information about an individual who has been cleared and distinguished from a known or suspected threat to aviation security, is shared with the airlines to prevent future delays and disruptions for that individual while traveling.

O. To the Department of Transportation (DOT) and its operating administrations when relevant or necessary to (1) ensure safety and security in any mode of transportation; (2) enforce safety- and security-related regulations and requirements; (3) assess and distribute intelligence or law

enforcement information related to transportation security; (4) assess and respond to threats to transportation; (5) oversee the implementation and ensure the adequacy of security measures at airports and other transportation facilities; (6) plan and coordinate any actions or activities that may affect transportation safety and security or the operations of transportation operators; or (7) the issuance, maintenance, or renewal of a license, certificate, contract, grant, or other benefit.

P. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by name, incident code, social security number or other unique personal identifier.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Referred issues are sent to DHS components for resolution. Components will maintain the record copy in accordance with the component's related record disposition schedule. CRCL will maintain a reference copy containing the original complaint, all related and relevant documents, and the component's memorandum of resolution in accordance with records schedule N1–563–07–6, b.1 and will destroy or delete seven years after resolution or closure of the case.

Retained issues are either maintained by CRCL because of the significance of the issue, which may result in policy change, or issues retuned from the component for resolution in accordance with N1–563–07–6, b.2 and will destroy or delete seventy-five years after resolution or closure of the case.

Significant case files involve allegations made against senior DHS officials; attract national media or congressional attention; present significant or novel questions of law or policy; and result in substantive changes in DHS policies and procedures. Significant case files will be selected by the Headquarters and component civil rights and civil liberties offices based on these criteria. In accordance with N1–563–07–6, b.3 records are maintained through the end of fiscal year in which the significant case file is closed. Records are transferred to NARA five years after the case is closed according to NARA transfer guidance and regulations.

SYSTEM MANAGER AND ADDRESS:

For DHS: Complaints Manager (202–357–8178), Office for Civil Rights and Civil Liberties, Department of Homeland Security, 1201 New York Avenue, NW., Washington, DC 20528.

For components of DHS, the System Manager can be found at *http://www.dhs.gov/foia* under "contacts."

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, CRCL, component civil rights and civil liberties offices, and staff of components who do not have a designated civil rights and civil liberties office but who do perform related functions, will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the CRCL FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under "contacts." If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Information is collected from individuals who file complaints, eyewitnesses, third parties, DHS employees and/or contractors, illegal aliens involved in the circumstances that gave rise to the complaint, open sources such as non-fee internet sources and newspapers, and other entities with

information pertinent to the matter under investigation. The information is received via correspondence, telephone calls, e-mails, and facsimiles.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security proposes to exempt certain portions of this system relating to ongoing investigations and national security activities from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f) pursuant to 5 U.S.C. 552a (k)(1), (k)(2), (k)(3), and (k)(5).

Dated:May 13, 2010.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010–16363 Filed 7–2–10; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–57]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; HUD NEPA ARRA SECTION 1609 (c) Reporting

AGENCY: Office of the Chief Information Officer.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Grantees who receive ARRA funding projects must report on the status and progress of their projects and activities with respect to compliance with the National Environmental Policy Act (NEPA) requirements and documentation. HUD consolidates and transmits the information received from grantees to the Council on Environmental Quality and OMB for the Administration's reports to the House and Senate committees designated in the legislation. Two additional questions covering why the review has taken so long and when the review is likely to be completed will be asked in HUD's new electronic data collection system—Recovery Act Management System (RAMPS).

DATES: *July 9, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within three days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail: *OIRA_Submission @omb.eop.gov;* fax: (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney, Jr., Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410–5000; telephone 202–402–8048, (this is not a toll-free number) or e-mail Mr. McKinney at *Leroy.McKinneyJr@hud.gov* for a copy of the proposed forms, or other available information. Copies of available documents submitted to OMB may be obtained from Mr. McKinney or @ *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Title of Proposed Notice: HUD NEPA ARRA SECTION 1609(c) Reporting.

OMB Approval Number: 2506–0187.

Agency Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Grantees who receive ARRA funding for projects must report on the status and progress of their projects and activities with respect to compliance with the National Environmental Policy Act (NEPA) requirements and documentation. HUD consolidates and transmits the information received from grantees to the Council on Environmental Quality and OMB for the Administration's reports to the House and Senate committees designated in the legislation.

Frequency of Submission: Quarterly.

The estimated number of respondents is 6000; the frequency of response is 4 per year; 2 hours per response, for burden hours of 12,000.

Total Estimated Burden Hours: 12,000.

Status: Revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 29, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–16311 Filed 7–2–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO320000L1320000.PP; OMB Control Number 1004–0132]

Renewal of Approved Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) for a 3-year renewal of OMB Control Number 1004–0132 under the Paperwork Reduction Act. This control number includes paperwork requirements in 43 CFR parts 3200 and 3280, which cover management of Federal geothermal resources.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. Therefore, written comments should be received on or before August 5, 2010.

ADDRESSES: Submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0132), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *oira_docket@omb.eop.gov.* Please mail a copy of your comments to: Bureau Information Collection Clearance Officer (WO–630), Department of the Interior, 1849 C Street, NW., Mail Stop 401 LS,

Washington, DC 20240. Please send a copy of your comments by electronic mail to *jean_sonneman@blm.gov* or by fax to Jean Sonneman at 202–912–7102.

FOR FURTHER INFORMATION CONTACT: You may contact Barbara Gamble at 202–912–7148. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8339, to contact Ms. Gamble. You may also contact Ms. Gamble to obtain a copy, at no cost, of the regulations and forms that require this collection of information.

SUPPLEMENTARY INFORMATION: The following information is provided for the information collection:

Title: Geothermal Resource Leasing and Geothermal Resources Unit Agreements (43 CFR parts 3200 and 3280).

Forms:

- Form 3200–9, Notice of Intent to Conduct Geothermal Resource Exploration Operations;
- Form 3203–1, Nomination of Lands for Competitive Geothermal Leasing;
- Form 3260–2, Geothermal Drilling Permit;
- Form 3260–3, Geothermal Sundry Notice;
- Form 3260–4, Geothermal Well Completion Report; and
- Form 3260–5, Monthly Report of Geothermal Operations.

OMB Control Number: 1004–0132.

Type of Review: Revision of a currently approved information collection.

Abstract: Various statutes (such as 30 U.S.C. 1001—1028) authorize the Secretary of the Interior to issue leases for the development and utilization of geothermal resources. The BLM implements these statutory authorities in accordance with regulations at 43 CFR parts 3200 and 3280. The information collected under these regulations enables the BLM to make decisions regarding geothermal leases and unit agreements. It also enables the BLM to monitor compliance with the terms and conditions of leases and unit agreements. Responses are required to obtain or maintain a benefit.

Frequency of Collection: On occasion for all aspects of this information collection except 43 CFR subpart 3276, Monthly Report of Geothermal Operations.

Annual Burden Hours: 5,404 hours.

Annual Non-hour Burden Cost: $72,810 for document processing fees associated with some of these information collection requirements.

The following table details the individual components and respective hour burden estimates of this information collection request:

Type of response	Number of responses	Hours per response	Total hours
A	B	C	D
43 CFR subpart 3202; Lessee Qualifications	75	1	75
43 CFR subpart 3203; Nomination of Lands for Competitive Leasing; Form 3203–1	80	1	80
43 CFR subpart 3204; Noncompetitive Leasing Other Than Direct Use Leases	50	4	200
43 CFR subpart 3205; Direct Use Leasing	10	10	100
43 CFR subpart 3206; Lease Issuance	155	1	155
43 CFR subpart 3207; Lease Terms and Extensions	50	1	50
43 CFR subpart 3210; Lease Consolidation	50	1	50
43 CFR subpart 3212; Lease Suspensions and Royalty Rate Reductions	10	40	400
43 CFR subpart 3213; Lease Relinquishment, Termination, Cancellation, and Reinstatement	10	40	400
43 CFR subpart 3217; Cooperative Agreements	10	40	400
43 CFR subpart 3251; Notice of Intent to Conduct Geothermal Exploration Activities; Form 3200–9	12	8	96
43 CFR subpart 3252; Geothermal Sundry Notice; Form 3260–3	100	8	800
43 CFR subpart 3253; Reports: Exploration Operations	12	8	96
43 CFR subpart 3256; Exploration Operations Relief and Appeals	10	8	80
43 CFR subpart 3261; Geothermal Drilling Permit; Form 3260–2	60	8	480
43 CFR subpart 3264; Geothermal Well Completion Report; Form 3260–4	12	10	120
43 CFR subpart 3272; Utilization Plans and Facility Construction Permits	10	10	100
43 CFR subpart 3273; Site License Application	10	10	100
43 CFR subpart 3273; Assignment or Transfer of a Site License	22	1	22
43 CFR subpart 3274; Commercial Use Permit	10	10	100
43 CFR subpart 3276; Monthly Report of Geothermal Operations; Form 3260–5	120	10	1,200
43 CFR subpart 3281; Unit Agreements	10	10	100
43 CFR subpart 3282; Participating Area	10	10	100
43 CFR subpart 3283; Unit Agreement Modifications	10	10	100
Totals	908		5,404

60-Day Notice: As required in 5 CFR 1320.8(d), the BLM published the 60-day notice in the **Federal Register** on February 3, 2010 (75 FR 5623) soliciting comments from the public and other interested parties. The comment period closed on April 5, 2010. The BLM did not receive any comments from the public in response to this notice, and did not receive any unsolicited comments from respondents.

The BLM requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;
2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments to the addresses listed under **ADDRESSES**. Please refer to OMB control number 1004–0132 in your correspondence. 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.

Jean Sonneman,

Acting Information Collection Clearance Officer.

[FR Doc. 2010–16357 Filed 7–2–10; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2010–N088; 41910–1112–0000–F2]

Endangered [and Threatened] Wildlife and Plants; Permit(s); Land Clearing Associated With Phosphate Mining in Manatee County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for an incidental take permit (ITP); availability of proposed low-effect habitat conservation plans (HCP); request for comment/information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of an incidental take permit (ITP) application and habitat conservation plan (HCP). Mosaic Fertilizer, LLC (applicant) requests a 24-year ITP under the Endangered Species Act of 1973, as amended (Act). The applicant anticipates taking approximately 75 acres (ac) of Florida scrub-jay (*Aphelocoma coerulescens*)-occupied habitat incidental to land clearing and phosphate mining in Manatee County, Florida (project). The applicant's HCP describes the mitigation and minimization measures the applicant proposes to address the effects of the project to the Florida scrub-jay.

DATES: We must receive any written comments on the ITP application and HCP on or before August 5, 2010.

ADDRESSES: If you wish to review the application and HCP, you may write the Field Supervisor at our Jacksonville Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256 or make an appointment to visit during normal business hours. If you wish to comment, you may mail or hand deliver comments to the Jacksonville Field Office, or you may e-mail comments to *erin_gawera@fws.gov.* For more information on reviewing documents and public comments and submitting comments, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Erin Gawera, Fish and Wildlife Biologist, Jacksonville Field Office (*see* **ADDRESSES**); telephone: 904/731–3121.

SUPPLEMENTARY INFORMATION:

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.

Please reference permit number TE236128–0 for Mosaic Fertilizer, LLC in all requests or comments. If you do not receive a confirmation from us that we have received your e-mail message, contact us directly at the telephone number listed under **FOR FURTHER INFORMATION CONTACT.**

Background

The Florida scrub-jay (scrub-jay) is found exclusively in peninsular Florida and is restricted to xeric upland communities (predominately in oak-dominated scrub with open canopies) of the interior and Atlantic coast sand ridges. Increasing urban and agricultural development has resulted in habitat loss and fragmentation, which have adversely affected the distribution and numbers of scrub-jays. Remaining habitat is largely degraded due to the exclusion of fire, which is needed to maintain xeric uplands in conditions suitable for scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

Applicant's Proposal

The applicant is requesting take of approximately 75 ac of occupied Florida scrub-jay habitat incidental to the project. The 4,345-ac project is located on the Texaco Tract in Sections 22–27, 34, and portions of Section 13, Township 34 South, Range 22 East, in Manatee County, Florida. The proposed project includes land clearing activities associated with phosphate mining which will result in the take of 75 ac of occupied scrub-jay habitat, including three scrub-jay families. The applicant proposes to mitigate for the take of the Florida scrub-jay at a ratio of 2:1 based on Service Mitigation Guidelines. The applicant proposes to mitigate for 75 ac of impacts by establishing a conservation easement capturing 150 ac of scrub-jay within the Mosaic Wellfield.

We have determined that the applicant's proposal, including the proposed mitigation and minimization measures, would have minor or negligible effects on the species covered in the HCP. Therefore, we are making a preliminary determination that the ITP is a "low-effect" project and qualifies for categorical exclusion under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1). We may revise this preliminary determination based on our review of public comments we receive in response to this notice. A low-effect HCP is one involving (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

We will evaluate the HCP and comments we receive to determine whether the ITP application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the application meets those requirements, we will issue the ITP for incidental take of the sand skink. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the ITP.

Authority

We provide this notice under Section 10 of the Act and NEPA regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6.

Dated: June 4, 2010.

David L. Hankla,

Field Supervisor, Jacksonville Field Office.

[FR Doc. 2010–16217 Filed 7–2–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Repair Kalaupapa Dock Structure: Kalaupapa National Historical Park, Hawaii; Notice of Termination of an Environmental Impact Statement

SUMMARY: The NPS is terminating an Environmental Impact Statement (EIS) as previously noticed in the **Federal Register** on April 17, 2009, for repair of

the dock structure at Kalaupapa National Historical Park. It has become apparent that an EIS will not be necessary due to reduced scope of the proposed actions such that there is no potential for significant impacts nor controversy surrounding the proposal. Coincident with this termination notice, the NPS is hereby announcing preparation of an Environmental Assessment (EA). The EA will describe two alternatives remaining for consideration, including a no-action alternative, and will analyze potential environmental consequences of the proposed dock repairs, including minor to moderate effects on water quality, benthic resources, coral and essential fish habitats, species protected under the Endangered Species Act and the Marine Mammal Protection Act, historic resources, cultural landscape, ethnographic resources, and park operations. Measures to minimize harm will be included, and an "environmentally preferred" alternative identified.

Background: Kalaupapa National Historic Park (NHP) on Molokai was established in 1980 in recognition of the seminal role of this remote area in development of treatments and care for persons with Hansen's disease. Repairs of Kalaupapa dock structures are necessary to ensure continued barge service for the park and community residents. Timely repair of the structures is needed to preclude disruption of incoming barge service upon which the park and isolated community residents depend for their livelihood (as well as regular outgoing service required for the park's recycling program and other operations and activities).

Originally the NPS planned to prepare an EA, and scoping was conducted during spring and summer 2008. Oral and written comments were obtained from the Kalaupapa patient community and park neighbors; state, county, and federal agencies, including Hawaii Department of Health, the State Historic Preservation Officer, and U.S. Fish and Wildlife Service (USFWS); interested organizations; and native Hawaiian groups. Based on information obtained, it was determined that preparation of an EIS was warranted.

At that time the range of alternatives under consideration was as follows: *Alternative A* (no action) would have maintained current conditions. *Alternative B* would have stabilized and repaired bulkhead and low pier walls; repaired a deteriorating concrete pier and a breakwater; and constructed a mooring dolphin to assist with barge landings. *Alternative C* would have entailed deferred maintenance and dolphin installation similar to *Alternative B,* as well as dredged the harbor bottom to widen the berthing basin so as to accommodate a variety of sizes of available barges.

Based upon careful consideration of all public comments received to date, as well as further coordination with USFWS and National Marine Fisheries Service, the scope of work originally proposed has been reduced—widening the berthing basin and installation of a mooring dolphin have been dropped from consideration, which will avoid unacceptable impacts to coral and to marine species including the endangered Hawaiian Monk seal. These options will be addressed in the EA as alternatives considered but dismissed from analysis. The preferred alternative in the EA will consist of a maintenance plan, which is restricted to repair of the breakwater, repair of the deteriorating concrete pier, and stabilization of the bulkhead and low pier walls.

SUPPLEMENTARY INFORMATION: All persons on the EIS mailing list will be incorporated into the EA mailing list. Additional information regarding the preparation of the EA may be obtained by contacting Superintendent Steve Prokop, Kalaupapa National Historical Park, P.O. Box 2222, Kalaupapa, HI, 96742, (808) 567–6802. Project updates will also be periodically posted at *http://parkplanning.nps.gov/kala,* as well as provided through local and regional press media.

Dated: May 28, 2010.

George J. Turnbull,

Acting Regional Director, Pacific West Region.

[FR Doc. 2010–16247 Filed 7–2–10; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

National Park Service

Record of Decision for the General Management Plan for the Chattahoochee River National Recreation Area, GA

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the Record of Decision for the General Management Plan Environmental Impact Statement for the Chattahoochee River National Recreation Area.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of the Record of Decision (ROD) for the General Management Plan, Chattahoochee River National Recreation Area, Georgia. On December 15, 2009, the Regional Director, Southeast Region, approved the ROD for the project. As soon as practicable, the NPS will begin to implement the Preferred Alternative contained in the Final Environmental Impact Statement (EIS) issued on November 13, 2009. Six alternatives were evaluated in the EIS These include: Alternative A, No Action— Continue Current Management; Alternative B, Focus on Solitude—implements management programs to minimize development in the park and maximize the opportunity for visitors to experience solitude in natural settings; Alternative C—Visitors would be drawn toward a system of relatively developed hubs in which administrative and interpretive facilities are located; Alternative D—Expanding and distributing access throughout the park, including newly acquired parcels to provide diverse types of visitor experiences; Alternative E—Takes some features of Alternatives C and D and provides expanded access to the park while at the same time maintaining substantial acreage with less "hardened" forms of access such as paved parking areas, roads, and other structures; and Alternative F, the preferred alternative—Increases opportunities for the park to expand use to local visitors and increase connectivity to neighboring communities through trail linkages, partnering, and expanded interpretive, education and outreach activities.

The ROD includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferable alternative, a finding of no impairment of park resources and values, a listing of measures to minimize environmental harm, and an overview of public involvement in the decision-making process.

FOR FURTHER INFORMATION CONTACT: Daniel R. Brown, 1978 Island Ford Parkway, Sandy Springs, GA 30350–3400, (678) 538–1200, *Daniel_R_Brown@nps.gov.*

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision may be obtained from the contact listed above or online at *http://parkplanning.nps.gov/CHAT.*

Authority: The authority for publishing this notice is 40 CFR 1506.6.

The responsible official for this Record of Decision is the Regional Director, Southeast Region, National Park Service, 100 Alabama Street, SW., 1924 Building, Atlanta, Georgia 30303.

Dated: May 14, 2010.

Gordon Wissinger,

Acting Regional Director, Southeast Region.

[FR Doc. 2010–16248 Filed 7–2–10; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Walker River Basin Acquisition Program

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of cancellation.

SUMMARY: The Bureau of Reclamation (Reclamation) is canceling work on the Environmental Impact Statement (EIS) for the Walker River Basin Acquisition Program (Acquisition Program). Reclamation has determined that the action of providing funds for the Acquisition Program as authorized in Public Laws 109–103 and 111–85 is not a Federal discretionary action. In addition, Reclamation does not have control over the expenditure of the funds by the Acquisition Program recipient and has therefore determined National Environmental Policy Act (NEPA) compliance is not necessary per 2008 Department of Interior regulations for implementing NEPA (43 Code of Federal Regulations [CFR] Part 46 Implementation of the NEPA of 1969). Reclamation included its decision that NEPA compliance is not required in the July 2009 Draft EIS and shared the decision at the August 2009 public hearings. In February 2010, Reclamation issued a Revised Draft EIS with incorporation of public comment for informational purposes only rather than a NEPA analysis. Additional comments were not solicited on this February 2010 Revised Draft EIS, and a Final EIS and Record of Decision (ROD) will not be prepared.

FOR FURTHER INFORMATION CONTACT: Mrs. Caryn Huntt DeCarlo, Lahontan Basin Area Office at 775–884–8352, or e-mail *chunttdecarlo@usbr.gov.*

SUPPLEMENTARY INFORMATION: Since 1882, diversions from the Walker River, primarily for irrigated agriculture, have resulted in a steadily declining surface elevation of Walker Lake with a current net decrease of 156 feet. The decrease has resulted in extremely poor water quality and deteriorated lake ecology. As a result, several Federal laws have been passed to address the lake's environmental conditions. Reclamation's role related to the Acquisition Program as authorized in two of those laws, Public Laws 109–103 and 111–85, is to provide funding to the University of Nevada (University) or the National Fish and Wildlife Foundation (NFWF) for their implementation of the Program. Both laws direct that the funds be used by the recipient to acquire from willing sellers land, water appurtenant to the land, and related interests in the Walker River Basin, Nevada. Acquired water rights would be transferred to provide water for environmental restoration of Walker Lake. NFWF and the University entered into an agreement in December 2009 where the University assigned all their rights, interests, and obligations for the Acquisition Program to NFWF. NFWF will be administering the Acquisition Program going forward.

Reclamation published a Notice of Intent to prepare an EIS on the Acquisition Program in the **Federal Register** on September 25, 2007 (72 FR 54456). Public scoping meetings on the EIS were held in October 2007 and meetings on the alternatives to be evaluated in the EIS were held in June 2008. Reclamation developed a No Action Alternative and three acquisition alternatives to analyze in the EIS. The objective of all acquisition alternatives (Purchase, Leasing and Efficiency) was to acquire sufficient water from willing sellers to increase average annual inflow to Walker Lake by 50,000 acre feet. Reclamation published a Notice of Availability of the Draft EIS on July 24, 2009 (74 FR 36737) and a notice to reopen the comment period for review of the Draft EIS on September 23, 2009 (74 FR 48596).

In 2008, DOI promulgated its regulations for implementing NEPA (43 Code of Federal Regulations [CFR] part 46 Implementation of the NEPA of 1969); the rule was finalized on November 14, 2008. Section 46.100(a) of these regulations state in part "If Federal funding is provided with no Federal agency control as to the expenditure of such funds by the recipient, NEPA compliance is not necessary." Reclamation evaluated its role for the Acquisition Program and determined the agency does not exercise control or responsibility over the Acquisition Program, is not approving the action, and does not have control over the expenditure of Federal funds by the recipient. Therefore, Reclamation determined that NEPA compliance is not required and a ROD will not be issued. This determination regarding NEPA compliance and why Reclamation would not be issuing a ROD was explained in the July 2009 Draft EIS and shared at the August 2009 EIS public hearings. Reclamation also shared that while the agency decided NEPA compliance was not required, there was value in soliciting public comments on the Draft EIS, responding to comments and incorporating as appropriate into the analysis. Reclamation stated at the time that a Final EIS would be completed for informational purposes, but later determined the title Revised Draft EIS was more appropriate since a ROD would not be issued.

In February 2010, Reclamation released a Revised Draft EIS that included responses to public comments on the July 2009 Draft EIS and incorporated appropriate changes to the analysis from public comment, new legislation, and data. The Revised Draft EIS was prepared for informational purposes rather than as a required NEPA analysis for Federal agency decision making. Additional comments on the Revised Draft EIS were not solicited and the document noted that a Final EIS and ROD would not be prepared and that the EIS would be formally cancelled via notice in the **Federal Register**.

Dated: June 28, 2010.

Pablo R. Arroyave,

Deputy Regional Director, Mid-Pacific Region.

[FR Doc. 2010–16300 Filed 7–2–10; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Class III Gaming Compact.

SUMMARY: This notice publishes the Approved Compact between the Seminole Tribe of Florida and the State of Florida.

DATES: *Effective Date:* July 6, 2010.

FOR FURTHER INFORMATION CONTACT: Paula Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal—State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The compact authorizes the Seminole Tribe to operate slot machines, raffles and drawing, and any new game that may be authorized

by Florida law for any person for any purpose, and banking or banked card games. The term of the compact is 20 years. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, is publishing notice that the Compact between the Seminole Tribe of Florida and the State of Florida is now in effect.

Dated: June 28, 2010.

Paul Tsosie,

Chief of Staff, Office of the Assistant Secretary—Indian Affairs.

[FR Doc. 2010–16213 Filed 7–2–10; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Class III Tribal-State Compact.

SUMMARY: This notice publishes approval of the Compact between the Shoshone-Paiute Tribes and the State of Nevada.

DATES: *Effective Date:* July 6, 2010.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The duration of the compact is four years calculated from the date of commencement of gaming. The compact permits the Tribe to offer the full gamut of casino-style gaming authorized by the Nevada Gaming Commission and/or lawfully permitted to be played by the State.

Dated: June 28, 2010.

Paul Tsosie,

Chief of Staff, Office of the Assistant Secretary—Indian Affairs.

[FR Doc. 2010–16214 Filed 7–2–10; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0047]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Application for Import Quota for Ephedrine, Pseudoephedrine, and Phenylpropanolamine

ACTION: 60-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), 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. Comments are encouraged and will be accepted until September 7, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of information collection 1117–0047:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Import Quota for Ephedrine, Pseudoephedrine, and Phenylpropanolamine.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: DEA Form 488, Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit.

Other: None.

Abstract: 21 U.S.C. 952 and 21 CFR 1315.34 require that persons who desire to import the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine during the next calendar year shall apply on DEA Form 488 for import quota for such List I chemicals.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA estimates that fifty-seven (57) individual respondents will submit eighty (80) individual import quota applications. DEA estimates that each response will take one hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* DEA estimates that this collection will involve eighty (80) annual public burden hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street, NEW, Suite 2E–502. Washington, DC 20530.

Dated: June 30, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–16341 Filed 7–2–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0013]

Agency Information Collection Activities: Proposed collection; comments requested: Application for Permit to Import Controlled Substances for Domestic and/or Scientific Purposes pursuant to 21 U.S.C. 952; DEA Form 357

ACTION: 60-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), 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. Comments are encouraged and will be accepted until September 7, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of information collection 1117–0013:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Permit to Import Controlled Substances for Domestic and/or Scientific Purposes pursuant to 21 U.S.C. 952 (DEA Form 357).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* DEA Form 357, Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Business or other for-profit.

Other: None.

Abstract: 21 CFR 1312.11 requires any registrant who desires to import certain controlled substances into the United States to have an import permit. In order to obtain the permit, an application must be made to the Drug Enforcement Administration on DEA Form 357.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 84 persons complete an estimated 873 DEA Form 357s at 15 minutes per form.

(6) An estimate of the total public burden (in hours) associated with the collection: It is estimated that there are 218 annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street, NE., Suite 2E–502, Washington, DC 20530.

Dated; June 30, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–16343 Filed 7–2–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Bureau of International Labor Affairs

Solicitation of Nominations for the United States Department of Labor's Iqbal Masih Award for the Elimination of Child Labor

The United States Department of Labor's Iqbal Masih Award for the Elimination of Child Labor presented by Secretary Hilda Solis, United States Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210:

1. *Subject:* The United States Department of Labor's Iqbal Masih Award for the Elimination of Child Labor.

2. *Purpose:* To outline the eligibility criteria, the nomination process and the administrative procedures for the United States Department of Labor's Iqbal Masih Award for the Elimination of Child Labor, and to solicit nominations for the United States Department of Labor's Iqbal Masih Award for the Elimination of Child Labor.

3. *Originator:* Office of Child Labor, Forced Labor and Human Trafficking of the Bureau of International Labor Affairs (ILAB/OCFT).

4. *Background:* The award is to recognize exceptional efforts to reduce the worst forms of child labor and is in response to Senate Committee direction (Significant Report 110–107 DM/ILAB), that the Secretary of Labor:

> Establish an annual non-monetary award recognizing the extraordinary efforts by an individual, company, organization or national government toward the reduction of the worst forms of child labor. The award shall be named, "the United States Department of Labor's Iqbal Masih Award for the Elimination of Child Labor." Iqbal Masih was a Pakistani carpet weaver sold into slavery at age four. He escaped from his servitude at age 12 and became an outspoken advocate against child slavery. He told the world of his plight when he received the Reebok Human Rights Award in 1994. He was tragically killed a year later at the age of 13 in his native Pakistan.

In view of inspiring and motivating those who are working to eliminate the worst forms of child labor, the award's two major goals are to:

a. Honor and give public recognition to a recipient demonstrating extraordinary efforts to combat the worst forms of child labor internationally, and who shares qualities demonstrated by Iqbal Masih including leadership, courage, integrity, and a search to end the labor exploitation of children, and,

b. Raise awareness about the worst forms of child labor internationally.

5. *Eligibility and Selection Criteria:*

A. The nominees may include individuals, companies, organizations, or national governments and nominations may be submitted by other persons and entities with the knowledge and permission of the nominee.

B. Nominees for the United States Department of Labor's Iqbal Masih Award for the Elimination of Child

Labor will be judged by the following selection criteria:

1. Implemented extraordinary efforts that contribute towards the reduction of the worst forms of child labor.

2. Generated positive international attention in support of efforts to reduce the worst forms of child labor.

3. Inspired others, including young persons, to become champions against the worst forms of child labor following the spirit and example of Iqbal Masih.

4. Fomented constructive change regarding the labor exploitation of children under great odds or at great personal cost.

6. *Nomination Submission Requirements:*

A. Nominations must identify the proposed candidate and include a justification statement.

B. The nomination packages should be limited to information relevant to the nominee. Nomination packages should be no longer than two (2) typed pages double-spaced. A page is 8.5 x 11 (on one side only) with one-inch margins (top, bottom, and sides).

C. Nomination packages must include the following for consideration:

1. An executive summary about the nominee, which clearly identifies the specific attributes of the nominee relevant to the selection criteria as listed in Section 5(B).

2. A data summary on the nominee. See Section 6(D).

D. A data summary on the nominee will include the following:

1. Name(s) of the individual, company, organization or national government being nominated.

2. Full street address, telephone number and e-mail address of nominee.

3. Name, title, street address, telephone number and e-mail address of the person or organization submitting the nomination.

E. Timing and Acceptable Methods of Submission of Nominations:

Nomination packages must be submitted to The United States Department of Labor's Iqbal Masih Award for the Elimination of Child Labor, Office of Child Labor, Forced Labor and Human Trafficking, Room S–5317, 200 Constitution Avenue, NW., Washington, DC 20210 by August 31, 2010. Any application received after 4:45 p.m. EDT on August 31, 2010 will not be considered unless it was received before the award is made and:

1. It was sent by registered or certified mail no later than August 16, 2010.

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. EDT at the place of mailing, August 30, 2010.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date will be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the ILAB/OCFT on the application wrapper or other documentary evidence or receipt maintained by that office. Applications sent by other delivery services, such as Federal Express, UPS, e-mail (to *muirragui.eileen@dol.gov*), *etc.,* will also be accepted; however, the applicant bears the responsibility of timely submission.

Confirmation of receipt of your application can be made by contacting Eileen Muirragui, by e-mail *muirragui.eileen@dol.gov,* telephone (202) 693–4842, or OCFT telephone (202) 693–4843, prior to the closing deadline.

7. *The Administrative Review Process:*

A. ILAB/OCFT will perform a preliminary administrative review to determine the sufficiency of all submitted application packages relative to the selection criteria listed in Section 5(B).

B. ILAB/OCFT will conduct an initial substantive review of the nominations received and will identify a short list of candidates to be considered.

C. A panel of Department of Labor representatives will perform a secondary review to make a determination of the semi-finalists.

D. The Secretary of Labor will conduct the final review and selection.

8. *Other Factors to be Considered During the Administrative Review Process:* Receipt of this award will not preclude a nominee from being considered for the United States Department of Labor's Iqbal Masih Award for the Elimination of Child Labor in subsequent years. Specific accomplishments that served as the basis of a prior award, however, may not be considered as the basis for a subsequent award application.

9. *Procedures Following Selection:* The awardee will be notified of selection via the contact person identified in the application package at least four weeks prior to the awards ceremony. Non-selected nominees will also be notified within 30 days of the selection of the awardee.

10. *Location:* The Department of Labor anticipates that the awards ceremony will be held in late 2010 or early 2011 at a location to be determined by the Secretary of Labor.

Paperwork Reduction Act Notice (Pub. L. 104–13): Persons are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This collection of information is approved under OMB Number 1290–0007 (Expiration Date: 12/31/2012). The obligation to respond to this information collection is voluntary; however, only nominations that follow the nomination procedures outlined in this notice will receive consideration. The average time to respond to this information of collection is estimated to be 10 hours per response; including the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Submit comments regarding this estimate; including suggestions for reducing response time or for improving any aspect of this collection of information to the Departmental Clearance Officer, U.S. Department of Labor, Office of the Chief Information Officer, Room N–1301, 200 Constitution Avenue, NW., Washington, DC 20210 or e-mail to *DOL_PRA_PUBLIC@dol.gov.* Please do not send completed nominations to this address.

We are very interested in your thoughts and suggestions about your experience in preparing and filing this nomination packet for the United States Department of Labor's Iqbal Masih Award for the Elimination of Child Labor. Your comments will be very useful to the ILAB/OCFT in making improvements in our solicitation for nominations for this award in subsequent years. All comments are strictly voluntary and strictly private. We would appreciate your taking a few minutes to tell us—for example, whether you thought the instructions were sufficiently clear; what you liked

or disliked; what worked or didn't work; whether it satisfied your need for information or if it didn't, or anything else that you think is important for us to know. Your comments will be most helpful if you can be very specific in relating your experience.

We value your comments, and would really like to hear from you. Please send any comments you have to Eileen Muirragui at *muirragui.eileen@dol.gov* or via mail to the U.S. Department of Labor, Office of Child Labor, Forced Labor, and Human Trafficking, Room S–5317, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 29th day of June 2010.

Sandra Polaski,

Deputy Undersecretary for International Affairs.

[FR Doc. 2010–16219 Filed 7–2–10; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Susan Harwood Training Grant Program, FY 2010

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notification of Funding Opportunity for Susan Harwood Training Grant Program, FY 2010.

Funding Opportunity No.: SHTG–FY–10–02

Catalog of Federal Domestic Assistance No.: 17.502

SUMMARY: This notice announces grant availability of approximately $2.75 million for the Susan Harwood Training Grant Program for Targeted Topic training grants. The complete Harwood solicitation for grant applications (SGA) for Targeted Topic training grants is available at: *http://www.grants.gov.*

Targeted Topic training grants will support the development of quality safety and health training materials and/or the conduct of training for workers and/or employers at multiple worksites addressing one or more of the 30 occupational safety and health hazards OSHA has selected for this grant solicitation. The full list of selected training topics is listed in the solicitation for grant applications that is available on grants.gov. The Agency may award grants for some or all of the listed Targeted Topic training topics. Targeted Topic training grants will be awarded for a 12-month project performance period. The maximum funding that can be requested for the 12-month project performance period is $250,000.

DATES: Targeted Topic training grant applications must be received electronically by the Grants.gov system no later than 4:30 p.m., E.T. on Friday August 6, 2010, the application deadline date.

ADDRESSES: The complete Susan Harwood Training Grant Program solicitation for grant applications for Targeted Topic training grants and all information needed to apply for this funding opportunity are available at: *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: Any questions regarding this solicitation for grant applications should be emailed to *HarwoodGrants@dol.gov* or directed to Kimberly Newell, Program Analyst, or Jim Barnes, Director, Office of Training and Educational Programs, at (847) 759–7700. To obtain further information on the Susan Harwood Training Grant Program of the U.S. Department of Labor, visit the OSHA Web site at: *https://www.osha.gov,* select "Training" under the Top Links section, and then select "Susan Harwood Training Grant Program". Please note that on the Harwood Web page, the "Applying for a Grant" section contains a PowerPoint program entitled "Helpful Tips for Improving Your Susan Harwood Grant Application."

Authority: The Occupational Safety and Health Act of 1970, (29 U.S.C. 670), Pub. L. 111–117, and the 2010 Consolidated Appropriations Act.

Signed at Washington, DC, this 28 day of June 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–16398 Filed 7–2–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

ZRIN 1210 ZA07

[Application Number D–11270]

Amendment to Prohibited Transaction Exemption (PTE) 84–14 for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers

AGENCY: Employee Benefits Security Administration.

ACTION: Adoption of amendment to PTE 84–14.

SUMMARY: This document amends PTE 84–14, a class exemption that permits various parties that are related to employee benefit plans to engage in transactions involving plan assets if, among other conditions, the assets are managed by "qualified professional asset managers" (QPAMs), which are independent of the parties in interest and which meet specified financial standards. Additional exemptive relief is provided for employers to furnish limited amounts of goods and services to a managed fund in the ordinary course of business. Limited relief is also provided for leases of office or commercial space between managed funds and QPAMs or contributing employers. Finally, relief is provided for transactions involving places of public accommodation owned by a managed fund. The amendment permits a QPAM to manage an investment fund containing the assets of the QPAM's own plan or the plan of an affiliate.

The amendment affects participants and beneficiaries of employee benefit plans, the sponsoring employers of such plans, and other persons engaging in the described transactions.

DATES: The amendment is effective November 3, 2010.

FOR FURTHER INFORMATION CONTACT: Christopher Motta, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Room N–5700, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8540 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On August 23, 2005, a notice was published in the **Federal Register** (70 FR 49312) of the pendency before the Department of Labor (the Department) of a proposed amendment to PTE 84–14 (49 FR 9494, March 13, 1984, as corrected at 50 FR 41430, October 10, 1985, and amended at 70 FR 49305 (August 23, 2005)). PTE 84–14 provides an exemption from certain of the restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (ERISA), and from certain of the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code. The Department proposed the amendment on its own motion pursuant to section 408(a) of 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, 32847, August 10, 1990).[1]

[1] Section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), generally transferred the authority of the Secretary of Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

For purposes of this exemption, references to specific provisions of Title I of the Act, unless

Continued

The notice of pendency gave interested persons an opportunity to comment on the proposed exemption. The Department received five written comments, each of which raised several issues. Upon consideration of these comments, the Department has determined to grant the proposed amendment, subject to certain modifications. These modifications and the major comments are discussed below.

Executive Order 12866 Statement

Under Executive Order 12866 (58 FR 51735), a "significant" regulatory action is subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

When proposed, this amendment was determined to be a "significant regulatory action" and was reviewed by OMB. The finalization of the proposal has also been determined to be a "significant regulatory action" under Executive Order 12866.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, the reporting burden (time and financial resources) is minimized, and the Department can properly assess the impact of collection requirements on respondents.

The Department requested public comments on the information collection requirements of the proposed amendments to PTE 84–14 in the notice published in the **Federal Register** (70 FR 49312) of the pendency before the Department of the proposed amendment to PTE 84–14, described earlier in the preamble. No comments specifically addressing the Department's paperwork burden estimates were received. Following the closing of the 60-day comment period, the Department submitted an Information Collection Request (ICR) to OMB, which approved the information collection requirements included in the proposed amendments under OMB Control Number 1210–0128 in a Notice of Action dated October 18, 2005. The approval was scheduled to expire October 31, 2008; therefore, on October 22, 2008, the Department filed with OMB a request to discontinue the control number on October 22, 2008, because it was clear that the proposed amendment would not be finalized before the ICR was scheduled to expire. OMB approved the Department's request on the same day. The Department is hereby filing a request to reinstate the control number with the changes discussed below.

The information collection requirements of this final amendment are essentially unchanged from the proposal and consist, in part, of the requirements that the QPAM develop written policies and procedures designed to ensure compliance with the conditions of the exemptions and have an independent auditor conduct an annual exemption audit and issue an audit report to each QPAM-sponsored plan managed by the QPAM. Although no program changes have been made that would require revision of the prior paperwork burden estimates, the Department is adjusting its estimates of the cost burden of this final amendment in two respects. First, the Department is revising its estimate of the number of respondents, based on more recent Form 5500 data. Second, the Department is revising its estimate of the cost of the exemption audit and report, based on public comments on the substance of the proposed amendments. The Department will submit, contemporaneously with publication of this final amendment, a change worksheet to OMB for approval of these adjustments, which are described further below.

In the proposed amendment, the Department estimated the total number of institutions (banks, savings institutions, insurance companies, and investment advisors) that might choose to act as QPAMs for their own plans at 6,500. Based on more recent information from the 2007 Form 5500 filings, the Department now estimates that number at 4,400. Assuming that all eligible institutions would choose to take advantage of the exemption, the aggregate cost of developing written policies and procedures, assuming one hour of a legal professional's time at $119 per hour, is estimated at $523,700.[2] As explained in the preamble to the proposed amendment, the actual amount of time required, and the resulting cost burden, may be even lower because the Department has described the objective requirements of the exemption that are to be included in the policies and procedures. In future years, the Department is assuming that an additional one percent of the currently existing QPAMs, or 44 institutions will annually establish new policies and procedures for managing their own plans, at an annual cost of approximately $5,200.

In the paperwork burden estimates for the proposal, the Department assumed that the exemption audit report would not impose any additional paperwork burden on respondents because preparation of a written report is usual and customary for any independent audit. In several of the comments received in response to the proposed amendment, which are described further below, commenters asserted that the exemption audit as proposed would be substantially different in nature from other internal audits currently performed by QPAMs, but similar to the exemption audit currently required under PTE 96–23 (relating to the activities of in-house asset managers (INHAMs)). Two commenters estimated the cost of an INHAM exemption audit to be at least $20,000. The Department further obtained information from industry representatives describing INHAM exemption audits as ranging in cost from $10,000 to $25,000, depending on the asset size of the plan. In light of this information, the Department has decided to adjust its burden estimates to recognize the cost of preparing an annual exemption report. Because the asset size of QPAM-sponsored plans is likely to be smaller than the asset size

otherwise specified, refer also to the corresponding provisions of the Code.

[2] EBSA estimates of labor rates include wages, other benefits, and overhead based on the National Occupational Employment Survey (May 2008, Bureau of Labor Statistics) and the Employment Cost Index (June 2009, Bureau of Labor Statistics). Figures are projected forward to 2010. Legal professional wage and benefits estimates of $119.03 are based on metropolitan wage rates for lawyers.

of plans whose assets are managed by INHAMs, the Department has assumed that the average cost of an exemption audit required under the amendment at $10,000, with an estimated additional annual cost burden of $44,000,000 ($10,000 * 4,400 QPAMs).

Description of the Exemption

PTE 84–14 consists of four separate parts. The General Exemption, set forth in Part I, permits an investment fund managed by a QPAM to engage in a wide variety of transactions described in ERISA section 406(a)(1)(A) through (D) with virtually all parties in interest except the QPAM which manages the assets involved in the transaction and those parties most likely to have the power to influence the QPAM.

Part II of the exemption provides limited relief from both section 406(a) and (b) of ERISA for certain transactions involving those employers and certain of their affiliates which could not qualify for the General Exemption provided by Part I.

Part III of the exemption provides limited relief from section 406(a) and (b) of ERISA for the leasing of office or commercial space by an investment fund to the QPAM, an affiliate of the QPAM, or a person who could not qualify for the General Exemption provided by Part I because it held the power of appointment, as such term is described in paragraph (a) of Part I.

Part IV of the exemption provides limited relief from sections 406(a) and 406(b)(1) and (2) of ERISA for the furnishing of services and facilities by a place of public accommodation owned by an investment fund managed by a QPAM, to all parties in interest, if the services and facilities are furnished on a comparable basis to the general public.

In the notice published on August 23, 2005, the Department proposed to amend PTE 84–14 to permit a QPAM to prospectively manage an investment fund that contains the assets of its own plan or the plan of an affiliate (retroactive and transitional relief in this regard is provided in the notice of final amendment to PTE 84–14 that was published on the same day (as cited above)). This prospective relief is described in Part V of the proposed amendment, which specifically provides relief for transactions described in Parts I, III and IV of PTE 84–14 that involve a QPAM-managed fund containing the assets of a plan sponsored by such QPAM. Among other things, relief is contingent upon an "independent auditor" conducting an annual "exemption audit" to determine whether the written procedures adopted by the QPAM are designed to assure compliance with the conditions of the exemption. The term "exemption audit" is defined in Part VI, the "Definitions" section of the proposed amendment.

Written Comments

Independent Audit Requirement

Several of the commenters requested that the "exemption audit" requirement be eliminated. One commenter stated that the "exemption audit" is unnecessary given existing regulatory oversight and internal audit requirements. This commenter identified numerous regulators that oversee financial institutions that act as QPAMs. Additionally, the commenter noted that that QPAMs are subject to external examinations, internal audits, and reviews designed to assure compliance with the laws and regulations that affect the QPAMs' activities.

As noted in the preamble to the proposed amendment, PTE 84–14 was developed and granted based on the essential premise that broad relief could be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent, discretionary, manager. The arrangement described in the proposed amendment diverges from the original premise of PTE 84–14 in that it involves the retention by a plan sponsor/QPAM of the discretion to invest the assets of plans sponsored by the QPAM in an investment fund managed by the QPAM. In order to address this lack of QPAM independence, the proposed amendment relies on the "exemption audit;" which is an annual audit designed to ensure that, among other things, the conditions of the exemption have been met. None of the regulatory oversight identified by the commenter similarly addresses this concern. Although financial institutions that act as QPAMs perform certain audits internally, this type of audit does not address the potential for the exercise of undue influence which may arise in the absence of an independent investment manager.

One commenter stated that the "exemption audit" is not necessary where a QPAM has a track record of ensuring that the conditions of the class exemption have been met (*i.e.,* where the QPAM manages more than $100 million in assets other than the assets of plans sponsored by the QPAM). The Department does not believe that a certain stated dollar amount of plan assets managed by a QPAM (other than the assets of a plan sponsored by the QPAM or an affiliate) is an adequate substitute for the lack of an independent fiduciary that would be responsible for monitoring the activities of the QPAM with respect to its own in-house plan.

Two commenters argue that the Department should modify the "exemption audit" if it determines not to eliminate it altogether. These commenters state that the cost of the audit is burdensome and/or unnecessary given the availability of different alternatives. One of these commenters recommends that the audit be performed less frequently (i.e., every five years); the other commenter recommends that the audit requirement be altered to consist of an in-house review or in-house "audit of exemption compliance," together with the additional requirement that an independent firm conduct an exemption audit every five years.

It is the view of the Department that performance of the "exemption audit" on a less than an annual basis will weaken an important plan protection. The Department believes that an annual review of, among other things, a QPAM's written policies and procedures and a representative sample of plan transactions by an independent auditor is necessary to address the lack of QPAM independence. With regards to the costs associated with the "exemption audit," the Department notes that a financial services entity is under no obligation to serve as a QPAM for its own plan under the amended exemption if it is determined not to be cost effective.

Two commenters express the view that the "exemption audit" is unnecessary given that QPAMs are motivated to comply with the terms of the class exemption regardless of whether an "exemption audit" is performed. These commenters state that QPAMs are responsible for any losses resulting from any non-exempt transactions (*i.e.,* losses that arise in connection with transactions that fail to comply with the terms of PTE 84–14) and, accordingly, are self-motivated to comply with the terms of the amended class exemption.

The Department is not persuaded that a QPAM's motivation to avoid losses from non-exempt transactions is an adequate substitute for the "exemption audit." As noted in the preamble to the proposed amendment, the Department believes that the involvement of an independent party in overseeing compliance with the exemption would serve as a meaningful safeguard. In addition, the "exemption audit" protects plans by ensuring that an investment

manager, who may not otherwise have experience managing ERISA plan assets, complies with the provisions of ERISA.

Upon considering all the comments, the Department has determined not to modify the "exemption audit" requirement in the final QPAM class exemption. Although the proposed amendment provided only that the "exemption audit" must be performed on an "annual basis," it did not specify the date by which each year's audit must be completed. To avoid any uncertainty on this issue, the final amendment specifies that the "exemption audit" must be completed within six months following the end of the year to which it relates.

Diverse Clientele Test

Several commenters commented on section I(e) of the class exemption.[3] Two of these commenters state that the Diverse Clientele Test is duplicative and/or unnecessary in light of the exemption audit and should be waived where a QPAM acts as a manager for its own plan or the plan of an affiliate. Another commenter states that the diverse clientele test should be stricter and recommends that the 20% limitation should be lowered to 10%.

The Department notes that the Diverse Clientele Test, as it applies to the amended class exemption, ensures that the assets of plans sponsored by a QPAM or its affiliates do not constitute a significant percentage of the assets of an investment fund managed by the QPAM. In this regard, as stated in the preamble to PTE 84–14, the Department believes that the presence of independent business provides an important protection under the class exemption.[4] Accordingly, the Department has determined not to eliminate the percentage limitation of the Diverse Clientele Test. However, in consideration of the nature of the transactions exempted and the additional protections embodied in the class exemption, the Department does not believe that it is necessary to reduce the current percentage to ten percent.

Another commenter notes that PTE 96–23, a class exemption which permits various transactions involving employee benefit plans whose assets are managed by in-house managers (INHAMs), does not contain a limitation that parallels the Diverse Clientele Test in PTE 84–14. This commenter notes that banks and insurance companies, which do not meet the definition of INHAM and therefore do not qualify for relief under that class exemption, will be subject to a limitation that is not otherwise applicable to financial institutions that qualify for relief under the INHAM class exemption.

In this regard, the Department notes that this amendment of PTE 84–14 does not foreclose future consideration of additional exemptive relief under PTE 96–23 for financial institutions that do not meet the Diverse Clientele Test and currently do not qualify as INHAMs, if the requisite findings under section 408(a) of ERISA can be made.

Scope of Relief

One of the commenters stated that it is unclear whether the proposed amendment would permit a QPAM to manage an investment fund that contains the assets of a plan sponsored by an affiliate of the QPAM. The Department has revised Part V of the final amendment to clarify that relief is being granted for a QPAM to manage an investment fund that contains the assets of a plan sponsored by a QPAM and/or a plan sponsored by an affiliate thereof.

Transitional Relief

One commenter urged the Department to delay the effective date of the final amendment in order to give parties more time to comply with the changes. Specifically, the commenter requested that the amendment be effective 120 days after publication in the **Federal Register**. The Department agrees that additional time may be needed for QPAMs to conform to the amended class exemption. Accordingly, the final amendment is effective 120 days following the date of publication of this amendment in the **Federal Register**. In the interim, a QPAM may continue to act as an investment manager for its own in-house plan in reliance on the transitional relief provided in the amendment to PTE 84–14 published on August 23, 2005.

Definition of QPAM

One commenter recommended that the amendment permit only financial institutions that are registered investment advisers (and not, for example, proprietary trading operations) to act as QPAMs for their own plans. In this regard, the Department notes that Part VI(a) of the amended class exemption defines the term "qualified professional asset manager" or "QPAM" to mean an independent fiduciary which is (1) A bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940, or (2) a savings and loan association, or (3) an insurance company which is qualified under the laws of more than one State to manage, acquire, or dispose of any assets of a plan, or (4) an investment adviser registered under the Investment Advisers Act of 1940. In light of the above, the Department believes that it is unnecessary to amend the definition of QPAM as requested.

Additional Clarifications

In the preamble to the proposed amendment, the Department noted that the exemption audit is substantially similar to the audit required under PTE 96–23 (61 FR 15975 (Apr. 10, 1996)). However, following publication of the proposed amendment, the Department became aware of practitioner uncertainty regarding certain aspects of the audit requirement in PTE 96–23. Because of the similarity of the audit requirements in the proposed amendment to PTE 84–14 with the audit requirement in PTE 96–23, the Department is providing additional clarifying language in sections VI(p) and V(c) of PTE 84–14 as described below, and, further, is offering the following additional guidance.

Section VI(p) of the proposed amendment requires, in part, an auditor to test a representative sample of a plan's transactions covered by the exemption in order to make findings regarding whether the QPAM is in compliance with the QPAM's policies and procedures, and with the objective requirements of the exemption. The Department notes, however, that in certain instances, an auditor may need to construct and test more than one set of transactions in order to have a reasonable basis for an opinion on the QPAM's compliance with the exemption. For example, an auditor may initially believe that the most appropriate way to make the required findings is to construct a sample that represents the total universe of relevant transactions engaged in by the QPAM under the exemption. In testing the sample, however, the auditor should look for, and may find, patterns of compliance failures that indicate that certain types of transactions are more prone to compliance failures than others. If such patterns appear, the auditor may need to test additional transactions to more accurately assess the extent and causes of non-compliant transactions. Since, as noted in the preamble to the proposed amendment, the audit requirement is, among other things, intended to protect plans by

[3] Part I(e) of PTE 84–14 provides that a QPAM may not enter into a transaction with a party in interest with respect to any plan whose assets managed by the QPAM, when combined with the assets of other plans established or maintained by the same employer or affiliates of the employer or by the same employee organization, and managed by the QPAM, represent more than 20 percent of the total clients assets managed by the QPAM at the time of the transaction.

[4] 49 FR 9504.

ensuring that an investment manager complies with the requirements of the exemption, the sample should also be sufficient in size and nature for the auditor to render an overall opinion regarding whether the QPAM's program complied with the objective requirements of the exemption, and with the QPAM's own policies and procedures.

Accordingly, the Department has clarified section VI(p)(2) of PTE 84–14 in a manner that is consistent with the views expressed above.

Section V(c) of the proposed amendment requires that an independent auditor conduct an exemption audit on an annual basis, and issue a written report to the plan presenting its specific findings regarding the level of compliance with the policies and procedures adopted by the QPAM. However, the proposed amendment does not specify the date by which each audit must be completed. To avoid any uncertainty on this issue, section V(c) of PTE 84–14 now expressly provides that the audit must be completed within six months following the end of the year to which it relates. For consistency with the changes to section VI(p)(2) described above, section V(c) also expressly provides that the written report must contain the specific findings required under section VI(p)(2), and an overall opinion regarding the level of compliance of the QPAM's program with the policies and procedures adopted by the QPAM and the objective requirements of the exemption.

The Department notes that relief is not available under PTE 84–14 for those transactions that did not satisfy its conditions. As a result, the Department anticipates that an auditor's report will clearly identify each transaction examined by the auditor that does not comply with the QPAM's policies and procedures or the exemption. In this regard, the report should identify the specific policies, procedures or exemption conditions that were not satisfied. The Department expects further that each written report will include a description of the steps, if any, taken by the QPAM to remedy transactions that did not comply with the objective requirements of the exemption. The report should also contain a description of the steps taken by the auditor to construct the sample(s) and an explanation as to why the auditor believes that the sample on which the required findings are based is an adequate representation of the total universe of transactions engaged in by the QPAM.

The QPAM retains responsibility for reviewing the written report and taking any appropriate actions deemed necessary for assuring compliance with the exemption. The Department cautions that the failure of the QPAM to take appropriate steps to address any adverse findings or prohibited transactions in an audit would raise issues under the fiduciary responsibility provisions of section 404 of ERISA.

For the sake of convenience, the entire text of PTE 84–14 has been reprinted with this notice.

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 ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan. Additionally, the fact that a transaction is the subject of an exemption does not 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) The Department finds that the amended 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 amended exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the amendment; and

(4) The amended exemption is supplemental to, and not in derogation of, any other provisions of ERISA and 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.

Exemption

Under section 408(a) of the Act 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, 32847, August 10, 1990), effective as noted, the Department amends PTE 84–14 as set forth below:

Part I—General Exemption

Effective as of August 23, 2005, the restrictions of ERISA section 406(a)(1)(A) through (D) and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (D), shall not apply to a transaction between a party in interest with respect to an employee benefit plan and an investment fund (as defined in section VI(b)) in which the plan has an interest, and which is managed by a qualified professional asset manager (QPAM) (as defined in section VI(a)), if the following conditions are satisfied:

(a) At the time of the transaction (as defined in section VI(i)) the party in interest, or its affiliate (as defined in section VI(c)), does not have the authority to—

(1) Appoint or terminate the QPAM as a manager of the plan assets involved in the transaction, or

(2) Negotiate on behalf of the plan the terms of the management agreement with the QPAM (including renewals or modifications thereof) with respect to the plan assets involved in the transaction;

Notwithstanding the foregoing, in the case of an investment fund in which two or more unrelated plans have an interest, a transaction with a party in interest with respect to an employee benefit plan will be deemed to satisfy the requirements of section I(a) if the assets of the plan managed by the QPAM in the investment fund, when combined with the assets of other plans established or maintained by the same employer (or affiliate thereof described in section VI(c)(1) of the exemption) or by the same employee organization, and managed in the same investment fund, represent less than 10 percent of the assets of the investment fund;

(b) The transaction is not described in—

(1) Prohibited Transaction Exemption 2006–16 (71 FR 63786; October 31, 2006) (relating to securities lending arrangements) (as amended or superseded),

(2) Prohibited Transaction Exemption 83–1 (48 FR 895; January 7, 1983) (relating to acquisitions by plans of interests in mortgage pools) (as amended or superseded), or

(3) Prohibited Transaction Exemption 82–87 (47 FR 21331; May 18, 1982) (relating to certain mortgage financing arrangements) (as amended or superseded);

(c) The terms of the transaction are negotiated on behalf of the investment fund by, or under the authority and general direction of, the QPAM, and either the QPAM, or (so long as the QPAM retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by the QPAM, makes the decision on behalf of the investment fund to enter into the transaction, provided that the transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest;

(d) The party in interest dealing with the investment fund is neither the QPAM nor a person related to the QPAM (within the meaning of section VI(h));

(e) The transaction is not entered into with a party in interest with respect to any plan whose assets managed by the QPAM, when combined with the assets of other plans established or maintained by the same employer (or affiliate thereof described in section VI(c)(1) of this exemption) or by the same employee organization, and managed by the QPAM, represent more than 20 percent of the total client assets managed by the QPAM at the time of the transaction;

(f) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the QPAM, the terms of the transaction are at least as favorable to the investment fund as the terms generally available in arm's length transactions between unrelated parties;

(g) Neither the QPAM nor any affiliate thereof (as defined in section VI(d)), nor any owner, direct or indirect, of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of: Any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary; income tax evasion; any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or any other crime described in section 411 of ERISA. For purposes of this section (g), a person shall be deemed to have been "convicted" from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

Part II—Specific Exemption for Employers

Effective as of August 23, 2005, the restrictions of sections 406(a), 406(b)(1) and 407(a) of ERISA and the taxes imposed by section 4975(a) and (b) of the Code, by reason of Code section 4975(c)(1)(A) through (E), shall not apply to:

(a) The sale, leasing, or servicing of goods (as defined in section VI(j)), or to the furnishing of services, to an investment fund managed by a QPAM by a party in interest with respect to a plan having an interest in the fund, if—

(1) The party in interest is an employer any of whose employees are covered by the plan or is a person who is a party in interest by virtue of a relationship to such an employer described in section VI(c),

(2) The transaction is necessary for the administration or management of the investment fund,

(3) The transaction takes place in the ordinary course of a business engaged in by the party in interest with the general public,

(4) Effective for taxable years of the party in interest furnishing goods and services after August 23, 2005, the amount attributable in any taxable year of the party in interest to transactions engaged in with an investment fund pursuant to section II(a) of this exemption does not exceed one (1) percent of the gross receipts derived from all sources for the prior taxable year of the party in interest, and

(5) The requirements of sections I(c) through (g) are satisfied with respect to the transaction;

(b) The leasing of office or commercial space by an investment fund maintained by a QPAM to a party in interest with respect to a plan having an interest in the investment fund, if—

(1) The party in interest is an employer any of whose employees are covered by the plan or is a person who is a party in interest by virtue of a relationship to such an employer described in section VI(c),

(2) No commission or other fee is paid by the investment fund to the QPAM or to the employer, or to an affiliate of the QPAM or employer (as defined in section VI(c)), in connection with the transaction,

(3) Any unit of space leased to the party in interest by the investment fund is suitable (or adaptable without excessive cost) for use by different tenants,

(4) The amount of space covered by the lease does not exceed fifteen (15) percent of the rentable space of the office building, integrated office park, or of the commercial center (if the lease does not pertain to office space),

(5) In the case of a plan that is not an eligible individual account plan (as defined in section 407(d)(3) of ERISA), immediately after the transaction is entered into, the aggregate fair market value of employer real property and employer securities held by investment funds of the QPAM in which the plan has an interest does not exceed 10 percent of the fair market value of the assets of the plan held in those investment funds. In determining the aggregate fair market value of employer real property and employer securities as described herein, a plan shall be considered to own the same proportionate undivided interest in each asset of the investment fund or funds as its proportionate interest in the total assets of the investment fund(s). For purposes of this requirement, the term "employer real property" means real property leased to, and the term "employer securities" means securities issued by, an employer any of whose employees are covered by the plan or a party in interest of the plan by reason of a relationship to the employer described in subparagraphs (E) or (G) of ERISA section 3(14), and

(6) The requirements of sections I(c) through (g) are satisfied with respect to the transaction.

Part III—Specific Lease Exemption for QPAMs

Effective as of August 23, 2005, the restrictions of section 406(a)(1)(A) through (D) and 406(b)(1) and (2) of ERISA and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (E), shall not apply to the leasing of office or commercial space by an investment fund managed by a QPAM to the QPAM, a person who is a party in interest of a plan by virtue of a relationship to such QPAM described in subparagraphs (G), (H), or (I) of ERISA section 3(14) or a person not eligible for the General Exemption of Part I by reason of section I(a), if —

(a) The amount of space covered by the lease does not exceed the greater of 7500 square feet or one (1) percent of the rentable space of the office building, integrated office park or of the commercial center in which the investment fund has the investment,

(b) The unit of space subject to the lease is suitable (or adaptable without

excessive cost) for use by different tenants,

(c) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the QPAM, the terms of the transaction are not more favorable to the lessee than the terms generally available in arm's length transactions between unrelated parties, and

(d) No commission or other fee is paid by the investment fund to the QPAM, any person possessing the disqualifying powers described in section I(a), or any affiliate of such persons (as defined in section VI(c)), in connection with the transaction.

Part IV—Transactions Involving Places of Public Accommodation

Effective as of August 23, 2005, the restrictions of section 406(a)(1)(A) through (D) and 406(b)(1) and (2) of ERISA and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (E), shall not apply to the furnishing of services and facilities (and goods incidental thereto) by a place of public accommodation owned by an investment fund managed by a QPAM to a party in interest with respect to a plan having an interest in the investment fund, if the services and facilities (and incidental goods) are furnished on a comparable basis to the general public.

Part V—Specific Exemption Involving QPAM—Sponsored Plans

Effective after November 3, 2010, the relief provided by Parts I, III or IV of PTE 84–14 from the applicable restrictions of ERISA section 406(a), section 406(b)(1) and (2), and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (E), shall apply to a transaction involving the assets of a plan sponsored by the QPAM or an affiliate of the QPAM if:

(a) The QPAM has discretionary authority or control with respect to the plan assets involved in the transaction;

(b) The QPAM adopts written policies and procedures that are designed to assure compliance with the conditions of the exemption;

(c) An independent auditor, who has appropriate technical training or experience and proficiency with ERISA's fiduciary responsibility provisions and so represents in writing, conducts an exemption audit (as defined in section VI(p) on an annual basis. Following completion of the exemption audit, the auditor shall issue a written report to the plan presenting its specific findings regarding the level of compliance: (1) With the policies and procedures adopted by the QPAM in accordance with section V(b); and (2) with the objective requirements of the exemption. The written report shall also contain the auditor's overall opinion regarding whether the QPAM's program complied: (1) with the policies and procedures adopted by the QPAM; and (2) with the objective requirements of the exemption. The exemption audit and the written report must be completed within six months following the end of the year to which the audit relates;

(d) The transaction meets the applicable requirements set forth in Parts I, III, or IV of the exemption.

Part VI—Definitions and General Rules

For purposes of this exemption:

(a) The term "qualified professional asset manager" or "QPAM" means an independent fiduciary (as defined in section VI(o)) which is —

(1) A bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940 that has the power to manage, acquire or dispose of assets of a plan, which bank has, as of the last day of its most recent fiscal year, equity capital (as defined in section VI(k)) in excess of $1,000,000, or

(2) A savings and loan association, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, that has made application for and been granted trust powers to manage, acquire or dispose of assets of a plan by a State or Federal authority having supervision over savings and loan associations, which savings and loan association has, as of the last day of its most recent fiscal year, equity capital (as defined in section VI(k)) or net worth (as defined in section VI(l)) in excess of $1,000,000, or

(3) An insurance company which is qualified under the laws of more than one State to manage, acquire, or dispose of any assets of a plan, which company has, as of the last day of its most recent fiscal year, net worth (as defined in section VI(l)) in excess of $1,000,000 and which is subject to supervision and examination by a State authority having supervision over insurance companies, or

(4) An investment adviser registered under the Investment Advisers Act of 1940 that has total client assets under its management and control in excess of $50,000,000 as of the last day of its most recent fiscal year, and either (A) shareholders' or partners' equity (as defined in section VI(m)) in excess of $750,000, or (B) payment of all of its liabilities including any liabilities that may arise by reason of a breach or violation of a duty described in sections 404 and 406 of ERISA is unconditionally guaranteed by—(i) A person with a relationship to such investment adviser described in section VI(c)(1) if the investment adviser and such affiliate have shareholders' or partners' equity, in the aggregate, in excess of $750,000, or (ii) A person described in (a)(1), (a)(2) or (a)(3) of section VI above, or (iii) A broker-dealer registered under the Securities Exchange Act of 1934 that has, as of the last day of its most recent fiscal year, net worth in excess of $750,000; and (C) effective as of the last day of the first fiscal year of the investment adviser beginning on or after August 23, 2005, substitute "$85,000,000" for "$50,000,000" and "$1,000,000" for "$750,000" in (a)(4)(A) or (B) of section VI above;

Provided that such bank, savings and loan association, insurance company or investment adviser has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

(b) An "investment fund" includes single customer and pooled separate accounts maintained by an insurance company, individual trusts and common, collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of the QPAM) is subject to the discretionary authority of the QPAM.

(c) For purposes of section I(a) and Part II, an "affiliate" of a person means—

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, 10 percent or more partner (except with respect to Part II this figure shall be 5 percent), or highly compensated employee as defined in section 4975(e)(2)(H) of the Code (but only if the employer of such employee is the plan sponsor), and

(3) Any director of the person or any employee of the person who is a highly compensated employee, as defined in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets involved in the transaction. A named fiduciary (within the meaning of section 402(a)(2) of ERISA) of a plan with respect to the plan assets involved in the transaction and an employer any of whose employees are covered by the

plan will also be considered affiliates with respect to each other for purposes of section I(a) if such employer or an affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

(d) For purposes of section I(g) an "affiliate" of a person means—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any director of, relative of, or partner in, any such person,

(3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and

(4) Any employee or officer of the person who—

(A) Is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or

(B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.

(e) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) The term "party in interest" means a person described in ERISA section 3(14) and includes a "disqualified person," as defined in Code section 4975(e)(2).

(g) The term "relative" means a relative as that term is defined in ERISA section 3(15), or a brother, a sister, or a spouse of a brother or sister.

(h) A QPAM is "related" to a party in interest for purposes of section I(d) of this exemption if, as of the last day of its most recent calendar quarter: (i) The QPAM owns a ten percent or more interest in the party in interest; (ii) a person controlling, or controlled by, the QPAM owns a twenty percent or more interest in the party in interest; (iii) the party in interest owns a ten percent or more interest in the QPAM; or (iv) a person controlling, or controlled by, the party in interest owns a twenty percent or more interest in the QPAM. Notwithstanding the foregoing, a party in interest is "related" to a QPAM if: (i) A person controlling, or controlled by, the party in interest has an ownership interest that is less than twenty percent but greater than ten percent in the QPAM and such person exercises control over the management or policies of the QPAM by reason of its ownership interest; (ii) a person controlling, or controlled by, the QPAM has an ownership interest that is less than twenty percent but greater than ten percent in the party in interest and such person exercises control over the management or policies of the party in interest by reason of its ownership interest. For purposes of this definition:

(1) The term "interest" means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership, or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest if, other than in a fiduciary capacity, the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(i) The time as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after December 21, 1982, or a renewal that requires the consent of the QPAM occurs on or after December 21, 1982 and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Notwithstanding the foregoing, this exemption shall cease to apply to a transaction exempt by virtue of Part I or Part II at such time as the percentage requirement contained in section I(e) is exceeded, unless no portion of such excess results from an increase in the assets transferred for discretionary management to a QPAM. For this purpose, assets transferred do not include the reinvestment of earnings attributable to those plan assets already under the discretionary management of the QPAM. Nothing in this paragraph shall be construed as exempting a transaction entered into by an investment fund which becomes a transaction described in section 406 of ERISA or section 4975 of the Code while the transaction is continuing, unless the conditions of this exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(j) The term "goods" includes all things which are movable or which are fixtures used by an investment fund but does not include securities, commodities, commodities futures, money, documents, instruments, accounts, chattel paper, contract rights and any other property, tangible or intangible, which, under the relevant facts and circumstances, is held primarily for investment.

(k) For purposes of section VI(a)(1) and (2), the term "equity capital" means stock (common and preferred), surplus, undivided profits, contingency reserves and other capital reserves.

(l) For purposes of section VI(a)(3), the term "net worth" means capital, paid-in and contributed surplus, unassigned surplus, contingency reserves, group contingency reserves, and special reserves.

(m) For purposes of section VI(a)(4), the term "shareholders' or partners' equity" means the equity shown in the most recent balance sheet prepared within the two years immediately preceding a transaction undertaken pursuant to this exemption, in accordance with generally accepted accounting principles.

(n) The terms "employee benefit plan" and "plan" refer to an employee benefit plan described in section 3(3) of ERISA and/or a plan described in section 4975(e)(1) of the Code.

(o) For purposes of section VI(a), the term "independent fiduciary" means a fiduciary managing the assets of a plan in an investment fund that is independent of and unrelated to the employer sponsoring such plan. For purposes of this exemption, the independent fiduciary will not be deemed to be independent of and unrelated to the employer sponsoring the plan if such fiduciary directly or indirectly controls, is controlled by, or is under common control with the employer sponsoring the plan. Notwithstanding the foregoing: (1) For the period from December 21, 1982, through November 3, 2010, a QPAM managing the assets of a plan in an investment fund will not fail to satisfy the requirements of this section solely because such fiduciary is the employer sponsoring the plan or directly or indirectly controls, is controlled by, or is under common control with the employer sponsoring the plan; and (2) effective after November 3, 2010 a QPAM acting as a manager for its own plan or the plan of an affiliate (as defined in section VI(c)(1)) will be deemed to satisfy the requirements of

this section if the requirements of Part V are met.

(p) Exemption Audit. An "exemption audit" of a plan must consist of the following:

(1) A review of the written policies and procedures adopted by the QPAM pursuant to section V(b) for consistency with each of the objective requirements of this exemption (as described in section VI(q)).

(2) A test of a representative sample of the plan's transactions during the audit period that is sufficient in size and nature to afford the auditor a reasonable basis:

(A) To make specific findings regarding whether the QPAM is in compliance with (i) the written policies and procedures adopted by the QPAM pursuant to section VI(q) of the exemption and (ii) the objective requirements of the exemption; and

(B) To render an overall opinion regarding the level of compliance of the INHAM's program with section VI(p)(2)(A)(i) and (ii) of the exemption.

(3) A determination as to whether the QPAM has satisfied the definition of an QPAM under the exemption; and

(4) Issuance of a written report describing the steps performed by the auditor during the course of its review and the auditor's findings.

(q) For purposes of section VI(p), the written policies and procedures must describe the following objective requirements of the exemption and the steps adopted by the QPAM to assure compliance with each of these requirements:

(1) The definition of a QPAM in section VI(a).

(2) The requirement of sections V(a) and I(c) regarding the discretionary authority or control of the QPAM with respect to the plan assets involved in the transaction, in negotiating the terms of the transaction and with respect to the decision on behalf of the investment fund to enter into the transaction.

(3) For a transaction described in Part I:

(A) That the transaction is not entered into with any person who is excluded from relief under section I(a), section I(d), or section I(e),

(B) that the transaction is not described in any of the class exemptions listed in section I(b),

(4) If the transaction is described in section III:

(A) That the amount of space covered by the lease does not exceed the limitations described in section III(a); and

(B) That no commission or other fee is paid by the investment fund as described in section III(d).

Signed at Washington, DC, this 29th day of June, 2010.

Ivan L. Strasfeld

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2010–16302 Filed 7–2–10; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (10–073)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Brenda J. Maxwell, Office of the Chief Information Officer, Mail Suite 2S71, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Brenda J. Maxwell, Office of the Chief Information Officer, NASA Headquarters, 300 E Street, SW., Mail Suite 2S71, Washington, DC 20546, (202) 358–4616, *brenda.maxwell@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The NASA Office of Public Affairs wants an electronic method to provide scheduling and notification of NASA events that allow them to track and manage these requests for events.

II. Method of Collection

Electronic.

III. Data

Title: Special Events Guest System (SEGS).

OMB Number: (2700–0073).

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 11,000.

Estimated Time per Response: Voluntary.

Estimated Total Annual Burden Hours: 1,100.

Estimated Total Annual Cost: $0.

IV. Requests for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Brenda J. Maxwell,

NASA PRA Clearance Officer.

[FR Doc. 2010–16215 Filed 7–2–10; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289; NRC–2010–0221]

Exelon Generation Company, LLC; Three Mile Island Nuclear Station, Unit No. 1; Exemption

1.0 Background

Exelon Generation Company, LLC (Exelon, the licensee) is the holder of Facility Operating License No. DPR–50 which authorizes operation of the Three Mile Island Nuclear Station, Unit 1 (TMI–1). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor (PWR) located in Dauphin County, Pennsylvania.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR) part 50, Section 50.48, requires that nuclear power plants that were licensed before January 1, 1979, must satisfy the requirements of 10 CFR part 50, appendix R, section III.G, "Fire protection of safe shutdown capability." TMI–1 was licensed to operate prior to January 1, 1979. As

such, the licensee's Fire Protection Program (FPP) must satisfy the established fire protection features of 10 CFR part 50, appendix R, section III.G.

TMI–1 proposes to utilize an operator manual action (OMA) in lieu of meeting the circuit separation and/or protection requirements contained in 10 CFR part 50, appendix R, section III.G.2 (III.G.2), which requires ensuring that one of the redundant trains of systems necessary to achieve and maintain hot shutdown is maintained free of fire damage. In this case, the OMA is proposed for a fire occurring in Fire Zone 6 of the plant's Auxiliary Building (AB–FZ–6). The prescribed action involves opening a breaker and manually opening valve MU–V–36 within 40 minutes to support maintaining a makeup pump minimum recirculation path. By letter dated December 30, 1986 (ADAMS Legacy Library Accession No. 8701090216), this OMA was previously approved by the NRC; however, the time requirement has been shortened, necessitating this exemption.

In summary, by letter dated March 3, 2009 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML090630134), as supplemented by letter dated March 15, 2010 (ADAMS Accession No. ML100750093), Exelon requested an exemption for TMI–1 from certain technical requirements of III.G.2 for the use of an OMA in lieu of meeting the circuit separation and/or protection requirements contained in III.G.2 for AB–FZ–6.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when: (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. These circumstances include the special circumstances that the application of the regulation is not necessary to achieve the underlying purpose of the rule.

In its March 15, 2010, letter, the licensee discussed financial implications associated with plant modifications that may be necessary to comply with the regulation. If such costs have been shown to be significantly in excess of those contemplated at the time the regulation was adopted, or are significantly in excess of those incurred by others similarly situated, this may be considered a basis for considering an exemption request. However, financial implications were not considered in the regulatory review of their request since no substantiation was provided regarding such financial implications. Even though no financial substantiation was provided, the licensee did submit sufficient regulatory basis to support a technical review of their exemption request in that the application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

In accordance with 10 CFR 50.48(b), nuclear power plants licensed before January 1, 1979, are required to meet section III.G, of 10 CFR part 50, appendix R. The underlying purpose of 10 CFR part 50, appendix R, section III.G is to ensure that the ability to achieve and maintain safe shutdown is preserved following a fire event. The regulation intends for licensees to accomplish this by extending the concept of defense-in-depth to:

(1) Prevent fires from starting;

(2) Rapidly detect, control, and extinguish promptly those fires that do occur;

(3) Provide protection for structures, systems, and components important to safety so that a fire that is not promptly extinguished by the fire suppression activities will not prevent the safe shutdown of the plant.

The stated purpose of III.G.2 is to ensure that one of the redundant trains necessary to achieve and maintain hot shutdown conditions remains free of fire damage in the event of a fire. Section III.G.2 requires one of the following means to ensure that a redundant train of safe shutdown cables and equipment is free of fire damage, where redundant trains are located in the same fire area outside of primary containment:

(1) Separation of cables and equipment by a fire barrier having a 3-hour rating;

(2) Separation of cables and equipment by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards and with fire detectors and an automatic fire suppression system installed in the fire area; or

(3) Enclosure of cables and equipment of one redundant train in a fire barrier having a 1-hour rating and with fire detectors and an automatic fire suppression system installed in the fire area.

Exelon has requested an exemption from the requirements of III.G.2 for TMI–1 to the extent that one of the redundant trains of systems necessary to achieve and maintain hot shutdown is not maintained free of fire damage in accordance with one of the required means, for a fire occurring in Fire Zone AB–FZ–6 in the Auxiliary Building. In its March 15, 2010, response to the NRC's request for additional information, the licensee stated that the purpose of its request was to credit the use of an OMA, in conjunction with other forms of defense-in-depth, in lieu of the separation and protective measures required by III.G.2 for a fire in Fire Zone AB–FZ–6. Specifically, Fire Zone AB–FZ–6 is not protected throughout by an automatic fire suppression system and rated fire barriers or 20 feet of spatial separation are not provided between the redundant equipment. The OMA entails locally opening a feeder breaker (1P 480V Switchgear Unit 4C) located in Fire Zone CB–FA–2a and a valve (MU–V–36), which is located in Fire Zone AB–FZ–3, to establish a makeup pump recirculation flow path.

In summary, TMI–1 does not meet the requirements of III.G.2 for a fire in Fire Zone AB–FZ–6 and an OMA may be necessary to achieve and maintain hot shutdown capability. The licensee also indicated that the only credible scenario for a fire in Fire Zone AB–FZ–6 that may require the need to manually open valve MU–V–36 is as follows: the fire must initiate within the MU–V–36 breaker compartment of the 1A Engineered Safeguards Valve (ESV) motor control center (MCC), cause a fault on an energized circuit to make MU–V–36 close, cause power failure of the 1A ESV MCC, spread to and damage the instrument air tubing causing valves MU–V–18 and MU–V–20 to close, and cause failure of the 1B ESV MCC power circuit, which is contained within a 4-inch galvanized steel conduit.

See Section 3.3 below for additional details addressing the spatial separation between cables and instrument air tubing. In addition, the TMI–1 analysis assumes that fire damage may occur immediately upon first detection of the fire to all components in the fire area. The licensee stated that after confirmation of a fire, the fire abnormal operating procedure (AOP) for Fire Zone AB–FZ–6 would be entered.

The licensee has described in its initial request, and subsequent documents, elements of the fire protection program that provide justification that the concept of defense-in-depth that is in place in Fire Zone AB–FZ–6 is consistent with that intended by the regulation. To accomplish this, the licensee provides various forms of protection in order to maintain the concept of defense-in-

depth. The licensee's approach is discussed below.

3.1 Fire Prevention

The licensee has stated that it has an administrative controls program in place to control ignition sources, hot work activities (activities such as welding or grinding), in situ and transient combustibles, and fire system impairments. The administrative controls program is described in the TMI–1 Updated Final Safety Analysis Report (UFSAR) and in the Fire Hazards Analysis Report (FHAR), which is incorporated by reference into the UFSAR. Transient combustibles are restricted in Fire Zone AB–FZ–6 and particularly in the 1A ESV MCC area.

In addition to these measures, the licensee has stated that the power and control cables with voltages up to 480V AC and 480/120V in the fire zone are thermoset (Kerite with ethylene propylene rubber (EPR) insulation). Thermoset cables are resistant to self-ignited cable fires and are not considered to represent an ignition source. Other ignition sources in the area consist of control power transformers inside the 1A ESV MCC. The licensee also stated that the transformers are contained within the metal-clad MCC housing and contain no combustible or flammable liquids and that the control cables are located in open trays while the 480V power cables are in conduit or use armor jacketed cable. Therefore, due to limited ignition sources and the cables installed in conduit and armored jacketed cables, flame propagation is not expected to present a hazard.

3.2 Detection, Control and Extinguishment

Fire Zone AB–FZ–6 is provided with a ceiling-mounted photoelectric smoke detection system, which is connected to the Auxiliary Building fire detection panel, located near the 1A ESV MCC. The licensee has indicated that if smoke is detected, a local horn and strobe light are actuated at the fire alarm panel as well as in the control room. There are two smoke detectors located within a few feet horizontally and approximately 13 feet vertically above the 1A ESV MCC. The smoke detection system is designed and installed in accordance with National Fire Protection Association (NFPA) 72D (1975), "Proprietary Protective Signaling Systems for Guard, Fire Alarm and Supervisory Service," and NFPA 72E (1978), "Automatic Fire Detectors."

A hose reel, with at least 100 feet of hose, is provided in adjacent Fire Zone AB–FZ–9. The hose reel is less than 100 feet from the 1A ESV MCC area or any other area in Fire Zone AB–FZ–6. The hose reels were designed and installed in accordance with NFPA 14 (1978), "Standpipe and Hose Systems," and have electrically-safe fog nozzles installed, which make them safe to use in the vicinity of electrical equipment. Portable dry chemical and carbon dioxide fire extinguishers are also permanently mounted in Fire Zone AB–FZ–6 and adjacent fire zones. These extinguishers have been installed in accordance with NFPA 10, "Standard for Portable Fire Extinguishers." The licensee stated that all fire protection equipment is maintained in accordance with the site FPP to ensure operability.

A water curtain is provided for fire protection of the zone boundary between Fire Zones AB–FZ–6 and AB–FZ–7. The pre-action water curtain system between Fire Zones AB–FZ–6 and AB–FZ–7 is actuated by the cross-zone smoke detection system but is not credited for fire suppression within Fire Zone AB–FZ–6. The water curtain is only provided for fire protection of the zone boundary between Fire Zones AB–FZ–6 and AB–FZ–7 and all other openings are sealed with material having at least a 1-hour fire rating.

The remaining zone boundaries consist of reinforced concrete walls, floors and ceilings. The south boundary and portion of the ceiling are not adjacent to any other plant areas. The remainder of the ceiling adjacent to the chemical addition area and Emergency Safeguards Features (ESF) Ventilation Room is a 3-hour fire barrier. Most of the north boundary is adjacent to Fire Zone AB–FZ–7 with an open passage, discussed above, between the zones. The remainder of the north boundary is adjacent to the Reactor Building, which is a 3-hour rated fire barrier. The east boundary is adjacent to Fire Zones FH–FZ–1 and FH–FZ–2 and is made of reinforced concrete. A 3-hour rated fire barrier is provided on the floor where this zone is adjacent to Fire Zones AB–FZ–2a, AB–FZ–2b and AB–FZ–2c. An automatic pre-action system is located in Fire Zone AB–FZ–4 where the floor of Fire Zone AB–FZ–6 is adjacent to Fire Zone AB–FZ–4.

3.3 Preservation of Safe Shutdown Capability

The licensee has stated that the postulated fire event that may require the OMA to open MU–V–36 would include at least four independent failures to occur; two of which are sequence dependent (*i.e.,* MU–V–36 hot short occurs prior to loss of MCC) as described below:

- While 1A ESV MCC is energized, the fire causes a hot short (within 1A ESV MCC), which establishes proper voltage in the closing circuit and causes MU–V–36 to travel closed (MU–V–36 control cable CQ232A).
- After MU–V–36 is closed, the fire causes loss of 1A ESV MCC (cable LP8 within MCC), which is located in the fire zone. This eliminates remote control of MU–V–16A and MU–V–16B and would isolate the 'A' train emergency makeup (High Pressure Injection [HPI]) flow path (valves normally closed).
- The fire causes a loss of integrity of the ¼-inch outside diameter copper tubing which causes a sufficient reduction in the Auxiliary Building instrument air supply pressure for MU–V–18 to close and eventually for MU–V–20 to close. Loss of control of MU–V–18 eliminates the use of the normal Reactor Coolant System (RCS) makeup flow path and depressurization of the MU–V–20 actuator would cause seal injection flow to the RCP to be isolated.
- Fire causes loss of power to 1B ESV MCC (cable LS7A). This eliminates remote control of MU–V–16C and MU–V–16D and would eliminate the 'B' train emergency makeup (HPI) flow path as an alternate means of RCS makeup (valves normally closed).

In order for a fire to cause MU–V–36 to close, the licensee has indicated that " * * * the fire must cause an intra-cable hot short between a normally energized conductor in multi-conductor cable CQ232A and the conductor that picks up the closing coil. This would short out the remote control switch and energize the closing coil for MU–V–36. The fire must maintain this hot short without grounding the circuit and blowing the control power fuses or otherwise causing a loss of control power, such as loss of the main 1A ESV MCC power cable LP8. The MU–V–36 circuits of concern are located within the MCC breaker compartment along with the control power fuses. It is unlikely that a fire could sufficiently damage cable CQ232A insulation and short the proper conductors to energize the closing coil for MU–V–36 prior to blowing the control power fuses. Because the fire must cause a hot short to close MU–V–36 prior to loss of control power, the most likely fire ignition location within Fire Zone AB–FZ–6 is in the MU–V–36 breaker compartment. Fires in other areas of 1A ESV MCC would be likely to trip the main bus breaker or otherwise damage the 1A ESV MCC power cable LP8 prior to affecting MU–V–36 circuits."

Next, the licensee has indicated that "[t]he primary combustible in Fire Zone AB–FZ–6 is 1A ESV MCC and

associated cables * * * [t]he tubing closest to 1A ESV MCC is ¼-inch outside diameter tubing used for testing reactor building pressure switches. This tubing is at least 6 feet from the MCC with no intervening combustibles. The loss of integrity of these ¼-inch outside diameter tubing lines may not be sufficient to exceed the capacity of the instrument air supply and reduce the instrument air supply pressure to MU–V–18 (normal RCS makeup isolation valve) below 60 psig [pounds per square inch gauge]. Both instrument air compressors are unaffected by a fire in Fire Zone AB–FZ–6 and would attempt to maintain the instrument air supply to MU–V–18. The loss of instrument air system integrity occurs in a section supplied through ⅜-inch regulators and ¼-inch outside diameter tubing. The main instrument air system distribution headers are 2-inch lines. This specific failure may not be sufficient to reduce the air supply pressure to MU–V–18 enough to prevent adequate RCS makeup flow. The next closest copper tubing in Fire Zone AB–FZ–6 is against the containment wall. This tubing is further separated from 1A ESV MCC by at least 10 feet of distance with no intervening combustibles. Based on the existing separation with no intervening combustibles and outside diameter of the instrument air lines within Fire Zone AB–FZ–6, it is unlikely that a fire in 1A ESV MCC would cause a loss of Auxiliary Building instrument air pressure."

The licensee further indicated that "[t]he power cable for 1B ESV MCC (LS7A) is routed through Fire Zone AB–FZ–6. The cable comes through the 1-hour-rated wall (similar to UL-tested configuration U–410) separating Fire Zones AB–FZ–6a and AB–FZ–6 in 4-inch galvanized steel conduit as it passes through the area near 1A ESV MCC. As it turns away from 1A ESV MCC (at least 6 feet of separation with no intervening combustibles), it exits the conduit and enters a tray (via a splice box). There is at least 12 feet of vertical separation with no intervening combustibles between the top of 1A ESV MCC and the 4-inch conduit that holds LS7A. Based on the existing separation and conduit protection, it is unlikely that the 1B ESV MCC power cable would be damaged, even if 1A ESV MCC were fully consumed in a fire."

Additionally, the Auxiliary Building ventilation system is not credited for smoke removal. If the primary safe shutdown (SSD) operator becomes aware of smoke in the Auxiliary Building, the operator will don a self-contained breathing apparatus (SCBA) to perform actions when directed by the control room. Two SCBAs are staged near the primary operator station on Auxiliary Building 305' elevation. All operators assigned to fire brigade or SSD duties are qualified to use a SCBA. Validation exercises have been performed to demonstrate that operators can reliably don a SCBA in less than 3 minutes.

Given the lack of combustibles, separation of cables described above, and the sequence of events required, it is unlikely that the OMA to open MU–V–36 would be required. It is also likely that a fire would be detected and suppressed before the sequence of events and failures described above fully evolved. In the unlikely occurrence that the sequence does fully evolve, the OMA is available to provide assurance that safe shutdown can be achieved.

3.4 Feasibility and Reliability of the OMAs

This analysis postulates that the features described in Sections 3.1, 3.2 and 3.3, are not sufficient to assure safe shutdown capability. The licensee has proposed an OMA to be performed in addition to the above discussed fire protection features.

NUREG–1852, "Demonstrating the Feasibility and Reliability of Operator Manual Actions in Response to Fire," provides criteria and associated technical bases for evaluating the feasibility and reliability of post-fire OMAs in nuclear power plants. The following provides the TMI–1 analysis of these criteria for justifying the OMA specified in this request for Fire Zone AB–FZ–6.

3.4.1 Bases for Establishing Feasibility and Reliability

The licensee's analysis addresses factors such as environmental concerns, equipment functionality and accessibility, available indications, communications, portable equipment, personnel protection equipment, procedures and training, staffing and demonstrations.

In their March 3, 2009, letter, and further supported by their March 15, 2010, letter, the licensee stated that environmental considerations such as radiological concerns, emergency lighting, temperature and humidity conditions and smoke and toxic gases were evaluated and found to not represent a negative impact on the operators' abilities to complete the OMA. The licensee stated that radiation levels expected during travel to or at the OMA location in the Auxiliary Building are minimal with dose rates that would be less than 10 millirem per hour. The licensee also confirmed that sufficient emergency lighting exists at the areas where actions are performed and along the travel routes to the areas. The licensee has stated that operators also have access to 8-hour battery-powered portable lights, as well. The licensee also has confirmed that temperature and humidity conditions will not challenge the operators performing the OMA. The licensee stated that radio and page communications are available for this OMA. Additionally, the licensee indicated that heat and smoke or gas generation from the fire will not impact the operator performing the OMA. This is further supported by the fact that the location of the postulated fire event is in a different fire zone than the locations for where actions are performed.

The licensee stated that the functionality of equipment and cables needed to perform the required OMA is documented in the OMA procedures, which reflect equipment availability and provide specific direction where functionality of equipment and cables may be compromised by fire. In addition, in-plant OMA walk downs were performed and demonstrated that the OMA equipment was accessible. The physical location of the components where the OMA is to be performed is identified in the fire AOPs and where components cannot be operated from the floor, installed ladders or portable ladders are provided. Other than keys, portable lighting, and portable ladders, the operators use no other additional support equipment. The fire AOPs identify when a key is required to perform the OMA. Keys required by operators are in the possession of the operator and the specific key number required for the OMA is identified in the fire AOP.

With regard to available indications, the licensee has stated that available diagnostic instrumentation is listed in the fire AOP for each fire area; however, instrumentation or indications are generally not relied upon to perform the OMA. Explicit steps in the fire AOPs direct the operators on how to perform the OMA such that one train of available indications is always available for a fire in a given fire area or zone. The licensee stated that the OMA does not require any indication to support completion of the OMA; however, lack of indication may be used to initiate an action and that successful accomplishment of the OMA is directly observable by the operator performing the OMA. The successful completion of the action is then reported to the Control Room operators. Additionally, emergency

makeup flow indication is available for a fire in Fire Zone AB–FZ–6.

With regard to communications, the licensee stated that TMI–1 has portable radio and installed phones available as part of the normal plant communications available between the Control Room and the operators and the radio and phone systems are robustly designed such that they should be available following most fire scenarios. If the various communication systems are not available, the method of communication will be face-to-face or using radios via line-of-sight (*i.e.,* no repeaters). The licensee simulated face-to-face communication was simulated by having operators start the manual action from directly outside the Control Room. Task completion is normally reported by portable hand held radio or installed phones but may also be reported by face-to-face communication if plant communication systems are not available. The General Announcing System, Operations Radio System, Plant Telephone System, Sound Powered Phone System, and Face-to-Face Communications are all available to Control Room operators and operators performing OMAs.

The licensee stated that operators performing the OMA are provided with standard personal protective equipment (PPE), including hardhat, gloves, and protective glasses. In the unlikely event that smoke conditions would require SCBAs to be worn, the plant equipment operators are qualified to wear SCBAs and the SCBAs are staged at strategic locations in the plant with additional SCBAs in the fire brigade locker.

The licensee stated that fire AOPs have been developed for each fire area or zone and that the fire AOPs are staged in certain strategic locations that are easily accessible to the operators. The individual procedures are presented in a standardized procedure format that the operators are familiar with. The fire AOPs contain both preventive actions to prevent potential adverse fire effects, as well as reactive actions to direct timely action if a fire causes a particular adverse condition (*i.e.,* valve spuriously opens or closes). The procedures for individual fire areas are used in conjunction with the symptom-based (reactive) Emergency Operating Procedures (EOPs) and other symptom-based AOPs to provide a combined preventive (fire AOPs) and reactive (EOPs and all AOPs, including fire) approach to achieve safe shutdown following a fire. The individual fire area shutdown procedures provide the operators with information as to the available equipment (including instrumentation) that can be relied upon following a fire. The fire AOP procedures provide specific guidance to the operators as to what equipment could be affected by the fire and are written in order of time criticality (*i.e.,* the most time critical actions are in the front of the procedure) to ensure that the actions are taken within the analyzed time required in the safe shutdown analysis.

With regard to staffing and demonstrations, the licensee stated that three qualified operators are available to perform the manual action at all times and that demonstrations were performed in the TMI–1 plant simulator and in the plant by operator walk downs to show that the OMAs can be performed within the times as described in the safe shutdown analysis.

3.4.2 Feasibility

The licensee's analysis demonstrates that, for the expected scenario, the OMAs can be diagnosed and executed in 19 minutes while the time available to complete them is 40 minutes. The licensee stated that the 40-minute time limit itself is a conservative measure since recent testing on the MU–V–20 backup air supply demonstrated that MU–V–20 would only stay open for approximately 75 minutes. The licensee's analysis also demonstrates that various factors, as discussed above, have been considered to address uncertainties in estimating the time available. Therefore, the OMA included in this review is feasible because there is adequate time available for the operator to perform the required manual actions to achieve and maintain hot shutdown following a fire in Fire Zone AB–FZ–6.

3.4.3 Reliability

The stated completion time of 19 minutes provides reasonable assurance that the OMA can reliably be performed under a wide range of conceivable conditions by different plant crews because it, in conjunction with the 21-minute margin and other installed fire protection features, accounts for sources of uncertainty such as variations in fire and plant conditions, factors unable to be recreated in demonstrations and human-centered factors. Therefore, the OMA included in this review is reliable because there is adequate time available to account for uncertainties not only in estimates of the time available, but also in estimates of how long it takes to diagnose a fire and execute the OMAs (*e.g.,* as based, at least in part, on a plant demonstration of the actions under nonfire conditions).

3.5 Defense-In-Depth Summary

In summary, the defense-in-depth concept for a fire in Fire Zone AB–FZ–6 provides a level of safety that results in the unlikely occurrence of fires; rapid detection, control, and extinguishment of fires that do occur; and the protection of structures, systems, and components important to safety. As discussed above, in the unlikely event of a fire that challenges safe shutdown capability, the licensee has provided preventative and protective measures in addition to a feasible and reliable OMA that together demonstrate the licensee's ability to preserve or maintain safe shutdown capability at TMI–1 in the event of a fire in Fire Zone AB–FZ–6.

3.6 Authorized by Law

This exemption would allow TMI–1 to utilize an OMA, in conjunction with the other installed fire protection features, to ensure that at least one means of achieving and maintaining hot shutdown remains available during and following a postulated fire event, as part of its fire protection program, in lieu of meeting the circuit separation and/or protection requirements specified in III.G.2 for a fire in Fire Zone AB–FZ–6. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50. The NRC staff has determined that granting of the licensee's proposed Exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

3.7 No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR part 50, appendix R, section III.G is to ensure that at least one means of achieving and maintaining hot shutdown remains available during and following a postulated fire event. Because the use of the specific OMA, in conjunction with the other installed fire protection features, only impacts the response to the specific Fire Zone AB–FZ–6 scenario described above, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

3.8 Consistent With Common Defense and Security

The proposed exemption would allow TMI–1 to utilize a specific OMA, in conjunction with the other installed fire protection features, in response to a fire in Fire Zone AB–FZ–6 in lieu of

meeting the requirements specified in III.G.2. This change, to the operation of the plant, has no relation to security issues. Therefore, the common defense and security is not diminished by this exemption.

3.9 Special Circumstances

Special circumstances in accordance with 10 CFR 50.12(a)(2)(ii) are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR Part 50, Appendix R, Section III.G is to ensure that at least one means of achieving and maintaining hot shutdown remains available during and following a postulated fire event. Therefore, since the underlying purpose of Appendix R, Section III.G is achieved, the special circumstances for granting an exemption from 10 CFR Part 50, Appendix R, Section III.G exist, as required by 10 CFR 50.12(a)(2)(ii).

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants Exelon an exemption from the requirements of section III.G.2 of appendix R of 10 CFR part 50, to TMI–1 for the OMA discussed above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 36700).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 28th day of June 2010.

For The Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–16352 Filed 7–2–10; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

NNI Strategic Plan 2010; Request for Information

ACTION: Notice.

SUMMARY: The purpose of this RFI is to enhance the value of the National Nanotechnology Initiative (NNI) by reaching out to the nanotechnology stakeholder community for specific input for the next NNI Strategic Plan to be published in December 2010. This RFI refers to the NNI Goals identified from the 2007 Strategic Plan (*http://www.nano.gov/NNI_Strategic_Plan_2007.pdf*) as a starting point for questions covering themes such as research priorities, investment, coordination, partnerships, evaluation, and policy.

RFI Response Instructions: The White House Office of Science and Technology Policy is interested in responses that address one or more of the following **Questions** below that are broadly categorized under Goals and Objectives; Research Priorities; Investment; Coordination and Partnerships; Evaluation; and Policy as related to the NNI. When submitting your response, please indicate: (1) The question(s) you are answering, and (2) which of the four NNI goals to which it applies. Please be specific and concise.

Responses to this RFI should be submitted by 11:59 p.m. Eastern Time on August 15, 2010. (Submissions prior to the July 13–14, 2010 "NNI Strategic Plan Stakeholder Workshop" (*http://www.nano.gov/html/meetings/NNISPWorkshop/index.html*) may also inform dialogues at this event.) Responses to this RFI must be delivered electronically in the body of or as an attachment to an e-mail sent to *NNIStrategy@ostp.gov*. Additionally, OSTP intends to stage an online public comment event July 13–August 15, 2010 to solicit input on the NNI Strategic Plan. For details on this online event, see *http://www.whitehouse.gov/ostp/NNIStrategy/*.

Responses to this notice are not offers and cannot be accepted by the Government to form a binding contract or issue a grant. Information obtained as a result of this RFI may be used by the government for program planning on a non-attribution basis. Do not include any information that might be considered proprietary or confidential.

Background Information

What is the NNI? The National Nanotechnology Initiative (NNI) is a U.S. Government research and development (R&D) program of 25 agencies working together toward the common challenging vision of a future in which the ability to understand and control matter at the nanoscale leads to a revolution in technology and industry that benefits society. The combined, coordinated efforts of these agencies have accelerated discovery, development, and deployment of nanotechnology towards agency missions and the broader national interest. Established in 2001, the NNI involves nanotechnology-related activities by the 25 member agencies, 15 of which have budgets for nanotechnology R&D for 2011.

The NNI is managed within the framework of the National Science and Technology Council (NSTC), the Cabinet-level council by which the President coordinates science and technology across the Federal Government and interfaces with other sectors. The Nanoscale Science, Engineering, and Technology (NSET) Subcommittee of the NSTC coordinates planning, budgeting, program implementation, and review of the NNI. The NSET Subcommittee is composed of senior representatives from agencies participating in the NNI (*http://www.nano.gov*).

NNI Goals: The December 2007 NNI Strategic Plan (*http://www.nano.gov/NNI_Strategic_Plan_2007.pdf*) specifies four overarching, crosscutting goals towards achieving the overall vision of the NNI:

Goal 1: Advance a world-class nanotechnology research and development program. The NNI ensures United States leadership in nanotechnology research and development by stimulating discovery and innovation. This program expands the boundaries of knowledge and develops technologies through a comprehensive program of research and development. The NNI agencies invest at the frontiers and intersections of many disciplines, including biology, chemistry, engineering, materials science, and physics. The interest in nanotechnology arises from its potential to significantly impact numerous fields, including aerospace, agriculture, energy, the environment, healthcare, information technology, homeland security, national defense, and transportation systems.

Goal 2: Foster the transfer of new technologies into products for commercial and public benefit. Nanotechnology contributes to United States competitiveness by improving existing products and processes and by creating new ones. The NNI implements strategies that maximize the economic benefits of its investments in nanotechnology, based on understanding the fundamental science and responsibly translating this knowledge into practical applications.

Goal 3: Develop and sustain educational resources, a skilled workforce, and the supporting infrastructure and tools to advance nanotechnology. A skilled science and engineering workforce, leading-edge

instrumentation, and state-of-the-art facilities are essential to advancing nanotechnology research and development. Educational programs and resources are required to produce the next generation of nanotechnologists, that is, the researchers, inventors, engineers, and technicians who drive discovery, innovation, industry, and manufacturing.

Goal 4: Support responsible development of nanotechnology. The NNI aims to maximize the benefits of nanotechnology and at the same time to develop an understanding of potential risks and to develop the means to manage them. Specifically, the NNI pursues a program of research, education, and communication focused on environmental, health, safety, and broader societal dimensions of nanotechnology development.

Program Component Areas (PCAs): The December 2007 NNI Strategic Plan (*http://www.nano.gov/NNI_Strategic_Plan_2007.pdf*) lays out eight categories of NNI investment known as program component areas (PCAs) to facilitate coordination, planning, and assessment of efforts towards achieving the NNI goals. The PCAs are: 1. Fundamental nanoscale phenomena and processes; 2. Nanomaterials; 3. Nanoscale devices and systems; 4. Instrumentation research, metrology, and standards for nanotechnology; 5. Nanomanufacturing; 6. Major research facilities and instrumentation acquisition; 7. Environment, health, and safety; and 8. Education and societal dimensions.

NNI Budget: Federal agencies annually report individual investments in nanotechnology R&D within PCAs in support of national goals and agency missions. Each agency separately determines its budgets for nanotechnology R&D, in coordination with the Office of Management and Budget, the Office of Science and Technology Policy, and Congress. Thus, the NNI is an interagency budget crosscut in which participating agencies work closely with each other to create an integrated program through communication, coordination, and collaboration. The proposed NNI budget for Fiscal Year 2011 is $1.76 billion, bringing the cumulative investment since the inception of the NNI in 2001 to nearly $14 billion (*http://www.nano.gov/NNI_2011_budget_supplement.pdf*).

NNI Coordination: Enhanced communication through committees and working groups has led to joint coordination and collaboration in a variety of forms. The NSET Subcommittee has established four working groups: (1) The Global Issues in Nanotechnology (GIN) Working Group, (2) the Nanotechnology Environmental and Health Implications (NEHI) Working Group, (3) the Nanomanufacturing, Industry Liaison, and Innovation (NILI) Working Group, and (4) the Nanotechnology Public Engagement and Communication (NPEC) Working Group. (See *http://www.nano.gov/html/about/nsetworkinggroups.html*.) Products from these working groups and other interagency collaborations include sharing of knowledge and expertise; joint sponsorship of solicitations and workshops; and leveraging funding, staff, and facility/equipment resources at NNI participating agencies. The National Nanotechnology Coordination Office (NNCO; *http://www.nano.gov/html/about/nnco.html*) acts as the primary point of contact for information on the NNI, provides public outreach on behalf of the NNI, and provides technical and administrative support to the NSET Subcommittee as well as the NSET working groups listed above.

Questions

A. Goals and Objectives

- A1. What specific and measurable objectives should be established to help achieve the four stated NNI goals?
- A2. Are there other overarching goals that would enable the NNI to better support the vision of a future in which the ability to understand and control matter at the nanoscale leads to a revolution in technology and industry that benefits society?

Example: In achieving Goal 2, "to foster the transfer of new technologies into products for commercial and societal benefit," one objective could be for the NNI member agencies to increase their emphasis on commercialization of nanotechnology-based products by launching new government-industry-university partnerships using successful models such as the Nanoelectronics Research Initiative (NRI; *http://nri.src.org/member/about/default.asp;* cf. recommendations in the President's Council of Advisors on Science & Technology's "Report to the President and Congress on the Third Assessment of the National Nanotechnology Initiative" (*http://www.whitehouse.gov/sites/default/files/microsites/ostp/pcast-nano-report.pdf*).

B. Research Priorities

- B1. What are the most important gaps in the NNI R&D portfolio (i.e., specific underfunded areas ripe for success) that should be addressed to achieve the NNI goal(s) (please specify 1, 2, 3, and/or 4)?
- B2. What nanotechnology R&D areas should NNI member agencies pursue under the Nanotechnology Signature Initiatives model of close and targeted program-level interagency collaboration to help accelerate nanotechnology innovation?

Background: To accelerate nanotechnology development in support of the President's priorities and innovation strategy, NNI member agencies have identified areas ripe for significant advances through closer program-level interagency collaboration oriented around specific targets that are not likely to be achieved apart from more intensive interagency and cross-sector collaboration. The three resulting Nanotechnology Signature Initiatives for FY 2011 are: 1. Nanotechnology applications for solar energy; 2. Sustainable Nanomanufacturing; and 3. Nanoelectronics for 2020 and Beyond (details are available at *http://www.nano.gov/html/research/signature_initiatives.html*). These Nanotechnology Signature Initiatives represent the leading edge of functional interagency collaboration in the budget and program planning process under the NNI, with multiple agencies working in common toward specific objectives.

- B3. What are the most important scientific and technical challenges that would need to be met to realize the NNI goal(s) (1, 2, 3, and/or 4) and objectives?

C. Investment

- C1. What types of research and development investments (e.g. support for individual investigators, small teams, centers, research infrastructure, etc.) should the NNI agencies create, sustain, and/or expand to achieve the NNI goal(s) (please specify 1, 2, 3, and/or 4)?

Example, Department of Energy: the Department of Energy (DOE) investment in 2011 continues to support full operation of the five DOE Nanoscale Science Research Center (NSRC) user facilities (corresponding to PCA 6, major research facilities and instrumentation acquisition) and an extensive array of individual university grants and laboratory research programs. The Energy Frontier Research Centers, larger collaborative efforts in which a portion of the activity relates to nanoscale science, are also continued. In 2010 DOE initiates an Energy Innovation Hub on Fuels from Sunlight, and this support will continue in 2011, with a portion of the activity related to nanoscience. Much of the increase in DOE funding results from new funding from the Advanced Research Projects

Agency—Energy (ARPA–E), the initiation of additional Energy Frontier Research Centers, and the formation of a second Energy Innovation Hub focusing on batteries and energy storage. A significant fraction of these activities will be fundamentally based on nanoscience.

Example, National Science Foundation and Environmental Protection Agency: In 2011, the NSF and the EPA continue to fund (over five years, starting in September 2008) two Centers for the Environmental Implications of Nanotechnology (CEIN). Led by the University of California Los Angeles and Duke University, the CEINs will study how nanomaterials interact with the environment and human health, resulting in better risk assessment and risk mitigation strategies. Each center works as a network, connected to multiple research organizations, industry, and government agencies, and emphasizes interdisciplinary research and education.

• C2. What relative distribution of research and development investment among the PCAs is needed to achieve the NNI goal(s) (1, 2, 3, and/or 4), and why?

Background: While the NNI remains focused on fulfilling the Federal role of supporting basic research, infrastructure development, and technology transfer, the proposed investments for 2011 place renewed emphasis on accelerating the transition from basic R&D advances and capabilities into innovations that support national priorities such as sustainable energy technologies, healthcare, and environmental protection. While the dominant focus of NNI funding represented in PCAs 1, 2, and 3 have been relatively sustained, the fastest-growing PCAs in recent years have been those for EHS (PCA 7, the requested EHS investment for 2011 is $117 million—over triple the figure for 2005) and nanomanufacturing (PCA 5, increasing from $34 million in 2006 to $101 million in the 2011 request), with a resultant small percentage reduction (about one percent change from 2010) in the highest-funded PCA, fundamental nanoscale phenomena and processes (PCA 1, $484.4 million in the 2011 request). See the *NNI Supplement to the President's FY 2011 Budget* at *http://www.nano.gov/NNI_2011_budget_supplement.pdf,* pages 7–11 and the data.gov site (*http://www.data.gov/raw/1556/#*) for more details on relative funding over time.

• C3. What is the appropriate balance for investment in nanotechnology among US private and public entities (i.e., government, corporate R&D, and venture capital) to achieve the NNI goal(s) (please specify 1, 2, 3, and/or 4), and why?

Background: The President's Council of Advisors on Science & Technology's "Report to the President and Congress on the Third Assessment of the National Nanotechnology Initiative" (*http://www.whitehouse.gov/sites/default/files/microsites/ostp/pcast-nano-report.pdf*) reports that the United States invested $5.7 billion in nanotechnology Research & Development in 2008, which corresponds approximately to one-third from Federal and State governments, half from corporate investments, and about one-fifth from venture capital investments.

D. Coordination and Partnerships

• D1. How could the NNI strengthen interagency coordination and collaboration towards specific NNI goal(s) (please specify 1, 2, 3, and/or 4) and objectives?

• D2. What improved mechanisms may be utilized to facilitate innovative cross-disciplinary research supporting the NNI goal(s) (please specify 1, 2, 3, and/or 4)?

• D3. What are the most effective roles of the government, industry, academia, and other stakeholders in achieving this NNI goal (1, 2, 3, and/or 4)?

• D4. What new forms of collaboration between stakeholders should be explored to facilitate nanotechnology-based innovation into applications?

Government-Government Example: to help accomplish Goal 4, to "support responsible development of nanotechnology," the National Institutes of Health's (NIH) National Institute of Environmental Health Sciences (NIEHS) is supporting research to determine precisely the physical and chemical properties of nanomaterials with biological response, thus supplying critical data for hazard and risk assessment. To support the goals of this program, NIEHS is establishing collaborations with the NIH/National Cancer Institute's Nanotechnology Characterization Laboratory for physical characterization of nanomaterials and with the Cancer Biomedical Informatics Grid (CaBIG®) NanoLab for data storage.

• D5. What existing activities in the public and private sector could the NNI develop or model to achieve the NNI goal(s) (please specify 1, 2, 3, and/or 4)?

Example: The NRI (described above in section A) is a leading example of industry-university cooperative research involving more than 30 top universities in the United States with research projects organized around four multi-university centers incorporating state and regional funding as well.

• D6. What partners or types of partners would need to collaborate (i.e., government, specific foundations and industry groups, new ideas for consortia) to accomplish the NNI goal(s) (please specify 1, 2, 3, and/or 4)?

• D7. What are effective mechanisms to leverage and/or coordinate US-funded research and development with international efforts?

• D8. What mechanisms could NNI use to regularly engage experts in academia and industry and other organizations for input on its approach to addressing specific NNI goals (please specify 1, 2, 3, and/or 4)?

• D9. What is the role of public engagement in achieving specific NNI goals? In what ways can the Federal government best engage with citizens to ensure the sustainable development of nanotechnology-based products with the broadest economic and societal benefits?

Evaluation

• E1. What specific criteria (e.g., nanotechnology publications and citations, nanotechnology patent activity, nanotechnology-related job creation, relative international nanotechnology investments) should the NNI use to evaluate its progress towards the NNI goal(s) (please specify 1, 2, 3, and/or 4) and in what priority order?

• E2. Which organizations (e.g., government committees, independent organizations, international bodies) should perform the evaluation of progress towards the NNI goal(s) (please specify 1, 2, 3, and/or 4)?

• E3. How can NNI best balance fundamental and applied research and development towards the NNI goal(s) (please specify 1, 2, 3, and/or 4)?

Policy

• F1. What new, or existing, specific policies should the NNI agencies develop or adjust to support the NNI goal(s) (please specify 1, 2, 3, and/or 4) and to realize the broader economic and societal benefits associated with advances in nanotechnology?

Examples: Policies that impact and/or support the NNI goals might address procurement, incentive prizes, technical documentary standards, international collaboration, targeted investment, permanent resident cards for foreign graduates from accredited US academic institutions, etc.

• F2. What best practices can be drawn from nanotechnology- and innovation-related policies in other sectors and countries?

FOR FURTHER INFORMATION CONTACT: Any questions about the content of this RFI should be sent to *NNIStrategy@ostp.gov*. Additional information regarding this RFI is at *http://www.whitehouse.gov/ostp/NNIStrategy/*. Questions and responses may also be sent by mail (please allow additional time for processing) to the address: Office of Science and Technology Policy, ATTN: Nano RFI, Executive Office of the President, 725 17th Street, Room 5228, Washington, DC 20502. Phone: (202) 456–7116, Fax: (202) 456–6021.

Dated: June 29, 2010.

Ted Wackler,

Deputy Chief of Staff.

[FR Doc. 2010–16273 Filed 7–2–10; 8:45 am]

BILLING CODE 3170–W0–P

SECURITIES AND EXCHANGE COMMISSION

[Form N–14; SEC File No. 270–297; OMB Control No. 3235–0336]

Proposed Collection; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form N–14, SEC File No. 270–297, OMB Control No. 3235–0336.

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 (the "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 N–14 (17 CFR 239.23)—Registration Statement Under the Securities Act of 1933 for Securities Issued in Business Combination Transactions by Investment Companies and Business Development Companies. Form N–14 is used by investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) ("Investment Company Act") and business development companies as defined by section 2(a)(48) of the Investment Company Act to register securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act") to be issued in business combination transactions specified in rule 145(a) under the Securities Act (17 CFR 230.145(a)) and exchange offers. The securities are registered under the Securities Act to ensure that investors receive the material information necessary to evaluate securities issued in business combination transactions. The Commission staff reviews registration statements on Form N–14 for the adequacy and accuracy of the disclosure contained therein. Without Form N–14, the Commission would be unable to verify compliance with securities law requirements. The respondents to the collection of information are investment companies or business development companies issuing securities in business combination transactions. The estimated number of responses is 286 (including 266 registrants that file one new registration statement on Form N–14 each year and 20 registrants that file one amendment to Form N–14 each year) and the collection occurs only when a merger or other business combination is planned. The estimated total annual reporting burden of the collection of information is approximately 620 hours per response for a new registration statement, and approximately 350 hours per response for an amended Form N–14, for a total of 171,920 annual burden hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the Commission's mission, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of 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 29, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16306 Filed 7–2–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 0–2, SEC File No. 270–572, OMB Control No. 3235–0636.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collections 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.

Several sections of the Investment Company Act of 1940 ("Act" or "Investment Company Act") [1] give the Commission the authority to issue orders granting exemptions from the Act's provisions. The section that grants broadest authority is section 6(c), which provides the Commission with authority to conditionally or unconditionally exempt persons, securities or transactions from any provision of the Investment Company Act, or the rules or regulations thereunder, if and to the extent that 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.[2]

Rule 0–2 under the Investment Company Act,[3] entitled "General Requirements of Papers and Applications," prescribes general instructions for filing an application seeking exemptive relief with the Commission for which a form is not specifically prescribed. Rule 0–2 requires that each application filed with the commission have (a) A statement of authorization to file and sign the application on behalf of the applicant, (b) a verification of application and statements of fact, (c) a brief statement of the grounds for application, and (d) the name and address of each applicant and of any person to whom questions should be directed. The Commission uses the information required by rule 0–2 to decide whether the applicant

[1] 15 U.S.C. 80a–1 *et seq.*

[2] 15 U.S.C. 80a–6(c).

[3] 17 CFR 270.0–2.

should be deemed to be entitled to the action requested by the application.

Applicants for orders can include registered investment companies, affiliated persons of registered investment companies, and issuers seeking to avoid investment company status, among other entities. Commission staff estimates that it receives approximately 125 applications per year under the Act. Although each application typically is submitted on behalf of multiple entities, the entities in the vast majority of cases are related companies and are treated as a single respondent for purposes of this analysis.

The time to prepare an application depends on the complexity and/or novelty of the issues covered by the application. We estimate that the Commission receives 20 of the most time-consuming applications annually, 80 applications of medium difficulty, and 25 of the least difficult applications. Based on conversations with applicants, we estimate that in-house counsel would spend from ten to fifty hours helping to draft and review an application. We estimate a total annual hour burden to all respondents of 3,650 hours [(50 hours × 20 applications) + (30 hours × 80 applications) + (10 hours × 25 applications)].

Much of the work of preparing an application is performed by outside counsel. The cost outside counsel charges applicants depends on the complexity of the issues covered by the application and the time required for preparation. Based on conversations with attorneys who serve as outside counsel, the cost ranges from approximately $10,000 for preparing a well-precedented, routine application to approximately $150,000 to prepare a complex and/or novel application. This distribution gives a total estimated annual cost burden to applicants of filing all applications of $9,650,000 [(20 × $150,000) + (80 × $80,000) + (25 × $10,000)].

We request written comment on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of 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 29, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16307 Filed 7–2–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 302, SEC File No. 270–453, OMB Control No. 3235–0510.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 302 (17 CFR 242.302) of Regulation ATS (17 CFR 242.300 *et seq.*) under the Securities and Exchange Act of 1934 ("Act") (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation ATS sets forth a regulatory regime for "alternative trading systems" ("ATSs"), which are entities that carry out exchange functions but which are not required to register as national securities exchanges under the Act. In lieu of exchange registration, an ATS can instead opt to register with the Commission as a broker-dealer and, as a condition to not having to register as an exchange, must instead comply with Regulation ATS. Rule 302 of Regulation ATS (17 CFR 242.302) describes the recordkeeping requirements for ATSs. Under Rule 302, ATSs are required to make a record of subscribers to the ATS, daily summaries of trading in the ATS, and time-sequenced records of order information in the ATS.

The information required to be collected under Rule 302 should increase the abilities of the Commission, state securities regulatory authorities, and the self-regulatory organizations to ensure that ATSs are in compliance with Regulation ATS as well as other applicable rules and regulations. If the information is not collected or collected less frequently, the regulators would be limited in their ability to comply with their statutory obligations, provide for the protection of investors, and promote the maintenance of fair and orderly markets.

Respondents consist of ATSs that choose to register as broker-dealers and comply with the requirements of Regulation ATS. There are currently 81 respondents. These respondents will spend approximately 10,530 hours per year (81 respondents at 130 burden hours/respondent) to comply with the recordkeeping requirements of Rule 302. At an average cost per burden hour of $59, the resultant total related cost of compliance for these respondents is $621,270.00 per year (10,530 burden hours multiplied by $59/hour).

Written comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to: Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: June 29, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16310 Filed 7–2–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor

Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 7d–1; SEC File No. 270–176; OMB Control No. 3235–0311.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collection of information to the Office of Management and Budget for extension and approval.

Section 7(d) of the Investment Company Act of 1940 (15 U.S.C. 80a-7(d)) (the "Act" or "Investment Company Act") requires an investment company ("fund") organized outside the United States ("foreign fund") to obtain an order from the Commission allowing the fund to register under the Act before making a public offering of its securities through the United States mail or any means of interstate commerce. The Commission may issue an order only if it finds that it is both legally and practically feasible effectively to enforce the provisions of the Act against the foreign fund, and that the registration of the fund is consistent with the public interest and protection of investors.

Rule 7d–1 (17 CFR 270.7d–1) under the Act, which was adopted in 1954, specifies the conditions under which a Canadian management investment company ("Canadian fund") may request an order from the Commission permitting it to register under the Act. Although rule 7d–1 by its terms applies only to Canadian funds, other foreign funds generally have agreed to comply with the requirements of rule 7d–1 as a prerequisite to receiving an order permitting those foreign funds' registration under the Act.

The rule requires a Canadian fund that wishes to register to file an application with the Commission that contains various undertakings and agreements by the fund. The requirement of the Canadian fund to file an application is a collection of information under the Paperwork Reduction Act. Certain of the undertakings and agreements, in turn, impose the following additional information collection requirements:

(1) The fund must file agreements between the fund and its directors, officers, and service providers requiring them to comply with the fund's charter and bylaws, the Act, and certain other obligations relating to the undertakings and agreements in the application;

(2) The fund and each of its directors, officers, and investment advisers that is not a U.S. resident, must file an irrevocable designation of the fund's custodian in the United States as agent for service of process;

(3) The fund's charter and bylaws must provide that (a) the fund will comply with certain provisions of the Act applicable to all funds, (b) the fund will maintain originals or copies of its books and records in the United States, and (c) the fund's contracts with its custodian, investment adviser, and principal underwriter, will contain certain terms, including a requirement that the adviser maintain originals or copies of pertinent records in the United States;

(4) The fund's contracts with service providers will require that the provider perform the contract in accordance with the Act, the Securities Act of 1933 (15 U.S.C. 77a), and the Securities Exchange Act of 1934 (15 U.S.C. 78a), as applicable; and

(5) The fund must file, and periodically revise, a list of persons affiliated with the fund or its adviser or underwriter.

As noted above, under section 7(d) of the Act the Commission may issue an order permitting a foreign fund's registration only if the Commission finds that "by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions of the (Act)." The information collection requirements are necessary to assure that the substantive provisions of the Act may be enforced as a matter of contract right in the United States or Canada by the fund's shareholders or by the Commission.

Rule 7d–1 also contains certain information collection requirements that are associated with other provisions of the Act. These requirements are applicable to all registered funds and are outside the scope of this request.

The Commission believes that one foreign fund is registered under rule 7d–1 and currently active. Apart from requirements under the Act applicable to all registered funds, rule 7d–1 imposes ongoing burdens to maintain records in the United States, and to update, as necessary, certain fund agreements, designations of the fund's custodian as service agent, and the fund's list of affiliated persons. The Commission staff estimates that each year under the rule, the active registrant and its directors, officers, and service providers engage in the following collections of information and associated burden hours:

For the fund and its investment adviser to maintain records in the United States: [1]

0 hours: 0 minutes of compliance clerk time.

- For the fund to update its list of affiliated persons:

2 hours: 2 hours of support staff time.

- For new officers, directors, and service providers to enter into and file agreements requiring them to comply with the fund's charter and bylaws, the Act, and certain other obligations:

0.5 hours: 7.5 minutes of director time; 2.5 minutes of officer time; 20 minutes of support staff time.

- For new officers, directors, and investment advisers who are not residents of the United States to file irrevocable designation of the fund's custodian as agent for process of service:

0.25 hours: 5 minutes of director time; 10 minutes of support staff time.

Based on the estimates above, the Commission estimates that the total annual burden of the rule's paperwork requirements is 2.75 hours.[2] We estimate that directors perform 0.21 hours of these burden hours at a total cost of $945,[3] officers perform 0.04 of these burden hours at a total cost of 16.72,[4] and support staff perform 2.5 of these burden hours at a total cost of $147.50.[5] Thus, the Commission

[1] The rule requires an applicant and its investment adviser to maintain records in the United States (which, without the requirement, might be maintained in Canada or another foreign jurisdiction), which facilitates routine inspections and any special investigations of the fund by Commission staff. The registrant and its investment adviser, however, already maintain the registrant's records in the United States and in no other jurisdiction. Therefore, maintenance of the registrant's records in the United States does not impose an additional burden beyond that imposed by other provisions of the Act. Those provisions are applicable to all registered funds and the compliance burden of those provisions is outside the scope of this request.

[2] This estimate is based on the following calculation: (0 + 2 + 0.5 + 0.25) = 2.75 hours.

[3] The director estimates are based on the following calculations: (7.5 minutes + 5 minutes)/60 minutes per hour = 0.21 hours; and 0.21 hours × $4500/hour = $945. The per hour cost estimate is based on estimated hourly compensation for each board member of $500 and an average board size of 9 members.

[4] The officer estimates are based on the following calculations: 2.5 minutes/60 minutes per hour = 0.04 hours; 0.04 hours × $418/hour = $16.72. The per hour cost estimate is based on the figure for chief compliance officers found in SIFMA's *Management & Professional Earnings in the Securities Industry 2009,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[5] The support staff estimates are based on the following calculations: 2 hours + 20 minutes + 10 minutes = 2.5 hours; and 2.5 hours × $59/hour = $147.50. The per hour cost estimate is based on the

Continued

estimates the aggregate annual cost of the burden hours associated with rule 7d–1 is $1109.[6]

If a fund were to file an application under the rule, the Commission estimates that the rule would impose initial information collection burdens (for filing an application, preparing the specified charter, bylaw, and contract provisions, designations of agents for service of process, and an initial list of affiliated persons, and establishing a means of keeping records in the United States) of approximately 90 hours for the fund and its associated persons. The Commission is not including these hours in its calculation of the annual burden because no foreign fund has applied under rule 7d–1 to register under the Act in the last three years.

As noted above, after registration, a Canadian fund may file a supplemental application seeking special relief designed for the fund's particular circumstances. Rule 7d–1 does not mandate these applications. The active registrant has not filed a substantive supplemental application in the past three years. Therefore, the Commission has not allocated any burden hours for these applications.

The estimates of burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimates are not derived from a comprehensive or even a representative survey or study of Commission rules and forms.

If a Canadian or other foreign fund in the future applied to register under the Act under rule 7d–1, the fund initially might have capital and start-up costs (not including hourly burdens) of an estimated $17,280 to comply with the rule's initial information collection requirements. These costs include legal and processing-related fees for preparing the required documentation (such as the application, charter, bylaw, and contract provisions), designations for service of process, and the list of affiliated persons. Other related costs would include fees for establishing arrangements with a custodian or other agent for maintaining records in the United States, copying and transportation costs for records, and the costs of purchasing or leasing computer equipment, software, or other record storage equipment for records maintained in electronic or photographic form.

The Commission expects that a fund and its sponsors would incur these costs immediately, and that the annualized cost of the expenditures would be $17,280 in the first year. Some expenditures might involve capital improvements, such as computer equipment, having expected useful lives for which annualized figures beyond the first year would be meaningful. These annualized figures are not provided, however, because, in most cases, the expenses would be incurred immediately rather than on an annual basis. The Commission is not including these costs in its calculation of the annualized capital/start-up costs because no fund has applied under rule 7d–1 to register under the Act pursuant to rule 7d–1 in the last three years.

We request written comment on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of 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 29, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16309 Filed 7–2–10; 8:45 am]

BILLING CODE 8010–01–P

figure for compliance clerks found in SIFMA's *Management & Professional Earnings in the Securities Industry 2009,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

[6] This estimate is based on the following calculation: $1109.22 = $945 + $16.72 + 147.50.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 0–2, Form ADV–NR; SEC File No. 270–214; OMB Control No. 3235–0240.

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.

The titles for the collections of information are "Rule 0–2" (17 CFR 275.0–2) and "Form ADV–NR" (17 CFR 279.4) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1). Rule 0–2 and Form ADV–NR facilitate service of process to non-resident investment advisers and their non-resident general partners or non-resident managing agents. The Form requires these persons to designate the Commission as agent for service of process. The purpose of this collection of information is to enable the commencement of legal and or regulatory actions against investment advisers that are doing business in the United States, but are not residents.

The respondents to this information collection would be each non-resident general partner or non-resident managing agent of an SEC-registered adviser. The Commission has estimated that compliance with the requirement to complete Form ADV–NR imposes a total burden of approximately 1.0 hours for an adviser. Based on our experience with these filings, we estimate that we will receive 18 Form ADV–NR filings annually. Based on the 1.0 hours per respondent estimate, the Commission staff estimates a total annual burden of 18 hours for this collection of information.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will 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 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 29, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16308 Filed 7–2–10; 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 a Closed Meeting on Thursday, July 8, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (8), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, July 8, 2010 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Consideration of amicus participation;

A regulatory matter regarding a financial institution; and

Other matters relating to enforcement proceedings.

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: July 1, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–16452 Filed 7–1–10; 4:15 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62392; File No. SR–NASDAQ–2010–077]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to Pricing for Direct Circuit Connections

June 28, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 21, 2010, The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to establish pricing for 10Gb direct circuit connections and codify pricing for 10Gb [sic] direct circuit connections for customers who are not co-located in NASDAQ's datacenter. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to establish fees for direct 10Gb circuit connections, and codify fees for direct circuit connections capable of supporting up to 1Gb, for customers who are not co-located at the Exchange's datacenter. Currently, the Exchange already makes available to co-located customers a 10Gb circuit connection and charges for each a $1,000 initial installation charge as well as an ongoing monthly fee of $5,000. The Exchange is establishing the same fees for non co-located customers with a 10Gb circuit.[3]

The Exchange also already makes available to both co-located and non co-located customers direct connections capable of supporting up to 1Gb, with per connection monthly fees of $500 for co-located customers and $1,000 for non co-located customers. Monthly fees are higher for non co-located customers because direct connections require NASDAQ to provide cabinet space and middleware for those customers' third-party vendors to connect into the datacenter and, ultimately, to the trading system. Finally, for non co-located customers the Exchange charges an optional installation fee of $925 if the customer chooses to use an on-site router.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Sections 6(b)(5) of the Act,[5] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposal will provide greater

[3] NASDAQ provides an additional 1Gb copper connection option to Nasdaq for co-located customers. Given the technological constraints of copper connections over longer distances, NASDAQ does not offer a copper connection option to users outside of its datacenter.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

transparency into the connectivity options available to market participants.

The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The filing codifies and makes transparent the fees imposed for direct connections to non co-located customers. These fees are uniform for all such customers and are either comparable to fees charged to co-located customers or vary due to different costs associated with providing service to the two customer types.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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–NASDAQ–2010–077 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–NASDAQ–2010–077. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–077 and should be submitted on or before July 27, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16289 Filed 7–2–10; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62391; File No. SR–NASDAQ–2010–069]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish a Free Trial Period for the Use of Correlix, Inc. Data Latency Products in the NASDAQ Market Center

June 28, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 18, 2010, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NASDAQ. NASDAQ has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ is filing with the Commission a proposed rule change to establish a free trial period for the use of Correlix, Inc. data latency products in the NASDAQ Market Center. There is no proposed rule text.

* * * * *[sic]

(b) and (c) Not applicable. [sic]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Recently, NASDAQ entered into an agreement with Correlix to provide to users of the NASDAQ Market Center ("System") real-time analytical tools to measure the latency of orders to and from that System. The specifics of the NASDAQ/Correlix relationship are detailed in SR–NASDAQ–2010–068, a filing seeking Commission approval of the revenue sharing arrangement between the entities. The instant filing seeks Commission approval for the commencement of a free 60-day initial trial period for parties wishing to evaluate the Correlix RaceTeam offering for the NASDAQ Market Center while the Commission publishes and seeks comment on the separate revenue-sharing filing.

NASDAQ believes that the above approach will provide potential users valuable information about, and experience with, the Correlix RaceTeam product while simultaneously providing ample time for the Commission to review and seek public comment on the proposed revenue-sharing relationship between NASDAQ and Correlix.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Sections 6(b)(5) of the Act,[5] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change will provide potential users valuable information about, and experience with, the Correlix RaceTeam product while simultaneously providing ample time for the Commission to review and seek public comment on the proposed revenue-sharing relationship between NASDAQ and Correlix.

In addition, NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. In particular, NASDAQ notes that it will offer the free trial period on a uniform and non-discriminatory basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[8] of the Act and Rule 19b–4(f)(6) thereunder.[9]

NASDAQ has requested that the Commission waive the 30-day pre-operative waiting period contained in Exchange Act Rule 19b–4(f)(6)(iii).[10] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will afford Exchange members the benefit of the proposal—the ability to evaluate the Correlix RaceTeam product for free—without unnecessary delay. For this reason, the Commission designates the proposed rule change as operative under upon filing.[11]

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, as amended, 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–NASDAQ–2010–069 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–NASDAQ–2010–069. 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

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

available publicly. All submissions should refer to File Number SR–NASDAQ–2010–069 and should be submitted on or before July 27, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16290 Filed 7–2–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62354; File No. SR–NYSEAmex–2010–57]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending Rule 0 To Provide That Certain References in Exchange Rules Should Be Understood To Also Include FINRA, as Applicable

June 22, 2010.

Correction

In notice document 2010–15649 beginning on page 36730 in the issue of Monday, June 28, 2010, make the following correction:

On page 36730, in the third column, the department docket number is printed correctly to read as set forth above.

[FR Doc. C1–2010–15649 Filed 7–2–10; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62397; File No. SR–NASDAQ–2010–019]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change To Codify Prices for Co-Location Services

June 28, 2010.

I. Introduction

On January 29, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to co-location services and related fees. The proposed rule change was published for comment in the **Federal Register** on February 10, 2010.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description

As described in the Notice, NASDAQ is proposing to codify fees for its existing co-location services. Co-location services are a suite of hardware, power, telecommunication, and other ancillary products and services that allows market participants and vendors to place their trading and communications equipment in close physical proximity to the quoting and execution facilities of the Exchange and other NASDAQ OMX Group, Inc. markets. The Exchange provides co-location services and imposes fees through its wholly-owned subsidiary Nasdaq Technology Services LLC and pursuant to agreements with the owner/operator of its data center where both the Exchange's quoting and trading facilities and co-located customer equipment are housed.[4] Users of co-location services include private extranet providers, data vendors, as well as NASDAQ Exchange members and non-members. The use of co-location services is entirely voluntary.

As detailed in its fee schedule, NASDAQ imposes a uniform set of fees for various co-location services, including: Fees for cabinet space usage, or options for future space usage; installation and related power provision for hosted equipment; connectivity among multiple cabinets being used by the same customer as well as customer connectivity to the Exchange and telecommunications providers;[5] and related maintenance and consulting services. Fees related to cabinet and power usage are incremental, with additional charges being imposed based on higher levels of cabinet and/or power usage, the use of non-standard cabinet sizes or special cabinet cooling equipment, or the re-selling of cabinet space.

NASDAQ is implementing a Cabinet Proximity Option program where, for a monthly fee, customers can obtain an option for future use on available currently-unused cabinet floor space in proximity to their existing equipment. Under the program, customers can reserve up to maximum of 20 cabinets that the Exchange will endeavor to provide as close as reasonably possible to the customer's existing cabinet space, taking into consideration power availability within segments of the datacenter and the overall efficiency of use of datacenter resources as determined by the Exchange. Should reserved datacenter space be needed for use, the reserving customer will have three business days to formally contract with the Exchange for full payment for the reserved cabinet space in contention or it will be reassigned. In making determinations to require exercise or relinquishment of reserved space as among numerous customers, the Exchange will take into consideration several factors, including: Proximity between available reserved cabinet space and the existing space of a customer seeking additional space for actual cabinet usage; a customer's ratio of cabinets in use to those reserved; the length of time that a particular reservation(s) has been in place; and any other factor that the Exchange deems relevant to ensure overall efficiency in use of the datacenter space.

In the Notice, the Exchange made certain representations regarding its co-location services. First, the Exchange represents that co-location customers are not provided any separate or superior means of direct access to NASDAQ quoting and trading facilities, nor does the Exchange offer any separate or superior means of access to the Exchange quoting and trading facilities as among co-location customers themselves within the datacenter. Second, NASDAQ represents that it does not make available to co-located customers any market data or data feed product or service for data going into, or out of, the Exchange systems that is not likewise available to all the Exchange members.[6] Finally, the Exchange represents that all orders sent to the Exchange market enter the marketplace through the same central system quote and order gateway regardless of whether the sender is co-located in the Exchange data center or not. In short, according to the Exchange, it has created no special market technology or programming that is available only to co-located customers and has organized its systems to

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61488 (February 3, 2010), 75 FR 6748 ("Notice").

[4] NASDAQ has provided co-location services at various data centers since approximately 2004. Currently, the Exchange provides its co-location services through data centers located in the New York City and Mid-Atlantic areas.

[5] NASDAQ states that these fees are for telecommunications connectivity only. Market data fees are charged independently by NASDAQ and other exchanges.

[6] The Exchange made a 10Gb fiber connection available to co-located customers early in the first quarter of 2010. On June 21, 2010, the Exchange filed a proposed rule change that would, among other things, establish pricing for 10Gb fiber connections for customers who are not co-located in NASDAQ's datacenter. *See* SR–NASDAQ–2010–077.

minimize, to the greatest extent possible, any advantage for one customer versus another.

The Exchange also has represented that co-location services are generally available to all qualified market participants who desire them. With the exception of customers participating in the Cabinet Proximity Option program, the Exchange allocates cabinets and power on a first-come/first-serve basis. Should available cabinet inventory shrink to 40 cabinets or less, the Exchange will limit new cabinet orders to a maximum of 4 cabinets each, and all new cabinets will be limited to a maximum power level of 5kW. Should available cabinet inventory shrink to zero, the Exchange will place firms seeking services on a waiting list based on that date the Exchange receives signed orders for the services from the firm. In order to be placed on the waiting list, a firm must have utilized all existing cabinets they already have in the datacenter. Once on the list, the firms, on a rolling basis, will be allocated a single 5kW cabinet each time one becomes available. After receiving a cabinet, the firm will move to the bottom of the waiting list.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposed co-location fees are reasonable and equitably allocated insofar as they are applied on the same terms to similarly-situated market participants. The Commission notes that charges may vary depending on the use of cabinet space and/or power usage. In addition, the Commission believes that the co-location services described in the proposed rule change are not unfairly discriminatory because: (1) Co-location services are offered to all interested market participants who request them and pay the appropriate fees; (2) as represented by NASDAQ, the Exchange has architected its systems so as to, as much as possible, reduce or eliminate differences among users of its systems, whether co-located or not; and (3) the Exchange has stated that it has sufficient space to accommodate new co-locaters and has set forth in the proposed rule change objective procedures to allocate space should it become limited in the future.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASDAQ–2010–019) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16291 Filed 7–2–10; 8:45 am]

BILLING CODE 8011–01–P

[7] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2010–0037]

Future Systems Technology Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Eighth Panel Meeting.

DATES: August 3, 2010, 10 a.m.–5 p.m.

Location: Park Hyatt Washington DC, Hyde Park Room.

ADDRESSES: 24 & M Streets, NW., Washington, DC 20037.

SUPPLEMENTARY INFORMATION: *Type of meeting:* The meeting is open to the public.

Purpose: The Panel, under the Federal Advisory Committee Act of 1972, as amended, (hereinafter referred to as "the FACA") shall report to and provide the Commissioner of Social Security independent advice and recommendations on the future of systems technology and electronic services at the agency five to ten years into the future. The Panel will recommend a road map to aid SSA in determining what future systems technologies may be developed to assist in carrying out its statutory mission. Advice and recommendations can relate to SSA's systems in the area of Internet application, customer service, or any other arena that would improve SSA's ability to serve the American people.

Agenda: The Panel will meet on Tuesday, August 3, 2010 from 10 a.m. until 5 p.m. The agenda will be available on the Internet at *http://www.ssa.gov/fstap/index.htm* or available by e-mail or fax on request, one week prior to the starting date.

During the eighth meeting, the Panel may have experts address items of interest and other relevant topics to the Panel. This additional information will further the Panel's deliberations and the effort of the Panel subcommittees.

Public comments will be heard on Tuesday, August 3, 2010, from 4:30 p.m. until 5 p.m. Individuals interested in providing comments in person should contact the Panel staff as outlined below to schedule a time slot. Members of the public must schedule a time slot in order to comment. In the event public comments do not take the entire scheduled time period, the Panel may use that time to deliberate or conduct other Panel business. Each individual providing public comment will be acknowledged by the Chair in the order in which they are scheduled to testify. Individuals providing public comment are limited to a maximum five-minute, verbal presentation. In lieu of public comments provided in person, individuals may provide written comments to the panel for their review and consideration. Comments in written or oral form are for informational purposes only for the Panel. Public comments will not be specifically addressed or receive a written response by the Panel.

For individuals that are hearing impaired and in need of sign language services please contact the Panel staff as outlined below at least 10 business days prior to the meeting so that timely arrangements can be made to provide this service.

Contact Information: Records are kept of all proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the staff by:

Mail addressed to SSA, Future Systems Technology Advisory Panel, Room 800, Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–0001; Telephone at 410–965–

9951; Fax at 410–965–0201; or E-mail to *FSTAP@ssa.gov.*

Dianne L. Rose,

Designated Federal Officer, Future Systems Technology Advisory Panel.

[FR Doc. 2010–16349 Filed 7–2–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0005–N–15]

Notice and Request for Comments

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burdens. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on April 21, 2010 (75 FR 20875).

DATES: Comments must be submitted on or before August 5, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On April 21, 2010, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 75 FR 20875. FRA received no comments after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Filing of Dedicated Cars.

OMB Control Number: 2130–0502.

Type of Request: Extension without change of a currently approved collection.

Affected Public: Railroads.

Abstract: Title 49, part 215 of the Code of Federal Regulations, prescribes certain conditions to be followed for the movement of freight cars that are not in compliance with this part. Dedicated service means the exclusive assignment of railroad cars to the transportation of freight between specified points under the following conditions: (1) The cars are operated primarily on track that is inside an industrial or other non-railroad installation; and only occasionally over track of a railroad; (2) The cars are not operated at speeds of more than 15 miles per hour; and over track of a railroad—(A) for more than 30 miles in one direction; or (B) on a round trip for more than 60 miles; (3) The cars are not freely interchanged among railroads; (4) The words "Dedicated Service" are stenciled, or otherwise displayed, in clear legible letters on each side of the car body; and (5) The cars have been examined and found safe to operate in dedicated service. These cars must be identified in a written report to FRA before they are assigned to dedicated service, and these reports must be filed with FRA 30 days before the cars operate in dedicated service. FRA uses the information collected under § 215.5(d) to determine the number of railroads affected, the number and type of cars involved, the commodities being carried, and the territorial and speed limits within which the cars will be operated. FRA reviews these reports to determine if the equipment is safe to operate and if the operation qualifies for dedicated service. The information collected indicates to FRA inspectors that the particular or "dedicated" car is in special service and that certain exceptions have been provided for regarding the application of this regulation spelled out in § 215.3. Cars not in compliance with § 215.5(d) will be cited for violations by FRA inspectors. The information collected is also used by railroads to provide identification and control so that dedicated cars remain in the prescribed service.

Form Number(s): N/A.

Annual Estimated Burden Hours: 4 hours.

Title: Hours of Service Regulations.

OMB Control Number: 2130–0005.

Type of Request: Extension without change of a currently approved collection.

Affected Public: Railroads.

Abstract: The collection of information is due to the railroad hours of service regulations set forth in 49 CFR part 228 which require railroads to collect the hours of duty for covered employees, and records of train movements. Railroads whose employees have exceeded maximum duty limitations must report the circumstances. Also, a railroad that has developed plans for construction or reconstruction of sleeping quarters (subpart C of 49 CFR part 228) must obtain approval of the Federal Railroad Administration (FRA) by filing a petition conforming to the requirements of Sections 228.101, 228.103, and 228.105.

Form Number(s): FRA F 6180.3.

Annual Estimated Burden Hours: 3,707,346 hours.

ADDRESSES: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC, 20503, Attention: FRA Desk Officer. Alternatively, comments may be sent via e-mail to the Office of Information and Regulatory Affairs

(OIRA), Office of Management and Budget, at the following address: *oira_submissions@omb.eop.gov*

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register.**

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on June 29, 2010.

Kimberly Coronel,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2010–16339 Filed 7–2–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms, and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

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

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period was published on March 31, 2010 (75 FR 16227–16228).

DATES: Comments must be submitted on or before August 5, 2010.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Randolph Atkins, Ph.D., Office of Behavioral Safety Research, National Highway Traffic Safety Administration, NTI–131, Room W46–500, 1200 New Jersey Ave, SE., Washington, DC 20590. Dr. Atkins' phone number is 202–366–5597 and his e-mail address is *randolph.atkins@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Motivations for Speeding.

Type of Request: New information collection requirement.

Abstract: Speeding is one of the primary factors leading to vehicle crashes. In 2008, 31% of all fatal crashes were speeding-related. The estimated economic cost to society for speeding-related crashes is $40.4 billion per year. Driving at higher speeds reduces the ability of drivers to avoid obstacles or react to sudden changes in the roadway environment and increases crash severity. The pervasiveness of speeding behavior is reflected in a recent national survey that showed that approximately 75% of all drivers reported speeding in the past month. Since most drivers often do not see speeding as risky or dangerous behavior, it is imperative that NHTSA gain a better understanding of the motivations for speeding behaviors in order to develop and refine effective interventions and countermeasures.

NHTSA proposes to conduct follow-up focus groups with 72 participants from an earlier on-road instrumented vehicle data collection conducted in Seattle, WA and College Station, TX. Focus group recruitment will be based on participants' speeding patterns in the on-road data. The focus groups will contribute to a better understanding of speeding and speeders, a more accurate taxonomy of high/low speed driver subgroups, and a better understanding of the motives, attitudes and habits of these subgroups. The focus groups will explore speed choices and speeding behaviors and the factors that influence them, beliefs and attitudes toward speeding, reactions to and discussions about specific driving scenarios, and individual/group responses to various speeding countermeasures. The focus groups are expected to provide data relevant to descriptions of key motivations, attitudes, normative commitment to law, driving habits relevant to speeding and speeding countermeasures; descriptions of countermeasures with the greatest likely benefits; implementation issues and concerns associated with the countermeasures; and key advantages and disadvantages associated with various countermeasures.

Affected Public: NHTSA plans to conduct six focus group sessions, three in Seattle, WA and three in College Station, TX. Each focus group will consist of 8–12 participants and last approximately 80 minutes. Participants will be recruited by e-mail or telephone based on their driving behaviors in the earlier on-road phase of the study and their demographic characteristics. Participation by all respondents would be voluntary and confidential.

Estimated Total Annual Burden: The total estimated annual burden is between 64 and 96 hours, depending on the number of participants (range 8–12) in each group. The respondents would not incur any reporting cost from the information collection. The respondents also would not incur any record keeping burden or record keeping cost from the information collection.

Comments are invited on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed information collection;

(iii) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(iv) Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Authority: 44 U.S.C. 3506(c)(2)(A).

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2010–16227 Filed 7–2–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Tenth Meeting: Joint RTCA Special Committee 213: EUROCAE WG–79: Enhanced Flight Vision Systems/ Synthetic Vision Systems (EFVS/SVS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Joint RTCA Special Committee 213: EUROCAE WG–79: Enhanced Flight Vision Systems/ Synthetic Vision Systems (EFVS/SVS).

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Joint RTCA Special Committee 213: EUROCAE WG–79: Enhanced Flight

Vision Systems/Synthetic Vision Systems (EFVS/SVS).

DATES: The meeting will be held July 27–29, 2010 from 8:30 a.m.–5 p.m. (0830–1700).

ADDRESSES: The meeting will be held at the Cedar Rapids Marriott Hotel 1200 Collins Road Northeast, Cedar Rapids, Iowa 52402, Phone: (319) 393–6600. Objectives: Plenary approval DO–315A (MASPS for EFVS approach and landing). Preparation of draft DO–315B for Final Review and Comment (FRAC).

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Joint RTCA Special Committee 213: EUROCAE WG–79: Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS) meeting. The agenda will include:

Tuesday, 27 July

- Plenary discussion (sign-in at 0830).
- Introductions and administrative items.
- Review and approve minutes from last full plenary meeting.
- Approve DO–315A final version.
- Review DO–315B performance objectives.

Wednesday, 28 July

- Work Group 1 (SVS) and 2 (EFVS) Discussion (0830–1700, including breaks and lunch).

Thursday, 29 July

- Plenary discussion (0830–1500, including breaks and lunch).
- Approve DO–315B draft for FRAC release.
- Administrative items (meeting schedule).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

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

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 2010–16258 Filed 7–2–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5748; FMCSA–2001–11426; FMCSA–2002–11714; FMCSA–2008–0021]

Qualification of Drivers; Exemption Renewals; Vision

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 12 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on June 16, 2010 (75 FR 27621).

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 12 renewal applications, FMCSA renews the Federal vision exemptions for Guy M. Alloway, Joe W. Brewer, James D. Coates, Donald D. Dunphy, James W. Ellis, IV, John E. Engstad, David A. Inman, Lawrence C. Moody, Stanley W. Nunn, Bobby C. Spencer, Kevin R. Stoner and Marion E. Terry.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: June 28, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–16223 Filed 7–2–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010–0063]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PALMETTO FLYER.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0063 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments.

Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before August 5, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0063. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov* or *http://smses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PALMETTO FLYER is:

Intended Commercial Use of Vessel: "Parasail operations for hire."

Geographic Region: "South Carolina."

Privacy Act

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

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–16324 Filed 7–2–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010–0062]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel DUTCH HARBOR.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances.

A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0062 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 5, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0062. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov* and *http://smses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE, Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DUTCH HARBOR is:

Intended Commercial Use of Vessel: "Resurrection Bay evening dinner cruises."

Geographic Region: "Resurrection Bay, Alaska."

Privacy Act

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

By order of the Maritime Administrator.
Dated: June 28, 2010.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–16344 Filed 7–2–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010 0064]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PROTECTOR.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application

is given in DOT docket MARAD–2010–0064 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before August 5, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0064. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov* or *http://smses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PROTECTOR is:

Intended Commercial Use of Vessel: "Sightseeing along coast of the populated Hawaiian islands, Hawaii, Maui, Molokai, Lanai, Oahu, Kauai, not more than 5 miles offshore."

Geographic Region: "Hawaii."

Privacy Act

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

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–16345 Filed 7–2–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee—Public Teleconference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee Teleconference.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a teleconference of the Space Transportation Operations Working Group (STOWG) of the Commercial Space Transportation Advisory Committee (COMSTAC). The teleconference will take place on Wednesday, July 21, 2010, starting at 1:30 p.m. Eastern Daylight Time. Individuals who plan to participate should contact Susan Lender, DFO, (the Contact Person listed below) by phone or e-mail for the teleconference call in number.

The proposed agenda for this teleconference will feature the action items from the May 19, 2010 meeting held at the National Housing Center, 1201 15th Street, NW., Washington, DC 20005. These include:

1. Examine the top issues and articulate what they mean and how STOWG wants to address them.
2. Look at five questions from last October on the cost impact of second stages complying voluntarily with orbital debris management. STOWG wants to complete this action.
3. Review the Conops report.

Interested members of the public may submit relevant written statements for the COMSTAC members to consider under the advisory process. Statements may concern the issues and agenda items mentioned above or additional issues that may be relevant for the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact Susan Lender, DFO, (the Contact Person listed below) in writing (mail or e-mail) by July 15, 2010, so that the information can be made available to COMSTAC members for their review and consideration before the July 21, 2010, teleconference. Written statements should be supplied in the following formats: One hard copy with original signature or one electronic copy via e-mail.

An agenda will be posted on the FAA Web site at *http://www.faa.gov/go/ast.*

Individuals who plan to participate and need special assistance should inform the Contact Person listed below in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Susan Lender (AST–100), Office of Commercial Space Transportation (AST), 800 Independence Avenue SW., Room 331, Washington, DC 20591, telephone (202) 267–8029; E-mail *susan.lender@faa.gov.* Complete information regarding COMSTAC is available on the FAA Web site at: *http://www.faa.gov/about/office_org/headquarters_offices/ast/advisory_committee/.*

Issued in Washington, DC.

George C. Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2010–16254 Filed 7–2–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 29, 2010.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 5, 2010 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0085.

Type of Review: Extension without change of a currently approved collection.

Title: Principal Place of Business on Beer Labels. TTB REC 5130/5.

Abstract: TTB regulations permit domestic brewers who operate more than one brewery to show as their address on labels and kegs of beer, their "principal place of business" address. This label option may be used in lieu of showing the actual place of production on the label or of listing all of the brewer's locations on the label.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1513–0086.

Type of Review: Extension without change of a currently approved collection.

Title: Marks on Equipment and Structures (TTB REC 5130/3) and Marks and Labels on Containers of Beer (TTB REC 5130/4).

Abstract: Marks, signs, and calibrations are necessary on equipment and structures for identifying major equipment for accurate determination of tank contents, and segregation of taxpaid and nontaxpaid beer. Marks and labels on containers or beer are necessary to inform consumers of container contents, and to identify the brewer and place of production.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1513–0117.

Type of Review: Extension without change of a currently approved collection.

Title: Pay.gov User Agreement.

Form: TTB F 5000.31.

Abstract: The Pay.gov User Agreement will be used to identify, validate, approve, and register qualified users to allow for submission of electronic forms using the Pay.gov system.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 483 hours.

OMB Number: 1513–0125.

Type of Review: Extension without change of a currently approved collection.

Title: Distilled Spirits Bond.

Form: TTB F 5110.56.

Abstract: TTB F 5110.56 is used by proprietors of Distilled Spirits Plants (DSPs) and Alcohol Fuel Plants to file bond coverage with TTB. Using this form, these proprietors may file coverage and/or withdraw coverage for one plant or multiple plants. With this form proprietors of DSPs may also provide operations coverage for adjacent wine cellars. The bond may be secured through a surety company or it may be secured with collateral (cash, Treasury Bonds or Treasury Notes). The bond protects the revenue by ensuring adequate assets are available to pay tax liabilities.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 232 hours.

Clearance Officer: Gerald Isenberg, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G. Street, NW., Washington, DC 20005; (202) 453–2097.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Celina M. Elphage,

Treasury PRA Clearance Officer.

[FR Doc. 2010–16380 Filed 7–2–10; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Regulation Section 31.6001]

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 existing regulations, 26 CFR 31.6001–1, Records in general; 26 CFR 31.6001–2 Additional Records under FICA; 26 CFR 31.6001–3, Additional records under Railroad Retirement Tax Act; 26 CFR 31.6001–5, Additional records in connection with collection of income tax at source on wages; 26 CFR 31.6001–6, Notice by District Director requiring returns, statements, or the keeping of records.

DATES: Written comments should be received on or before September 7, 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 regulation sections should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: 26 CFR 31.6001–1, Records in general; 26 CFR 31.6001–2, Additional Records under FICA; 26 CFR 31.6001–3, Additional records under Railroad Retirement Tax Act; 26 CFR 31.6001–5, Additional records in connection with collection of income tax at source on wages; 26 CFR 31.6001–6, Notice by District Director requiring returns, statements, or the keeping of records.

OMB Number: 1545–0798.

Abstract: Internal Revenue Code section 6001 requires, in part, that every person liable for tax, or for the collection of that tax must keep such records and comply with such rules and regulations as the Secretary may from time to time prescribe. The recordkeeping requirements under 26 CRF 31.6001 have special application to employment taxes (and to employers) and are needed to ensure proper compliance with the Code. Upon examination, the records are needed by the taxpayer to establish the employment tax liability claimed on any tax return.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Recordkeepers: 5,676,263.

Estimated Time per Recordkeeper: 5 hours, 20 minutes.

Estimated Total Annual Recordkeeping Hours: 30,273,950.

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 28, 2010.

Gerald Shields,

IRS Tax Supervisory Analyst.

[FR Doc. 2010–16229 Filed 7–2–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209446–82]

Proposed Collection; Comment Request for REG 209446–82 (TD 8852)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209446–82 (TD 8852), Passthrough of Items of an S Corporation to its Shareholders (§ 1.1366–1).

DATES: Written comments should be received on or before September 7, 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 regulation should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Passthrough of Items of an S Corporation to its Shareholders.

OMB Number: 1545–1613.

Regulation Project Number: REG–209446–82 (TD 8852)

Abstract: Section 1366 requires shareholders of an S corporation to take into account their pro rata share of separately stated items of the S corporation and non-separately computed income or loss. Section 1.1366–1 of the regulation provides that an S corporation must report, and a shareholder is required to take into account in the shareholder's return, the shareholder's pro rata share, whether or not distributed, of the S corporation's items of income, loss, deduction, or credit.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and Individuals or households.

This reporting requirement is reflected in the burden of Form 1040, U.S. Individual Income Tax Return, and Form 1120S, U.S. Income Tax Return for an S Corporation. 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 11, 2010.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–16230 Filed 7–2–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Investigative Inquiry Forms.

DATES: Written comments should be received on or before September 8, 2010, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Judi Owens, 200 Third Street, A4–A, Parkersburg, WV 26106–5312, or *Judi.Owens@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Judi Owens, Bureau of the Public Debt, 200 Third Street, A4–A, Parkersburg, WV 26106–5312, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Investigative Inquiry Forms.

OMB Number: 1535–0141.

Form Numbers: PD F 5518, PD F 5519, PD F 5520, PD F 5521.

Abstract: The information is requested support of background investigations.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 2,160.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 360.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 28, 2010.

Judi Owens,

Manager, Information Management Branch.

[FR Doc. 2010–16274 Filed 7–2–10; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4562

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 4562, Depreciation and Amortization (Including Information on Listed Property).

DATES: Written comments should be received on or before September 7, 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 Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Depreciation and Amortization (Including Information on Listed Property).

OMB Number: 1545–0172.

Form Number: Form 4562.

Abstract: Form 4562 is used to claim a deduction for depreciation and amortization; to make the election to expense certain tangible property under Internal Revenue Code section 179; and to provide information on the business/investment use of automobiles and other listed property. The form provides the IRS with the information necessary to determine that the correct depreciation deduction is being claimed.

Current Actions: There are no changes being made to Form 4562 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, farms, and individuals.

Estimated Number of Respondents: 45,000,000.

Estimated Time per Respondent: 45 hours, 11 minutes.

Estimated Total Annual Burden Hours: 2,042,550,000.

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 18, 2010.

Gerald Shields,

Supervisory Tax Analyst.

[FR Doc. 2010–16233 Filed 7–2–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–127–86; PS–128–86; PS–73–88]

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–127–86, PS–128–86, and PS–73–88 (TD 8644), Generation-Skipping Transfer Tax (§§ 26.2601–1, 26.2632–1, 26.2642–1, 26.2642–2, 26.2642–3, 26.2642–4, 26.2652–2, and 26.2662–1).

DATES: Written comments should be received on or before September 7, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection

should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Generation-Skipping Transfer Tax.

OMB Number: 1545–0985 (TD 8644).

Regulation Project Number: PS–127–86; PS–128–86; PS–73–88 (TD 8644).

Abstract: This regulation provides rules relating to the effective date, return requirements, definitions, and certain rules covering the generation-skipping transfer tax. The information required by the regulation will require individuals and/or fiduciaries to report information on Forms 706, 706NA, 706GS (D), 706GS (D–1), 706GS (T), 709, and 843 in connection with the generation skipping transfer tax. The information will facilitate the assessment of the tax and taxpayer examinations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals and households, and Business or other for-profit organizations.

Estimated Number of Respondents: 10.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 50.

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 22, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–16232 Filed 7–2–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–153841–02]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–153841–02, Election Out of GST Deemed Allocations.

DATES: Written comments should be received on or before September 7, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Election Out of GST Deemed Allocations.

OMB Number: 1545–1892.

Regulation Project Number: REG–153841–02.

Abstract: This information is required by the IRS for taxpayers who elect to have the automatic allocation rules not apply to the current transfer and/or to future transfers to the trust or to terminate such election. This information is also required by the IRS for taxpayers who elect to treat trusts described in section 2632(c)(3)(B)(i) through (vi) as GST trusts or to terminate such election. This information will be used to identify the trusts to which the election or termination of election will apply.

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: 25,000.

Estimated Time per Respondent: 30 minutes.

Estimated total annual burden hours: 12,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 24, 2010.

Gerald Shields,

IRS Tax Supervisory Analyst.

[FR Doc. 2010–16259 Filed 7–2–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2004–29

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2004–29, Statistical Sampling in § 274 Context.

DATES: Written comments should be received on or before September 7, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Statistical Sampling in § 274 Contest.

OMB Number: 1545–1847.

Revenue Procedure Number: Revenue Procedure 2004–29.

Abstract: Revenue Procedure 2004–29 prescribes the statistical sampling methodology by which taxpayers under examination, making claims for refunds or filing original returns may establish the amounts of substantiated meal and entertainment expenses that are excepted from the 50% deduction disallowance of § 274(n)(1) under § 274(n)(2)(A), (C), (D), or (E).

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 400.

Estimated Annual Average Time per Respondent: 8 hours.

Estimated Total Annual Hours: 3,200.

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 24, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–16257 Filed 7–2–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8866

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 8866, Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.

DATES: Written comments should be received on or before September 7, 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 Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.

OMB Number: 1545–1622.

Form Number: Form 8866.

Abstract: Taxpayers depreciating property under the income forecast method and placed in service after September 13, 1995, must use Form 8866 to compute and report interest due or to be refunded under Internal Revenue Code 167(g)(2). The Internal Revenue Service uses the information on Form 8866 to determine if the interest has been figured correctly.

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: 3,300.

Estimated Time per Respondent: 13 hours, 22 minutes.

Estimated Total Annual Burden Hours: 44,121.

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 24, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–16256 Filed 7–2–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106177–97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing proposed regulation, REG–106177–97, Qualified State Tuition Programs.

DATES: Written comments should be received on or before September 7, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Qualified State Tuition Programs.

OMB Number: 1545–1614.

Regulation Project Number: REG–106177–97.

Abstract: This regulation affects qualified tuition programs (QTPs) described in Code section 529 and individuals receiving distributions from the programs. Information will be used by the IRS and individuals receiving QTP distributions to verify compliance with section 529 and to determine the taxable amount of a distribution.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: State, local or tribal governments and individuals or households.

Estimated Number of Respondents/Recordkeepers: 52.

Estimated Time per Respondent/Recordkeeper: 81,889 hrs, 37 minutes.

Estimated Total Annual Reporting/Recordkeeping Burden Hours: 4,258,260.

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 24, 2010.

Gerald Shields,

IRS Tax Supervisory Analyst.

[FR Doc. 2010–16255 Filed 7–2–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2000–12

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2000–12, Application Procedures for Qualified Intermediary Status Under Section 1441; Final Qualified Intermediary Withholding Agreement.

DATES: Written comments should be received on or before September 7, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application Procedures for Qualified Intermediary Status Under Section 1441; Final Qualified Intermediary Withholding Agreement.

OMB Number: 1545–1597.

Revenue Procedure Number: 2000–12 (Revenue Procedure 2000–12 is modified by Announcement 2000–50, Revenue Procedure 2003–64, Revenue Procedure 2004–21, and Revenue Procedure 2005–77.)

Abstract: This revenue procedure gives guidance for entering into a withholding agreement with the IRS to be treated as a Qualified Intermediary (QI) under regulation section 1.1441–1(e)(5). It describes the application procedures for becoming a QI and the terms that the IRS will ordinarily require in a QI withholding agreement. The objective of a QI withholding agreement is to simplify withholding and reporting obligations with respect to payments of income made to an account holder through one or more foreign intermediaries.

Current Actions: Revenue Procedure 2000–12 is modified by Announcement 2000–50, Revenue Procedure 2003–64, Revenue Procedure 2004–21, and Revenue Procedure 2005–77.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents/Recordkeepers: 1,097,991.

Estimated Time for QI Account Holder: 30 minutes.

Estimated Time for a QI: 2,093 hours.

Estimated Total Annual Reporting/Recordkeeping Hours: 301,018.

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 23, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–16253 Filed 7–2–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–939–86]

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, INTL–939–86, Insurance Income of a Controlled Foreign Corporation for Taxable Years beginning After December 31, 1986 (§ 1.953–2(e)(3)(iii), 1.953–4(b), 1.953–5(a), 1.953–6(a), 1.953–7(c)(8), and 1.6046–1).

DATES: Written comments should be received on or before September 7, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Insurance Income of a Controlled Foreign Corporation for Taxable Years Beginning After December 31, 1986.

OMB Number: 1545–1142.

Regulation Project Number: INTL–939–86.

Abstract: This regulation relates to the definition and computation of the insurance income of a controlled foreign corporation, and it also contains rules applicable to certain captive insurance companies. The information collection is required by the IRS in order for taxpayers to elect to locate risks with respect to moveable property by reference to the location of the property in a prior period; to allocate investment income to a particular category of insurance income; to allocate deductions to a particular category of insurance income; to determine the amount of those items, such as reserves, which are computed with reference to an insurance company's annual statement; to elect to have related person insurance income treated as income effectively connected with the conduct of a United States trade or business; and to collect the information required by Code section 6046 relating to controlled foreign corporations as defined in Code section 953(c).

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents/Recordkeepers: 500.

Estimated Time per Respondent/Recordkeeper: 28 hr., 12 min.

Estimated Total Annual Burden Hours: 14,100.

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 22, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–16252 Filed 7–2–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–78–91; PS–50–92; and REG–114664–97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations, PS–78–91 (TD 8430), Procedure for Monitoring Compliance With Low-Income Housing Credit Requirements; PS–50–92 (TD 8521), Rules To Carry Out the Purposes of Section 42 and for Correcting Administrative Errors and Omissions; and REG–114664–97 (TD 8859), Compliance Monitoring and Miscellaneous Issues Relating to the Low-Income Housing Credit (§§ 1.42–5, 1.42–13, and 1.42–17).

DATES: Written comments should be received on or before September 7, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* PS–78–91, Procedure for Monitoring Compliance With Low-Income Housing Credit Requirements; PS–50–92, Rules To Carry Out the Purposes of Section 42 and for Correcting Administrative Errors and Omissions; and REG–114664–97, Compliance Monitoring and Miscellaneous Issues Relating to the Low-Income Housing Credit.

OMB Number: 1545–1357.

Regulation Project Numbers: PS–78–91; PS–50–92; and REG–114664–97.

Abstract: PS–78–91 This regulation requires state allocation plans to provide a procedure for state and local housing credit agencies to monitor for compliance with the requirements of Code section 42 and report any noncompliance to the IRS. *PS–50–92* This regulation concerns the Secretary of the Treasury's authority to provide guidance under Code section 42 and allows state and local housing credit agencies to correct administrative errors and omissions made in connection with allocations of low-income housing credit dollar amounts and recordkeeping within a reasonable period after their discovery. *REG–114664–97* This regulation amends the procedures for state and local housing credit agencies' compliance monitoring and the rules for state and local housing credit agencies' correction of administrative errors or omissions.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individual or households, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 22,141.

Estimated Time per Respondent: 4 hours, 45 minutes.

Estimated Total Annual Burden Hours: 104,899.

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 22, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–16231 Filed 7–2–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706–NA

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 706–NA, United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of nonresident not a citizen of the United States.

DATES: Written comments should be received on or before September 7, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, 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 Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington DC 20224, or through the internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of nonresident not a citizen of the United States.

OMB Number: 1545–0531.

Form Number: 706–NA.

Abstract: Form 706–NA is used to compute estate and generation-skipping transfer tax liability for nonresident alien decedents in accordance with section 6018 of the Internal Revenue Code. IRS uses the information on the form to determine the correct amount of tax and credits.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 10.

Estimated Time per Respondent: 4 hours, 29 minutes.

Estimated Total Annual Burden Hours: 45.

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 23, 2010.

Gerald Shields,

Supervisory Tax Analyst.

[FR Doc. 2010–16234 Filed 7–2–10; 8:45 am]

BILLING CODE 4830–01–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing—July 14, 2010, Washington, DC.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

Name: Daniel M. Slane, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, and report to Congress annually on "the national security implications of the economic relationship between the United States and the People's Republic of China."

Pursuant to this mandate, the Commission will hold a public hearing in Toledo, OH on July 14, 2010, titled "The Challenge of China's Green Technology Policy and Ohio's Response."

Background

This is the eighth public hearing the Commission will hold during its 2010 report cycle to collect input from leading academic, industry, and government experts on national security implications of the U.S. bilateral trade and economic relationship with China. The July 14 hearing will examine the implications for the United States of China's policies for promoting domestic clean energy technology industry for the United States; the challenges and opportunities presented by the growth of Chinese green technology sector; consequences for local business of competition with Chinese companies; current efforts by both the Ohio State government, industry leaders and other institutions to respond to the challenge of China and promote economic growth in the region; and the steps the U.S. federal government should take in response to these developments. The July 14 hearing will be Co-chaired by Commissioners Carolyn Bartholomew and Peter Brooks.

Any interested party may file a written statement by July 14, 2010, by mailing to the contact below. On July 14, the hearing will be held in two sessions, one in the morning and one in the afternoon. A portion of each panel will include a question and answer period between the Commissioners and the witnesses.

Transcripts of past Commission public hearings may be obtained from the USCC Web site *http://www.uscc.gov*.

Date and Time: Wednesday, July 14, 2010, 9 a.m. to 4 p.m. Eastern Daylight Time. A detailed agenda for the hearing will be posted to the Commission's Web site at *http://www.uscc.gov* as soon as available.

ADDRESSES: The hearing will be held at the Hilton Toledo, 3100 Glendale Avenue, Toledo, OH 43614. Public seating is limited to about 50 people on a first come, first served basis. Advance reservations are not required.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the hearing should contact Michael Danis, Executive Director, 444 North Capitol Street, NW., Suite 602, Washington, DC 20001; phone: 202–624–1410, or via e-mail at *mdanis@uscc.gov*.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Pub. L. 109–108 (November 22, 2005).

Dated: June 29, 2010.

Michael Danis,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2010–16242 Filed 7–2–10; 8:45 am]

BILLING CODE 1137–00–P

Federal Register

Tuesday,
July 6, 2010

Part II

Department of Transportation

49 CFR Part 39

Transportation for Individuals With Disabilities: Passenger Vessels; Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 39

[Docket OST–2007–26829]

RIN 2105–AB87

Transportation for Individuals With Disabilities: Passenger Vessels

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule; request for comments.

SUMMARY: The Department is issuing a new Americans with Disabilities Act (ADA) rule to ensure nondiscrimination on the basis of disability by passenger vessel operators (PVOs). This rulemaking concerns service and policy issues. Issues concerning physical accessibility standards will be addressed at a later time, in conjunction with proposed passenger vessel accessibility guidelines drafted by the United States Access Board. The Department is also seeking further comment on three issues, concerning emotional support animals, mobility aids, and the relationship of DOT and DOJ rules.

DATES: This rule is effective November 3, 2010. Comments should be received by October 4, 2010.

ADDRESSES: You may submit comments (identified by the agency name and DOT Docket ID Number OST–2007–26829) by any of the following methods:

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

Instructions: You must include the agency name (Office of the Secretary, DOT) and Docket number (OST–2009–) for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail or courier. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided and will be available to Internet users. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://DocketsInfo.dot.gov.*

Docket: For Internet access to the docket to read background documents and comments received, go to *http://www.regulations.gov.* Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Ave., SE., Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 1200 New Jersey Avenue, SE., Room W94–302, Washington, DC 20590. (202) 366–9310 (voice); (202) 366–7687 (TDD); *bob.ashby@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION: The Department of Transportation has issued rules concerning nondiscrimination on the basis of disability for almost every mode of passenger transportation, including public transportation (bus, subway, commuter rail), over-the-road buses, intercity rail, and air transportation. The only mode for which the Department has yet to issue rules is transportation by passenger vessels. With this final rule, the Department can begin to close this gap in coverage of transportation for individuals with disabilities.

Background

When the Department issued its first Americans with Disabilities Act (ADA) rules in 1991, we discussed the coverage of passenger vessels. The Department reserved action on passenger vessels in the regulatory text in the final rule, and made the following statements on the subject in the preamble (56 FR 45599–45560; September 6, 1991):

> Ferries and passenger vessels operated by public entities are covered by the ADA, and subject at this time to DOJ Title II requirements as well as § 37.5 of this Part. * * * We anticipate further rulemaking to create appropriate requirements for passenger vessels * * *. The reason for this action is that, at the present time, the Department lacks sufficient information to determine what are reasonable accessibility requirements for various kinds of passenger vessels. * * * The Department of Transportation anticipates working with the Access Board and DOJ on further rulemaking to define requirements for passenger vessels. * * * The Department does want to make clear its view that the ADA does cover passenger vessels, including ferries, excursion vessels, sightseeing vessels, floating restaurants, cruise ships, and others. Cruise ships are a particularly interesting example of vessels subject to ADA coverage.
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> Cruise ships are a unique mode of transportation. Cruise ships are self-contained floating communities. In addition to transporting passengers, cruise ships house, feed, and entertain passengers and thus take on aspects of public accommodations. Therefore cruise ships appear to be a hybrid of a transportation service and a public accommodation * * *
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> In addition to being public accommodations, cruise ships clearly are within the scope of a "specified public transportation service." The ADA prohibits discrimination in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce (§ 304(a)). "Specified public transportation" is defined by § 301(10) as "transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis."
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> Cruise ships easily meet the definition of "specified public transportation." Cruise ships are used almost exclusively for transporting passengers and no one doubts that their operations affect commerce. Cruise ships operate according to set schedules or for charter and their services are offered to the general public. Finally, despite some seasonal variations, their services are offered on a regular and continuing basis.
>
> Virtually all cruise ships serving U.S. ports are foreign-flag vessels. International law clearly allows the U.S. to exercise jurisdiction over foreign-flag vessels while they are in U.S. ports, subject to treaty obligations. A State has complete sovereignty over its internal waters, including ports. Therefore, once a commercial ship voluntarily enters a port, it becomes subject to the jurisdiction of the coastal State. In addition, a State may condition the entry of a foreign ship into its internal waters or ports on compliance with its laws and regulations. The United States thus appears to have jurisdiction to apply ADA requirements to foreign-flag cruise ships that call in U.S. ports.

The U.S. Supreme Court affirmed the Department's long-held view that the ADA covers passenger vessels, specifically including foreign-flag cruise ships. In *Spector et al.* v. *Norwegian Cruise Lines,* 545 U.S. 119 (2005), the Court held that cruise ships are "public accommodations" that provide "specified public transportation" within the meaning of the ADA. The Court said that, while there may be some limitations on the coverage of the ADA to matters purely concerning the internal affairs of a foreign-flag vessel, matters concerning the ship operators' policies and conditions relating to transportation of passengers with disabilities (*e.g.,* higher fares or surcharges for disabled passengers,

waivers of medical liability, requirements for attendants) had nothing to do with a ship's internal affairs. Such matters, then, are clearly subject to ADA jurisdiction. It is issues of this kind that are the focus of this final rule.

The Access Board has been working for some time on drafting accessibility guidelines for passenger vessels. On November 26, 2004, the Access Board published for comment a notice of availability of draft guidelines for larger passenger vessels with a capacity of over 150 passengers or overnight accommodations for over 49 passengers. Since that time, the Access Board has been reviewing comments received and planning work on a Regulatory Assessment for vessel guidelines. On July 7, 2006, the Access Board issued a second notice of availability asking for comments on a revised draft of vessel guidelines. Following the review of comments on that notice, the Access Board, in cooperation with the Department of Transportation, would issue an NPRM and Regulatory Assessment concerning physical accessibility requirements for larger passenger vessels. As envisioned, the final rule resulting from such a future NPRM would ultimately be joined with a final rule resulting from this final rule in a single, comprehensive passenger vessel ADA rule.

On November 29, 2004, the Department published an advance notice of proposed rulemaking (ANPRM) asking questions about the shape of future ADA requirements for passenger vessels (69 FR 69247). The Department received 43 comments to the ANPRM. Most of these comments concerned the Access Board's draft guidelines and physical accessibility issues relating to existing and new vessels, and some of them concerned physical accessibility issues specific to very small vessels. The Department is retaining these comments and will consider them in context of the continuing work on the Access Board's draft vessel guidelines and the future NPRM that would propose to incorporate those guidelines in DOT rules.

The only comment on the ANPRM that concerned issues included in this NPRM was from the International Council of Cruise Lines (ICCL), a trade association for entities in the cruise industry. ICCL recommended that the rules exempt transfers of persons from larger vessels to tenders; recognize the flexibility of cabin configurations; exclude from coverage shore excursions provided by third-party-vendors, particularly in foreign countries; have eligibility criteria and direct threat provisions that allow operators to establish policies that will avoid safety risks; permit requirements for personal attendants; and permit limitations on the transportation of service animals. The Department addressed these comments in context of the individual sections of the proposed rule.

The notice of proposed rulemaking (NPRM) for this rule was issued on January 23, 2007 (72 FR 2833). In response to the NPRM, hundreds of comments were received from disability advocacy groups, the regulated industry, other governmental agencies, and the general public. At the request of industry, the Department held a public meeting on April 8–9, 2008, where members of these groups attended to inform the Department of their views on the practical effect of the NPRM's provisions. This final rule addresses the comments received in the docket and at the public meeting.

Section-by-Section Analysis

Section 39.1 What is the purpose of this Part?

This section briefly states the nondiscrimination-related purposes of the rule and specifies that nondiscrimination requirements apply to operators of foreign-flag as well as U.S. vessels.

Section 39.3 What do the terms in this rule mean?

This section defines the terms used in this rule. Many of the definitions are based on parallel definitions in other disability nondiscrimination regulations, adapted to the passenger vessel context. This preamble discussion focuses on terms that are specific to the passenger vessel context. Other terms have the same meanings as they do in other DOT disability rules.

Because this rule does not propose physical accessibility requirements for vessels, the definition of "accessible" will be fleshed out with proposed standards based on Access Board guidelines in a future rulemaking. The definitions of "auxiliary aids and services" and "direct threat" are drawn from Department of Justice regulations. "Direct threat" concerns only threats to the health and safety *of others.* Something that may threaten only the health or safety of a passenger with a disability, himself or herself, by definition cannot be a direct threat. The definition of "direct threat" is consistent with the understanding of that term in DOT and DOJ regulations. In the preamble to its over-the-road bus ADA rulemaking, the Department provided a thorough discussion of this concept (63 FR 51671–51674), which remains a good guide to the Department's thinking on this issue.

The definition of "disability" is taken from the existing ADA rule, 49 CFR Part 37. The Department is well aware that the ADA Amendments Act of 2008 altered the definition of disability. However, in its pending ADA Title II and Title III regulations, DOJ has not modified its existing definitions of this term, though it expects to do so In the future. The Department believes that it would be best to work on the regulatory expression of the amended definition in concert with DOJ, resulting in a single government-wide regulatory definition. Typically, in DOT transportation nondiscrimination practice (in contrast, for example, to employment nondiscrimination matters), the definition of "disability" has not been a major issue. In implementing this rule, the Department will be informed by the 2008 legislation if any issues arise in which the changed language of the statute are relevant to the obligations of PVOs.

The term "disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment. A commenter expressed concern that passengers may have many different kinds of disabilities and said that the proposed rule does not clearly define "disability." Another commenter stated that the definition of "disability" is unnecessarily confusing since it allows people who are "misclassified as disabled" to be considered disabled for the purposes of this rule.

The definition of the term "disability" in this rulemaking is based on the ADA statutory definition of "disability," and longstanding DOT and DOJ regulatory definitions. People who are "regarded as" having a disability, even if in fact they don't, have always been a protected class under the ADA. It is certainly true that there are many kinds of disabilities, and the definition, as fitting in a civil rights mandate, is intentionally broad.

The definition of "facilities" is also consistent with the definition of this term in other DOJ and DOT rules. Examples of facilities in the passenger vessel context include such things landside facilities and floating docks that a vessel operator owns, leases, or controls in the U.S. (including its territories, possessions, and commonwealths). Comments received in relation to the definition of facilities and terminals from the cruise line

industry objected to applying this rulemaking to facilities outside the U.S. due to possible conflict with the laws of the host nation. As in the case of the Air Carrier Access Act, where the Department does not assert jurisdiction over airports in foreign countries, the Department does not in this rule attempt to cover port facilities abroad. A passenger vessel operator (PVO) would be viewed as controlling a facility, even if it did not own or lease it, if the facility owner, through a contract or other arrangement, delegated authority over use of the facility to the passenger vessel operator during those times in which the vessel was at the facility.

The Department realizes that entities other than PVOs, such as municipalities or other private businesses, may own, lease, or control U.S. landside facilities that passenger vessels use. The obligations of these entities would be controlled by Titles II and III of the ADA and, in some cases, by section 504 of the Rehabilitation Act of 1973. The relationship envisioned between the facility owner/controller and the PVO is analogous to other situations in which entities subject to different disability access rules share responsibility (*e.g.,* public entity landlord subject to Title II leases property to a private entity subject to Title III).

The definition of "historic vessel" is also one that is likely to become more significant when future rulemakings include physical accessibility standards to Part 39. "New," "existing," and "used" passenger vessel are also terms that will be of greater importance once physical accessibility standards are in place. Because they are not necessary in this regulation, the Department has deleted these definitions. We anticipate proposing definitions of these and other terms relevant to the application of physical accessibility standards in a subsequent rulemaking related to Access Board proposals for passenger vessel guidelines.

"Operates" means the provision of transportation by any public or private entity on a passenger vessel. Moreover, the definition also includes the provision of transportation by another party having a contractual or other arrangement or relationship with the PVO involved. As in other parts of the Department's accessibility rules, a party can contract out its functions, but cannot contract away its responsibilities.

"Passenger vessel" is meant to be a broadly encompassing term for any boat, ship, or other craft that is hired by members of the public or for other activities conducted as a part of the vessel operator's normal operations (which could include promotional activities such as the use of a vessel by members of the public for which a fare is not charged or free ferry service). Boats or other craft that are rented or leased to consumers to be operated by the consumer (versus by the passenger vessel operator and its personnel) are not covered.

One commenter recommended excluding vessels that support offshore oil and gas activities from this definition. Such vessels are chartered by a customer principally for transport of cargo. Other commenters recommended excluding from the rulemaking supply vessels, crew boats, all vessels below a certain size (*e.g.,* 100 gross tons, space for 150 or 6 passengers) school training or sailing vessels, party fishing vessels, and research vessels carrying students if the "mission" of the vessel would be compromised.

It appears that many of these comments were based on the premise that this rule will require significant physical changes to existing vessels. It will not. This rule addresses policies and practices of PVOs, not the design or construction of their vessels. With respect to PVO policies that would, for example, exclude an individual because he is blind, or charge extra fees because a passenger uses a wheelchair or other assistive device, the nondiscrimination principles of the ADA do not apply any differently because of the size or function of a vessel. As it develops its vessel accessibility guidelines, the Access Board is taking vessel size matters into account, and in future rulemaking the Department anticipates harmonizing its standards with the Access Board guidelines, including size limitations the Access Board rule may adopt.

The Passenger Vessel Association commented that, where a vessel owner or operator is not paid for carrying the passengers, there should be no additional requirements placed on the owner by the rule. The Department disagrees. The rights of individuals with disabilities are protected under the ADA whether or not the individual is a paying customer. There is no basis under the statute for treating individuals differently based on their status as paying or non-paying passengers.

"Passenger vessel operator" is a term that includes both owners and operators of a passenger vessel. A PVO may be either a public or a private entity. Sometimes, ownership of vessels can be complex, with two or more parties involved, with yet another party responsible for the day-to-day operation of the vessel. In such situations, all the parties involved would be jointly and severally responsible for compliance with these rules.

In a change from the NPRM, the term PVO includes only private entities primarily engaged in the business of transporting people. The Department of Justice (DOJ) has authority over public accommodations that operate vessels and are not primarily engaged in the business of transporting people. DOJ's regulations applicable to public accommodations apply to ensure nondiscrimination by such vessel operators. Persons with complaints or concerns about discrimination on the basis of disability by vessel operators who are private entities not primarily engaged in the business of transporting people, or questions about how DOJ's regulations apply to such operators and vessels, should contact DOJ. For these reasons, it has been determined that it is not necessary to include provisions in this final rule concerning vessels operated by private entities not primarily engaged in the business of transporting people.

The basic distinction is that a vessel operator whose vessel takes passengers from Point A to Point B (*e.g.,* a cruise ship that sails from Miami to one or more Caribbean islands, a private ferry boat between two points on either side of a river, a water taxi between two points in an urban area) is most likely a private entity primarily in the business of transporting people. A vessel operator who departs from Point A, takes passengers on a recreational trip, and returns passengers to Point A without ever providing for disembarkation at a Point B (*e.g.,* a dinner or harbor cruise, a fishing charter) is most likely a private entity not primarily engaged in the business of transporting people. In cases where it is not clear whether a vessel operator is or is not primarily engaged in the business of transporting people, the Department of Transportation, in consultation with DOJ, will determine into which category the operator falls. There may be certain situations in which a passenger vessel's operations can simultaneously be subject to both DOT and DOJ rules.

The terms, "individual with a disability" and "qualified individual with a disability," have similar meanings for purposes of the rule. There could be situations in which a qualified individual with a disability may not actually be a passenger, such as in the case of an individual choosing to assist a person with a disability in ways that do not involve actually accompanying the person on a voyage (*e.g.,* assistance with buying tickets, assistance in moving through a terminal, advocating

for the person with the PVO concerning policies affecting the person's travel).

"Specified public transportation" should not be read under this Part to include promotional rides on vessels for the purpose of informing a vessel purchase. Nor does it include operations of vessels by private entities not primarily engaged in the business of transporting people.

"Terminal" refers to property or facilities adjacent to the means of boarding a vessel that passengers use to get to the vessel. A terminal, in this sense, can be a large complex, a building, or a very simple facility. Importantly, terminals are covered under Part 39 only to the extent that the PVO owns or leases the terminal or exercises control over its selection, design, construction, or alteration (*e.g.,* PVO selects site for construction of new facility; PVO has choice of docking at existing accessible or inaccessible facility).

The definition of "wheelchair" is taken from the Department's ADA rule for surface transportation modes, 49 CFR part 37. The only difference is that the part 39 definition does not include a sentence referring to the "common wheelchair" term. This term was taken from Access Board guidelines relating to the design and construction of surface transportation vehicles, and it is not clear that the term has a relevant application in the passenger vessel context. Moreover, the inclusion of the term in part 37 has been problematic, in that it has led to unanticipated operational applications of what was intended to be a design standard.

Section 39.5 To whom do the provisions of this Part apply?

The Department is applying the provisions of this Part to all passenger vessels, regardless of size. There are three major exceptions to this general coverage. First, while all U.S.-flagged vessels would be covered, coverage of foreign-flag vessels would be limited to those that pick up or discharge passengers in the U.S. For example, suppose a foreign-flag cruise PVO operates two ships. One of them sails only among ports in Europe. Another picks up passengers in Miami and cruises to several Caribbean ports. The latter would be covered and the former would not. Several commenters recommended for the rule to apply to all domestic and foreign cruise ships, including river cruise ships, regardless of whether the ships picks up passengers in the U.S. The Cruise Lines International Association, Inc. disagreed, and commented that the rules should not cover foreign flag cruise ships that do not embark, disembark, or stop at any U.S. ports because Congress has not made a "clear statement" of intent that the ADA apply extraterritorially. This rule covers only those vessels that pick up or discharge passengers in the U.S.

The second exception will address vessel accessibility standards. To this end, this rule reserves paragraph (c) to state the scope of the applicability of these standards in the future. As noted above, some comments urged exempting small vessels from the rules due to the difficulty in making physical modifications to such vessels. The Department notes that draft Access Board vessel guidelines would limit their application to vessels permitted to carry over 150 passengers or over 49 overnight passenger capacity categories, as well as tenders with a capacity of 60 or more and all ferries. The Department would follow the Access Board's final guidelines, when they are issued, with respect to coverage.

While exemptions or scoping provisions based on vessel size might be appropriate for accessibility standards, the Department believes that there is no basis by which to justify an exemption from the nondiscrimination provisions not related to such standards. The provisions of this rule are do not require physical changes to a vessel, but rather concern an operator's policies to ensure treatment for disabled passengers that is consistent with the intent of the ADA.

The third exception, as noted above, is that the rule will apply only to private entities primarily engaged in the business of transporting people, and not to private entities not primarily engaged in the business of transporting people. This change eliminates from coverage the vast majority of small private entities to which the NPRM would have applied.

Section 39.7 What other authorities concerning nondiscrimination on the basis of disability apply to owners and operators of passenger vessels?

This section simply points out that recipients of Federal financial assistance (*e.g.,* some public ferry operators) are, in addition to part 39, subject to section 504 of the Rehabilitation Act and DOT implementing rules. Department of Justice (DOJ) ADA regulations, as applicable, also cover PVOs.

Section 39.9 What may a PVO of a foreign-flag vessel do if it believes that a provision of a foreign nation's law prohibits compliance with a provision of this Part?

Section 39.9, which parallels language in the Department's Air Carrier Access Act (ACAA) rules for foreign carriers, provides a waiver mechanism for situations in which a PVO for a foreign-flag vessel believes that a binding legal requirement of a foreign nation (or of an international agreement) precludes compliance with a requirement of Part 39. This provision concerns binding legal requirements, not guidance or codes of suggested practices. It concerns situations in which such a binding legal requirement actually precludes compliance with a Part 39 provision (*e.g.,* Part 39 says "You must do X," while a binding foreign legal requirement says "You must not do X"), as opposed to a situation where foreign law authorizes a practice that differs from a Part 39 requirement (*e.g.,* Part 39 says "You must do Y," while a foreign law says "You may do Z"). In a situation where the Department grants a waiver, the Department would look to the PVO for a reasonable alternative means of achieving the purpose of the waived provision.

To avoid placing PVOs in a situation in which they potentially would be required to comply with contradictory legal requirements, this rule provides PVOs 90 days from the publication of the final rule to file a waiver request. If the PVO files a waiver request meeting the requirements of this section within that period, it could continue to implement policies that it believes are consistent with the foreign law in question pending the Department's decision on the waiver request.

A commenter suggested that an international governing body could be set up to mediate issues of conflict between foreign law and U.S. law. The same commenter recommended that such a governing body could also evaluate a PVO's alternative means of compliance under the standard of "best interest of the person with a disability." At this time, the Department does not believe that the establishment of procedures other than those proposed in the NPRM is appropriate or necessary. These decisions are properly made by the Department as part of its ADA responsibilities. The parallel provisions under the Air Carrier Access Act have worked well with respect to international air carriers.

Proposed section 39.11, concerning equivalent facilitation, has been reserved since it relates mainly to future standards based on the Access Board's vessel design and construction guidelines, which have not yet been formally proposed or adopted by the Access Board. The Department anticipates proposing such a provision in a subsequent NPRM to adopt Access Board guidelines.

Section 39.13 When must PVOs comply with the provisions of this Part?

As a general matter, PVOs would have to begin to comply with the provisions of this rule as soon as the rule becomes effective. There is no evident reason why PVOs should need a lengthy phase-in period to comply with requirements pertaining to denials of transportation on the basis of disability, extra or special charges, attendants, advance notice, waivers of liability, *etc.* Indeed, a significant number of PVO commenters said that their practices and policies are already consistent with the requirements the Department is making part of this rule.

Comments were received urging a range of options from requiring immediate compliance with the rule to delaying the rule until it can be issued with the Access Board's final standards and so that training can be conducted for implementing the rule. As the final rule does not include training requirements and no vessel modifications are required as a result of this rule, the Department believes that simply defining nondiscrimination policies under the ADA does not require any lead time for implementation.

Section 39.21 What is the general nondiscrimination requirement of this Part?

The provisions of this section are parallel to the general nondiscrimination requirements in the Department's other disability-related rules. We call attention particularly to paragraph (b), which would require reasonable modification of PVOs' otherwise acceptable general policies where doing so is necessary to accommodate the needs of a particular individual or category of individuals with a disability. Such modification is required unless it would require a fundamental alteration in the nature of the PVO's services, facilities, *etc.* The final rule modifies the NPRM's language to reflect distinctions between the reasonable modification obligations of public and private entities, consistent with DOJ rules on the subject.

A few commenters stated that the language relating to "reasonable modifications" was not congruent with other Departmental ADA rulemakings and that the requirement to make reasonable modifications exceeds the Department's authority under the ADA. "Reasonable modifications" is a central idea of disability law, occurring in many applications of section 504 of the Rehabilitation Act. A similar provision was adopted in a rulemaking concerning the Air Carrier Access Act, and it has caused no problems of which we are aware. Department of Justice (DOJ) ADA rules have long included the concept. While the Department's surface transportation ADA rule (49 CFR part 37) does not presently include this language, the Department, in a pending rulemaking concerning part 37, has proposed to add it. The Department believes it is appropriate for a PVO to modify policies so that accessible service is actually made available to passengers, absent a alteration. Commenters were unable to provide any examples of how doing so would be inimical to passenger vessel operations or safety.

Section 39.23 What are the requirements concerning contractors to owners and operators of passenger vessels?

As noted above, contractors and other persons whom the PVO uses to provide services to passengers "stand in the shoes" of the PVO with respect to the requirements of this rule. The PVO must ensure, through provisions in the contracts or other agreements with such third parties, that the third parties comply with applicable requirements.

Commenters were concerned with the speed at which contracts must be updated to reflect contractors' duties on behalf of a PVO with respect to the ADA. All contracts must be updated within one year from the effective date of this rule or the contract anniversary date, whichever one comes sooner. The Department believes this amount of time is sufficient for compliance.

Another commenter suggested excluding contractors outside of the U.S. from the requirements of the rule. This final rule does not apply to contractors who work with PVOs outside of the U.S. However, PVOs are encouraged to voluntarily contract for compliance with the ADA to the maximum degree that foreign/international laws will allow.

In reference to paragraph (b), the same commenter suggested that the requirement to include "assurance of compliance" language in contracts should not be applied to contracts between cruise lines and their U.S.-based contractors. The commenter expressed that modifying contracts to add this required language would cause an "undue burden" on cruise lines and would be unnecessary due to existing ADA requirements applicable to U.S.-based contractors. There is no showing in any of the comments that the task of making such a modification to the contract would be a significant barrier at all, let alone an "undue burden." If, as the commenter suggests, the contractors are already in compliance with ADA obligations, the burden on them would be negligible.

Another commenter questioned whether paragraph (b) implicitly requires the creation of a written contract where the PVO and contractor have been operating without such a contract. There is no mandate for a written contract, though good business practices often involve written contracts. However, the absence of a written contract does not excuse noncompliance by a PVO resulting from the action of a third party acting on its behalf. The Department does not need to receive copies of written agreements between a PVO and a contractor.

Section 39.25 May PVOs refuse to provide transportation or use of a passenger vessel on the basis of disability?

The Department views any policy or action prohibiting a person with a disability from being transported on or otherwise using a passenger vessel as discriminatory on its face. If a PVO says to a person, literally or in effect, "you are a person with a disability, therefore stay off my vessel," the PVO would violate this rule.

The Department recognizes that some disabilities may make other passengers uncomfortable. That is not a justifiable reason to deny access to the vessel to persons with these disabilities (*see* paragraph (b)). Only if there is a genuine safety issue, meeting the stringent criteria outlined in section 39.27, would the PVO be justified in excluding a person because the person has a disability. Even in that case, the PVO would have to provide a written or e-mail explanation to the person within 10 days of the denial (paragraph (c)).

Two commenters indicated that historic vessels may not be able to meet the requirements of this section. Another commenter inquired as to whether the section allows the PVO to deny a "wheelchair-bound" passenger access to a second deck where the deck is only accessible by stairs, or from going to a first deck dining space when there is no remaining accessible space in the dining room. The Department recognizes that, particularly for vessels built before the adoption of physical accessibility standards, some vessels will not enable some persons with certain disabilities to travel on or to obtain some services aboard the vessels. For example, an older vessel might not have any overnight cabins of a size that could accommodate a person using a power wheelchair, or might have a dining area that is on a deck that can be accessed only by using steps. The

Department would not, in such a situation, regard a PVO's statement to a passenger about existing physical barriers as equivalent to a policy denying transportation on or use of the vessel on the basis of disability.

Another commenter suggested using a "strict scrutiny" standard for determining whether a vessel's explanation for denying access is reasonable. The "strict scrutiny" legal standard is used for assessing constitutional law issues, and it is not suitable for this situation.

Many of the comments regarding this section ultimately addressed vessel construction and the difficulty involved in handling numerous passengers with mobility aids. This rulemaking imposes no duty on PVOs to make alterations to their vessels to accommodate disabled passengers, beyond existing ADA requirements for Title II (program accessibility) or Title III (readily achievable barrier removal) entities.

As was pointed out by commenters in the public meeting, passenger vessels operate a customer service oriented business that necessitates accommodating passenger requests whenever possible. However, this rule does not call on PVOs to do the physically impossible. For instance, suppose a vessel has entries/corridors that are 30 inches wide and a passenger uses a mobility aid that is 36 inches wide. The passenger is not able to be physically accommodated through those corridors using this device and the PVO would not be in violation of this rule. (Of course, if the passenger chose to use an alternative mobility device that could fit the space, the passenger would have to be provided access using the alternative device.)

Section 39.27 Can a PVO take action to deny transportation or restrict services to a passenger with a disability based on safety concerns?

This section states that a PVO can deny transportation or restrict services to a person with a disability when necessitated by legitimate safety requirements. Legitimate safety requirements cannot be based on mere speculation, stereotypes, or generalizations about individuals with disabilities. They can be based only on actual, demonstrable safety risks. The rule would also permit a PVO to deny or restrict transportation of a passenger with a disability in the event that the passenger posed a direct threat to others. While there is no recordkeeping requirement in the rule, a PVO that claims legitimate safety requirements as the basis for any restriction on a passenger with a disability should be prepared to justify the actual safety basis for its restriction. This would be an important issue in the review of a complaint by the cognizant Federal agency.

Section 39.29 May PVOs limit the numbers of passengers with a disability on a passenger vessel?

The Department views any policy limiting the number of passengers with a disability on a vessel as discriminatory on its face. However, the cruise industry and several PVOs commented that limiting the number of passengers with mobility aids might be necessary based on what a vessel can accommodate either physically or with current staff levels. The Department understands these comments but believes it is necessary to differentiate between disabled individuals with mobility impairments as opposed to persons with other disabilities such as hearing or vision impairments. PVOs do not have any need to limit the number of disabled individuals without a mobility impairment.

However, the Department does recognize that vessel weight and stability requirements may necessarily limit the number of disabled passengers requiring wheelchairs or other powered mobility devices that can safely be physically accommodated on board at any one time. For example, if there are already two individuals on board the vessel using power wheel chairs, and accommodating a third such individual would create weight or stability issues that would threaten the safety of the vessel and persons aboard it, the Captain could deny transportation to the third individual on the basis of a legitimate safety requirement. The Department anticipates that this issue would arise only on relatively small vessels (*e.g.,* a small water taxi), not on larger vessels (*e.g.,* a cruise ship, the Staten Island ferry).

The Department also recognizes that, on some smaller vessels, the physical limitations of the vessel may impose limits on the number of wheelchairs or other mobility devices that can physically fit. This provision is not intended to require, for example, that 10 wheelchairs must be accommodated on a vessel where there is physical space for only four.

Section 39.31 May PVOs limit access to transportation on or use of a vessel on the basis that a passenger has a communicable disease?

Section 39.33 May PVOs require a passenger with a disability to provide a medical certificate?

These related provisions are intended to limit PVOs' discretion to impose requirements or restrictions on passengers on medical grounds. Most disabilities are not medical conditions: A person is not ill because he or she cannot see, hear, or walk, and applying a medical model to many disabilities is inappropriate. On the other hand, people with some communicable diseases may have a disability as the result of their disease and can pose health threats to others on board the vessel.

With respect to communicable diseases, the PVO cannot deny or restrict transportation on or use of a passenger vessel on the basis that the passenger has a communicable disease, unless the PVO acts (1) on the basis of a determination by a public health authority or (2) the PVO is able to make a two-pronged determination. One prong is the severity of the health consequences of a disease; the other is whether the disease can readily be communicated by casual contact. Only if a disease has both severe consequences to the health of other persons *and* is readily communicable by casual contact could a PVO legitimately deny or restrict transportation.

For example, HIV/AIDS has severe health consequences, but is not readily communicable by casual contact. The common cold is readily communicable by casual contact but does not have severe health consequences. Consequently, having a cold or AIDS would not be a basis on which a PVO could limit a person's transportation on or use of a vessel. Probably the best recent example of a disease that meets both criteria is Severe Acute Respiratory Syndrome (SARS), and a readily human-to-human transmissible flu pandemic with severe effects on persons contracting the disease or an outbreak of norovirus would also qualify.

It should be noted that there could be some circumstances in which the two criteria mentioned in this section could interact. For example, a public health authority could issue an alert or recommendation concerning the travel by people with a particular disease, but not make a determination that such persons could not travel at all. In these circumstances, a PVO could still restrict travel by persons with the disease if it met both the casual contact

transmission and severe health consequences prongs of the regulatory test in this section.

It is important that, in addressing communicable disease issues, PVOs act in a nondiscriminatory way. Policies for excluding passengers on the basis of communicable disease or illness must not be exercised to exclude disabled passengers disproportionately. For example, if only deaf individuals with norovirus are denied boarding, while hearing passengers with the same condition are allowed to board, there would be a violation of this rule.

In any case in which a medical certificate may be required or a limitation on a passenger's travel be imposed because of a communicable disease, the limitation would have to be the minimum needed to deal with the medical issue involved. For example, the PVO would not be authorized to deny transportation to an individual if a less drastic alternative, such as the passenger's use of medical measures that would reduce the likelihood of the transmission of an illness, is available.

If a PVO refuses transportation to a passenger with a disability on grounds related to a communicable disease or other medical condition, the PVO must permit the passenger to travel or use the vessel (or a comparable vessel for a comparable trip) at a later available date within one year at the same price as the original trip or, at the passenger's discretion, provide a refund. If there is not an available date for the passenger to be rebooked within one year, a refund would have to be provided.

Section 39.31 would prohibit a PVO from requiring a medical certificate in any situation other than the communicable disease situation discussed in section 39.31. This represents a change from the NPRM, in which the Department proposed to permit medical certificates in circumstances such as the use of personal oxygen supplies or a determination by vessel personnel that an individual could not travel successfully without requiring extraordinary medical assistance. The Department believes that, in the passenger vessel context (as distinct from airline service, on which these proposals were modeled), the risks that these proposals were intended to address are much less probable, and that imposing medical certificate requirements on passengers are consequently not justified.

Two commenters objected to allowing the PVO to require medical certification from a disabled individual under any circumstance. Other commenters were in favor of requiring medical documentation under all circumstances. Another commenter suggested allowing PVOs to restrict the number of passengers with disabilities that are at a very high risk of requiring emergency and/or extensive medical care during the course of the voyage. As noted above, the Department believes that provisions of this kind are unnecessary and could lead to unfair exclusions or restrictions for passengers. We therefore did not include such provisions in the final rule.

Section 39.35 May PVOs require a passenger with a disability to provide advance notice that he or she is traveling on or using a passenger vessel when no special services are sought?

Section 39.37 May PVOs require a passenger with a disability to provide advance notice in order to obtain particular auxiliary aids and services or to arrange group travel?

These related sections make clear that it is never appropriate for a PVO to require a person to provide advance notice simply that he or she is planning to travel, just because he or she has a disability. The PVO's nondiscriminatory policies and practices should be in place, regardless. On the other hand, there may be specific circumstances in which provision of advance notice is needed. These include to groups of 10 or more passengers with disabilities traveling together and the provision of a particular auxiliary aid or service (*e.g.,* a sign language interpreter). Numerous comments were received on these provisions. The main thrust of these comments was that PVOs need to know what sort of disabilities their passengers have in order to adequately plan to accommodate them from both a safety perspective and to provide them the best experience possible. The Department is sympathetic to this position and seeks to balance the right of privacy of the passengers with the need of PVOs to plan to accommodate and provide services to passengers. Passengers with a disability are not required to identify themselves as disabled when they are seeking no special privileges or services or auxiliary aids or services. PVOs can legitimately suggest that passengers with disabilities voluntarily self-disclose needs for special privileges or services, and it may be prudent for passengers to do so in order to avoid confusion.

However, with respect to groups of passengers with disabilities traveling together, a passenger may be required to identify that need to the PVO at the time of reservation. Likewise, a passenger seeking a particular auxiliary aid or service may be required to provide advance notice. PVOs' reservation and information systems must ensure that when passengers provide this notice, the information is transmitted clearly and on time to persons who need to provide the services involved. PVOs should consider soliciting information regarding the need for special assistance from all persons making a reservation.

Section 39.39 How do PVOs ensure that passengers with disabilities are able to use accessible cabins?

The Department anticipates that the forthcoming Access Board guidelines will address the scoping and dimensions of accessible cabins on new or altered vessels. While this rule consequently does not require vessels with overnight accommodations to have accessible cabins, we recognize that cabins identified by PVOs as accessible do exist on some vessels. This section concerns how PVOs would make sure that passengers with disabilities actually are able to get those accessible cabins. The Department recognizes that non-disabled passengers, understanding that accessible cabins are somewhat more roomy than other cabins in the same class of service, may sometimes seek to reserve those cabins, making them unavailable to passengers with disabilities.

The NPRM proposed a system in which a passenger requesting an accessible cabin would be required, at the PVO's request, to present documentation of the physical condition that necessitates use of an accessible cabin, at which point their reservations would trump even earlier reservations for an accessible cabin made by non-disabled passengers, though no passengers would ever be "bumped" from the voyage as a result. Some commenters objected to having to provide medical documentation. Others said that passengers with disabilities should be able to book an accessible cabin up to the day of sailing, while other commenters stated that reservations for accessible cabins should be made within a set time frame (*i.e.,* 72 hours) before departure.

In response to comments, the Department is deleting the proposed requirement that passengers provide documentation of their disability and revising the reservation requirements. Instead, the final rule includes what we believe is a simpler system, in which accessible cabins must be withheld from reservation until all cabins in that class of service have been reserved. If a passenger with a disability requests a remaining accessible cabin, then the

passenger with a disability gets that cabin. However, once all the other, non-accessible cabins have been booked, the PVO may, if it chooses, book the cabins for non-disabled passengers.

While the final rule does not require or permit medical documentation for persons reserving accessible cabins because they have a disability, PVOs have to ask persons seeking to reserve such a cabin whether they have a disability that requires use of the accessibility facilities provided in the cabin. In addition, PVOs may require a written attestation from the passenger that her or she needs the accessible features provided in the cabin. These provisions are modeled on an approach that is sometimes used concerning reserving accessible seating sports stadiums. PVOs must also investigate the potential misuse of accessible cabins and can take action against abusers (*e.g.,* a PVO may deny transportation to a non-disabled individual who books an accessible cabin on the basis of a misrepresentation that the individual has a disability).

The Department recognizes that some existing vessels may not have accessible cabins in all classes of service. PVOs, however, cannot properly impose costs on disabled passengers because vessels lack accessible cabins in some classes of service. If a passenger with a disability wants to travel in a less costly class of service, rather than a more expensive class, but the PVO has chosen to make adequate numbers of accessible cabins available only in more other expensive classes of service, the PVO must make accessible cabins available to passengers with disabilities at no more than the cost of the class of service the passenger requests. Under a nondiscrimination rule, disabled passengers, like all other passengers, should be able to purchase accommodations they can use at a price they are willing to pay.

Section 39.41 May a passenger with a disability be required to travel with another person?

The Department regards requiring a passenger with a disability to travel with another person, just because that person has a disability, as discriminatory on its face. Such a requirement is not only an affront to the independence and dignity of the passenger, but may sometimes make travel cost-prohibitive. In the NPRM, the Department proposed allowing PVOs to require a personal or safety assistant in some circumstances. This proposal was based on a parallel section of the ACAA rule. However, in the specific situation of passenger vessel transportation (which differs from air travel in a number of important respects), the Department believes that allowing PVOs to require an assistant could lead to abuse, and is not likely to be necessary in any event. The rule clearly states that crew members are not required to assist passengers with personal functions like eating, dressing, or toileting. Passengers who need assistance with these functions will therefore be aware that they cannot expect crew members to perform these functions and, consequently, will choose to travel with a companion if they need to. Vessel personnel are likewise trained to perform safety functions for all passengers.

One commenter asked if the PVO is allowed to require a personal caretaker for each disabled person where a group of passengers with a disability intend to bring only one caretaker for the group. Given that the rule does not permit requirements to travel with an attendant at all, the PVO could not impose such a requirement. Another commenter stated that this provision of the rule places all responsibility for care on the PVO regardless of the credibility of the passenger's claim of independence. Again, vessel personnel do not have personal care obligations with respect to passengers with disabilities. We do not believe that a passenger with a disability who cannot eat without assistance is likely to embark on a lengthy voyage without someone to help with eating.

Section 39.43 May PVOs impose special charges on passengers with a disability for providing services required by this rule?

Price discrimination is forbidden. PVOs may not charge higher fares to passengers with disabilities than to other passengers. PVOs cannot impose surcharges on passengers with disabilities, or any sort of extra or special charges for facilities, equipment, accommodations, or services that must be provided to passengers because they have a disability. This prohibition would apply not only to formal charges made by the PVO itself, but to informal charges that PVO personnel might seek to impose or pressure passengers with a disability to pay. For example, if a vessel cannot be boarded by a wheelchair user without assistance (*e.g.,* because the boarding ramp slope is too steep), it would not be appropriate for vessel personnel who provide boarding assistance to ask, pressure, or imply that the wheelchair users should provide a tip for the assistance.

One of the important implications of the prohibition on price discrimination concerns situations in which an accommodation for a person with a disability is available only in a more expensive type or class of service than the passenger requests. The most important application of this principle concerns reservations for accessible cabins, which are governed by section 39.39. However, the same principle would apply to other services or accommodations on board some ships as well. The only comment regarding this section stated that passengers requiring an accessible cabin should be provided the same pricing options available to passengers who do not require an accessible cabin. This section as written ensures this to be the case.

Section 39.45 May PVOs impose restrictions on passengers with a disability that they do not impose on other passengers?

Section 39.47 May PVOs require passengers with a disability to sign waivers or releases?

These related sections (*i.e.,* sections 39.45 and 39.47) would forbid restrictions on passengers with a disability that are not imposed on other passengers, including requirements to sign waivers or releases either for themselves or their assistive devices. The kinds of restrictions these sections address are restrictions created by PVO policy. The Department is aware that, particularly pending the adoption of passenger vessel physical accessibility standards, portions of existing vessels may well be inaccessible to some passengers with a disability. Inaccessibility of this kind would not violate these sections, but an administrative rule declaring certain portions of a vessel off limits to a passenger with a disability would, if that rule did not apply equally to all passengers. Likewise, waivers of liability or releases not required of all passengers cannot be required of passengers with a disability (including, but not limited to, waivers or releases concerning mobility devices).

Section 39.51 What is the general requirement for PVOs' provision of auxiliary aids and services to passengers?

This section requires PVOs to effectively communicate with passengers with disabilities, through the use of auxiliary aids or services where needed. This obligation includes effectively conveying information so that both the passenger and the PVO can be understood and understand what is being communicated. The language of the final rule distinguishes between the somewhat different obligations of public and private entities with regard to the

provision of auxiliary aids and services, and states the fundamental alteration and undue burden exception to these requirements. PVOs, not individuals with disabilities, have the responsibility to provide needed auxiliary aids and services.

"Undue burden" is one of the fundamental concepts in disability law, applying in a variety of contexts. The basic definition of what constitutes an undue burden is stated in the Department of Justice Title III rule, 28 CFR 36.104, as being something that involves significant difficulty or expense. In determining whether an action would result in an undue burden, the factors that the DOJ definition lists, adapted to the passenger vessel context, include

(1) The nature and cost of the action needed to comply with Part 39 requirements;

(2) The overall financial resources of the PVO involved, the number of persons employed by the PVO; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation of the vessel; or the impact otherwise of the action upon the operation of vessel;

(3) The geographic separateness, and the administrative or fiscal relationship of PVO in question to any parent corporation or entity;

(4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and

(5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

DOJ provides further information about its application of the concept in the preamble to its Title III regulation (discussion of 28 CFR 36.303(f), *see http://www.ada.gov/reg3a.html*).

It must be emphasized that because something creates some degree of cost and difficulty, it is not necessarily an undue burden. There are "due burdens," costs and difficulties that must be borne in order to afford nondiscriminatory service to individuals with disabilities. As the factors in the DOJ definition indicate, what may be an undue burden for a small entity (*e.g.,* because it would "break the bank" for that entity, making profitable operation impossible) may be a "due burden" that would be "small change" to a larger entity. Requiring an extensive and very expensive service to meet a minor, transitory need might be undue because it is disproportionate. "Undue burden" determinations inevitably involve the exercise of informed judgment about the facts of a given situation, but the bar is intended to be high: The concept is not intended to provide a free pass to entities to avoid nondiscrimination obligations. It should be emphasized, in the context of auxiliary aids and services, that even if one particular auxiliary aid or service creates an undue burden, the PVO retains an obligation to provide effective communication through use of another auxiliary aid or service that is not unduly burdensome.

One commenter said that, in order for a PVO to effectively communicate with individuals with hearing and visual impairments, the PVO should install advanced technology for videophones and instant messaging on its vessel. The Department believes it would be premature, as well as outside the scope of the notice for this rulemaking, to require a particular technology or vessel communication system at this time, but this is an issue that could be addressed as part of the future accessibility standard rulemaking.

Section 39.53 What information must PVOs provide to passengers with a disability?

The Department recognizes that some existing vessels may not be able to be made accessible to people with mobility impairments and that some ports (*e.g.,* some foreign ports at which a cruise ship calls) may not be usable by persons with some disabilities. This section requires PVOs to inform people with disabilities, accurately and in detail, about what they can expect.

Such information includes: (1) Any limitations of the usability of the vessel or portions of the vessel by people with mobility impairments; (2) any limitations on the accessibility of boarding and disembarking at ports at which the vessel will call (*e.g.,* because of the use of inaccessible lighters or tenders as the means of coming to or from the vessel); (3) any limitations on the accessibility of services or tours ancillary to the transportation provided by the vessel concerning which the PVO makes arrangements available to passengers; (4) limitations on the ability of passengers to take a service animal off the vessel at a foreign port (*e.g.,* because of quarantine regulations); and (5) the particular auxiliary aids or services available to passengers with hearing or vision impairments for each of the various on-board activities and services that require advance notice in order to be made available. With this information, potential passengers with a disability can make an informed choice about whether seeking transportation on a particular vessel is worth their while.

One commenter suggested that providing information about boarding and disembarking only to those passengers that self-identify as having a disability may cause confusion and bad feelings among those passengers with disabilities that did not self-identify. Moreover, the commenter recommended making such information available in all promotional materials including pre-boarding information, Web site, advertisements, the Daily Program, and in all brochures. The Department believes that there is merit in providing such information generally to all passengers. However, if a PVO provides this information to people who ask for it in order to accommodate a disability, that is sufficient to meet the PVO's obligation under the rule.

Section 39.55 Must information and reservation services of PVOs be accessible to individuals with hearing or vision impairments?

This section applies to information and reservation services made available to consumers in the United States, regardless of the nationality of a PVO or where the personnel or equipment providing the services are themselves based. If a PVO provides telephone reservation or information service to the public, the PVO must make this service available to individuals who are deaf or hard-of-hearing through use of a text telephone (TTY) or a TTY relay service (TRS). In response to comments received on this section, the Department will not require each PVO to have access to a text telephone, so long as they can receive calls through a text telephone relay service.

One commenter stated that this provision should include a Web accessibility requirement following the World Wide Web Consortium standards. The Department is aware that Web accessibility is an important issue for people with disabilities, and we will address this subject further during the next phase of passenger vessel rulemaking.

Another commenter recommended that individuals such as travel agents and boat crew who interact with consumers should receive training on what disability access is available. In reference to travel agents, the Department believes this is outside the scope of this rulemaking. As for employees, comments from PVOs asserted that crews are already trained to accommodate passengers with disabilities. The Department may further consider training requirements for crews during the development of the next phase of the passenger vessel rulemaking.

Section 39.57 Must PVOs make copies of this rule available to passengers?

PVOs must maintain a current copy of the text of this rule on each vessel and in every terminal which they serve. The copy may be a paper copy or a digital copy so long as it can be easily referenced by PVO employees and by passengers upon their request. Commenters supported this section as written. Private sector PVOs who do not receive Federal financial assistance are not required to make a copy of the rule available in languages other than English. However, any PVOs that do receive Federal financial assistance should be aware of their obligations concerning persons with lower English proficiency under Title VI of the Civil Rights Act of 1964, as amended, and applicable Executive Orders and regulations. As part of a PVO's obligation to communicate effectively, a PVO must make copies available in accessible formats on request, subject to the fundamental alteration provisions of section 39.51(c). If provision of the information is not feasible in one accessible format, because it would involve a fundamental alteration, then another accessible format would have to be made available.

Section 39.61 What requirements must PVOs meet concerning the accessibility of terminals and other landside facilities?

This section applies to landside facilities that the PVO owns, leases, or controls in the U.S. It requires compliance with the same ADA obligations as apply to other types of transportation facilities under 49 CFR part 37.

If the PVO does not own, lease, or control a facility, then the requirements of this section do not apply to it (there may well be situations in which a public entity or another private entity would own or control the facility, in which case the other entity would have its own ADA and/or section 504 obligations). In the case of a foreign facility, where ADA or section 504 rules would not apply in their own right, facility accessibility would then become a matter of the law of the country in which the facility is located. Commenters recommended that this section should be applied to facilities both inside and outside of the US. However, as noted in the discussion of the definition of "facility," the Department can apply this regulation only to facilities located in the U.S, since the ADA does not apply to landside facilities in foreign territory.

The rule makes a familiar three-part breakdown of accessibility responsibilities for covered facilities, similar to that found in DOT's existing ADA regulations (*see* 49 CFR part 37, subpart C). New facilities must meet accessibility standards from the beginning. In the case of an alteration, the altered portion of the existing facility has to be brought up to the same accessibility standards applicable to new facilities. For existing facilities not otherwise being altered, the PVO has to ensure that the facility is able to be used by a passenger with a disability to access the PVO's vessel. This could be achieved through a variety of means. As under other applications of the ADA, requirements for public sector entities under Title II and private sector entities under Title III differ somewhat with respect to existing facilities (*i.e.,* program accessibility vs. readily achievable barrier removal). These differences are stated in paragraph (c) of this section.

We note that there may be many situations in which a PVO shares accessibility responsibilities with another party. For example, a PVO may lease a portion of a port facility that is owned by a private or public entity. The PVO has responsibilities under this Part; the other entity may have responsibilities in its own right under Title II or III or the ADA and under section 504. In these cases, it would be up to the parties involved to allocate the responsibilities among themselves, so that they jointly ensure that accessibility requirements are met for the facility. Where the PVO does not own, lease, or control a facility, the PVO has no responsibility for making accessibility changes under this rule.

One commenter recommended that facilities used by small vessels should be exempt from this section. The Department again finds no basis for limiting the applicability of this provision based on vessel size. A landside facility operated by a small vessel PVO has no different status from one operated by a large PVO for ADA or section 504 purposes.

Section 39.63 What modifications and auxiliary aids and services are required at terminals and other landside facilities for individuals with hearing or vision impairments?

This section specifies that effective communication that has to be provided at terminals and other landside facilities to ensure that persons with sensory impairments will be able to request and receive the information otherwise available to the public, concerning such subjects as ticketing, fares, and schedules. A few commenters said that PVOs should not have to make changes to facilities that the PVO does not own or operate. Again, where the PVO does not own, lease, or control a facility, the PVO has no responsibility for making accessibility changes to the facility under this rule. Moreover, effective communication can be achieved through means, like auxiliary aids and services, that would not require modifications to facilities where a PVO is not able to make changes to the facility.

The Department proposed a one-year phase-in for both existing and new facilities in order to allow PVOs to explore and implement the best communications options for their customers and business operations. One commenter expressed that there should not be a phase-in period for this provision and that it should become effective immediately due to current technology and existing ADA requirements. The Department agrees, and in this final rule, makes this provision effective when the rule goes into effect.

Subpart E—Accessibility of Vessels

This subpart is reserved. It is a place-holder for the subsequent inclusion of passenger vessel physical accessibility standards based on future Access Board guidelines. We emphasize that this rule does not create standards for the design and construction of vessels and does not impose requirements to alter existing vessels for the purpose of accessibility. PVOs remain obligated, of course, to meet existing ADA requirements for readily achievable barrier removal (Title III) or program accessibility (Title II).

Section 39.81 What assistance must PVOs provide to passengers with a disability in getting to and from a passenger vessel?

This section does not deal with boarding a vessel, as such. Rather, it deals with how people get to the point of boarding a vessel, in terms of land transfers (*e.g.,* a bus between the airport and the terminal) and in actually moving through the terminal and boarding process up to the point of getting onto the vessel, where the PVO or a contractor to the PVO provides their services. PVOs are responsible for making sure that these services are accessible to people with disabilities. Representatives of the cruise line industry commented that requiring cruise lines to ensure the accessibility of services provided by third-party independent contractors, such as transportation to or from the cruise ship, would be unreasonable and a denial of

due process. This rule does not impose such an obligation if the PVO and the service provider, such as a taxi company, have no contractual relationship. This provision will not have extraterritorial application and will apply only with respect to terminals located in the U.S.

Section 39.83 What are PVOs' obligations for assisting passengers with a disability in getting on and off a passenger vessel?

The optimal solution for boarding a vessel involves a passenger with a disability being able to board independently (*e.g.,* via a level-entry ramp). The Department realizes that there will be many situations where this optimal solution does not exist. In these situations, the PVO is responsible for providing assistance that enables a passenger with a disability to get on or off the vessel. As noted above, this rule does not require vessel personnel to do the physically impossible with respect to providing boarding assistance. One commenter asked how a PVO is to decide between a passenger who is "not able to get on or off a passenger vessel without assistance" and one who can "readily get on or off a passenger vessel without assistance." In such a situation the PVO should ask the passenger whether he/she wants or needs assistance.

We note that a number of comments represented that these services are already being provided in many instances, so we believe it is fair to suggest that this requirement would not create significant added burdens for PVOs. We also note that this provision pertains to normal boarding and disembarkation from a vessel. Obviously, in the case of an "abandon ship" or other emergency situation, crew should use any means necessary to ensure that all passengers can safely evacuate.

The Department appreciates the comments received regarding accessible boarding systems and will use them to inform a future rulemaking in this area when the Access Board has provided appropriate standards on which a regulation can be based.

Section 39.85 What services must PVOs provide to passengers with a disability on board a passenger vessel?

Section 39.87 What services are PVOs not required to provide to passengers with a disability on board a passenger vessel?

These sections concern services that PVOs must provide or, alternatively, do not need to provide to passengers with a disability. The services a PVO must provide include movement about the vessel, but only with respect to portions of the vessel that are not accessible to passengers with a disability acting independently. To the extent that a PVO makes accessibility improvements to a vessel, the PVO can probably reduce its obligation to provide this service. When food is provided to passengers, PVO personnel must help passengers with a disability to a limited degree, including opening packages and identifying food, or explaining choices. Assistance in actual eating or other personal functions (*e.g.,* toileting or provision of medical equipment or supplies or assistive devices, beyond what is provided to all passengers) is not required. Effective communication of all on-board information is required.

Several commenters expressed that PVOs should be required to provide closed captioning on televisions, interpreters aboard the vessel (in theatres or other "public" rooms aboard the vessel), and wheelchairs for use by passengers. In this rulemaking, the Department is not mandating the use of any specific means of communication, though televisions, if provided for passengers, must have closed captioning. Otherwise, PVOs' obligation is to provide effective communication, through the use of auxiliary aids and services as appropriate for Title II or III entities, as the case may be. As for wheelchairs or other assistive devices, the Department believes this is the responsibility of the passenger and not the PVO, except to the extent that the PVO would need a wheeled mobility assistive device to provide boarding assistance to an individual who does not normally use such a device but could not board the vessel without one (*e.g.,* a semi-ambulatory person who can walk on a level surface but would have difficulty with a steep boarding ramp).

One commenter also expressed that sign language interpreters should be provided on vessels traveling inside and outside of the U.S. Use of sign language interpreters is one type of auxiliary aids and services, which may be provided subject to the fundamental alteration provisions of section 39.51(c).

Section 39.89 What requirements apply to on-board safety briefings, information, and drills?

This section specifies that safety-related information must be communicated effectively to passengers with disabilities. This would include the use of auxiliary aids and services, where needed. Safety videos would have to be captioned or have an interpreter inset, in order to make the information available to persons with impaired hearing. Providing safety information in this way is a key component of effective communication of this material to individuals who are deaf or who have hearing impairments. Passengers with disabilities must be enabled to participate in evacuation and other safety drills, and information about evacuation and safety procedures would have to be kept in locations that passengers with disabilities can access and use. Several commenters supported requiring PVOs to utilize flashing lights to warn passengers with hearing disabilities of emergencies. This issue will be addressed by the Access Board.

Section 39.91 Must PVOs permit passengers with a disability to travel with service animals?

Many persons with disabilities rely on service animals to travel and conduct daily functions. This section specifies that PVOs would be required to permit service animals to accompany a passenger with a disability on board a vessel.

Foreign countries may limit entry of service animals. This should not affect the carriage of service animals on the vessel, however, since there is no requirement that the animal leave the ship. Limitations on the ability of such an animal to leave the ship at a foreign port would be included in the information that a cruise ship would provide to potential customers inquiring about an upcoming cruise. Consistent with foreign port requirements, the PVO could insist that the animal not disembark at a port where doing so is not permitted. The user could leave the vessel even if the animal had to remain on board, however. PVOs and owners would have to work together to ensure that the animal was properly cared for in the owner's absence (*e.g.,* in the case of a lengthy excursion away from the vessel).

Several commenters said that PVOs should permit passengers with disabilities to bring their own food and supplies for service animals without any charge and provide refrigerators for proper storage of such food. PVO commenters said that PVOs should not be required to provide food for the animal, stating that there should be no charges for passengers using their own animal food and that most cruise lines currently follow this practice. Under the final rule, PVOs will not be required to provide food for service animals, but passengers may bring a reasonable quantity of their own food aboard the vessel at no additional charge. PVOs must provide refrigeration space for the animal food. This requirement applies

only to cruise ships or other vessels providing overnight accommodations. There is no need for refrigeration on short-voyage ferries or water taxis.

We view a limitation on the number of service animals that can be brought on a given voyage as tantamount to a number limit on passengers with a disability (*i.e.,* as a number limit), which this rule prohibits. It is not evident that having a number of such animals on board a ship at a given time would be disruptive to ship operations, and vague concerns about adverse effects on the quality of the cruise experience for other passengers do not trump the nondiscrimination imperative of the ADA.

While this rule does not require it, the Department believes that it is a good idea to permit not only service animals, *per se,* but also emotional support animals (ESA) to accompany passengers with disabilities who use them. This can be beneficial to individuals who genuinely need the assistance of such an animal to enjoy fully travel and services aboard a vessel. We refer PVOs and passengers with disabilities to applicable provisions of the Department's Air Carrier Access Act regulations and appendices (14 CFR part 382) for suggestions on how and in what circumstances it is appropriate to accommodate people using ESAs.

Commenters raised questions about animal relief areas aboard the vessel. Since this goes the design or construction of physical features of the a vessel, it is better addressed in the next rulemaking phase concerning accessibility standards.

Section 39.93 What wheelchairs and other assistive devices may passengers with a disability bring onto a passenger vessel?

Section 39.95 May PVOs limit their liability for the loss of or damage to wheelchairs and other assistive devices?

These sections say simply that passengers should be permitted to bring and use their own wheelchairs and other assistive devices on board a vessel. The cruise line industry stated that it does not support the use of mobility devices that are two-wheeled and allow an individual to "ride" the device. Another commenter expressed that the references to mobility aids and other assistive devices do not conform to the current standard found in 49 CFR part 37. The Department is currently reviewing and may revise its part 37 treatment of mobility aids.

With respect to mobility aids, the final rule is modeled on an approach supported by the Department of Justice. That is, manual and power wheelchairs and other manual mobility aids must be accommodated in any area open to pedestrian use. This requirement is intended to be implemented consistent with other provisions of the rule (*e.g.,* concerning existing facility accessibility, weight and balance concerns), which may in occasional situations limit the ability especially of larger power wheelchairs to be accommodated.

With respect to other powered mobility devices (*e.g.,* two-wheeled devices, such as Segways, designed or adapted for use by a person with a disability to accommodate that disability), PVOs would be required to make reasonable modifications in policies, practices, or procedures to allow such devices to be used by individuals with mobility disabilities, unless doing so would be inconsistent with legitimate safety requirements. The Department expects that, in most cases, such devices would be permitted to be used.

The Department strongly emphasizes that any such safety requirements cannot be pretextural and must be based on actual, demonstrable, risks and not on not mere speculation, stereotypes, or generalizations either about people with disabilities or their mobility devices. While the rule does not include a recordkeeping requirement concerning such safety requirements, a PVO subject to a complaint about arbitrarily excluding a mobility device would doubtless be asked to document the factual justification for any policy limiting passengers' devices.

These requirements apply to PVOs covered by both Title II and Title III of the ADA. In addition, Title II (*i.e.,* public sector) entities would have to minimize any restrictions placed on use of other powered mobility devices and provide a written explanation to the user, on request, of any exclusion or restriction of his or her device. This latter provision is found in the Title II enforcement provision of this regulation (section 36.109).

Once a device is on board, if the PVO is responsible for its loss or damage, the PVO must compensate the owner, at the level of the original purchase price of the device. One commenter stated that the appropriate cost for the loss of damaged assistive devices should be the current replacement cost for the device rather than the original purchase price. The Department is utilizing the original purchase price. This is the measure of the level of compensation found within the Department's ACAA rule, and we believe it will most appropriately compensate the owner for the loss of or damage to the device.

Section 39.101 What are the requirements for providing Complaints Resolution Officials?

Section 39.103 What actions do CROs take on complaints?

The Complaints Resolution Official (CRO) is the PVO's expert in disability matters, knowledgeable about both the Department's regulations and the PVO's procedures, and is able to assist passengers with disabilities and other PVO personnel in resolving issues. The CRO model should adapt very well to passenger vessels, to solve problems at the PVO level before they become matters for complaints to the DOT or DOJ.

A commenter expressed that it may be impractical and financially burdensome to have a CRO onboard each vessel. The Department does not mandate that CRO duties necessarily be full-time for a given employee, and CRO functions can be performed as collateral duties of existing personnel. PVOs could, for example, use a number of different vessel and landside personnel as CROs, who might perform these functions in addition to their other duties. We expect that PVOs will have varying degrees of formality in their CRO programs; however, no matter whether in a facility or on a vessel, all employees should be able to direct a passenger to the CRO.

PVOs are likely to find it necessary to ensure that not only CROs, but also other personnel who interact with passengers, are sufficiently knowledgeable regarding the requirements of these rules and proficient in performing tasks related to passengers with disabilities. (PVO commenters asserted that their personnel are already trained to deal properly with customers, including passengers with disabilities.) If they are not, it is likely that mistakes will be made that would potentially lead to noncompliance. Some commenters recommended the adoption of training standards or requirements in this rule. However, the Department is not instituting any formal training requirement at this time and will leave it to PVOs to decide how best to prepare their CROs, along with the remainder of their entire staff, to meet the responsibilities that PVOs have under this Part. If, over time, the Department becomes aware of implementation or compliance difficulties that appear to stem from a lack of training, the Department can revisit this issue.

One commenter expressed that certifying the training or drafting a

training curriculum would be difficult and unnecessary. This rule does not institute a certification requirement. Another commenter expressed that information about CROs should be posted on the PVO's Web site so that passengers have access to the information. We agree that sources of various information, including Web sites, should include information on the function of CROs and how to contact them, but we are not requiring this as part of this rule.

Section 39.105 How must PVOs respond to written complaints?

Section 39.107 Where may passengers obtain assistance with matters covered by this regulation?

The required responses to complaints under this section by the PVO may be in either written or e-mail form. At this time, the Department is not instituting a reporting requirement for complaints received by PVOs regarding violations of this rule. Upon analysis of operations under this rule, the Department may propose a reporting requirement at a later date. It should be noted that these sections concern the interaction between PVOs and passengers; these are not procedures for Federal agency responses to complaints made to DOT or DOJ. For example, DOJ does not follow these procedures when it receives a complaint concerning a Title III PVO.

One commenter suggested that deadlines be put into place to ensure that complaints do not languish and that a timely resolution is received. The commenter also suggested that there should be an outside organization for aggrieved passengers to take complaints to if they are not satisfied with the CRO resolution. In so far as deadlines are concerned, these sections, as written, provide deadlines for filing and responding to complaints. In reference to appeals of a PVO's decision, the complainant has the ability to pursue DOT or DOJ enforcement action, for Title II or Title III entities, respectively. The PVO must notify the complainant of this right.

Section 39.109 What enforcement actions may be taken under this Part?

One important difference between the ACAA and the ADA is that, under the former, the Department has its own civil penalty enforcement authority and procedures. The Department does not have its own civil penalty authority under Titles II and III of the ADA, though the Department can conduct investigations and compliance reviews, collect data, find facts, come to conclusions, and refer matters to the Department of Justice for further action under section 504 and Title II. The Departmental Office of Civil Rights (DOCR) will be the central point for receiving such complaints. DOJ has the jurisdiction to conduct investigations and take enforcement action under Title III, which can lead to the imposition of damages and civil penalties.

Some PVOs receive Federal financial assistance, such as ferry operators who receive Federal Transit Administration (FTA) funding. Complaints concerning violations of this Part by FTA-assisted ferry operators could be made to the FTA under the Department's ADA and section 504 rules, and FTA could take enforcement action as provided in those rules. No comments were received on this section and it is adopted as written.

Request for Comments: This rule is a final rule with a request for comments limited to three issues. All provisions will go into effect on November 3, 2010. With respect to the three issues on which the Department is seeking further comment, the Department intends, before the effective date of the rule, to publish either an amended final rule or a notice explaining why no further changes are being made.

The first issue concerns use by passengers with disabilities of emotional support animals. Unlike service animals, emotional support animals are not trained to perform specific physical tasks, but by their presence assist individuals with mental health-related disabilities in coping with the effects of their disabilities. For example, an emotional support animal may assist an individual with a severe anxiety disorder in dealing with the stresses of travel. In the absence of this assistance from the animal, the individual could find travel very difficult or impossible.

As noted in the preamble discussion of section 39.91, this rule does not require PVOs to provide access to emotional support animals. In another disability discrimination context, under the Air Carrier Access Act, the Department requires air carriers to permit emotional support animals to travel with their users. The Department seeks comment on whether PVOs should be required to allow access for individuals with disabilities and their emotional support animals. If PVOs are required to do so, what, if any, safeguards against abuse (*e.g.,* passengers attempting to pass off their pets as emotional support animals) should be included?

The service animal provisions as currently written in this rule are consistent with DOJ's proposed rules amending Title II and Title III. Should DOT rules be identical to DOJ rules in this with respect to emotional support animals (*i.e.,* such that the use of emotional support animals is treated the same way on passenger vessels as it is in other public accommodations covered by DOJ rules, such as parks, restaurants, dorms, lodging, hospitals, *etc.*)? Alternatively, should DOT have discretion to have different provisions specific to vessels?

The second issue concerns the treatment of mobility aids. Section 39.93 divides mobility devices into two categories: Wheelchairs and other power-driven mobility devices. Wheelchairs have a specific definition in section 39.3, including "three or four-wheeled devices, usable indoors, designed for and used by individuals with mobility impairments, whether operated manually or powered." Under section 39.93, PVOs must permit wheelchairs to be used in any area open to pedestrian use, though, as noted in the preamble discussion of section 39.25, there could be circumstances in which a particular wheelchair does not fit a particular space.

PVOs can limit the use of other power-driven mobility aids by applying a series of factors set forth in paragraph 39.93(b). The application of these factors could give PVOs greater discretion to permit or refuse use of devices that did not meet the definition of "wheelchair," (*e.g.,* devices that otherwise look like traditional wheelchairs but have six wheels, two-wheeled devices like Segways) than they have with respect to wheelchairs. The Department seeks comment two sets of questions related to the handling of mobility aids.

First, should a PVO have to demonstrate (*i.e.,* bear a burden of proof) that it has a sound basis for excluding or restricting a passenger's other power-driven mobility aid? Should there be any basis other than safety (*i.e.,* inconsistency with a legitimate safety requirement) for a decision to exclude or limit a device? Should it be made clear that a device, even if not originally designed for use by individuals with disabilities, should be accepted on board a vessel if it is adapted for use by a passenger with a disability, again subject to legitimate safety requirements?

Second, should the entire approach to mobility aids be rethought? For example, it may not be necessary to distinguish between categories of mobility aids at all. One commenter to the NPRM suggested adopting the term "wheeled mobility assistive device" be used in place of other terms. In this concept, if a wheeled mobility assistive

device, however it is designed, can be accommodated on board a vessel, consistent with legitimate safety requirements, it would have to be accepted by the PVO, regardless of whether it was a "wheelchair," *per se.* The Department seeks comment on this approach and on whether, if adopted, it should include any categorical exceptions (*e.g.,* gasoline engine-powered devices). For information, the Department refers interested persons to the Department's September 2005 interpretation of its existing ADA regulation (49 CFR part 37) concerning acceptance of mobility aids [*http://www.fta.dot.gov/civilrights/ada/civil_rights_3893.html*].

Similar to the emotional support animal issue earlier, the mobility aid provisions as currently written in this rule are consistent with DOJ's proposed rules amending Title II and Title III. Should DOT rules be identical to DOJ rules in this with respect to mobility aids (*i.e.,* such that the use of mobility aids is treated the same way on passenger vessels as it is in other public accommodations covered by DOJ rules, like as parks, restaurants, dorms, lodging, hospitals, *etc.*)? Alternatively, should DOT have discretion to have different provisions specific to vessels?

The third issue the Department seeks comment on concerns the overall relationship between DOJ and DOT ADA rules. DOJ currently has draft final rules revising its Title II and Title III DOT rules under review by the Office of Management and Budget (OMB). It is possible that, as part of the interagency review process led by OMB, provisions in the DOJ rules (*e.g.,* concerning the definition of auxiliary aids and services and the application of that definition) might change in a way that create a difference between the language of part 39 and the language of the forthcoming DOJ rules. In such a situation, should DOT amend part 39 to be consistent with the new DOJ language? The purpose of doing so would be to avoid confusion or any burden placed on people with disabilities or PVOs that might arise if different definitions or substantive provisions of different rules applied in the specific context of passenger vessel operations, as distinct from other aspects of public accommodations or public sector facilities and activities covered by, DOJ rules.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This is a significant rule under Executive Order 12866 and DOT Regulatory Policies and Procedures purposes. This is because the rule address issues of considerable policy interest and creates requirements for entities that have not previously been subject to regulation. However, the rule does not impose significant costs. The main thrust of the rule is to prohibit PVOs from taking actions—such as requiring attendants, denying transportation, limiting access for service animals, or imposing special charges—that create barriers to travel by persons with disabilities. There is little, if any, cost to a PVO from avoiding taking discriminatory actions. According to comments received at both the ANPRM and NPRM stages, many PVOs already provide boarding assistance and other services to passengers with disabilities, so it is reasonable to assume that the passenger assistance provisions of this rule will not have significant incremental costs. This rule does not impose a training requirement or reporting requirements.

In the section of the preamble responding to the Regulatory Flexibility Act, the Department will discuss the cost impacts, or lack of same, from some specific sections of the rule.

Some commenters did express concern about potential costs of the NPRM. These comments largely were the result of commenters mistakenly believing that the NPRM proposed requiring PVOs to physically alter vessels, especially small vessels. In fact, the NPRM did not propose, and the final rule does not require, alterations to vessels for the purpose of achieving accessibility. The rule takes vessels as they are and focuses on the policies and practices of PVOs with respect to the use of the vessels by passengers with disabilities.

In a future rulemaking, the Department anticipates proposing, in conjunction with the Access Board, design and construction standards for vessels. These standards will affect new vessels and alterations to existing vessels. This future rulemaking is expected to involve a more detailed regulatory evaluation with respect to the costs and benefits of its proposals.

In the passenger vessel context, as in other areas, the purpose of the ADA is to ensure nondiscrimination on the basis of disability and accessibility of travel on vessels for people with disabilities. Consequently, the most important benefits of this rule are the largely non-quantifiable benefits of increased access and mobility for passengers with disabilities. Policies required by this rule will eliminate most practices of PVOs that prevent or inhibit travel by persons with disabilities. The benefits that will accrue from removal of these barriers cannot be quantified, but could well include increased employment, business, recreational, and educational opportunities for travelers with disabilities, and quality of life enhancements associated with travel opportunities both within the U.S. and to foreign points.

Many persons with mobility impairments will be able to use passenger vessel services for the first time, and take advantage of an expanded range of travel opportunities. Even persons with disabilities who do not immediately choose to use a passenger vessel will know that barriers to such travel have been removed, and there is a psychological benefit to knowing one can travel if one wishes (what economists sometimes refer to as the "option value" of a regulatory provision).

Other beneficiaries of this rule include the travel companions, family, and friends of passengers with disabilities, since persons with disabilities would have greater and more varied travel opportunities. In addition, to the extent that changes in PVO practice make use of vessels easier for everyone, there will be indirect benefits for the general traveling public.

Because making passenger vessel transportation and services more readily available to passengers with disabilities and others traveling with them is likely to increase overall usage of vessels to some degree, it is likely that there will be some economic benefits to PVOs from compliance with the rule, though the Department does not have information allowing us to quantify these potential benefits.

Regulatory Flexibility Act

In considering this rule from the point of view of the Regulatory Flexibility Act, we emphasize two main points. First, for the reasons discussed above, we believe strongly that the overall costs of the rule to any entities—large or small—will be very low. The rule will not create significant economic impacts on anyone. In particular, the Department here repeats what it has said throughout the rulemaking: The rule does not impose design and construction standards that will require vessel operators, large or small, to alter their vessels.

Second, compared to the NPRM, the number of small entities subject to the rule is greatly reduced. The final rule covers only private entities primarily engaged in the business of transporting people, eliminating from coverage private entities not primarily engaged in the business of transporting people. The

vast majority of small entities that the NPRM would have covered (*e.g.,* fishing charter boats, sightseeing and dinner cruise boats, dive boats) are not subject to the final rule. Of the private entities primarily engaged in the business of transporting people that the rule does cover, most—such as cruise ships and public ferry systems—are not small entities. Some, such as smaller ferry or water taxi operations, may be small entities. While the number of small entities covered by the final rule is not ascertainable from the record of this rulemaking, the Department believes that it is highly unlikely to be substantial.

The Small Business Administration (SBA) Office of Advocacy commented on the NPRM. One of the primary SBA comments concerned SBA's estimate that a very large number of small businesses would be covered by the rule. Given the change in the final rule to cover only private entities primarily engaged in the business of transporting people, SBA's estimate—based almost entirely on private entities not primarily engaged in the business of transporting people—is no longer applicable. We recognize that there could also be some small public entities that are covered by the rule (*e.g.,* a small municipality that operates a ferry or water taxi service), though the record of the rulemaking does not provide a basis for knowing whether this is the case or estimating how many there may be. Because the costs of the rule to any entities is minimal, there would not be a significant cost to these Title II entities.

SBA also pointed to certain sections of the rule that it thought could involve costs. With respect to section 39.3, SBA asked that the Department should make clear that there is no liability for discrimination based on the accessibility of existing vessels. As stated elsewhere, this rule does not impose any incremental obligation to alter existing vessels for the purpose of accessibility. PVOs, like other entities, remain subject to the existing ADA requirements to provide program accessibility (Title II) or to ensure readily achievable barrier removal (Title III). SBA also suggested making compliance materials available regarding the rule's definitions, particularly if there are conflicting definitions between DOJ rules and the Air Carrier Access Act. Under this or any rule, no one is required to comply with a definition. Compliance is required only with substantive provisions of a rule. The final rule has harmonized DOT passenger vessel rule provisions with DOJ ADA rule provisions.

With respect to section 39.13, SBA said the small business community was confused about the difference between this rule and forthcoming Access Board guidelines, and that the effective date of the rule should be extended six months. The distinction is actually a very clear and simple one: This rule concerns the policies that PVOs apply to passengers with disabilities on their vessels and does not create design or construction standards for new or altered vessels. The forthcoming Access Board guidelines will create design and construction standards for new and altered larger vessels (*e.g.,* those with a passenger capacity of over 150 passengers or over 49 spaces for overnight accommodations), but will not address the kinds of policy issues that the current DOT rule addresses. The Department is making this rule effective 120 days from the date of publication, and we do not believe a longer lead time is needed to assist the relatively few remaining small PVOs covered by the rule in understanding this straightforward point. Through long experience, the Department has found it most helpful to issue guidance (*e.g.,* questions and answers) after a regulation has gone into effect, when both we and the regulated parties have had time to determine what implementation and interpretation questions of general interest are valuable to address.

With respect to sections 39.29 (39.27 in the NPRM) and 39.93, SBA asserted that there was a paperwork burden, a recordkeeping requirement, and a training burden. Section 39.29 of the final rule in fact requires neither paperwork, nor recordkeeping, nor training. It simply directs vessel operators not to impose number limits, except where legitimate safety requirements (*i.e.,* with regard to weight and balance) dictate otherwise. In most instances, given that the final rule focuses on larger vessels, this exception is unlikely to come into play. Section 39.93 has been revised for greater consistency with the Department of Justice's approach to mobility aid issues, and likewise does not include recordkeeping or training requirements. In one category of cases—denial of access to an "other powered mobility device" by a public entity, the entity would have to provide a written explanation on the passenger's request. Given that public entities covered by the rule—mostly large public ferry systems—are not small entities, and that it is likely there would be few instances in which mobility devices would be denied passage, and fewer still in which the passenger asked for a written explanation, the Department believes that the cost and burden of this requirement would be very minor.

With respect to the advance notice provisions of the rule (39.33 and 39.35 in the NPRM, 39.35 and 39.37 of the final rule), SBA requested that the Department respond to the comment that operators of small vessels should be able to require advance notice for fewer than the proposed group of 10 or more disabled passengers traveling together. As noted above, most of the vessels to which this comment pertained are not covered by the final rule. Moreover, comments did not suggest a persuasive reason why, for example, a group of four or six wheelchair users should be burdened with an advance notice requirement simply because the size of the vessel or size of the business operating the vessel is smaller. The Department believes the 10-person group provision is sensible, and it remains in the final rule.

With respect to section 39.83, concerning assistance by vessel personnel in getting persons with disabilities on and off the vessel, SBA asked the Department to provide estimates of the costs of providing such assistance, as a "new requirement." As SBA acknowledged, commenters to the NPRM said that their personnel commonly performed this function already. In analyzing the costs of a rule, the Department focuses on incremental costs, not assuming a baseline in which no one is performing something required by the rule. The information in the record suggests that the incremental costs of this provision of the rule would be low, and the record does not provide information on how many vessel operators (particularly the relatively few small PVOs that the final rule covers) currently decline to provide boarding assistance to passengers with disabilities. While the record therefore does not support a quantified estimate of the incremental costs of this requirement to small entities, the Department is justified, based on the evidence of the record, for estimating that it would be very low.

Concerning service animals, SBA suggested that there should be an exception to the rule that would allow very small vessels to deny passage for safety reasons. As noted above, the number of very small vessels covered by the rule is likely to be very small. Denial of access to a service animal is tantamount to denying transportation to its user. Consequently, the provisions of section 39.27, concerning exclusion of a passenger with disabilities in connection with legitimate safety

requirements, would apply in a case where a PVO believed it should exclude a service animal for safety reasons. SBA also notes that smaller ferries and other small vessels might not have refrigerators on board to store food for service animals. There is no need to refrigerate animal food on the short trips typically run by small ferries or water taxis, so the issue would likely never arise. The need to store and refrigerate animal food would most likely arise on vessels that provide overnight accommodations, which typically are larger vessels.

With respect to complaints resolution officers (CROs; sections 39.101–39.105) SBA requests an estimate of the costs of this requirement. As SBA concedes, there are no training requirements for CROs in the final rule, and many of the same personnel already receive customer relations and safety training. Consequently, the incremental cost of getting small entities' CROs to the point of proficiency is limited to the time to read and understand the rule. The rule is not excessively lengthy, with the regulatory text likely to amount to around 7–8 **Federal Register** pages. It is not necessary for CROs to memorize the rule, only to become familiar enough with it to know what provisions to reference when a question or issue arises. It is fair to assume that this task would take an hour. Suppose there are 500 small PVOs covered by the rule (likely an overgenerous number). Then the total burden would be 500 work hours. To make a cost estimate, one would multiply this number of hours by the average hourly wage of PVO personnel who would read the rule. If this average is $20/hour, then the total cost of the requirement for small PVOs would be $10,000.

To estimate the cost and burden of having CROs working for small entities to provide responses to written complaints, it would be necessary to estimate how many such complaints there will be. The record of the rulemaking provides no basis for making such an estimate. The main purpose of the CRO requirement is to resolve problems before they turn into written complaints. Likewise, the purpose of the entire rule is to set forth explicit expectations for PVO policies, so that PVOs do not conduct themselves in ways that give rise to complaints. Many vessel industry commenters said that they emphasize providing good customer service to passengers with disabilities. If true, this would minimize the occurrence of complaints. For these reasons, the Department believes that the number of written complaints involving small entities would be small. If we assume that the task of gathering information for and writing a letter to a complainant would take four hours, and that 20 percent of the hypothetical 500 PVOs—100 entities—had one complaint filed against them per year, the task would occupy 400 work hours. Again, if we multiply this figure by the average hourly wage of the CRO—assuming, as before, that this is $20/hour—then the annual total is $8,000. It is possible to plug in a variety of assumptions about the number of CROs, the number of complaints, and the wage rates involved, but the bottom line remains a very modest economic impact in any plausible scenario.

Parties aggrieved by PVO misconduct already have the authority to bring litigation under the ADA or to complain to DOJ about disability discrimination. The *Spector* case, cited earlier in this preamble, is the most prominent example of such litigation, having been decided by the Supreme Court.

Because the costs of the rule are minimal to any covered parties, and because the number of small entities affected is likely to be very small, I certify that this rule will not have a significant economic effect on a substantial number of small entities.

Federalism

While there are some State and local entities (*i.e.* operators of State or municipal ferry systems) that would be covered by this rule, most regulated parties are private entities. The rule will not create any significant changes in the Federal/State/local relationship with respect to these entities, and has no pre-emptive effect. Consequently, we have concluded that there are not sufficient Federalism impacts to warrant the preparation of a Federalism assessment.

List of Subjects in 49 CFR Part 39

Individuals with disabilities, Mass transportation, Passenger vessels.

Issued this 16th day of June 2010 at Washington, DC.

Ray LaHood,

Secretary of Transportation.

■ For the reasons set forth in the preamble, the Department of Transportation is amending 49 CFR subtitle A by adding a new 49 CFR part 39, to read as follows:

PART 39—TRANSPORTATION FOR INDIVIDUALS WITH DISABILITIES: PASSENGER VESSELS

Subpart A—General

Sec.
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39.7 What other authorities concerning nondiscrimination on the basis of disability apply to owners and operators of passenger vessels?
39.9 What may the owner or operator of a foreign-flag vessel do if it believes a provision of a foreign nation's law prohibits compliance with a provision of this Part?
39.11 [Reserved]
39.13 When must PVOs comply with the provisions of this Part?

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39.21 What is the general nondiscrimination requirement of this Part?
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Subpart G—Complaints and Enforcement Procedures

39.101 What are the requirements for providing Complaints Resolution Officials?
39.103 What actions do CROs take on complaints?
39.105 How must PVOs respond to written complaints?
39.107 Where may persons obtain assistance with matters covered by this regulation?
39.109 What enforcement actions may be taken under this Part?

Authority: 42 U.S.C. 12101 through 12213; 49 U.S.C. 322; 29 U.S.C. 794.

Subpart A—General

§ 39.1 What is the purpose of this Part?

The purpose of this Part is to carry out the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 with respect to passenger vessels. This rule prohibits owners and operators of passenger vessels, including U.S. and foreign-flag vessels, from discriminating against passengers on the basis of disability; requires vessels and related facilities to be accessible; and requires owners and operators of vessels to take steps to accommodate passengers with disabilities.

§ 39.3 What do the terms in this rule mean?

In this regulation, the terms listed in this section have the following meanings:

"Accessible" means, with respect to vessels and facilities, complying with the applicable requirements of this Part.

"The Act" or "ADA" means the Americans with Disabilities Act of 1990 (Pub. L. 101–336, 104 Stat. 327, 42 U.S.C. 12101–12213 and 47 U.S.C. 225 and 611), as it may be amended from time to time.

"Assistive device" means any piece of equipment that assists a passenger with a disability to cope with the effects of his or her disability. Such devices are intended to assist a passenger with a disability to hear, see, communicate, maneuver, or perform other functions of daily life, and may include medical devices.

"Auxiliary aids and services" includes:

(1) Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;

(2) Qualified readers, taped texts, audio recordings, brailed materials and displays, screen reader software, magnification software, optical readers, secondary auditory programs (SAP), large print materials, accessible electronic and information technology, or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;

(3) Acquisition or modification of equipment or devices; or

(4) Other similar services or actions.

"Coast Guard" means the United States Coast Guard, an agency of the Department of Homeland Security.

"Commerce" means travel, trade, transportation, or communication among the several States, between any foreign country or any territory and possession and any State, or between points in the same State but through another State or foreign country.

"Department" or "DOT" means the United States Department of Transportation, including any of its agencies.

"Designated public transportation" means transportation provided by a public entity by passenger vessel that provides the general public with general or special service, including charter service, on a regular and continuing basis.

"Direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

''Disability'' means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(1) The phrase *physical or mental impairment* means—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine;

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

(iii) The term physical or mental impairment includes, but is not limited to, such contagious or noncontagious diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease, tuberculosis, drug addiction and alcoholism;

(iv) The phrase physical or mental impairment does not include homosexuality or bisexuality.

(2) The phrase *major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and work.

(3) The phrase *has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) The phrase *is regarded as having such an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities, but which is treated by a public or private entity as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward such an impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by a public or private entity as having such an impairment.

(5) The term disability does not include—

(i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) Compulsive gambling, kleptomania, or pyromania; or

(iii) Psychoactive substance abuse disorders resulting from the current illegal use of drugs.

"Facility" means all or any portion of buildings, structures, sites, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

"Individual with a disability" means a person who has a disability, but does not include an individual who is currently engaging in the illegal use of drugs, when a public or private entity acts on the basis of such use.

"Operates" includes, with respect to passenger vessel service, the provision of transportation by a public or private entity itself or by a person under a contractual or other arrangement or relationship with the entity.

"Passenger for hire" means a passenger for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.

"Passenger vessel" means any ship, boat, or other craft used as a conveyance on water, regardless of its means of propulsion, which accepts passengers, whether or not for hire. The term does not include boats or other craft rented or leased to and operated solely by consumers or fixed floating structures permanently moored or attached to a landside facility.

"Passenger vessel owner or operator (PVO)" means any public or private entity that owns or operates a passenger vessel. When the party that owns a passenger vessel is a different party from the party that operates the vessel, both are responsible for complying with the requirements of this Part. To be a PVO for purposes of this Part, a private entity must be a private entity primarily engaged in the business of transporting people, as determined by the Department of Transportation in consultation with the Department of Justice.

"Private entity" means any entity other than a public entity that is primarily engaged in the business of transporting people.

"Public entity" means:

(1) Any State or local government; or

(2) Any department, agency, special purpose district, or other instrumentality of one or more State or local governments (including an entity established to provide public ferry service).

"Qualified individual with a disability" means an individual with a disability—

(1) Who, as a passenger (referred to as a "passenger with a disability"), with respect to obtaining transportation on or use of a passenger vessel, or other services or accommodations required by this Part,

(i) Buys or otherwise validly obtains, or makes a good faith effort to obtain, a ticket for transportation on a passenger vessel and presents himself or herself at the vessel for the purpose of traveling on the voyage to which the ticket pertains; or

(ii) With respect to use of a passenger vessel for which members of the public are not required to obtain tickets, presents himself or herself at the vessel for the purpose of using the vessel for the purpose for which it is made available to the public; and

(iii) Meets reasonable, nondiscriminatory requirements applicable to all passengers; or

(2) Who, with respect to accompanying or meeting a traveler, using ground transportation, using facilities, or obtaining information about schedules, fares, reservations, or policies, takes those actions necessary to use facilities or services offered by the PVO to the general public, with reasonable modifications, as needed, provided by the PVO.

"Secretary" means the Secretary of Transportation or his/her designee.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394, 29 U.S.C. 794), as amended.

"Service animal" means any guide dog, signal dog, or other animal individually trained to work or perform tasks for an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, alerting persons with seizure disorders to the onset of a seizure, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

"Specified public transportation" means transportation by passenger vessel provided by a private entity to the general public, with general or special service (including charter service) on a regular and continuing basis, where the private entity is primarily engaged in the business of transporting people.

"Terminal" means, with respect to passenger vessel transportation, the portion of a property located adjacent to a dock, entry ramp, or other means of boarding a passenger vessel, including areas through which passengers gain access to land transportation, passenger shelters, designated waiting areas, ticketing areas, and baggage drop-off and retrieval sites, to the extent that the PVO owns or leases the facility or exercises control over the selection, design, construction, or alteration of the property.

"United States" or "U.S." means the United States of America, including its territories, commonwealths, and possessions.

"Wheelchair" means any mobility aid belonging to any class of three or four-wheeled devices, usable indoors, designed for and used by individuals with mobility impairments, whether operated manually or powered.

"You" means the owner or operator of a passenger vessel, unless the context requires a different meaning.

§ 39.5 To whom do the provisions of this Part apply?

(a) Except as provided in paragraph (b) or (c) of this section, this Part applies to you if you are the owner or operator of any passenger vessel, and you are:

(1) A public entity that provides designated public transportation; or

(2) A private entity primarily engaged in the business of transporting people whose operations affect commerce and that provides specified public transportation;

(b) If you are the PVO of a foreign-flag passenger vessel, this Part applies to you only if your vessel picks up passengers at a port in the United States, its territories, possessions, or commonwealths.

§ 39.7 What other authorities concerning nondiscrimination on the basis of disability apply to owners and operators of passenger vessels?

(a) If you receive Federal financial assistance from the Department of Transportation, compliance with applicable requirements of this part is a condition of compliance with section 504 of the Rehabilitation Act of 1973 and of receiving financial assistance.

(b) You are also subject to ADA regulations of the Department of Justice (28 CFR part 35 or 36, as applicable).

§ 39.9 What may the owner or operator of a foreign-flag vessel do if it believes a provision of a foreign nation's law prohibits compliance with a provision of this Part?

(a) If you are the PVO of a foreign-flag vessel, and you believe that a binding legal requirement of a foreign nation precludes you from complying with a provision of this Part, you may request a waiver of the provision of this Part.

(b) You must send such a waiver request to the Department.

(c) Your waiver request must include the following elements:

(1) A copy, in the English language, of the foreign law involved;

(2) A description of how the binding legal requirement of a foreign nation applies and how it precludes compliance with a provision of this Part;

(3) A description of the alternative means you will use, if the waiver is granted, to effectively achieve the objective of the provision of this Part subject to the waiver or, if applicable, a justification of why it would be impossible to achieve this objective in any way.

(d) If you submit such a waiver request before November 3, 2010 you may continue to apply the foreign legal requirement pending the Department's response to your waiver request.

(e) The Department shall grant the waiver request if it determines that the binding legal requirement of a foreign nation applies, that it does preclude compliance with a provision of this Part, and that the PVO has provided an effective alternative means of achieving the objective of the provision of this Part subject to the waiver or clear and convincing evidence that it would be impossible to achieve this objective in any way.

§ 39.11 [Reserved]

§ 39.13 When must PVOs comply with the provisions of this part?

You are required to comply with the requirements of this part beginning November 3, 2010, except as otherwise provided in individual sections of this part.

Subpart B—Nondiscrimination and Access to Services

§ 39.21 What is the general nondiscrimination requirement of this part?

(a) As a PVO, you must not do any of the following things, either directly or through a contractual, licensing, or other arrangement:

(1) You must not discriminate against any qualified individual with a disability, by reason of such disability, with respect to the individual's use of a vessel;

(2) You must not require a qualified individual with a disability to accept special services that the individual does not request;

(3) You must not exclude a qualified individual with a disability from or deny the person the benefit of any vessel transportation or related services that are available to other persons, except when specifically permitted by another section of this Part; and

(4) You must not take any action against an individual (*e.g.,* refusing to provide transportation) because the individual asserts, on his or her own behalf or through or on behalf of others, rights protected by this part or the ADA.

(b)(1) As a PVO that is a private entity, you must make reasonable modifications in policies, practices, or procedures when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless you can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations.

(2) As a PVO that is a public entity, you must make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination on the basis of disability, unless you can demonstrate that making the modifications would fundamentally alter the nature of the services, programs, or activities you offer.

§ 39.23 What are the requirements concerning contractors to owners and operators of passenger vessels?

(a) If, as a PVO, you enter into a contractual or other arrangement or relationship with any other party to provide services to or affecting passengers, you must ensure that the other party meets the requirements of this Part that would apply to you if you provided the service yourself.

(b) As a PVO, you must include an assurance of compliance with this Part in your contracts or agreements with any contractors who provide to the public services that are subject to the requirements of this Part. Noncompliance with this assurance is a material breach of the contract on the contractor's part. With respect to contracts or agreements existing on November 3, 2010, you must ensure the inclusion of this assurance by November 3, 2011 or on the next occasion on which the contract or agreement is renewed or amended, whichever comes first.

(1) This assurance must commit the contractor to compliance with all applicable provisions of this Part in activities performed on behalf of the PVO.

(2) The assurance must also commit the contractor to implementing directives issued by your Complaints Resolution Officials (CROs) under § 39.103.

(c) As a PVO, you must also include such an assurance of compliance in your contracts or agreements of appointment with U.S. travel agents. With respect to contracts or agreements with U.S. travel agents existing on November 3, 2010, you must ensure the inclusion of this assurance by November 3, 2011 or on the next occasion on which the contract or agreement is renewed or amended, whichever comes first. You are not required to include such an assurance in contracts with foreign travel agents.

(d) You remain responsible for your contractors' and U.S. travel agents' compliance with this Part and with the assurances in your contracts with them.

(e) It is not a defense to an enforcement action under this Part that your noncompliance resulted from action or inaction by a contractor or U.S. travel agent.

§ 39.25 May PVOs refuse to provide transportation or use of a vessel on the basis of disability?

(a) As a PVO, you must not refuse to provide transportation or use of a vessel to a passenger with a disability on the basis of his or her disability, except as specifically permitted by this Part.

(b) You must not refuse to provide transportation or use of a vessel to a passenger with a disability because the person's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience crewmembers or other passengers.

(c) If you refuse to provide transportation or use of a vessel to a passenger on a basis relating to the individual's disability, you must provide to the person a written statement of the reason for the refusal. This statement must include the specific basis for your opinion that the refusal meets the standards of § 39.27 or is

otherwise specifically permitted by this part. You must provide this written statement to the person within 10 calendar days of the refusal of transportation or use of the vessel.

§ 39.27 Can a PVO take action to deny transportation or restrict services to a passenger with a disability based on safety concerns?

(a) As a PVO, you may take action to deny transportation or restrict services to a passenger with a disability if necessitated by legitimate safety requirements. Safety requirements must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

Example 1 to paragraph 39.27(a): You may take such action in order to comply with Coast Guard safety regulations.

Example 2 to paragraph 39.27(a): You may take such action if accommodating a large or heavy wheelchair would, together with its occupant, create weight and balance problem that could affect adversely the seaworthiness of the vessel or impede emergency egress from the vessel.

Example 3 to paragraph 39.27(a): You could restrict access to a lifeboat for a mobility device that would limit access to the lifeboat for other passengers.

(b) In taking action pursuant to legitimate safety requirements, you must take the action that imposes the minimum feasible burdens or limitations from the point of view of the passenger. For example, if you can meet legitimate safety requirements by a means short of refusing transportation to a passenger, you must do so.

(c) You may take action to deny transportation or restrict services to a passenger if the passenger poses a direct threat to others. In determining whether an individual poses a direct threat to the health or safety of others, the PVO must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: The nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

§ 39.29 May PVOs limit the number of passengers with a disability on a passenger vessel?

As a PVO, you must not limit the number of passengers with a disability other than individuals with a mobility disability on your vessel. However, if in the Captain's judgment, weight or stability issues are presented by the presence of mobility devices and would conflict with legitimate safety requirements pertaining to the vessel and its passengers, then the number of passengers with mobility aids may be limited, but only to the extent reasonable to prevent a avoid such a conflict.

§ 39.31 May PVOs limit access to transportation or use of a vessel on the basis that a passenger has a communicable disease?

(a) You must not take any of the following actions on the basis that a passenger has a communicable disease or infection, unless one of the conditions of paragraph (b) of this section exists:

(1) Refuse to provide transportation or use of a vessel to the passenger;

(2) Delay the passenger's transportation or use of the vessel (*e.g.,* require the passenger to take a later trip);

(3) Impose on the passenger any condition, restriction, or requirement not imposed on other passengers; or

(4) Require the passenger to provide a medical certificate.

(b) You may take actions listed in paragraph (a) of this section only if either or both of the conditions listed in paragraphs (b)(1) and (2) of this section are met. The action you take must be the least restrictive from the point of view of the passenger, consistent with protecting the health of other passengers.

(1) U.S. or international public health authorities (*e.g.,* the Centers for Disease Control, Public Health Service, World Health Organization) have determined that persons with a particular condition should not be permitted to travel or should travel only under conditions specified by the public health authorities;

(2) An individual has a condition that is both readily transmissible by casual contact in the context of traveling on or using a passenger vessel and has serious health consequences.

Example 1 to paragraph 39.31(b)(2). A passenger has a common cold. This condition is readily transmissible by casual contact but does not have serious health consequences. You may not take any of the actions listed in paragraph (a) of this section.

Example 2 to paragraph 39.31(b)(2): A passenger has HIV/AIDS. This condition is not readily transmissible by casual contact but does have serious health consequences. You may not take any of the actions listed in paragraph (a) of this section.

Example 3 to paragraph 39.31(b)(2): A passenger has SARS or a norovirus. These conditions are readily transmissible by casual contact and have serious health consequences. You may take an action listed in paragraph (a) of this section.

Example 4 to paragraph 39.31(b)(2). A passenger has a condition that is not readily transmissible by casual contact to or does not have serious health consequences for the general passenger population. However, it is possible that it could be readily transmitted by casual contact with and have serious health consequences for an individual with a severe allergy or severely compromised immune system. You may not take any of the actions listed in paragraph (a) of this section.

(c) Any action of those listed in paragraph (a) of this section that you take under paragraph (b) of this section must be the least drastic action you can take to protect the health of other passengers. For example, if you can protect the health of other passenger by imposing a condition on the transportation of a passenger with a communicable disease (*e.g.,* limiting the passenger's access to certain facilities on the vessel for a period of time), you cannot totally deny transportation on the vessel.

(d) For purposes of paragraph (a)(4) of this section, a medical certificate is a written statement from the passenger's physician saying that the passenger's disease or infection would not, under the present conditions in the particular passenger's case, be readily communicable to other persons by casual contact during the normal course of the passenger's transportation or use of the vessel. Such a medical certificate must state any conditions or precautions that would have to be observed to prevent the transmission of the disease or infection to other persons in the normal course of the passenger's transportation on or use of the vessel. It must be sufficiently recent to pertain directly to the communicable disease presented by the passenger at the time the passenger seeks to board the vessel.

(e) If your action under this section results in the postponement of a passenger's transportation or use of the vessel, you must permit the passenger to travel or use the vessel at a later available time (up to one year from the date of the postponed trip or use of the vessel) at the cost that would have applied to the passenger's originally scheduled trip or use of the vessel without penalty or, at the passenger's discretion, provide a refund for any unused transportation or use of the vessel. If there is no available reservation within one year, you must provide a refund.

(f) If you take any action under this section that restricts a passenger's transportation or use of the vessel, you must, on the passenger's request, provide a written explanation within 10 days of the request.

§ 39.33 May PVOs require a passenger with a disability to provide a medical certificate?

Except as provided in § 39.31, you must not require a passenger with a disability to have a medical certificate as a condition for being provided transportation on your vessel.

§ 39.35 May PVOs require a passenger with a disability to provide advance notice that he or she is traveling on or using a passenger vessel when no particular services are sought?

As a PVO, you must not require a passenger with a disability to provide advance notice of the fact that he or she is traveling on or using a passenger vessel when the passenger is not seeking particular auxiliary aids or services, or special privileges or services, that in order to be provided need to be arranged before the passenger arrives to board the vessel. The PVO always has an obligation to provide effective communication between the PVO and individuals who are deaf or hard of hearing or blind or visually impaired through the use of appropriate auxiliary aids and services.

§ 39.37 May PVOs require a passenger with a disability to provide advance notice in order to obtain particular auxiliary aids and services or to arrange group travel?

(a) Except as provided in this section, as a PVO you must not require a passenger with a disability to provide advance notice in order to obtain services or privileges required by this Part.

(b) If 10 or more passengers with a disability seek to travel as a group, you may require 72 hours advance notice for the group's travel.

(c) With respect to providing particular auxiliary aids and services, you may request reasonable advance notice to guarantee the availability of those aids or services.

(d) Your reservation and other administrative systems must ensure that when passengers provide the advance notice that you require, consistent with this section, for services and privileges, the notice is communicated, clearly and on time, to the people responsible for providing the requested service or accommodation.

§ 39.39 How do PVOs ensure that passengers with disabilities are able to use accessible cabins?

(a) As a PVO operating a vessel that has accessible cabins, you must follow the requirements of this Part to ensure that passengers with disabilities who need accessible cabins have nondiscriminatory access to them.

(b) You must, with respect to reservations made by any means (*e.g.,* telephone, Internet, in person, or through a third party):

(1) Modify your policies, practices, or procedures to ensure that individuals with disabilities can make reservations for accessible cabins during the same hours and in the same manner as individuals who do not need accessible cabins;

(2) Identify and describe accessible features in the cabins offered through your reservations service in enough detail to permit individuals with disabilities to assess independently whether a given cabin meets his or her accessibility needs.

(3) Ensure that accessible cabins are held for use by individuals with disabilities until all other cabins in that class of service have been rented;

(4) Reserve accessible cabins upon request by a passenger with disabilities and ensure that the specific accessible cabin reserved by that passenger is held for him or her, even you do not normally hold specific cabins for passengers who make reservations.

(c) You may release unsold accessible cabins to persons without disabilities for their own use when all other cabins in the same class of service and price for a voyage have been reserved.

(d) If a passenger with a disability seeks to reserve an accessible cabin in a given class of service, and there is not an available accessible cabin in that class of service, but there is an available accessible cabin in a different class of service, you must allow the passenger to reserve that accessible cabin at the price of the requested class of service of the class of service in which the accessible cabin exists, whichever is lower.

(e) As a PVO, you are never required to deny transportation to any passenger who has already reserved passage in order to accommodate a passenger with a disability in an accessible cabin.

(f) You must not require proof of disability, including, for example, a doctor's note, before reserving an accessible cabin.

(g) To prevent fraud in the assignment of accessible cabins (*e.g.,* attempts by individuals who do not have disabilities to reserve accessible cabins because they have greater space, you—

(1) Must inquire of persons seeking to reserve such cabins whether the individual (or an individual for whom the cabin is being reserved) has a mobility disability or a disability that requires the use of the accessible features that are provided in the cabin.

(2) May require a written attestation from the individual that accessible cabin is for a person who has a mobility disability or a disability that requires the use of the accessible features that are provided in the cabin.

(h) You must investigate the potential misuse of accessible cabins where there is good cause to believe that such cabins have been purchased fraudulently, and you may take appropriate action against someone who has reserved or purchased such a cabin fraudulently. For example, if an individual who does not have a disability reserves an accessible cabin, after having attested that he or she has a mobility disability, you may deny transportation to the individual.

§ 39.41 May a passenger with a disability be required to travel with another person?

(a) You must not require that a passenger with a disability travel with another person as a condition of being provided transportation on or use of a passenger vessel.

(b) Your personnel are not required to perform personal tasks (*e.g.,* assisting with eating, dressing, toileting) for a passenger.

§ 39.43 May PVOs impose special charges on passengers with a disability for providing services required by this rule?

(a) As a PVO, you must not charge higher fares, surcharges, or other fees to passengers with a disability that are not imposed on other passengers for transportation or use of the vessel.

(b) If the accommodations on a vessel that are accessible to passengers with a disability are available only in a type or class of service or part of a vessel that are more expensive than the type or class of service or part of a vessel that the passenger requests, you must provide the accessible accommodation at the price of the type or class of service or facility that the passenger requests.

(c) You must not impose special or extra charges for providing facilities, equipment, or services that this rule requires to be provided to passengers with a disability.

§ 39.45 May PVOs impose other restrictions on passengers with a disability that they do not impose on other passengers?

(a) As a PVO, you must not subject passengers with a disability to restrictions that do not apply to other passengers, except as otherwise explicitly permitted in this Part.

(b) Restrictions you must not impose on passengers with a disability include, but are not limited to, the following:

(1) Restricting passengers' movement within the vessel or a terminal;

(2) Requiring passengers to remain in a holding area or other location in order to receive transportation or services;

(4) Requiring passengers to wear badges or other special identification; or

(5) Requiring ambulatory passengers, including but not limited to blind or visually impaired passengers, to use a wheelchair or other mobility device in order to receive assistance required by this Part or otherwise offered to the passenger.

(c) Special muster stations for disabled individuals are permissible for emergency evacuations in order to centrally locate available resources.

§ 39.47 May PVOs require passengers with a disability to sign waivers or releases?

(a) As a PVO, you must not require passengers with a disability to sign any release or waiver of liability not required of all passengers in order to receive transportation or use of a vessel or to receive services relating to a disability.

(b) You must not require passengers with a disability to sign waivers of liability for damage to or loss of wheelchairs or other mobility or assistive devices.

Subpart C—Information for Passengers

§ 39.51 What is the general requirement for PVOs' provision of auxiliary aids and services to passengers?

(a) If you are a PVO that is a public entity, you must furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program or activity. In determining what type of auxiliary aid or service is necessary, you must give primary consideration to the requests of individuals with disabilities.

(b) If you are a PVO that is a private entity, you must furnish appropriate auxiliary aids or services where necessary to ensure effective communication with individuals with disabilities.

(c) If a provision of a particular auxiliary aid or service would result in a fundamental alteration in the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or in an undue burden, you shall provide an alternative auxiliary aid or service, if one exists, that would not result in a fundamental alteration or undue burden but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the goods, services, facilities, privileges, advantages, or accommodations you offer.

(d) As a PVO, it is your responsibility, not that of a passenger with a disability, to provide needed auxiliary aids and services.

§ 39.53 What information must PVOs provide to passengers with a disability?

As a PVO, you must provide the following information to individuals who self-identify as having a disability (including those who are deaf or hard of hearing or who are blind or visually impaired) or who request disability-related information, or persons making inquiries on the behalf of such persons. The information you provide must, to the maximum extent feasible, be specific to the vessel a person is seeking to travel on or use.

(a) The availability of accessible facilities on the vessel including, but not limited to, means of boarding the vessel, toilet rooms, staterooms, decks, dining, and recreational facilities.

(b) Any limitations of the usability of the vessel or portions of the vessel by people with mobility impairments;

(c) Any limitations on the accessibility of boarding and disembarking at ports at which the vessel will call (*e.g.,* because of the use of inaccessible lighters or tenders as the means of coming to or from the vessel);

(d) Any limitations on the accessibility of services or tours ancillary to the transportation provided by the vessel concerning which the PVO makes arrangements available to passengers;

(e) Any limitations on the ability of a passenger to take a service animal off the vessel at foreign ports at which the vessel will call (*e.g.,* because of quarantine regulations) and provisions for the care of an animal acceptable to the PVO that the passenger must meet when the passenger disembarks at a port at which the animal must remain aboard the vessel.

(f) The services, including auxiliary aids and services, available to individuals who are deaf or hard of hearing or blind or visually impaired.

(g) Any limitations on the ability of the vessel to accommodate passengers with a disability.

(h) Any limitations on the accessibility of boarding and disembarking at ports at which the vessel will call and services or tours ancillary to the transportation provided by the vessel concerning which the PVO makes arrangements available to passengers.

§ 39.55 Must information and reservation services of PVOs be accessible to individuals with hearing or vision impairments?

This section applies to information and reservation services made available to persons in the United States.

(a) If, as a PVO, you provide telephone reservation or information service to the public, you must make this service available to individuals who are deaf or hard-of-hearing and who use a text telephone (TTY) or a TTY relay service (TRS).

(1) You must make service to TTY/TRS users available during the same hours as telephone service for the general public.

(2) Your response time to TTY/TRS calls must be equivalent to your response time for your telephone service to the general public.

(3) You must meet this requirement by [date one year from the effective date of this Part].

(b) If, as a PVO, you provide written (*i.e.,* hard copy) information to the public, you must ensure that this information is able to be communicated effectively, on request, to persons with vision impairments. You must provide this information in the same language(s) in which you make it available to the general public.

§ 39.57 Must PVOs make copies of this rule available to passengers?

As a PVO, you must keep a current copy of this Part on each vessel and each U.S. port or terminal you serve and make it available to passengers on request. If you are an entity that does not receive Federal financial assistance, you are not required to make this copy available in languages other than English. You must make it available in accessible formats on request, subject to the provisions of § 39.51(c).

Subpart D—Accessibility of Landside Facilities

§ 39.61 What requirements must PVOs meet concerning the accessibility of terminals and other landside facilities?

As a PVO, you must comply with the following requirements with respect to all terminal and other landside facilities you own, lease, or control in the United States (including its territories, possessions, and commonwealths):

(a) With respect to new facilities, you must do the following:

(1) You must ensure that terminal facilities are readily accessible to and usable by individuals with disabilities, including individuals who use wheeled mobility assistive devices. You are deemed to comply with this obligation if the facilities meet the requirements of 49 CFR 37.9, and the standards referenced in that section.

(2) You must ensure that there is an accessible route between the terminal or other passenger waiting area and the boarding ramp or device used for the vessel. An accessible route is one

meeting the requirements of the standards referenced in 49 CFR 37.9.

(b) When a facility is altered, the altered portion must meet the same standards that would apply to a new facility.

(c) With respect to an existing facility, your obligations are the following:

(1) If you are a public entity, you must ensure that your terminals and other landside facilities meet program accessibility requirements, consistent with Department of Justice requirements at 28 CFR 35.150.

(2) If you are a private entity, you are required to remove architectural barriers where doing so is readily achievable, *i.e.,* easily accomplishable and able to be carried out without much difficulty or expense, consistent with Department of Justice requirements at 28 CFR 36.304 or, if not readily achievable, ensure that your goods, services, facilities, privileges, advantages, or accommodations are available through alternative methods if those methods are readily achievable, consistent with Department of Justice regulations at 28 CFR 36.305.

(d) Where you share responsibility for ensuring accessibility of a facility with another entity, you and the other entity are jointly and severally responsible for meeting applicable accessibility requirements.

§ 39.63 What modifications and auxiliary aids and services are required at terminals and other landside facilities for individuals with hearing or vision impairments?

(a) As a PVO, you must ensure that the information you provide to the general public at terminals and other landside facilities is effectively communicated to individuals who are blind or who have impaired vision and deaf or hard-of-hearing individuals, through the use of auxiliary aids and services. To the extent that this information is not available to these individuals through accessible signage and/or verbal public address announcements or other means, your personnel must promptly provide the information to such individuals on their request, in languages (*e.g.,* English, Norwegian, Japanese) in which the information is provided to the general public.

(b) The types of information you must make available include, but are not limited to, information concerning ticketing, fares, schedules and delays, and the checking and claiming of luggage.

Subpart E—Accessibility of Vessels [Reserved]

Subpart F—Assistance and Services to Passengers With Disabilities

§ 39.81 What assistance must PVOs provide to passengers with a disability in getting to and from a passenger vessel?

(a) As a PVO, if you provide, contract for, or otherwise arrange for transportation to and from a passenger vessel in the U.S. (*e.g.,* a bus transfer from an airport to a vessel terminal), you must ensure that the transfer service is accessible to and usable by individuals with disabilities, as required by this Part.

(b) You must also provide assistance requested by or on behalf of a passenger with a disability in moving between the terminal entrance (or a vehicle drop-off point adjacent to the entrance) of a terminal in the U.S. and the place where people get on or off the passenger vessel. This requirement includes assistance in accessing key functional areas of the terminal, such as ticket counters and baggage checking/claim. It also includes a brief stop upon request at an accessible toilet room.

§ 39.83 What are PVOs' obligations for assisting passengers with a disability in getting on and off a passenger vessel?

(a) If a passenger with a disability can readily get on or off a passenger vessel without assistance, you are not required to provide such assistance to the passenger. You must not require such a passenger with a disability to accept assistance from you in getting on or off the vessel unless it is provided to all passengers as a matter of course.

(b) With respect to a passenger with a disability who is not able to get on or off a passenger vessel without assistance, you must promptly provide assistance that ensures that the passenger can get on or off the vessel.

(c) When you have to provide assistance to a passenger with a disability in getting on or off a passenger vessel, you may use any available means to which the passenger consents (*e.g.,* lifts, ramps, boarding chairs, assistance by vessel personnel).

§ 39.85 What services must PVOs provide to passengers with a disability on board a passenger vessel?

As a PVO, you must provide services on board the vessel as requested by or on behalf of passengers with a disability, or when offered by PVO personnel and accepted by passengers with a disability, as follows:

(a) Assistance in moving about the vessel, with respect to any physical barriers rendering an area not readily accessible and usable to the passenger.

(b) If food is provided to passengers on the vessel, assistance in preparation for eating, such as opening packages and identifying food;

(c) Effective communication with passengers who have vision impairments or who are deaf or hard-of-hearing, so that these passengers have timely access to information the PVO provides to other passengers (*e.g.,* weather, on-board services, delays).

§ 39.87 What services are PVOs not required to provide to passengers with a disability on board a passenger vessel?

As a PVO, you are not required to provide extensive special assistance to passengers with a disability. For purposes of this section, extensive special assistance includes the following activities:

(a) Assistance in actual eating;

(b) Assistance within a toilet room or assistance elsewhere on the vessel with elimination functions; and

(c) Provision of medical equipment or services, or personal devices, except to the extent provided to all passengers.

§ 39.89 What requirements apply to on-board safety briefings, information, and drills?

As a PVO, you must comply with the following requirements with respect to safety briefings, information, or drills provided to passengers:

(a) You must provide the briefings or other safety-related information through means that effectively communicate their content to persons with vision or hearing impairments, using auxiliary aids and services where necessary for effective communication. This includes providing written materials in alternative formats that persons with vision impairments can use.

(b) You must not require any passenger with a disability to demonstrate that he or she has listened to, read, or understood the information presented, except to the extent that you impose such a requirement on all passengers. You must not take any action adverse to a qualified individual with a disability on the basis that the person has not "accepted" the briefing.

(c) As a PVO, if you present on-board safety briefings to passengers on video screens, you must ensure that the safety-video presentation is accessible to passengers with impaired hearing (*e.g.,* through use of captioning or placement of a sign language interpreter in the video).

(d) You must provide whatever assistance is necessary to enable passengers with disabilities to

participate fully in safety or emergency evacuation drills provided to all passengers.

(e) You must maintain evacuation programs, information, and equipment in locations that passengers can readily access and use.

§ 39.91 Must PVOs permit passengers with a disability to travel with service animals?

(a) As a PVO, you must permit service animals to accompany passengers with a disability.

(b) You must permit the service animal to accompany the passenger in all locations that passengers can use on a vessel, including in lifeboats.

(c) You must permit the passenger accompanied by the service animal to bring aboard a reasonable quantity of food for the animal aboard the vessel at no additional charge. If your vessel provides overnight accommodations, you must also provide reasonable refrigeration space for the service animal food.

(d) You must accept the following as evidence that an animal is a service animal: Identification cards, other written documentation, presence of harnesses, tags, and/or the credible verbal assurances of a passenger with a disability using the animal.

(e) If the legal requirements of a foreign government (*e.g.,* quarantine regulations) do not permit a service animal to disembark at a foreign port, as a PVO you may require the animal to remain on board while its user leaves the vessel. You must work with the animal's user to ensure that the animal is properly cared for during the user's absence.

§ 39.93 What wheelchairs and other assistive devices may passengers with a disability bring onto a passenger vessel?

(a) As a PVO subject to Title III of the ADA, you must permit individuals with mobility disabilities to use wheelchairs and manually powered mobility aids, such as walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities in any areas open to pedestrian use.

(b)(1) As A PVO subject to Title III of the ADA, you must make reasonable modifications in your policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility disabilities, unless you can demonstrate that a device cannot be operated on board the vessel consistent with legitimate safety requirements you have established for the vessel.

(2) In determining whether a particular other power-driven mobility device can be allowed on a specific vessel as a reasonable modification under paragraph (b)(1) of this section, the PVO must consider:

(i) The type, size, weight, dimensions, and speed of the device;

(ii) The vessel's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);

(iii) The vessel's design and operational characteristics (*e.g.,* the size and balance requirements of the vessel, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user);

(iv) Whether legitimate safety requirements can be established to permit the safe operation of a device in the specific vessel; and

(c)(1) As a PVO subject to Title III of the ADA, you must not ask an individual using a wheelchair or other power-driven mobility device questions about the nature and extent of the individual's disability.

(2) You may ask a person using an other power-driven mobility device to provide a credible assurance that the mobility device is required because of the person's disability. In response to this inquiry, you must accept the presentation of a valid, State-issued disability parking placard or card, or State-issued proof of disability as a credible assurance that the use of the other power-driven mobility device is for the individual's mobility disability. In lieu of a valid, State-issued disability parking placard or card, or State-issued proof of disability, a PVO shall accept as a credible assurance a verbal representation not contradicted by observable fact, that the other power-driven mobility device is being used for a mobility disability.

(d) As a PVO subject to Title II of the ADA, you must follow the requirements of paragraphs (a) through (c) of this section. In addition, any restriction you impose on the use of an other powered mobility device on your vessel must be limited to the minimum necessary to meet a legitimate safety requirement. For example, if a device can be accommodated in some spaces of the vessel but not others because of a legitimate safety requirement, you could not completely exclude the device from the vessel.

(e) As a PVO, you are not required to permit passengers with a disability to bring wheelchairs or other powered mobility devices into lifeboats or other survival craft, in the context of an emergency evacuation of the vessel.

§ 39.95 May PVOs limit their liability for loss of or damage to wheelchairs or other assistive devices?

Consistent with any applicable requirements of international law, you must not apply any liability limits with respect to loss of or damage to wheeled mobility assistive devices or other assistive devices. The criterion for calculating the compensation for a lost, damaged, or destroyed wheelchair or other assistive device is the original purchase price of the device.

Subpart G—Complaints and Enforcement Procedures

§ 39.101 What are the requirements for providing Complaints Resolution Officials?

(a) As a PVO, you must designate one or more Complaints Resolution Officials (CROs).

(b) You must make a CRO available for contact on each vessel and at each terminal that you serve. The CRO may be made available in person or via telephone, if at no cost to the passenger. If a telephone link to the CRO is used, TTY or TRS service must be available so that persons with hearing impairments may readily communicate with the CRO. You must make CRO service available in the language(s) in which you make your other services available to the general public.

(c) You must make passengers with a disability aware of the availability of a CRO and how to contact the CRO in the following circumstances:

(1) In any situation in which any person complains or raises a concern with your personnel about discrimination, policies, or services with respect to passengers with a disability, and your personnel do not immediately resolve the issue to the customer's satisfaction or provide a requested accommodation, your personnel must immediately inform the passenger of the right to contact a CRO and the location and/or phone number of the CRO available on the vessel or at the terminal. Your personnel must provide this information to the passenger in a format he or she can use.

(2) Your reservation agents, contractors, and Web sites must provide information equivalent to that required by paragraph (c)(1) of this section to passengers with a disability using those services.

(d) Each CRO must be thoroughly familiar with the requirements of this Part and the PVO's procedures with respect to passengers with a disability. The CRO is intended to be the PVO's "expert" in compliance with the requirements of this Part.

(e) You must ensure that each of your CROs has the authority to make

dispositive resolution of complaints on behalf of the PVO. This means that the CRO must have the power to overrule the decision of any other personnel, except that the CRO may not be given authority to countermand a decision of the master of a vessel with respect to safety matters.

§ 39.103 What actions do CROs take on complaints?

When a complaint is made directly to a CRO (*e.g.,* orally, by phone, TTY) the CRO must promptly take dispositive action as follows:

(a) If the complaint is made to a CRO before the action or proposed action of PVO personnel has resulted in a violation of a provision of this Part, the CRO must take, or direct other PVO personnel to take, whatever action is necessary to ensure compliance with this Part.

(b) If an alleged violation of a provision of this Part has already occurred, and the CRO agrees that a violation has occurred, the CRO must provide to the complainant a written statement setting forth a summary of the facts and what steps, if any, the PVO proposes to take in response to the violation.

(c) If the CRO determines that the PVO's action does not violate a provision of this Part, the CRO must provide to the complainant a written statement including a summary of the facts and the reasons, under this Part, for the determination.

(d) The statements required to be provided under this section must inform the complainant of his or her right to complain to the Department of Transportation and/or Department of Justice. The CRO must provide the statement in person to the complainant in person if possible; otherwise, it must be transmitted to the complainant within 10 calendar days of the complaint.

§ 39.105 How must PVOs respond to written complaints?

(a) As a PVO, you must respond to written complaints received by any means (*e.g.,* letter, fax, e-mail, electronic instant message) concerning matters covered by this Part.

(b) A passenger making a written complaint, must state whether he or she had contacted a CRO in the matter, provide the name of the CRO and the date of the contact, if available, and enclose any written response received from the CRO.

(c) As a PVO, you are not required to respond to a complaint from a passenger postmarked or transmitted more than 45 days after the date of the incident.

(d) As a PVO, you must make a dispositive written response to a written disability complaint within 30 days of its receipt. The response must specifically admit or deny that a violation of this part has occurred. The response must be effectively communicated to the recipient.

(1) If you admit that a violation has occurred, you must provide to the complainant a written statement setting forth a summary of the facts and the steps, if any, you will take in response to the violation.

(2) If you deny that a violation has occurred, your response must include a summary of the facts and your reasons, under this Part, for the determination.

(3) Your response must also inform the complainant of his or her right to pursue DOT or DOJ enforcement action under this part, as applicable. DOT has enforcement authority under Title II of the ADA for public entities and under section 504 of the Rehabilitation Act for entities that receive Federal financial assistance; DOJ has enforcement authority under Title III of the ADA for private entities.

§ 39.107 Where may persons obtain assistance with matters covered by this regulation?

A passenger, PVO, or any other person may obtain information, guidance, or other assistance concerning 49 CFR part 39 from then DOT Departmental Office of Civil Rights and/or DOT Office of General Counsel, 1200 New Jersey Avenue, SE., Washington, DC 20590.

§ 39.109 What enforcement actions may be taken under this Part?

(a) The Department of Transportation investigates complaints and conducts reviews or other inquiries into the compliance with this Part of PVOs that are Title II entities.

(b) As a PVO subject to Title II of the ADA, you must be prepared to provide to the Department of Transportation a written explanation of your action in any situation in which you exclude or restrict an individual with a disability or any mobility or other assistive device used by such an individual with respect to the use of your vessel.

(c) The Department of Transportation investigates complaints conducts compliance reviews or other inquiries into the compliance of this Part of PVOs, whether private or public entities, that receive Federal financial assistance from the Department, under section 504 of the Rehabilitation Act of 1973, as amended.

(d) The Department may refer any matter concerning the compliance of PVOs with this Part to the Department of Justice for enforcement action.

(e) The Department of Justice investigates complaints and conducts reviews or other inquiries into the compliance with this Part of PVOs that are Title III entities.

(f) The Department of Justice may file suit in Federal court against both Title II and Title III PVOs for violations of this part.

[FR Doc. 2010–15101 Filed 7–2–10; 8:45 am]

BILLING CODE 4910–9X–P

Federal Register

Tuesday,
July 6, 2010

Part III

The President

Proclamation 8539—To Modify Duty-Free Treatment Under the Generalized System of Preferences

Proclamation 8540—Death of Robert C. Byrd, President Pro Tempore of the Senate

Memorandum of June 30, 2010—Long-Term Gulf Coast Restoration Support Plan

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Presidential Documents

Title 3—

The President

Proclamation 8539 of June 29, 2010

To Modify Duty-Free Treatment Under the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to sections 501 and 503(a)(1)(A) of the Trade Act of 1974, as amended (the "1974 Act") (19 U.S.C. 2461 and 2463(a)(1)(A)), the President may designate articles as eligible for preferential tariff treatment under the Generalized System of Preferences (GSP).

2. Pursuant to section 503(c)(2)(A) of the 1974 Act (19 U.S.C. 2463(c)(2)(A)), beneficiary developing countries, except those designated as least-developed beneficiary developing countries or beneficiary sub-Saharan African countries as provided in section 503(c)(2)(D) of the 1974 Act (19 U.S.C. 2463(c)(2)(D)), are subject to competitive need limitations on the preferential treatment afforded under the GSP to eligible articles.

3. Section 503(c)(2)(F)(i) of the 1974 Act (19 U.S.C. 2463(c)(2)(F)(i)) provides that the President may disregard the competitive need limitation provided in section 503(c)(2)(A)(i)(II) of the 1974 Act (19 U.S.C. 2463(c)(2)(A)(i)(II)) with respect to any eligible article from any beneficiary developing country if the aggregate appraised value of the imports of such article into the United States during the preceding calendar year does not exceed an amount set forth in section 503(c)(2)(F)(ii) of the 1974 Act (19 U.S.C. 2463(c)(2)(F)(ii)).

4. Pursuant to section 503(d)(5) of the 1974 Act (19 U.S.C. 2463(d)(5)), any waiver granted under section 503(d) shall remain in effect until the President determines that such waiver is no longer warranted due to changed circumstances.

5. Pursuant to sections 501 and 503(a)(1)(A) of the 1974 Act, and after receiving advice from the United States International Trade Commission (the "Commission") in accordance with section 503(e) (19 U.S.C. 2463(e)), I have determined to designate certain articles as eligible articles when imported from any beneficiary developing country.

6. Pursuant to section 503(c)(2)(A) of the 1974 Act, I have determined that in 2009 certain beneficiary developing countries exported eligible articles in quantities exceeding the applicable competitive need limitations, and I therefore terminate the duty-free treatment for such articles from such beneficiary developing countries.

7. Pursuant to section 503(c)(2)(F) of the 1974 Act, I have determined that the competitive need limitation provided in section 503(c)(2)(A)(i)(II) of the 1974 Act should be disregarded with respect to certain eligible articles from certain beneficiary developing countries.

8. Pursuant to section 503(d)(5) of the 1974 Act, I have determined that a previously granted waiver of the competitive need limitations of section 503(c)(2)(A) of the 1974 Act is no longer warranted due to changed circumstances.

9. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the relevant provisions of that Act, and of other Acts affecting import treatment, and actions thereunder, including the removal,

modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to title V and section 604 of the 1974 Act, do proclaim that:

(1) In order to provide that one or more countries should no longer be treated as beneficiary developing countries with respect to one or more eligible articles for purposes of the GSP, general note 4(d) to the HTS is modified as set forth in section A of Annex I to this proclamation.

(2) In order to provide that one or more countries should no longer be treated as beneficiary developing countries with respect to certain eligible articles for purposes of the GSP, the Rates of Duty 1-Special subcolumn for the corresponding HTS subheadings is modified as set forth in section B of Annex I to this proclamation.

(3) In order to designate certain articles as eligible articles for purposes of the GSP, the Rates of Duty 1-Special subcolumn for the corresponding HTS subheadings is modified as set forth in section C of Annex I to this proclamation.

(4) The competitive need limitation provided in section 503(c)(2)(A)(i)(II) of the 1974 Act is disregarded with respect to the eligible articles in the HTS subheadings and to the beneficiary developing countries listed in Annex II to this proclamation.

(5) The waiver of the application of section 503(c)(2)(A) of the 1974 Act to the articles in the HTS subheading and to the beneficiary developing country listed in Annex III to this proclamation is revoked.

(6) The modifications to the HTS set forth in Annexes I, II, and III to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the respective annex.

(7) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

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

Billing code 3195–W9–P

ANNEX I

MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Section A. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 2010, general note 4(d) to the Harmonized Tariff Schedule of the United States (HTS) is modified by:

(1) adding, in numerical sequence, the following subheading numbers and the countries set out opposite such subheading numbers:

1605.20.05	Thailand
4409.29.05	Brazil
7113.19.21	India
7113.19.25	India

(2) adding, in alphabetical order, the following countries opposite the following subheading numbers:

4011.10.10	Thailand

Section B. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 2010, the HTS is modified as provided in this section. For each of the following subheadings, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A" and inserting the symbol "A*" in lieu thereof:

1605.20.05
4409.29.05
7113.19.21
7113.19.25

Section C. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 2010, the HTS is modified as provided in this section. For each of the following subheadings, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol AA+@ and inserting the symbol AA@ in lieu thereof:

0710.22.40
0710.90.91

ANNEX II

HTS Subheadings and Countries for Which the Competitive Need Limitation Provided in Section 503(c)(2)(A)(i)(II) Is Disregarded

0406.20.51	Argentina
0410.00.00	Indonesia
0603.13.00	Thailand
0710.80.50	Turkey
0711.40.00	India
0711.59.90	Jamaica
0711.90.30	Lebanon
0810.60.00	Thailand
0811.90.10	Ecuador
0813.40.10	Thailand
0813.40.80	Thailand
1106.30.40	Brazil
1202.10.40	Ecuador
1601.00.40	Brazil
1604.14.50	Maldives
1701.91.42	Brazil
1806.10.34	Uruguay
1806.10.43	India
1806.32.01	Ecuador
1901.90.42	Indonesia
2001.90.45	India
2005.80.00	Thailand
2005.91.97	India
2008.30.96	Philippines
2008.99.50	Thailand
2101.12.32	Philippines
2103.90.72	Thailand
2306.50.00	Indonesia
2308.00.95	Egypt
2516.12.00	India
2827.39.25	India
2827.39.45	India
2827.60.51	Ukraine
2830.90.20	Russia
2831.90.00	India
2833.29.40	Turkey
2840.11.00	Turkey
2840.19.00	Turkey
2844.10.10	Russia
2849.10.00	Brazil
2903.51.00	India
2905.19.10	Brazil
2905.44.00	Indonesia
2907.12.00	India
2907.15.10	India
2907.29.25	India
2909.11.00	India
2909.50.40	Indonesia
2910.20.00	Brazil
2912.49.10	India
2913.00.50	India
2914.40.20	India
2915.39.10	India
2915.60.10	India
2917.14.10	Brazil
2921.42.21	India
2921.42.55	India
2924.29.36	India
2926.90.08	India
2927.00.30	India
2932.29.25	India
2933.19.45	India
2933.49.08	India
3824.90.31	Brazil
3824.90.32	Brazil
4012.12.80	India
4101.50.40	Argentina
4104.11.30	India
4104.11.40	Argentina
4104.41.30	Brazil
4104.41.40	Brazil
4106.21.90	India
4106.22.00	Pakistan
4107.11.60	Turkey
4107.12.40	Thailand
4107.19.40	India
4107.19.60	Brazil
4107.91.40	Argentina
4107.99.40	Brazil
4113.10.60	Pakistan
4114.10.00	Turkey
4601.22.40	Philippines

4601.93.05	India
4602.11.05	India
4602.19.23	Philippines
5208.31.20	India
5209.31.30	India
5209.41.30	India
5607.90.35	Philippines
6801.00.00	India
6911.10.60	Thailand
7113.20.25	India
7202.99.20	Argentina
7325.91.00	India
7601.20.30	India
7614.10.50	India
8007.00.20	Brazil
8112.12.00	Kazakhstan
8112.59.00	Russia
8112.99.10	Russia
8202.40.30	Brazil
8404.20.00	Indonesia
8410.13.00	Brazil
8507.40.40	Philippines
9010.50.30	India
9027.50.10	Philippines
9205.90.14	India
9603.10.90	Sri Lanka

ANNEX III

HTS Subheadings and Countries for a which a Waiver of the Application of Section 503(c)(2)(A) of the 1974 Act is Revoked

Effective July 1, 2010, the waiver of the application of section 503(c)(2)(A) of the 1974 Act is revoked for the following HTS subheading and the country set out opposite such subheading.

7113.19.25	India

[FR Doc. 2010–16588
Filed 7–2–10; 11:15 am]
Billing code 7020–02–C

Presidential Documents

Proclamation 8540 of June 30, 2010

Death of Senator Robert C. Byrd, President Pro Tempore of the Senate

By the President of the United States of America

A Proclamation

As a mark of respect for the memory and longstanding service of Senator Robert C. Byrd, President pro tempore of the Senate, I hereby order, by the authority vested in me by the Constitution and the laws of the United States of America, that the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset on the day of his interment. I further direct that the flag shall be flown at half-staff for the same period at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

I also direct, that in honor and tribute to this great patriot, that the flag of the United States shall be displayed at full-staff at the White House and on all public buildings and grounds, at all military posts and Naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions on Independence Day, July 4, 2010. I further direct that on that same date, that the flag of the United States shall be flown at full-staff at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

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

[FR Doc. 2010–16595
Filed 7–2–10; 11:15 am]
Billing code 3195–W0–P

Presidential Documents

Memorandum of June 30, 2010

Long-Term Gulf Coast Restoration Support Plan

Memorandum for the Heads of Executive Departments and Agencies

The oil spill in the Gulf of Mexico is the worst environmental disaster America has ever faced. The oil spill represents just the latest blow to an area that has already suffered significant hardship. In addition to fighting the spill, conducting environmental cleanup, and ensuring such a crisis does not happen again, we must help the Gulf Coast and its people recover from this tragedy. A long-term plan to restore the unique beauty and bounty of this region is therefore necessary.

As I announced on June 15, 2010, and pursuant to the authority vested in me as President by the Constitution and the laws of the United States of America, I assign to the Secretary of the Navy (Secretary) the responsibility to lead the effort to create a plan of Federal support for the long-term economic and environmental restoration of the Gulf Coast region, in coordination with States, local communities, tribes, people whose livelihoods depend on the Gulf, businesses, conservationists, scientists, and other entities and persons as he deems necessary. In addition to working with these stakeholders, the Secretary shall coordinate, as appropriate, with the heads of executive departments and agencies, as well as offices within the Executive Office of the President (collectively, executive branch components).

Specifically, I direct the following:

Section 1. As soon as possible, the Secretary shall develop a Gulf Coast Restoration Support Plan (Plan), based on the following principles:

(a) The Plan shall provide a comprehensive assessment of post-spill needs, as well as a proposal for Federal assistance in the overall recovery of the region.

(b) The purpose of the Plan shall be to develop an approach that will ensure economic recovery, community planning, science-based restoration of the ecosystem and environment, public health and safety efforts, and support of individuals and businesses who suffered losses due to the spill.

(c) The Plan shall take into account resources already available to respond to the oil spill, and complement the on-going oil spill response efforts. The Secretary will also coordinate, as needed, with the State, Federal, and tribal trustees who have responsibility for directing the natural resource damage planning process under the Oil Pollution Act and other applicable law.

(d) The Plan shall identify long- and short-term objectives and, where applicable, how the achievement of these objectives will be measured.

Sec. 2. (a) This assignment is prescribed as an additional responsibility of the Secretary in accordance with section 5013 of title 10, United States Code. This additional responsibility may not be delegated under section 5013(f) of title 10, United States Code.

(b) To assist in accomplishing the directive in section 1 of this memorandum, executive branch components shall make available information and other resources, including personnel, deemed by the Secretary to be necessary for development of the Plan.

Sec. 3. (a) Executive branch components shall carry out the provisions of this memorandum to the extent permitted by law, subject to the availability

of appropriations, and consistent with their statutory and regulatory authorities and their enforcement mechanisms.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing in this memorandum shall relieve or otherwise affect the obligations of any responsible party under the Oil Pollution Act or other applicable law.

Sec. 4. The Secretary is hereby authorized to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, June 30, 2010

[FR Doc. 2010–16596
Filed 7–2–10; 11:15 am]
Billing code 3810–FF–P

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