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WHEN: Tuesday, September 14, 2010
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Contents

Federal Register

Vol. 75, No. 146

Friday, July 30, 2010

Agricultural Marketing Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 44934–44935

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service
PROPOSED RULES
Procedures Relating to Awards under Equal Access to Justice Act, 44928–44929

Animal and Plant Health Inspection Service
RULES
Black Stem Rust:
Additions of Rust-Resistant Varieties, 44881
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Certificate for Poultry and Hatching Eggs for Export, 44935
Phytophthora Ramorum; Quarantine and Regulations, 44936

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

Centers for Medicare & Medicaid Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 44969–44971
Medicaid Program:
Request for Comments on Legislative Changes to Provide Quality of Care to Children, 44971–44972
Medicare and Medicaid Programs:
Hospital Application to Enter into an Agreement with a Different Organ Procurement Organization, 44972–44973

Coast Guard
RULES
Drawbridge Operation Regulations:
Cape Fear River, Wilmington, NC; Temporary Deviation, 44916–44917

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 44937

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Additions to and Deletions from the Procurement List, 44940–44941

Commodity Futures Trading Commission
RULES
Operation, in the Ordinary Course, of Commodity Broker in Bankruptcy, 44890–44893

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 44941

Election Assistance Commission
NOTICES
Meetings; Sunshine Act, 44941–44942

Energy Department
See Federal Energy Regulatory Commission
See Western Area Power Administration
PROPOSED RULES
Workplace Substance Abuse Programs for Department of Energy Contractors, 44929–44930

Environmental Protection Agency
RULES
National Oil and Hazardous Substances Pollution Contingency Plans:
National Priorities List; Deletion of SMS Instruments, Inc. Superfund Site, 44920–44924
Tolerance Exemptions:
Castor Oil, Ethoxylated, Dioleate, 44917–44920
PROPOSED RULES
National Oil and Hazardous Substances Pollution Contingency Plans:
National Priorities List; Intent to Delete SMS Instruments, Inc. Superfund Site, 44932–44933
Stakeholder Input; Revisions to Water Quality Standards Regulation, 44930–44932
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Environmental Impact Assessment of Nongovernmental Activities in Antarctica, 44944–44946
Applications for Emergency Exemptions:
Spirotetramat for Use on Dry Bulb Onions in Minnesota, 44946–44948
California State Motor Vehicle Pollution Control Standards:
Within-the-Scope Determination for Amendments to California's Low Emission Vehicle Program, 44948–44951
Environmental Impact Statements; Availability, etc.:
Weekly receipt, 44951
Inquiry to Learn Whether Businesses Assert Business Confidentiality Claims, 44951–44954
Product Cancellation Order for Certain Pesticide Registrations, 44954–44964

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Revision of Class E Airspace:
Kulik Lake, AK, 44884–44885

Special Conditions:
Garmin International G100 and GFC700 System Installation in Cessna Model 525 Jet, etc., 44881–44884
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Flight Standards Customer Satisfaction Survey, 45007–45008
Verification of Authenticity of Foreign License, Rating and Medical Certification, 45007

Federal Communications Commission
NOTICES
Structure and Practices of the Video Relay Service Program; Correction, 44964

Federal Election Commission
NOTICES
Filing Dates for the West Virginia Senate Special Election, 44964–44965

Federal Energy Regulatory Commission
RULES
Pipeline Posting Requirements under Section 23 of the Natural Gas Act, 44893–44901

Federal Maritime Commission
NOTICES
Petitions for Exemptions:
Hainan P O Shipping Co., Ltd., 44965–44966

Federal Reserve System
NOTICES
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 44965

Federal Transit Administration
NOTICES
Environmental Impact Statements; Availability, etc.:
Proposed Light Rail Transit Line, Detroit, MI, 45008–45010

Fish and Wildlife Service
NOTICES
Permit Applications, 44986–44987
Permits, 44987–44988

Food and Drug Administration
NOTICES
The Reportable Food Registry; Availability:
New Approach to Targeting Inspection Resources and Identifying Patterns of Adulteration, 44973–44974

Foreign Assets Control Office
RULES
Lebanon Sanctions Regulations, 44907–44916

Forest Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Ochoco National Forest; Lookout Ranger Mountain District; Correction, 44936
Meetings:
Unita-Wasatch-Cache National Forest Resource Advisory Committee, 44936–44937

Health and Human Services Department
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
RULES
Pre-Existing Condition Insurance Plan Program, 45014–45033
NOTICES
Designations of a Class of Employees for Addition to the Special Exposure Cohort, 44966–44968
Reestablishment of the Technical Review Panel on the Medicare Trustees Reports, 44968–44969

Homeland Security Department
See Coast Guard
See Transportation Security Administration

Housing and Urban Development Department
NOTICES
Federal Property Suitable as Facilities to Assist the Homeless, 44975

Industry and Security Bureau
RULES
Foreign Direct Products of U.S. Technology, 44887–44890

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Reclamation Bureau

Internal Revenue Service
RULES
Extended Carryback of Losses to or from Consolidated Groups:
Correction, 44901
Qualified Zone Academy Bonds:
Obligations of States and Political Subdivisions, 44901–44907

International Trade Administration
NOTICES
Extension of Time Limit for Preliminary Results of the 6th Antidumping Duty Administrative and 6th New Shipper Reviews:
Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 44938–44939
Final Results of Changed Circumstance Review:
Natural Bristle Paint Brushes and Brush Heads from the Peoples Republic of China, 44939–44940
Withdrawal of Application for Duty-Free Entry of Scientific Instruments, 44940

International Trade Commission
NOTICES
Determinations:
Wire Decking from China, 44988
Investigations:
Certain Toner Cartridges and Components Thereof, 44988–44989
Termination of Investigations:
Certain Semiconductor Chips Having Synchronous Dyrnamic Random Access Memory Controllers, 44989–44990

Labor Department
See Workers Compensation Programs Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 44990–44991

Land Management Bureau
NOTICES
Call for Nominations:
Western Oregon Resource Advisory Committees, 44975–44976
Environmental Impact Statements; Availability, etc.:
South Gillette Area Belle Ayr North Coal Lease-by-Application, Wyoming, 44980–44981
Vegetation Treatments Using Herbicides on Bureau of Land Management Lands in Oregon, 44981
West Tavaputs Plateau Natural Gas Full Field Development Plan, 44976–44977
Wright Area Coal, Wyoming, 44978–44980
Exploration for Coal in Colorado License Application (COC–74235), 44983–44984
Filings of Plats of Survey:
California, 44984–44986
Idaho, 44984

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Pollock for American Fisheries Act Catcher Vessels in the Inshore Open Access Fishery, etc.; Closure, 44927
Fisheries of the Northeastern United States:
Northeast Multispecies Fishery; Trip Limit Reduction and Trawl Gear Restriction, 44924–44925
Fisheries Off West Coast States:
Modifications of West Coast Commercial and Recreational Salmon Fisheries; Inseason Actions; etc., 44925–44927
NOTICES
Atlantic Coastal Fisheries Cooperative Management Act Provisions:
Atlantic Coastal Shark Fishery; Cancellation of Federal Moratorium, 44938

National Park Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Roosevelt-Vanderbilt National Historic Sites, Hyde Park, New York, 44977–44978

Nuclear Regulatory Commission
NOTICES
Review of Management Directive 8.11, 44992–44993

Postal Regulatory Commission
NOTICES
New Postal Product, 44993–44994

Presidential Documents
PROCLAMATIONS
Special Observances:
National Korean War Veterans Armistice Day (Proc. 8543), 45035–45037
EXECUTIVE ORDERS
Government Agencies and Employees:
Employment of Individuals With Disabilities (EO 13548), 45039–45041
ADMINISTRATIVE ORDERS
Continuation of the National Emergency With Respect to the Actions of Certain Persons to Undermine the Sovereignty of Lebanon or Its Democratic Processes and Institutions (Notice of July 29, 2010), 45043–45045

Reclamation Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
Arkansas Valley Conduit and Long-term Excess Capacity Master Contract, Fryingpan–Arkansas Project, Colorado, 44982–44983

Securities and Exchange Commission
NOTICES
Self–Regulatory Organizations; Proposed Rule Changes:
Chicago Board Options Exchange, Inc.; Correction, 44995
International Securities Exchange, LLC, 44995–44996
Study Regarding Obligations of Brokers, Dealers, and Investment Advisers, 44996–44998

Small Business Administration
NOTICES
Disaster Declarations:
Florida, 44994
Pennsylvania, 44994

Surface Transportation Board
NOTICES
Continuances in Control Exemptions:
Gregory B. Cundiff, Connie Cundiff, CGX, Inc. and Ironhorse Resources, Inc, 45008
Lease and Operation Exemptions:
LRY, LLC D.B.A. Lake Railway; Union Pacific Railroad Co., 45010–45011
Operation Exemptions:
Gardendale Railroad, Inc., Rail Line of Border Transload & Transfer, Inc.; LaSalle County, TX, 45011

Thrift Supervision Office
NOTICES
Appointments of Receivers:
MainStreet Savings Bank, FSB, 45011
Olde Cypress Community Bank; Clewiston, FL, 45011–45012
Turnberry Bank; Aventura, FL, 45012

Transportation Department
See Federal Aviation Administration
See Federal Transit Administration
See Surface Transportation Board
See Transportation Security Administration
RULES
Nondiscrimination on Basis of Disability in Air Travel:
Corrections, 44885–44887
NOTICES
Meetings:
The Future of Aviation Advisory Committee Aviation Safety Subcommittee, 44998
Orders Soliciting Community Proposals, 44998–45007

Transportation Security Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Sensitive Security Information Threat Assessments, 44974–44975

Treasury Department
See Foreign Assets Control Office
See Internal Revenue Service
See Thrift Supervision Office

Western Area Power Administration
NOTICES
Proposed Power Allocations:
2015 Resource Pool – Sierra Nevada Customer Service Region, 44942–44944

Workers Compensation Programs Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 44991–44992

Separate Parts In This Issue

Part II
Health and Human Services Department, 45014–45033

Part III
Presidential Documents, 45035–45037, 45039–45041

Part IV
Presidential Documents, 45043–45045

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:
8543 45037

Executive Orders:
13548 45039

Administrative Orders:
Notices:
Notice of July 29, 2010 45045

7 CFR
301 44881

Proposed Rules:
1 44928

10 CFR

Proposed Rules:
707 44929

14 CFR
23 44881
71 44884
382 44885

15 CFR
732 44887
736 44887
740 44887
748 44887

17 CFR
190 44890

18 CFR
284 44893

26 CFR
1 (2 documents) 44901
602 44901

31 CFR
549 44907

33 CFR
117 44916

40 CFR
180 44917
300 44920

Proposed Rules:
131 44930
300 44932

45 CFR
152 45014

50 CFR
648 44924
660 44925
679 44927

Rules and Regulations

Federal Register

Vol. 75, No. 146

Friday, July 30, 2010

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2010-0035]

Black Stem Rust; Additions of Rust-Resistant Varieties

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On May 25, 2010, the Animal and Plant Health Inspection Service published a direct final rule. (See 75 FR 29191-29193.) The direct final rule notified the public of our intention to amend the black stem rust quarantine and regulations by adding 21 varieties to the list of rust-resistant *Berberis* species or cultivars and 2 varieties to the list of rust-resistant *Mahonia* species or cultivars in the regulations. We did not receive any written adverse comments or written notice of intent to submit adverse comments in response to the direct final rule.

EFFECTIVE DATE: The effective date of the direct final rule is confirmed as July 26, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Prakash K. Hebbar, National Program Manager, Black Stem/Barberry Rust Program, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737-1231; (301) 734-5717.

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75-15 issued under Sec. 204, Title II, Public Law 106-113, 113 Stat. 1501A-293; sections 301.75-15 and 301.75-16 issued under Sec. 203, Title II, Public Law 106-224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 27th day of July 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–18756 Filed 7–29–10; 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No CE309; Notice No. 23–249–SC]

Special Conditions: Garmin International G1000 and GFC700 System Installation in the Cessna Model 525 Citation Jet; Installation of Mid-Continent MD835 Lithium Ion Battery

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Garmin International, model G1000, Multifunctional Display and GFC700 Automatic Flight Control System installation with a Mid-Continent MD835 Lithium Ion Battery in the Cessna model 525 Citation Jet. This airplane as modified by Garmin International will have a novel or unusual design feature(s) associated with installation of the Mid-Continent Instruments MD835 Lithium Ion (Li-ion) battery. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is July 14, 2010.

We must receive your comments by August 30, 2010.

ADDRESSES: Mail two copies of your comments to: Federal Aviation Administration, Regional Counsel, ACE–7, Attn: Rules Docket No CE309, 901 Locust, Room 506, Kansas City, Missouri 64106. You may deliver two copies to the Small Airplane Directorate at the above address. Mark your comments: Docket No. CE309. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: James Brady, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, 901 Locust, Kansas City, MO 64106; telephone (816) 329–4132; facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION:

The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested persons to submit written data, views, or arguments as they desire. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You may inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, send us a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On September 18, 2009, Garmin International applied for a supplemental type certificate for installation of the Mid-Continent Instruments MD835 Lithium Ion battery in the G1000 & GFC700 equipped Cessna model 525 Citation Jet. The model 525 is a two-engine turbofan aircraft certified in the normal category under Title 14, part 23. The aircraft is certified for eight seats including the pilot, a maximum gross weight of 10,700 pounds, and maximum altitude of 41,000 feet mean sea level (MSL).

The current regulatory requirements for part 23 airplanes do not contain adequate requirements for the application of Li-ion batteries in airborne applications. Garmin International proposes to replace an existing BF Goodrich PS–834A lead-acid emergency battery with a Mid-Continent Instruments MD835 Lithium Ion battery on Cessna model 525 Citation Jets. This type of battery possesses certain failure, operational, and maintenance characteristics that differ significantly from the nickel cadmium (Ni-Cd) and lead-acid rechargeable batteries currently approved in other normal, utility, acrobatic, and commuter category airplanes.

Type Certification Basis

Under the provisions of § 21.101, Garmin International must show that the Cessna model 525 Citation Jet, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in the type certificate of the Cessna model 525 Citation Jet or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in the Cessna model 525 Citation Jet are as follows:

For serial numbers 525–0001 through 525–0599

Part 23 effective February 1, 1965, as amended by Amendments 23–1 through 23–38, and 23–40;

For serial numbers: 525–0600 and subsequent:

Part 23 effective February 1, 1965, as amended by Amendments 23–1 through 23–38, and 23–40; except the following paragraphs applicable for Engines and Full Authority Digital Engine Controls (FADECs):

Sections 23.611, 23.777, 23.779, 23.781, 23.865, 23.867, 23.901, 23.903, 23.939, 23.943, 23.951, 23.955, 23.961, 23.973, 23.1011, 23.1013, 23.1019, 23.1021, 23.1041, 23.1043, 23.1045, 23.1091, 23.1093, 23.1103, 23,1111, 23.1121, 23.1123, 23.1141, 23.1143, 23.1145, 23.1163, 23.1181, 23.1182, 23.1183, 23.1189, 23.1191, 23.1193, 23.1195, 23.1203, 23.1301, 23.1305, 23.1309, 23.1337, 23.1521, 23.1549, and 23.1583 as amended through Amendment 23–1 through 23–38, and 23–40 through 23–54.

For serial numbers 525–0001 through 525–0599:

14 CFR part 36 effective December 1, 1969, as amended by Amendments 36–1 through 36–18;

For serial numbers 525–0600 and subsequent:

Part 36 December 1, 1969, as amended by Amendments 36–1 through 36–25

For serial numbers 525–0001 through 525–0599:

14 CFR part 34 effective September 10, 1990;

For serial numbers 525–0600 and subsequent:

Part 34 effective September 10, 1990, Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes, as amended by Amendments 34–1 through 34–3.

Compliance with the Noise Control Act of 1972;

Special Conditions as follows:

23–ACE–55, additional requirements for:

Smoke evacuation, protection of electronic systems from lightning and high intensity radiated electromagnetic fields (HIRF), electronic flight instrument displays, thrust attenuating systems (thrust attenuating systems are not applicable for serial numbers 525–0600 and subsequent), engine fire extinguishing system, performance, including takeoff, takeoff speeds, accelerate-stop, takeoff path, takeoff distance and takeoff run, takeoff flight path, climb one engine inoperative, landing, balked landing, climb, minimum control speed, trim, static longitudinal stability, demonstration of static longitudinal stability, static directional and lateral stability, wings level stall, turning flight and accelerated stalls, stall warning, vibration and buffeting, high speed characteristics, airspeed indicating system, static pressure system, maximum operating speed limit, minimum flight crew, operating limitations, operating procedures, performance information, airspeed indicator, effects of contamination on Natural Laminar Flow airfoils, definitions, and AFM approved information.

Exemption as follows:

Exemption No. 5759 granted to use a relaxed "Dutch Roll" damping criteria above 18,000 feet in lieu of damping criteria of § 23.181(b).

Equivalent level of safety as follows (Applicable to airplanes S/N 525–0360 and On equipped with Collins Proline 21 electronic displays of engine instruments):

- Number ACE–00–01: Sections 23.1305(c)(2), (c)(5), and 23.1549(a) through (d), direct reading, digital only displays for the high-pressure turbine speed (N2), and fuel flow indications.

Compliance with ice protection has been demonstrated in accordance with §§ 23.1416 and 23.1419.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 23) do not contain adequate or appropriate safety standards for the Cessna model 525 Citation Jet because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16. The FAA issues special conditions, as defined in § 11.19, under § 11.38 and they become part of the type certification basis under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the model 525 must comply with the part 23 fuel vent and exhaust emission requirements of part 34 and the part 23 noise certification requirements of part 36.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model to incorporate the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

The Cessna model 525 Citation jet will incorporate the following novel or unusual design features:

Garmin International proposes to replace an existing BF Goodrich PS–834A lead-acid emergency battery with a Mid-Continent Instruments MD835 lithium ion battery on Cessna model 525 Citation Jet. This type of battery possesses certain failure, operational characteristics, and maintenance requirements that differ significantly from the Ni-Cd and lead-acid rechargeable batteries currently approved in other normal, utility, acrobatic, and commuter category airplanes.

Discussion

The applicable part 21 and part 23 airworthiness regulations governing the installation of batteries in general aviation airplanes, including § 23.1353, were derived from Civil Air Regulations

(CAR 3) as part of the recodification that established 14 CFR part 23. The battery requirements, which were identified as § 23.1353, were basically a rewording of the CAR requirements and did not add any substantive technical requirements. An increase in incidents involving battery fires and failures that accompanied the increased use of Ni-Cd batteries in airplanes resulted in rulemaking activities on the battery requirements for business jet and commuter category airplanes. These regulations were incorporated into § 23.1353(f) and (g), which apply only to Ni-Cd battery installations.

The proposed use of Li-ion batteries on the Cessna model 525 Citation Jet has prompted the FAA to review the adequacy of the existing battery regulations with respect to that chemistry. As the result of this review, the FAA determines the existing regulations do not adequately address several failure, operational, and maintenance characteristics of Li-ion batteries that could affect safety of the battery installation and the reliability of the Cessna model 525 Citation Jet electrical power supply.

Li-ion batteries in general are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (*i.e.,* thermal runaway) than their Ni-Cd and lead-acid counterparts. This is especially true for overcharging a Li-ion battery, which will likely result in explosion, fire, or both. Certain types of Li-ion batteries pose a potential safety problem because of the instability and flammability of the organic electrolyte employed by the cells of those batteries. The severity of thermal runaway in large batteries increases due to the higher amount of electrolyte.

If the discharge of the cells is below a typical voltage of 3.0 volts on some versions of Li-ion batteries, they will no longer accept a charge. This loss of capacity may not be detected by the simple voltage measurements commonly available to flight crews as a means of checking battery status, a problem shared with Ni-Cd batteries.

Unlike Ni-Cd and lead-acid cells, some types of Li-ion cells employ electrolytes that are known to be flammable. This material can serve as a source of fuel for an external fire in the event of a cell container breach.

The intent of these special conditions is to establish appropriate airworthiness standards for Li-ion battery installations in the Cessna model 525 Citation Jet. Special conditions also ensure that these battery installations do not possess hazardous or unreliable design characteristics. These special conditions adopt the following requirements as a means of addressing these concerns:

(1) Inclusion of those sections of § 23.1353 that are applicable to batteries of any type.

(2) Inclusion of the flammable fluid fire protection requirements of § 23.863. In the past, this rule was not applied to the batteries of business jet or commuter category airplanes since the electrolytes utilized in lead-acid and Ni-Cd batteries are not considered to be flammable.

(3) Addition of new requirements to address the potential hazards of overcharging and over discharging that are unique to Li-ion battery designs.

(4) Addition of maintenance requirements to ensure that batteries used as spares are maintained in an appropriate state of charge (SOC).

Applicability

As discussed above, these special conditions are applicable to the Cessna model 525 Citation Jet. Should Garmin International apply at a later date for a supplemental type certificate to modify any other model to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the Cessna model 525 Citation Jet. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Cessna model 525 Citation Jet airplanes modified by Garmin International.

1. Cessna Model 525 G1000 and GFC700 Lithium Battery Installation. The Federal Aviation Administration issues the following Special Conditions (SC), which apply to all Cessna model 525 Citation Jets equipped with Mid-Continent-835 Lithium Ion batteries, in lieu of the requirements of § 23.1353 (a)(b)(c)(d)(e), Amendment 23–49.

Lithium-ion batteries and battery installations on Cessna model 525 Citation Jet equipped with existing PS–834A batteries must be designed and installed as follows:

(1) Safe cell temperatures and pressures must be maintained during any probable charging or discharging condition, or during any failure of the charging or battery monitoring system not shown to be extremely remote. The Li-ion battery installation must be designed to preclude explosion or fire in the event of those failures.

(2) Li-ion batteries must be designed to preclude the occurrence of self-sustaining, uncontrolled increases in temperature or pressure.

(3) No explosive or toxic gases emitted by any Li-ion battery in normal operation or as the result of any failure of the battery charging or monitoring system, or battery installation not shown to be extremely remote, may accumulate in hazardous quantities within the airplane.

(4) Li-ion batteries that contain flammable fluids must comply with the flammable fluid fire protection requirements of § 23.863(a) through (d).

(5) No corrosive fluids or gases that may escape from any Li-ion battery may damage airplane structure or essential equipment.

(6) Each Li-ion battery installation must have provisions to prevent any hazardous effect on structure or essential systems that may be caused by the maximum amount of heat the battery can generate during a short circuit of the battery or of its individual cells.

(7) Li-ion battery installations must have—

(i) a system to control the charging rate of the battery automatically so as to prevent battery overheating or overcharging, or

(ii) a battery temperature sensing and over-temperature warning system with a means for automatically disconnecting the battery from its charging source in the event of an over-temperature condition, or

(iii) a battery failure sensing and warning system with a means for automatically disconnecting the battery from its charging source in the event of battery failure.

(8) Any Li-ion battery installation whose function is required for safe operation of the airplane must incorporate a monitoring and warning feature that will provide an indication to the appropriate flight crewmembers whenever the capacity and state of charge (SOC) of the batteries have fallen below levels considered acceptable for dispatch of the airplane.

(9) The Instructions for Continued Airworthiness (ICA) must contain required manufacturer's maintenance and inspection requirements to ensure batteries, including single cells, meet a safety function level essential to the aircraft's continued airworthiness.

(i) The ICA must contain operating instructions and equipment limitations in an installation maintenance manual.

(ii) The ICA must contain installation procedures and limitations in a maintenance manual sufficient to ensure cells or batteries, when installed according to the installation procedures, still meet safety functional levels essential to the aircraft's continued airworthiness. The limitations must identify any unique aspects of the installation.

(iii) The ICA must contain corrective maintenance procedures to functionally check battery capacity at the manufacturer's required inspection intervals.

(iv) The ICA must contain scheduled servicing information to replace batteries at the manufacturer's required replacement time.

(v) The ICA must contain maintenance and inspection requirements to visually check for a battery and/or charger degradation.

(10) Batteries in a rotating stock (spares) that have experienced degraded charge retention capability or other damage due to prolonged storage must be functionally checked at manufacturers recommended inspection intervals.

(11) If the Lithium Ion battery application contains software and/or complex hardware in accordance with Advisory Circular (AC) 20–115B and AC 20–152, they should be developed to the standards of DO–178B for software and DO–254 for complex hardware.

These special conditions are not intended to replace § 23.1353 in the certification basis of the Cessna model 525 Citation Jet. These special conditions apply only to Li-ion batteries and battery installations. The battery requirements of § 23.1353 remain in effect for batteries and battery installations on Cessna model 525 Citation Jets that do not use Lithium Ion batteries.

Issued in Kansas City, Missouri on July 14, 2010.

Kimberly K. Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–18669 Filed 7–29–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0270; Airspace Docket No. 10–AAL–8]

Revision of Class E Airspace; Kulik Lake, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Kulik Lake, AK, to correct an error in the airspace legal description. The FAA is taking this action to enhance safety and management of Instrument Flight Rules (IFR) operations at Kulik Lake Airport.

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

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–BAL, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *derril.bergt@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

History

On Tuesday, May 11, 2010, the FAA published a notice of proposed rulemaking in the **Federal Register** to revise Class E airspace at Kulik Lake, AK (75 FR 26151).

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

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

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at Kulik Lake Airport, AK, to correct an old airspace description error. This Class E airspace will provide adequate controlled airspace upward from 700 feet above the surface for safety and management of IFR operations at Kulik Lake Airport.

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

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

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

Kulik Lake Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AAL AK E5 Kulik Lake, AK [Revised]

Kulik Lake Airport, AK
(Lat. 58°58′55″ N., long. 155°07′17″ W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Kulik Lake Airport, AK, and within 4 miles either side of the 278 bearing from the Kulik Lake Airport, extending from the 4.3-mile radius to 7.5 miles west of the Kulik Lake Airport, AK.

Issued in Anchorage, AK, on July 20, 2010.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. 2010–18663 Filed 7–29–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 382

[Docket No. DOT–OST–2004–19482; DOT–OST–2005–22298; DOT–OST–2006–23999]

RIN No. 2105–AC97; 2105–AC29; 2105–AD41

Nondiscrimination on the Basis of Disability in Air Travel; Corrections

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Correcting amendments.

SUMMARY: The Department of Transportation published its amended Air Carrier Access Act (ACAA) rule in the **Federal Register** on Tuesday, May 13, 2008 (73 FR 27614). That rule amended the ACAA rules to apply to foreign air carriers and added new provisions concerning passengers who use medical oxygen and passengers who are deaf or hard-of-hearing. A corrections notice was published on March 18, 2009. This document further corrects editorial errors or omissions and provides clarifications regarding the preamble and regulatory text of the final rule.

DATES: *Effective Date:* These amendments and corrections are effective July 30, 2010.

FOR FURTHER INFORMATION CONTACT: Clereece Y. Kroha, Trial Attorney, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, 202–366–9342 (voice), 202–366–7152 (fax), *clereece.kroha@dot.gov* (e-mail). TTY users may reach the individual via the Federal Relay Service toll-free at 800–877–8339. Arrangements to receive this notice in an alternative format may also be made by contacting the above named individual.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Transportation published its amended Air Carrier Access Act rule, Nondiscrimination on the Basis of Disability in Air Travel, 14 CFR Part 382 (Part 382), in the **Federal Register** on May 13, 2008, (73 FR 27614), applying Part 382 to foreign carriers, adding new provisions concerning accommodations for passengers who use medical oxygen and who are deaf or hard-of-hearing, and reorganizing the entire rule. On March 18, 2009, the Department published a correction notice in the **Federal Register** (74 FR 11469), correcting several editorial errors, inconsistencies, and omissions that had been identified. Since the final rule became effective on May 13, 2009, we have identified several additional minor typographical and technical errors in the final rule text as well as the preamble, which this document corrects. We have set forth these corrections below. The corrections to the preamble can also be found on our Web site at *http://airconsumer.ost.dot.gov/.*

II. Summary of Errors to the Final ACAA Rule

A. Errors in the Preamble of the May 13, 2008, Final Rule (73 FR 27164)

On page 27619, in the third column, we intended to state that the carriers may choose to supplement the accessibility service provided by airports *themselves* or hire a contractor to do so. We erroneously used the word "itself" instead of "themselves." This error is being corrected.

On page 27620, in the first column, we discuss the applicability of the Title II ADA rules to transportation services provided by public entities. A period omitted at the end of that sentence is being added.

On page 27651, in the first column, in the first paragraph, we state that the requirements for information and reservation services apply to foreign carriers only with respect to flights covered by § 382.5. The correct section reference should be § 382.7. A similar typographical error is also being corrected on page 27651, in the second column, in the second paragraph.

On page 27654, in the first column, where we discuss the issue of whether a carrier should allow a passenger with a disability to make brief stops to obtain food and a beverage when assisting in his/her transfer to the connecting gate, we are correcting two editorial errors by deleting the word "would" from one sentence and the word "should" from another sentence.

On page 27665, in the first column, we discuss the cost incurred by small foreign carriers related to obtaining boarding equipment. An incomplete sentence is being corrected. Thus, the language that appeared as "mall carrier use the same airport, however, a sharing arrangement may be more effective" will read: "For small carriers using the same airport, however, a sharing arrangement may be more effective."

On the same page, following the paragraph discussed above, another typographical error is being corrected by deleting an unnecessary "a" from the next sentence.

B. Errors in the Regulatory Text of May 13, 2008, Final Rule

In § 382.7(f), we state that §§ 382.17 through 382.157 generally do not apply to an indirect carrier except insofar as § 382.11(b) applies to such a carrier. By doing so, we inadvertently omitted the first sentence in this subsection that would have explained that the general nondiscrimination provisions contained in §§ 382.1 through 382.15 do apply to indirect carriers. We are adding a sentence in § 382.7(f) to make this clear.

In addition, we are rephrasing the language in § 382.11(b) to clarify the circumstances where an indirect carrier must comply with §§ 382.17 through 382.157. That is that the indirect carrier must comply with these sections when it is providing facilities or services (such as checking in passengers and baggage, or providing boarding and deplaning assistance) that would have otherwise been provided by a direct carrier.

In § 382.23(d), we state the conditions under which a carrier may require a passenger with a medical certificate to undergo additional medical review by the carrier. Furthermore, we state that if the result of the review demonstrates that the passenger may not be able to complete the flight without extraordinary medical assistance or the passenger would impose a direct threat to the health or safety of other persons on the flight, the carrier "may take an action otherwise prohibited under § 382.23(a) of this part." In this last sentence, we intended to state that the carrier may take an action otherwise prohibited under § 382.21(a). Therefore, this sentence is being corrected accordingly. In addition, we are capitalizing the first letter in the word "part" in the phrase "of this part" so that its form is consistent with the phrase as it is used elsewhere in the rule.

In § 382.27(a), we state that "except as provided in * * * and §§ 382.133(c)(3) and 382.133(d)(3), as a carrier you must not require a passenger with a disability to provide advance notice in order to obtain services or accommodations required by this Part." We intended to provide that when a passenger with a disability plans to use a respiratory assistive device onboard, as detailed under § 382.133, the carrier is permitted to require that the passenger provide up to 48 hours' advance notice. However, we inadvertently referenced the wrong subsections of § 382.133. Neither § 382.133(c)(3) nor § 382.133(d)(3) is relevant to the notice issue in question. Therefore, we are correcting § 382.27(a) to reference the appropriate provisions in § 382.133, which are §§ 382.133(c)(4) and (5) and 382.133(d)(5) and (6).

In § 382.51(b), we are capitalizing the first letter in the word "part" in the phrase "in this part" so that its form is consistent with the phrase as it is used elsewhere in the rule.

In § 382.111(e), we state that "[a]ssistance in stowing and retrieving carry-on items, including mobility aids and other assistive devices stowed in the cabin (see also § 382.91(c))" must be provided. Section 382.91(c) relates to the carriers' responsibility to escort passengers with service animals to the service animal relief area and is not relevant to the substance of § 382.111(e). This typographical error is being corrected by changing "382.91(c)" to "382.91(d)".

In § 382.111(f), we state that a carrier must provide "[e]ffective communication with passengers who have vision impairments and/or who are deaf or hard-of-hearing, so that these passengers have timely access to information the carrier provides to other passengers * * *." Two mistakes are being corrected by this amendment. First, the use of the term "and/or" in § 382.111(f) can be read to require a carrier to provide deaf-blind passengers onboard the aircraft prompt access to information on such things as weather, on-board services, flight delays and connecting gates at the next airport. Contrary to this construction, we state in the preamble of the rule, on page 27642, that because communications with deaf-blind passengers regarding constantly-changing information requires highly specialized training for the carrier staff, we have determined that it is inappropriate at this time to require carriers to provide all the information covered in § 382.119 to deaf-blind passengers, including flight delays, weather conditions at the flight's destination, and boarding information, similar to the types of information referred to under § 382.111(f). This inconsistency was due to an editorial error which we are correcting by changing the term "and/or" in § 382.111(f) to "or". Thus, § 382.111(f) applies only to passengers with a visual or a hearing disability, but not to deaf-blind passengers.

We also state in the preamble of the rule, on pages 27640–41, after reviewing all the comments regarding the use of the term "prompt" versus "timely" with respect to wheelchair service, we decided to retain the "prompt" standard as we believe "prompt" is a clearer description of the actual standard than "timely". Throughout the relevant provisions in the text of the rule, "prompt" is used instead of "timely." For instance, in § 382.53(a)(1), we require that a carrier must ensure that passengers with a disability who identify themselves as persons needing visual or hearing assistance have *prompt* access to the same information provided to other passengers at each gate. In § 382.119(a), we impose on carriers a similar standard for ensuring that passengers with those disabilities receive *prompt* access to the same information provided to other passengers onboard the aircraft. We inadvertently used the term "timely" in § 382.111(f), which renders the provision in this subsection inconsistent with our stated intention and the other provisions in the rule. Therefore, the term "timely" in § 382.111(f) is being changed to "prompt."

In the rule as published in the **Federal Register** on May 13, 2008, §§ 382.151, 382.153, and 382.155 refer to "a carrier providing scheduled service or a carrier providing nonscheduled service using aircraft with 19 or more passenger seats * * *." The words "scheduled" and "nonscheduled" do not add to the meaning of these sentences as the phrase "using aircraft with 19 or more passenger seats" applies to both scheduled and nonscheduled services. Consequently, we are striking the distinction between scheduled and nonscheduled service so that these provisions simply refer to "* * * a carrier providing service using aircraft with 19 or more passenger seats * * *."

In § 382.151(c)(1), we state that when a passenger raises a disability-related complaint or concern, the carrier personnel must "immediately inform the passenger of the right to contact a CRO and then contact a CRO on the passenger's behalf or provide the passenger a means (*e.g.,* a phone, a phone card plus the location and/or phone number of the CRO available at the airport)." In order to make the sentence complete, the phrase "to do so" is added after the phrase "provide the passenger a means."

III. Rulemaking Procedures

Pursuant to section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), the Department can waive prior notice and opportunity for public comment on this action if it finds that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice. The revisions contained in this notice correct typographical and technical errors, omissions, and unclear language in the final rule. These corrections are necessary to ensure the clarity and accuracy of the final rule. Since all are minor and non-substantive, public comments on these revisions are unnecessary. Therefore, we find good cause to waive notice and comment procedures.

IV. Correction of Errors

In the preamble of the final rule published on Tuesday, May 13, 2008, 73 FR 27614, the following corrections are made:

A. Corrections to the Preamble

1. On page 27619, in the third column, in the 11th line, replace the

word "itself" with the word "themselves".

2. On page 27620, in the first column, in the 42nd line, add a period followed by two spaces between "airport)" and "DOT's".

3. On page 27651, in the first column, in the 11th line, replace "382.5" with "382.7."

4. On the same page, in the second column, in the 27th line, replace "382.5" with "382.7."

5. On page 27654, in the first column, in the 29th and the 30th lines, delete the first word "would" from the phrase "if doing so would would not result" so it reads "if doing so would not result".

6. On the same page in the same column, in the 34th line, delete the word "should" from the phrase "service would should allow" so it reads "service would allow".

7. On page 27665, in the first column, in the 35th and the 36th lines, revise the phrase "mall carrier use the same airport" so it reads "Small carriers using the same airport. * * *"

8. On the same page, in the same column, in the 50th line, delete the word "a" that was between the words "the" and "present" so the phrase reads "the present value".

B. Corrections to the Final Rule

List of Subjects in 14 CFR Part 382

Air carriers, Consumer protection, Individuals with disabilities, Reporting and recordkeeping requirements.

■ Accordingly, 14 CFR Part 382 is corrected by making the following correcting amendments:

PART 382—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL; STOWAGE OF WHEELCHAIRS, OTHER MOBILITY AIDS, AND OTHER ASSISTIVE DEVICES

■ 1. The authority citation for Part 382 continues to read as follows:

Authority: 49 U.S.C. 41705.

■ 2. In § 382.7, revise paragraph (f) to read as the follows:

§ 382.7 To whom do the provisions of this Part apply?

* * * * *

(f) If you are an indirect carrier, §§ 382.1 through 382.15 of this Part apply to you. §§ 382.17 through 382.157 of this Part do not apply to you except insofar as provided by § 382.11(b).

* * * * *

■ 3. In § 382.11, revise paragraph (b) to read as the follows:

§ 382.11 What is the general nondiscrimination requirement of this Part?

* * * * *

(b) As an indirect carrier, you must comply with §§ 382.17 through 382.157 of this Part when providing facilities or services to passengers that would have otherwise been provided by a direct air carrier.

■ 4. In § 382.23, revise the last sentence of paragraph (d) to read as the follows:

§ 382.23 May carriers require a passenger with a disability to provide a medical certificate?

* * * * *

(d) * * * If the results of this medical review demonstrate that the passenger, notwithstanding the medical certificate, is likely to be unable to complete the flight without requiring extraordinary medical assistance (*e.g.,* the passenger has apparent significant difficulty in breathing, appears to be in substantial pain, *etc.*) or would pose a direct threat to the health or safety of other persons on the flight, you may take an action otherwise prohibited under § 382.21(a) of this Part.

■ 5. In § 382.27, revise paragraph (a) to read as the follows:

§ 382.27 May a carrier require a passenger with a disability to provide advance notice in order to obtain certain specific services in connection with a flight?

(a) Except as provided in paragraph (b) of this section and §§ 382.133(c)(4) and (5) and 382.133 (d)(5) and (6), as a carrier you must not require a passenger with a disability to provide advance notice in order to obtain services or accommodations required by this Part.

* * * * *

§ 382.51 [Amended]

■ 6. In § 382.51, amend the last sentence of paragraph (b) by replacing the word "part" with "Part".

■ 7. In § 382.111, revise the first sentence of paragraph (e) and revise paragraph (f) to read as the follows:

§ 382.111 What services must carriers provide to passengers with a disability on board the aircraft?

* * * * *

(e) Assistance in stowing and retrieving carry-on items, including mobility aids and other assistive devices stowed in the cabin (*see also* 382.91(d)). * * *.

(f) Effective communication with passengers who have vision impairments or who are deaf or hard-of-hearing, so that these passengers have prompt access to information the carrier provides to other passengers (*e.g.* weather, on-board services, flight delays, connecting gates at the next airport).

■ 8. In § 382.151, revise paragraph (a) and amend paragraph (c)(1) by adding the phrase "to do so" after the phrase "provide the passenger a means" to read as follows:

§ 382.151 What are the requirements for providing Complaints Resolution Officials?

(a) As a carrier providing service using aircraft with 19 or more passenger seats, you must designate one or more CROs.

* * * * *

■ 9. In § 382.153, revise the introductory text to read as the follows:

§ 382.153 What actions do CROs take on complaints?

When a complaint is made directly to a CRO for a carrier providing service using aircraft with 19 or more passenger seats, the CRO must promptly take dispositive action as follows:

* * * * *

■ 10. In § 382.155, revise paragraph (a) by eliminating the reference to scheduled and nonscheduled services so the pertinent language reads as follows:

§ 382.155 How must carriers respond to written complaints?

(a) As a carrier providing service using aircraft with 19 or more passenger seats, you must respond to written complaints received by any means (*e.g.,* letter, fax, e-mail, electronic instant message) concerning matters covered buy this Part.

* * * * *

Issued on July 21, 2010 at Washington, DC, under authority delegated in 49 CFR 1.57(j).

Robert S. Rivkin,

General Counsel.

[FR Doc. 2010–18531 Filed 7–29–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732, 736, 740, and 748

[Docket No. 080215200–91321–01]

RIN 0694–AE27

Foreign Direct Products of U.S. Technology

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) clarifies the scope of the

"direct product rule" set forth in the Export Administration Regulations (EAR). Under the EAR's "direct product rule," foreign-made items that are located outside of the United States; subject to national security controls under the EAR; the direct product of U.S.-origin software or technology that requires a written assurance as a supporting document for a license or as a pre-condition for use of License Exception Technology and Software, Restricted (TSR); and are being reexported to a destination in a country of national security concern or a terrorist supporting country, are subject to the EAR and require an export license or license exception. This rule also makes parallel revisions or clarifications to written assurances required under License Exception TSR (Technology and Software Restricted), information required on the license application for national security controlled technology, and the instructional steps in the EAR that provide guidance on how to apply the direct product rule.

DATES: *Effective Date:* This rule is effective July 30, 2010.

ADDRESSES: Although this rule is in final form, written comments may be submitted via *http://www.regulations.gov;* by e-mail directly to BIS at *publiccomments@bis.doc.gov;* in hardcopy to U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th and Pennsylvania Ave., NW., Room H–2705, Washington, DC 20230; or by fax to (202) 482–3355. Please insert "0694–AE27" in the subject line of the written comments.

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, at (202) 482–2440 or by e-mail: *scook@bis.doc.gov.*

Comments regarding the collections of information associated with this rule, including suggestions for reducing the burden, should be sent to OMB Desk Officer, New Executive Office Building, Washington, DC 20503, Attention: Jasmeet Seehra, or by e-mail to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6883, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Direct Product Rule

Items subject to the Export Administration Regulations (EAR) include items located in the United States, wherever they are produced; items of "U.S. origin," that is, those produced in the United States, wherever they are located; and certain foreign produced items, including items subject to the EAR only on the basis of the "direct product rule." The "direct product rule" is found in General Prohibition No. 3, section 736.2(b)(3) of the EAR, and in section 734.3(a)(4). Under the "direct product rule" as amended, foreign-made items are subject to the EAR and require an export license or license exception, if such items are:

- Located outside of the United States;
- Subject to national security controls under the EAR;
- The direct product of U.S.-origin software or technology that requires a written assurance as a supporting document for a license or as a pre-condition for use of License Exception Technology and Software, Restricted (TSR); and
- Being reexported to a destination in Country Group D:1 and E:1 of Supplement No. 1 to part 740.

As discussed in section 732.2(f), it is necessary to determine whether an item is potentially subject to the "direct product rule" only with regard to foreign-produced items located in foreign countries.

This final rule changes the "direct product rule" as it is codified in the EAR, by expanding the country scope of the rule from Country Group D:1 and Cuba to Country Group D:1 and E:1 (Cuba, Iran, North Korea, Sudan, and Syria). This change is being made to bring the "direct product rule" into harmony with the policies the United States maintains against terrorist supporting countries in Country Group E:1.

Part 732—Steps for Using the EAR

This rule amends section 732.2, "Steps Regarding Scope of the EAR," by revising paragraph (f)(1)(i) in "Step 6: Foreign-made items produced with certain U.S. technology for export to specified destinations," specifically paragraph (f)(1)(i) and amending section 732.3, "Steps Regarding the Ten General Prohibitions," by revising paragraph (f)(1)(ii) "Step 11: Foreign-produced direct product" to expand the country scope of these steps to include all the countries in Country Group E:1, namely, Cuba, Iran, North Korea, Sudan, and Syria. Because this part of the EAR is merely guidance, it will not affect the paperwork burden of the public.

License Exception TSR (Technology and Software Restricted)

A "License Exception" is an authorization contained in part 740 of the EAR that allows export or reexport under stated conditions of items subject to the EAR that would otherwise require a license under the provisions of the EAR. License Exception TSR, found in section 740.6 of the EAR, authorizes exports and reexports of certain technology and software to destinations in Country Group B of Supplement No. 1 to part 740 of the EAR. Eligible technology and software are those that require a license for national security reasons only, and are identified by "TSR—Yes" in Export Control Classification Numbers (ECCNs) on the Commerce Control List (Supplement No. 1 to part 774 of the EAR). Prior to using this license exception, a written assurance as described in section 740.6 of the EAR must be obtained from the consignee. This assurance is required as a preventative measure against diversion or release of U.S.-origin technology, a national security-controlled foreign direct product of such technology, and a national security-controlled foreign direct product of a plant or manufacturing equipment made from such technology to Cuba or countries with which the U.S. has national security concerns and nationals thereof. This rule expands the country scope covered by this assurance to include all the countries in Country Group E:1 of Supplement No. 1 to part 740 of the EAR. License Exception TSR is subject to the restrictions of section 740.2 of the EAR that apply to all license exceptions in part 740 of the EAR. This revision will have no effect on the paperwork burden of exporters using License Exception TSR.

License Applications for Shipments That Include U.S.-Origin Technology

In addition to the instructions contained in Supplement No. 1 to part 748 that describe how to submit an application to BIS, section 748.9 and Supplement No. 2 to part 748 of the EAR set out requirements that license applicants must address for certain items or types of transactions. This rule revises the instructions under paragraph (i), "Parts, components, and materials incorporated abroad into foreign-made products" by expanding the country scope to include all the countries in Country Group E:1. With the publication of this rule, paragraph (i)(2)(x) now states that if the foreign-made product is the direct product of U.S.-origin technology, and U.S.-origin technology will accompany a shipment

to a country listed in Country Group D:1 or E:1 (see Supplement No. 1 to part 740 of the EAR), Block 24 must describe the type of technology and how it will be used. This change is being made to conform to the changes being made elsewhere in this rule to the "direct product rule." The effect of this amendment on the paperwork burden hours for filling out a license application is negligible, as there are rarely transactions involving these items to countries in Country Group E:1.

Export Administration Act

Since August 21, 2001, the Act has been in lapse. However, the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 13, 2009 (74 FR 41325 (August 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*).

Saving Clause

Shipments of items removed from license exception eligibility or from eligibility for export without a license as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on July 30, 2010, pursuant to actual orders for export to a foreign destination, may proceed to that destination under the previous license exception eligibility, or without a license, so long as they have been exported from the United States before September 28, 2010. Any such items not actually exported before midnight, on September 28, 2010, require a license in accordance with this regulation.

Rulemaking Requirements

1. This final rule has been determined to be significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of 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 Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves two collections of information subject to the PRA. One of the collections has been approved by OMB under control number 0694–0088, "Multi Purpose Application," and carries a burden hour estimate of 58 minutes for a manual or electronic submission. The other collection has been approved by OMB under control number 0694–0106, "Reporting and Recordkeeping Requirements under the Wassenaar Arrangement," and carries a burden hour estimate of 21 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to Jasmeet Seehra, OMB Desk Officer, by e-mail at *Jasmeet_K._Seehra@omb.eop.gov* or by fax to (202) 395–7285; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6622, Washington, DC 20230.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. BIS implements the "direct product rule" to require licenses for the reexport of items controlled for national security reasons to countries in Country Groups D:1 and E:2. If this rule were delayed to allow for notice and comment and a delay in the effective date, it would provide additional time to the embargoed countries, which are being added to the list of countries for which the direct product rule applies, to receive items without a license, contrary to the foreign policy and national security of the United States. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Ave., NW., Room 2705, Washington, DC 20230.

List of Subjects

15 CFR Part 732

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 736

Exports.

15 CFR Parts 740 and 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

■ Accordingly, Parts 732, 736, 740 and 748 of the Export Administration Regulations (15 CFR Parts 730–774) are amended as follows:

PART 732—[AMENDED]

■ 1. The authority citation for Part 732 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701–1706; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

■ 2. Section 732.2 is amended by revising paragraph (f)(1)(i) to read as follows:

§ 732.2 Steps regarding scope of the EAR.

* * * * *

(f) * * *

(1) * * *

(i) *Country scope of prohibition.* Your reexport destination for the foreign-produced direct product is a destination in Country Group D:1 or E:1 (see Supplement No. 1 to part 740 of the EAR) (reexports of foreign-produced direct products to other destinations are not subject to General Prohibition Three);

* * * * *

■ 3. Section 732.3 is amended by revising paragraph (f)(1)(i), to read as follows:

§ 732.3 Steps regarding the ten general prohibitions.

* * * * *

(f) * * *

(1) * * *

(i) *Country scope of prohibition.* Your reexport destination for the direct product is a destination in Country Group D:1 or E:1 (see Supplement No. 1 to part 740 of the EAR) (reexports of foreign-produced direct products to other destinations are not subject to General Prohibition Three described in § 736.2(b)(3) of the EAR);

* * * * *

PART 736—[AMENDED]

■ 4. The authority citation for Part 736 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009); Notice of November 6, 2009, 74 FR 58187 (November 10, 2009).

■ 5. Section 736.2 is amended by revising paragraph (b)(3)(i), to read as follows:

§ 736.2 General prohibitions and determination of applicability.

* * * * *

(b) * * *

(3) * * *

(i) *Country scope of prohibition.* You may not, without a license or license exception, reexport any item subject to the scope of this General Prohibition Three to a destination in Country Group D:1 or E:1 (See Supplement No. 1 to part 740 of the EAR).

* * * * *

PART 740—[AMENDED]

■ 6. The authority citation for Part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

§ 740.6 [Amended]

■ 7. Section 740.6 is amended by removing the reference to "E:2" and adding in its place "E:1" in paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), (a)(2)(i) and (a)(2)(ii).

PART 748—[AMENDED]

■ 8. The authority citation for Part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

■ 9. Supplement No. 2 to Part 748 is amended by removing the reference to "E:2" and adding in its place "E:1" in paragraph (i)(2)(x) and twice in paragraph (o)(3)(i).

Dated: July 23, 2010.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2010–18733 Filed 7–29–10; 8:45 am]

BILLING CODE 3510–33–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 190

RIN 3038–AC90

Operation, in the Ordinary Course, of a Commodity Broker in Bankruptcy

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (the "Commission") is amending its regulations regarding the operation of a commodity broker in bankruptcy, in order to permit the trustee in such bankruptcy to operate, with the written permission of the Commission, the business of such commodity broker in the ordinary course, including the purchase or sale of new commodity contracts on behalf of the customers of such commodity broker, under appropriate circumstances, as determined by the Commission.

DATES: *Effective Date:* The final rules are effective as of August 30, 2010.

FOR FURTHER INFORMATION CONTACT: Robert B. Wasserman, Associate Director, Division of Clearing and Intermediary Oversight, 202–418–5092, *rwasserman@cftc.gov;* or Alicia L. Lewis, Attorney-Advisor, Division of Clearing and Intermediary Oversight, 202–418–5862, *alewis@cftc.gov;* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

On December 16, 2009, the Commission published a Notice of Proposed Rulemaking, which proposed to amend Regulation 190.04(d) to permit a trustee, under appropriate circumstances, to operate the business of a commodity broker in bankruptcy in the ordinary course, including the purchase or sale of new commodity contracts on behalf of the customers of such commodity broker (the "Notice").[1] The proposed rule stated that the appropriateness of a particular set of circumstances would be determined by the Commission in its discretion, and such operation would require the written permission of the Commission.

The public comment period on the Notice ended on January 15, 2010. The Commission received two comments[2] during the comment period: (i) One from the trustee of a futures commission merchant ("FCM") that was sold as a going concern in bankruptcy[3] and (ii) one from a futures industry trade association.[4]

Collectively, the comments raise the following five (5) concerns with the Notice:

- The Commission's proposed rule is premature.
- The Commission staff should not be responsible for operating the FCM-related business of an insolvent FCM/broker-dealer.
- The Commission's proposed rule is overly broad as it does not specify all circumstances the Commission will consider in authorizing a trustee to operate the business of an FCM and provide the public with an opportunity to comment on these circumstances.
- The Commission should work with the Securities and Exchange Commission and the Securities Investor Protection Corporation to develop uniform procedures to guide a trustee of an insolvent FCM/broker-dealer in the absence of legislative changes.
- The Commission should grant immunity to a bankruptcy trustee, who is to operate the business of a commodity broker, in the limited operation of the business.

The Commission will address below each of the five concerns.

II. Concern That the Commission's Proposed Rule Is Premature

FIA stated that further action on the proposed rule is premature as the House of Representatives has passed a financial services reform bill which instructs the Commission, in coordination with the Securities and Exchange Commission ("SEC") and several bank regulatory authorities, to recommend, within 180 days of the bill's enactment, legislative changes to the federal insolvency laws to, among

[1] 74 FR 66598 (Dec. 16, 2009).

[2] For purposes of this release, a comment letter is referenced by: (i) Its author, (ii) its file number (as shown in the comment file associated with the Notice on the Commission's Web site), and (iii) the page (if applicable). The comment file associated with the Notice is available at *http://www.cftc.gov/LawRegulation/FederalRegister/CommentFiles/09-034.html.*

[3] Albert Togut of Togut, Segal & Segal LLP (Trustee for Refco, LLC) ("Refco Trustee") (CL01).

[4] The Futures Industry Association (representing the commodity futures and options industry) ("FIA") (CL02).

others, clarify and harmonize the insolvency law applicable to entities that are both FCMs and broker-dealers.[5] Moreover, FIA urged the Commission and the other regulatory authorities to perform a comprehensive review of the relevant provisions of the Bankruptcy Code ("Code") and the Commission's bankruptcy rules even if the bill does not become law. FIA believes that it would be inappropriate to adopt amendments to the Commission's bankruptcy rules when such a review and recommendations for comprehensive reform are imminent.

While the FIA comment was relevant when filed, the Commission notes that the provision referred to is no longer pending. Moreover, the amendments to Regulation 190.04(d) are narrowly designed to address the manner in which customer accounts are handled, under appropriate circumstances, in a commodity broker bankruptcy, which may occur at any time. Accordingly, the Commission will not defer the adoption of the final rule based on this concern.

The Commission notes, that currently, even if a qualified transferee for an insolvent commodity broker is identified prior to a bankruptcy filing by a commodity broker, a number of steps are required, as a practical matter, after the filing of the bankruptcy petition and prior to the transfer. The completion of these steps requires a measurable period of time, and may occur while the financial markets are open and active.[6]

The adoption of the rule would benefit customers of a commodity broker in bankruptcy, under appropriate circumstances, by permitting those customers to manage their accounts during this time. In addition to the flexibility given to customers, the adoption of the rule would also provide the Commission with the latitude to handle unanticipated events.

United States futures customers in the *Refco*[7] and *Lehman*[8] bankruptcies were well protected: Due to the timing of the filing (late in the day on Friday), and, in *Lehman,* action by the District Court, transfers of all customer accounts took place without a time period during which the markets were open but customers were unable to manage their accounts. These circumstances will not necessarily be replicated in a future bankruptcy. As a result, the Commission believes that the adoption of the rule would provide it with the flexibility and discretion necessary to protect customers by responding promptly to exigent circumstances in future bankruptcies.[9]

III. Concern That Commission Staff Would Be Responsible for Operating the FCM-Related Business of an Insolvent FCM/Broker-Dealer

FIA noted the trustee selected by the Securities Investor Protection Corporation ("SIPC") to oversee an insolvent FCM/broker-dealer may not have sufficient knowledge or experience to operate the FCM-related business of a FCM/broker-dealer.[10] FIA further noted that if the rule is adopted, the Commission's Division of Clearing and Intermediary Oversight ("DCIO") would be responsible for operating the FCM-related portion of the FCM/broker-dealer business by default. FIA questioned the appropriateness of DCIO undertaking this responsibility and whether DCIO staff had the requisite expertise to do so.

In the Commission's experience, trustees appointed by SIPC and the U.S. Trustees, and their legal counsel, have financial services industry experience and have engaged in formal and informal discussions with Commission staff regarding FCMs business as such. The Commission expects that such communications will occur in future bankruptcies.

The Commission also notes that, pursuant to the rule under consideration, before a trustee can operate the business of a commodity broker in bankruptcy in the ordinary course (including entering into new contracts on behalf of customers), the trustee must obtain the written permission of the Commission. Moreover, the Commission would have the opportunity to determine if the circumstances were appropriate to allow such permission. The proposed rule does not mandate the Commission to grant this permission. Therefore, the Commission will consider the circumstances in deciding whether to permit the trustee to operate the commodity broker's business in the ordinary course.

IV. Concern That the Commission's Proposed Rule Is Overly Broad as It Does Not Specify All Circumstances the Commission Will Consider in Authorizing a Trustee To Operate the Business of an FCM and Provide the Public With an Opportunity To Comment on These Circumstances

In the Notice, the Commission stated that it may consider the following factors in authorizing a trustee to operate the business of an FCM: "(1) Whether the commodity broker has entered into an agreement providing for the imminent transfer of its customer accounts to an entity that is ready, willing and able to accept such transfer promptly; (2) whether the commodity broker has sufficient capital, at the time it becomes subject to bankruptcy proceedings, to continue operating its business in the ordinary course pending the transfer; and (3) whether a commodity broker will have sufficient capital, after the sale of its assets (including its FCM business), to continue operating its business in the ordinary course until all of its customer accounts have been transferred."[11] FIA stated that the first and second factors "should be viewed as necessary conditions precedent to the exercise of such authority."[12] FIA further stated that "[i]f the Commission believes there are other circumstances in which it may be appropriate to authorize a trustee to operate the business of the FCM, the public should have an opportunity to comment on those circumstances."[13]

As each bankruptcy is unique, the Commission notes that future bankruptcies of commodity brokers may present new factors for consideration. Therefore, it would be impracticable for the Commission to present a comprehensive list of factors for public comment. The proposed rule seeks to address the distinctiveness of each bankruptcy by providing the Commission and trustees with a degree of flexibility in dealing with unanticipated events with rapidly-changing circumstances.

[5] *See* H.R. 4173, 111th Cong. § 3006 (2009); FIA CL02 at 3.

[6] The Commission notes that many markets are open for trading five (5) days a week, twenty-three (23) hours a day. Therefore, an FCM with world-wide operations may be open and trading continuously between Sunday afternoon and Friday evening in the United States.

[7] *See In re: Refco, LLC,* No. 05–60134–rdd, Docket No. 5 (Bankr. S.D.N.Y. Nov. 25, 2005); *see also* 74 FR 66598, 66599 (Dec. 16, 2009).

[8] *See S.I.P.C.* v. *Lehman Brothers, Inc.,* No. 08–8119, Docket No. 3 (S.D.N.Y. Sept. 19, 2008); *see also* 74 FR 66598, 66600 (Dec. 16, 2009).

[9] The Commission notes that the permission granted to the trustee to operate the business in bankruptcy does not compel a clearinghouse or clearing broker to accept and clear the commodity broker's trades.

[10] FIA CL02 at 4. FIA noted that 43 of the 50 largest FCMs are also registered broker-dealers. Therefore, SIPC would appoint the trustee for an insolvent FCM/broker-dealer.

[11] 74 FR 66598, 66600 (Dec. 16, 2009).

[12] FIA CL02 at 5.

[13] *Id.*

V. Recommendation That the Commission Work With the Securities and Exchange Commission and the Securities Investor Protection Corporation To Develop Uniform Procedures To Guide a Trustee of an Insolvent FCM/Broker-Dealer in the Absence of Legislative Changes

FIA recommends that the Commission, SIPC and the SEC work together to develop uniform written guidance for a trustee of an FCM/broker-dealer. While the Commission has engaged in discussions with the SEC and SIPC concerning FCM/broker-dealer bankruptcies and contingency planning, and Part 190 of the Commission's regulations contains extensive guidance for the conduct of an FCM bankruptcy (which is also applicable to a SIPC trustee in a SIPA proceeding[14]), the Commission believes that the development of specific uniform procedures may be impracticable due to the differences between the regimes and to the fact that each bankruptcy has its own unique set of facts and circumstances.

VI. Recommendation That the Commission Grant Immunity to a Bankruptcy Trustee Limited to Its Operation of a Commodity Broker's Business in Bankruptcy

The Refco Trustee recommends that Commission expand the proposed rule to provide the bankruptcy trustee with relief from personal liability and immunity from any suit for personal liability for actions or inactions taken by the trustee in good faith in the operation of the commodity broker's business. Specifically, the Refco Trustee notes that an unintended consequence of the proposed rule is that, "currently, a trustee in bankruptcy may be sued by third parties for acts or omissions in connection with the operation of a debtor's business."[15] The Refco Trustee expressed concern that the potential for such liability to a trustee would deter qualified individuals from being willing to serve in that capacity.

The Commission does not have the authority to grant such immunity. However, as the Refco Trustee noted, a trustee in bankruptcy could seek a court order which includes such immunity.[16]

[14] *See* Securities Investor Protection Act of 1970 § 7(b), 15 U.S.C. 78fff–1(b).

[15] Refco Trustee CL01 at 4 (discussing 28 U.S.C. 959(a)).

[16] *Id.*

VII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[17] requires Federal agencies, in promulgating regulations, to consider the impact of those regulations on small businesses. The final rule provides a limited exception to Regulation 190.04(d)(2), by permitting a trustee to operate, with the written permission of the Commission, the business of a commodity broker in bankruptcy in the ordinary course, including the purchase or sale of new commodity contracts on behalf of the customers of such commodity broker. The final rule does not impose a regulatory burden on either a commodity broker pre-bankruptcy or a trustee post-bankruptcy. Moreover, the final rule will affect only FCMs (including certain foreign futures commission merchants).[18] The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations on such entities in accordance with the RFA.[19] The Commission has previously determined that FCMs are not small entities for the purpose of the RFA.[20] Accordingly, pursuant to 5 U.S.C. 605(b), the Chairman certifies, on behalf of the Commission, that the final rule promulgated herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA")[21] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. The final rule promulgated in the release does not require the new collection of information on the part of any entities that would be subject to the final rule. Accordingly, for purposes of the PRA, the Commission certifies that the final rule promulgated in this release would not impose any new reporting or recordkeeping requirements.

[17] 5 U.S.C. 601 *et seq.*

[18] The proposed rule may apply, in the future, to other commodity brokers that execute trades and carry accounts for clearing on behalf of customers—namely, commodity options dealers and leverage transaction merchants. Currently, no such commodity brokers exist. Therefore, even if such commodity brokers would constitute "small entities" for purposes of the RFA, the proposed rule can have no current impact on such commodity brokers.

[19] 47 FR 18618 (Apr. 30, 1982).

[20] *Id.* at 18619.

[21] 44 U.S.C. 3501 *et seq.*

C. Cost-Benefit Analysis

Section 15(a) of the Act[22] requires that the Commission, before promulgating a regulation under the Act or issuing an order, consider the costs and benefits of its action. By its terms, Section 15(a) of the Act does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the regulation outweigh its costs. Rather, Section 15(a) of the Act simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) of the Act further specifies that costs and benefits shall be evaluated in light of the following considerations: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. Accordingly, the Commission could, in its discretion, give greater weight to any one of the five considerations and could, in its discretion, determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission has evaluated the costs and benefits of the final rule promulgated in this release, in light of (i) the comments that it has received on the Notice and (ii) the specific considerations identified in Section 15(a) of the Act, as follows:

1. Protection of Market Participants and the Public

In the event of the bankruptcy of a commodity broker, the final rule promulgated in this release would benefit the customers of such commodity broker, by providing them with the opportunity, under appropriate circumstances, to manage their accounts prior to the transfer of such accounts to a new commodity broker.

2. Efficiency and Competition

The final rule promulgated in this release is not expected to have an effect on efficiency or competition.

3. Financial Integrity of Futures Markets and Price Discovery

The final rule promulgated in this release will promote financial integrity of the futures markets by providing customers of a commodity broker in bankruptcy with the opportunity, under appropriate circumstances, to manage

[22] 7 U.S.C. 19.

their accounts prior to the transfer of such accounts to a new commodity broker.

4. Sound Risk Management Practices

The final rule promulgated in this release is not expected to have a direct effect on the risk management practices of commodity brokers.

5. Other Public Considerations

Recent events, such as the Refco and Lehman proceedings, have demonstrated that the final rule is necessary and prudent.

Accordingly, after considering the five factors enumerated in the Act, the Commission has determined to promulgated the final rules as set forth below.

List of Subjects in 17 CFR Part 190

Bankruptcy, Brokers, Commodity Futures.

■ For the reasons stated in the preamble, the Commission proposes to amend 17 CFR part 190 as follows:

PART 190—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

■ 1. The authority citation for Part 190 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4a, 6c, 6d, 6g, 7a, 12, 19, and 24, and 11 U.S.C. 362, 546, 548, 556, and 761–766, unless otherwise noted.

■ 2. Add new paragraph (d)(3) to Section 190.04 to read as follows:

§ 190.04 Operation of the debtor's estate—general.

* * * * *

(d) * * *

(3) *Exception to Liquidation Only.* Notwithstanding paragraph (d)(2) of this section, the trustee may, with the written permission of the Commission, operate the business of the debtor in the ordinary course, including the purchase or sale of new commodity contracts on behalf of the customers of the debtor under appropriate circumstances, as determined by the Commission.

* * * * *

Issued in Washington, DC on July 23, 2010 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–18790 Filed 7–29–10; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket Nos. RM08–2–002 and RM08–2–000; Order No. 720–B]

Pipeline Posting Requirements Under Section 23 of the Natural Gas Act

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order on rehearing and clarification.

SUMMARY: The Federal Energy Regulatory Commission clarifies its regulations requiring major non-interstate pipelines to post daily scheduled volume information and other data for certain points, as well as its regulations requiring interstate pipelines to post information regarding the provision of no-notice service. These modifications include establishing the compliance deadline for major non-interstate pipelines after the effective date of this rule and clarifying the requirement for interstate pipelines to update posted no-notice service volumes.

DATES: *Effective Date:* This rule will become effective October 1, 2010.

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SUPPLEMENTARY INFORMATION:

Table of Contents

	Paragraph Numbers
I. Introduction	1
II. Background	3
III. Discussion	12
A. Definition of Major Non-Interstate Pipeline	12
B. Posting Requirements for Major Non-Interstate Pipelines	19
1. Point Design Capacity	20
2. Timing of Posting Where Design Capacity is Known	27
3. Timing of Posting Where Design Capacity is Unknown or Does Not Exist	30
C. Compliance Deadline for Future Major Non-Interstate Pipelines	33
D. Confidentiality of Data to be Posted by Major Non-Interstate Pipelines	37
E. Interstate Pipeline Posting of No-Notice Service	48
IV. Information Collection Statement	55
V. Document Availability	57
VI. Effective Date and Compliance Deadlines	60

United States of America Federal Energy Regulatory Commission

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

Pipeline Posting Requirements under Section 23 of the Natural Gas Act, Docket Nos. RM08–2–002, Order No. 720–B, Order On Rehearing and Clarification

Issued July 21, 2010.

I. Introduction

1. On November 20, 2008, the Federal Energy Regulatory Commission (Commission) issued Order No. 720 requiring interstate and certain major non-interstate natural gas pipelines to post limited information on publicly accessible Internet Web sites regarding their operations.[1] On January 21, 2010, the Commission issued Order No. 720–A in response to requests for rehearing and clarification of Order No. 720.[2]

[1] *Pipeline Posting Requirements under Section 23 of the Natural Gas Act,* Order No. 720, 73 FR 73,494 (Dec. 2, 2008), FERC Stats. & Regs. ¶ 31,283 (2008) (Order No. 720).

[2] *Pipeline Posting Requirements under Section 23 of the Natural Gas Act,* Order No. 720–A, 75 FR 5178 (Jan. 21, 2010), FERC Stats. & Regs. ¶ 31,302 (2010) (Order No. 720–A).

2. Following the issuance of Order No. 720–A, three parties filed pleadings with the Commission seeking clarification and/or rehearing of Order No. 720–A. In this order, the Commission grants in part and denies in part those requests.

II. Background

3. In the Energy Policy Act of 2005 (EPAct 2005),[3] Congress added section 23 to the Natural Gas Act (NGA)[4] authorizing the Commission "to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce, having due regard for the public interest, the integrity of those markets * * * and the protection of consumers."[5] Section 23 further provides that the Commission may issue such rules as it deems necessary and appropriate to "provide for the dissemination, on a timely basis, of information about the availability and prices of natural gas sold at wholesale and interstate commerce to the Commission, State commissions, buyers and sellers of wholesale natural gas, and the public."[6]

4. On December 21, 2007, the Commission issued a Notice of Proposed Rulemaking (NOPR), proposing to require both interstate and certain major non-interstate natural gas pipelines to post daily information regarding their capacity, scheduled flow volumes, and actual flow volumes at major points and mainline segments.[7] The Commission believed that the posting proposal would facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce to implement section 23 of the Natural Gas Act.[8]

5. Acting under its authority in section 23 of the NGA, the Commission, on November 20, 2008, issued Order No. 720 requiring non-exempt major non-interstate pipelines to post scheduled flow and other information for each receipt or delivery point with a design capacity greater than 15,000 MMBtu per day.[9] Order No. 720 defined a "major non-interstate pipeline" as a natural gas pipeline that is not a natural gas company under the NGA and delivers annually more than 50 million MMBtu measured in average deliveries over the past three years. The Commission found that information about scheduled natural gas flows on major non-interstate pipelines is necessary to fill in significant gaps in the information currently available to interstate market participants. The Commission found that a significant amount of natural gas flows from producing basins to interstate markets on non-interstate pipelines. These scheduled flows affect supply considerations in interstate markets. Similarly, flows on non-interstate pipelines at the end of the delivery chain affect the demand considerations in the interstate market. Without access to significant information about supply and demand, interstate natural gas market participants are left with incomplete information to understand interstate wholesale prices.

6. Regarding interstate natural gas pipelines, Order No. 720 expanded the Commission's existing posting requirements under 18 CFR Part 284 to require interstate pipelines to post volumes of no-notice service flows at each receipt and delivery point three days after the gas flow. The Commission stated that, without reporting of no-notice service, the market cannot see large and unexpected increases in gas demand and therefore cannot understand price formation during such occasions. The Commission found that reporting such information after the gas flows, as required by Order No. 720, allows market participants to understand historical patterns of flows and will enable them to better predict future no-notice flows, with less of a burden than requiring full posting of actual flows.

7. Order No. 720 required major non-interstate pipelines to comply with the new rules within 150 days of Order No. 720's publication in the **Federal Register**.[10] Subsequently, the Commission extended the compliance deadline for major non-interstate pipelines until 150 days after an order on rehearing of Order No. 720. Order No. 720 required interstate natural gas pipelines to comply with the posting requirements no later than 60 days following the order's publication, and the Commission did not extend that deadline.[11]

8. Following the issuance of Order No. 720, several parties filed requests for rehearing and clarification of Order No. 720. In Order No. 720–A, the Commission generally affirmed Order No. 720, granting a number or requests for rehearing and clarification and adopting regulations consistent with its findings. Order No. 720–A, among other things: modified the definition of "major non-interstate pipeline" to include new pipelines (pipelines that have been operational for less than three years) with design capacities of more than 50 million MMBtu of natural gas annually; and established that, where design capacity is unknown or does not exist at a particular delivery or receipt point, a major non-interstate pipeline must post scheduling information for that point if gas volumes equal to or greater than 15,000 MMBtu were scheduled to it on any day within the prior three calendar years. Order No. 720–A also established a July 1, 2010 compliance deadline for major non-interstate pipelines (150 days following the publication of Order No. 720–A in the **Federal Register**).[12] The Commission did not modify the January 30, 2009 compliance deadline for interstate pipelines.[13]

9. Following the issuance of Order No. 720–A, three parties filed pleadings with the Commission seeking clarification and/or rehearing of Order No. 720–A: Interstate Natural Gas Association of America (INGAA); American Gas Association (AGA); and Atmos Pipeline–Texas, a division of Atmos Energy Corporation (Atmos).

10. In addition, subsequent to the issuance of Order No. 720–A, Atmos, AGA, the Railroad Commission of Texas, and Texas Pipeline Association made requests to the Commission to extend the July 1, 2010 deadline for major non-interstate pipelines to comply with the requirements of Order Nos. 720 and 720–A. On May 28, 2010, the Secretary of the Commission issued a Notice of Extension of Time extending the compliance deadline from July 1, 2010 until September 1, 2010.[14]

11. As discussed below, the Commission grants in part and denies in part the requests for rehearing and clarification of Order No. 720–A.

[3] Energy Policy Act of 2005, Public Law 109–58, 119 Stat. 594 (2005).

[4] NGA § 23, 15 U.S.C. 717t–2 (2000 & Supp. V 2005).

[5] NGA § 23, 15 U.S.C. 717t–2(a)(1) (2000 & Supp. V 2005).

[6] 15 U.S.C. 717t–2(a)(2).

[7] *Pipeline Posting Requirements under Section 23 of the Natural Gas Act,* 73 FR 1116 (Jan. 7, 2008), FERC Stats. & Regs. Proposed Regulations 2004–2007 ¶ 32,626, at P 3 (2007).

[8] *Id.* P 5.

[9] Order No. 720 at P 1.

[10] *Id.* P 168.

[11] Order No. 720 at P 167.

[12] *See Pipeline Posting Requirements Under Section 23 of the Natural Gas Act,* Docket No. RM08–2–001 (Jan. 27, 2010) (*Errata Notice On Compliance Deadline).* The notice corrected paragraph 216 of Order No. 720–A which incorrectly stated that major non-interstate pipelines must comply with the order no later than 150 days following its *issuance.*

[13] *Id.* P 215.

[14] *Pipeline Posting Requirements Under Section 23 of the Natural Gas Act,* Docket No. RM08–2–000 (Issued May 28, 2010) (Notice of Extension of Time).

III. Discussion

A. Definition of Major Non-Interstate Pipeline

12. In Order No. 720, the Commission adopted a definition of "major non-interstate pipeline" as a pipeline that: (1) Is not a "natural gas pipeline" under section 1 of the NGA; and (2) delivers annually more than 50 million MMBtu of natural gas measured in average deliveries over the past three years."[15] Order No. 720 added that the delivery threshold would be applied on a "facility-by-facility" basis,[16] which Order No. 720–A clarified applies both to determine whether a pipeline is a major non-interstate pipeline under 18 CFR 284.1(d) and also whether a major non-interstate pipeline is exempted from the posting requirements as provided in 18 CFR 284.14(b).[17] Order No. 720–A also explained that, under a facility-by-facility analysis, if a set of facilities is physically interconnected and operationally integrated (*i.e.,* transports natural gas through a centralized scheduling process), then the facilities should be treated as one entity, as opposed to multiple entities.[18] The Commission noted that whether pipelines are organized into separate corporate divisions or formal operating systems is irrelevant to the analysis.[19]

1. Request for Clarification or Rehearing

13. Atmos requests clarification or rehearing regarding certain facilities that are jointly owned by two or more parties, but which are operated by only one of the parties. In Atmos' hypothetical, Pipeline A and Pipeline B each own an undivided but equal interest in Facility X, which is a major non-interstate pipeline physically interconnected with other facilities of both Pipeline A and Pipeline B. Under its hypothetical, Pipeline A is the operator of Facility X and Pipeline B merely shares in the revenues and expenses from the ownership and operation of Facility X. Atmos believes that under this hypothetical the posting requirements are satisfied by Pipeline A's assumption of the reporting obligation for all eligible receipt and delivery points on Facility X inasmuch as Pipeline A is operating Facility X. Atmos also believes that, to the extent Pipeline B operates receipt or delivery points on Pipeline B's side of the interconnect with Facility X, Pipeline B would have the reporting obligation with respect to those points.

14. Atmos also requests clarification that Facility X can be effectively treated as part of the larger system of Pipeline A for purposes of reporting requirements to the extent that Pipeline A operates Facility X as part of a larger, major non-interstate pipeline system that is both physically connected and operationally integrated.

15. Lastly, Atmos requests clarification that annual information regarding transport and storage quantities reported on FERC Form 2 or a state equivalent form may be utilized by a major non-interstate pipeline for the initial and subsequent determinations of whether its average annual deliveries over the preceding three years exceeded 50 million MMBtu.

2. Commission Determination

16. Atmos' requests for clarification and rehearing are granted in part and denied in part. We agree with Atmos that where facilities are jointly owned by two or more parties, but are operated by only one of the parties, it is appropriate that the operating party post the necessary information regarding the jointly-owned facility.

17. Regarding whether its hypothetical Facility X can be treated as part of the larger system of Pipeline A for purposes of the reporting requirements, the Commission explained in Order No. 720–A that, under a facility-by-facility analysis, physically interconnected and operationally integrated (*i.e.,* utilize centralized scheduling process) facilities shall be treated as one entity for purposes of determining whether a pipeline is a major non-interstate pipeline. Consistent with that explanation, Facility X can be treated as part of the larger system of Pipeline A for purposes of the reporting requirement, and need not be treated as a stand-alone major non-interstate pipeline with an independent reporting requirement.[20]

18. Atmos' request for clarification regarding the use of FERC Form 2 or a state equivalent for the threshold determinations is granted in part and denied in part. In order to determine if a pipeline qualifies as a major non-interstate pipeline under the rule, the pipeline must aggregate its natural gas deliveries over the previous three calendar years and divide by three. In making this calculation, a pipeline may use any data source, not limited to FERC Form 2 or a state equivalent, that accurately reports its total deliveries for each of the preceding three calendar years.

B. Posting Requirements for Major Non-Interstate Pipelines

19. In Order No. 720, the Commission required all non-exempt major non-interstate pipelines to post both scheduled natural gas flow and design capacity information for each receipt and delivery point with a design capacity equal to or greater than 15,000 MMBtu per day.[21] The Commission also amended its regulations in Order No. 720–A and found that, where design capacity is unknown or does not exist, major non-interstate pipelines must post scheduling information for points with scheduled volumes equal to or greater than 15,000 MMBtu on any day within the prior three calendar years.[22]

1. Point Design Capacity

20. In Order No. 720, the Commission stated that, in circumstances where the design capacity of a receipt or delivery point could vary according to operational or usage conditions, a major non-interstate pipeline must post the design capacity for the most common operating conditions of its system during peak periods.[23] Order No. 720–A also stated that, if the major non-interstate pipeline has greater capacity at its point than the interconnecting interstate pipeline, the major non-interstate pipelines must nevertheless post the actual design capacity of its point. That is because the obligation to post design capacity relates to the facilities of the major non-interstate pipeline. Order No. 720–A added that major non-interstate pipelines must use reasonable efforts to determine design capacity at physical receipt and delivery points and to the extent that a major non-interstate pipeline is uncertain as to how to calculate design capacity, it is free to contact the Commission's compliance help desk for informal guidance.[24] Further, major non-interstate pipelines are free to post additional information, including, for example, operational considerations that could affect available capacity.

a. Request for Clarification

21. Atmos requests that the Commission clarify to a greater degree what constitutes "reasonable efforts" to determine the design capacity for a

[15] 18 CFR 284.1(d)(2).

[16] Order No. 720 at P 64.

[17] Order No. 720–A at P 76.

[18] *Id.* P 77.

[19] *Id.* P 78.

[20] As a reminder, the Commission's help desk can facilitate responses to questions regarding compliance with our regulations. *See Obtaining Guidance on Regulatory Requirements,* 123 FERC ¶ 61,157 (2008).

[21] Order No. 720 at P 82.

[22] Order No. 720–A at P 90.

[23] Order No. 720 at P 92.

[24] Order No. 720–A at 107.

physical receipt or delivery point. Atmos states that it has performed some engineering analysis at receipt and delivery points on its system where the point capacity, either individually or combined with other points on the same pipeline or lateral, exceeds the delivery capabilities of the upstream or downstream pipeline or lateral. For example, Atmos states that one pipeline segment on its system has a maximum daily capacity of approximately 800 MMSCF per day. However, two eligible points on this segment each have a design capacity of 500 MMSCF per day, so that the total capacity of the two points exceeds the segment capacity by 200 MMSCF. Therefore, Atmos submits, in this type of situation the design capacity of an individual receipt or delivery point is not a reasonable determination of the point's capacity in every instance.

22. Atmos believes that a more reasonable determination of a point's capacity in such circumstances would be the highest scheduled volume to that point on any day during the three calendar years because that is truly reflective of known and actual pipeline system operating conditions and requests that the Commission allow a major non-interstate pipeline to utilize this benchmark for point capacity posting purposes if (i) a reasonable attempt has been made to calculate design capacity consistent with the standard articulated in Order No. 720–A and (ii) the calculated design capacity is not a reasonable representation of the capacity at the point due to upstream or downstream facility limitations. Atmos recognizes the Commission has authorized major non-interstate pipelines to post additional information that may affect available capacity, but Atmos anticipates that this will result in postings replete with footnotes and caveats that may only serve to create more confusion for data observers.

b. Commission Determination

23. Atmos' request for clarification is approved in part and denied in part. In Order No. 720–A, the Commission provided clear instructions for determining the applicable capacity for points where design capacity is unknown; major non-interstate pipelines must post scheduled flow data for points where design capacity is unknown or does not exist with scheduled maximum natural gas volumes equal to or greater than 15,000 MMBtu on any day within the prior three calendar years.[25] The Commission adopted these rules with the understanding that there exist a small number of physical receipt and delivery points where major non-interstate pipelines cannot reasonably determine a physical design capacity. While not identifying herein specific actions that would constitute "reasonable" effort in determining a point's capacity, the Commission will clarify that major non-interstate pipelines would not be expected to undertake studies that would involve a physical survey of the point in question or use information not on hand or easily obtainable by the company.

24. That clarification notwithstanding, Atmos' comments attempt to reopen the question about whether design capacity is the appropriate measure to be posted. The Commission elected to require posting based on each receipt and delivery point's design capacity as opposed to some measure of highest actual usage at a point, because a point's design capacity was relatively fixed and lent itself to stable posting requirements. Ultimately, the Commission also believed that this would be less burdensome for pipelines.[26] In Order No. 720–A, the Commission affirmed its position and found that, despite the day-to-day operational factors that can sometimes affect available capacity, market participants should nevertheless be able to ascertain available capacity from the data to be posted by major non-interstate pipelines.[27]

25. Atmos has not presented any evidence indicating that it is unable to determine the design capacity of the points on its system. In fact, in its example, the design capacity of each point is known to be 500 MMSCF. Simply put, Atmos desires that the Commission require posting based on maximum scheduled flows at a point, as opposed to design capacity.

26. As discussed above, the Commission believes that design capacity is a less burdensome and reasonably objective criterion, although operationally available capacity provides market participants additional information about capacity availability. If Atmos, or any other major non-interstate pipeline, desires to post on its Web site a point's operationally available capacity, in addition to its design capacity, we support its efforts to do so.

2. Timing of Posting Where Design Capacity Is Known

27. In Order No. 720–A, the Commission required major non-interstate pipelines to begin Internet posting for newly-eligible receipt and delivery points within 45 days of the date the point becomes eligible for posting.[28]

a. Request for Clarification

28. AGA asserts that it is not clear when a newly-installed point with a physically metered design capacity equal to or greater than 15,000 MMBtu per day should be considered to become eligible for posting for purposes of triggering the 45-day period after which the pipeline must post information about the point. AGA recommends that the Commission clarify that such a new point does not become eligible for posting until the date the point has volumes scheduled to it. Atmos supports AGA's request for clarification.

b. Commission Determination

29. The Commission clarifies that a newly installed point with a physically metered design capacity equal to or greater than 15,000 MMBtu per day becomes eligible for posting on its in-service date. Therefore, the major non-interstate pipeline must begin posting the required information about that point 45 days after its in-service date. Scheduled volume information is only one category of the information section 284.14(a)(4) of the Commission's regulations requires major non-interstate pipelines to post. Also required is information regarding a point's design capacity. As the Commission found in Order No. 720, market participants can utilize design capacity and scheduled volume information to help determine available capacity at a particular point and therefore, required posting of both design capacity and scheduled volume information.[29] When a new point is placed into service its capacity is available for use by shippers, and therefore the major non-interstate pipeline should begin posting the availability of capacity at that point within 45 days, regardless of whether volumes have yet been scheduled at that point. AGA's and Atmos' request to delay posting until volumes are first scheduled to a new point would frustrate this very purpose and therefore, their request is denied.

3. Timing of Posting Where Design Capacity Is Unknown or Does Not Exist

30. When the design capacity of a point is unknown or does not exist, major non-interstate pipelines must post scheduling information for that point if

[25] Order No. 720–A at P 90.

[26] Order No. 720 at P 91.

[27] Order No. 720–A at 104.

[28] *Id.* P 115. This requirement is set forth in section 284.14(a)(3) of the Commission's regulations, as revised by Order No. 720–A.

[29] Order No. 720 at P 82, 84.

its scheduled volumes were equal to or greater than 15,000 MMBtu on any day within the prior three calendar years. Order No. 720–A held that major non-interstate pipelines need only review scheduled volume data annually to determine whether points where no design capacity is known must be posted. Therefore, such points do not become eligible for posting until January 1 of the year after the first day on which scheduled volumes equaled or exceeded 15,000 MMBtu.[30] This means that major non-interstate pipelines do not have to begin posting the required information about that point until 45 days after January 1, or on February 15.

a. Request for Clarification or Rehearing

31. AGA contends that a January 1 eligibility date for points where design capacity is unknown or does not exist is problematic because it means that, by February 15 of each year, the pipeline must, both collect and analyze the data necessary to determine whether a point would be eligible and make the necessary system changes to begin posting each eligible point. AGA recommends that the Commission clarify that for a point where the physically metered design capacity is not known or does not exist, such points become eligible for posting on February 1 of the following year, thus, postponing the date when the major non-interstate pipeline must begin posting information about the points until March 18 of the following year. Atmos supports AGA's request for clarification.

b. Commission Determination

32. AGA's request is denied. As described above, the eligibility determination for points whose design capacity is unknown or does not exist is based on calendar year data. Therefore, it is appropriate that the point be considered eligible for posting immediately upon completion of the calendar year during which scheduled volumes at the point reached or exceeded 15,000 MMBtu for at least one day. By requesting that the Commission move the eligibility date for such points from January 1 to February 1, AGA is effectively asking that the Commission extend the 45-day deadline to commence posting by one month, to 76 days. In denying earlier requests to expand the 45-day period, the Commission found that major non-interstate pipelines have access to, and utilize on a daily basis all of the information necessary to determine whether a receipt or delivery point must be posted under the new regulations.[31] Further, the Commission found that the posting of newly eligible points is of substantial value to market participants as new receipt and delivery points or increased scheduled flow to points could have immediate, substantial effect on market prices.[32] Balancing the transparency benefits of timely posting for newly eligible points with the burden of collecting and analyzing the data necessary to determine whether a point would be eligible and making the necessary system changes to begin posting, the Commission concluded that 45 days is appropriate.[33] AGA has not provided any specific evidence that would contradict the Commission's findings, even where design capacity is unknown or does not exist. Therefore, its request is denied.

C. Compliance Deadline for Future Major Non-Interstate Pipelines

33. A "major non-interstate pipeline" is defined as a natural gas pipeline that is not a natural gas company under the NGA and delivers annually more than 50 million MMBtu measured in average deliveries over the past three calendar years.

a. Request for Clarification

34. Atmos and AGA state that a pipeline may not currently qualify as a major non-interstate pipeline because its average deliveries over the last three calendar years were less than 50 million MMBtu. However, the pipeline could subsequently qualify as a major non-interstate pipeline if its annual deliveries increase. Atmos and AGA state that the Commission's posting regulations do not clearly articulate when a major non-interstate pipeline must begin complying with the posting requirements in subsequent years if its three-year deliveries average rises above the 50 million MMBtu threshold or it is no longer exempt. Atmos and AGA recommend that the Commission revise the regulations to make clear that after 2010, a pipeline that did not previously have to comply with the posting regulations, but then meets the definition of a major non-interstate pipeline and is not otherwise exempt, has until July 1 of that year to comply with the posting requirements. AGA argues that such pipelines should be permitted no less than 150 days to develop the systems and Internet resources to comply with the posting requirements, which is the same compliance period for pipelines today that meet the definition of a major non-interstate pipeline.

b. Commission Determination

35. Atmos' and AGA's requests for clarification are granted in part and denied in part. The Commission will provide pipelines that: (a) Meet the definition of a major non-interstate pipeline in the future; and (b) currently exempt major non-interstate pipelines that in the future no longer qualify for an exemption, have 150 days from the date the pipeline meets the definition of a major non-interstate pipeline or is no longer exempt to comply with the posting requirements.[34] However, this requires compliance by June 1, not July 1.

36. Similar to points where design capacity is unknown or does not exist, the threshold for determining if a pipeline meets the definition of a major non-interstate pipeline is based on calendar year data. Because points where design capacity is unknown or does not exist are based on calendar year data, they become eligible for posting on January 1 of the following year. Likewise, because the major non-interstate pipeline delivery threshold and posting exemptions are based upon calendar year data, the pipelines become eligible on January 1 of the following year.

D. Confidentiality of Data To Be Posted by Major Non-Interstate Pipelines

37. In Order No. 720, the Commission required that all postings by major non-interstate pipelines pursuant to this rule be public. The Commission recognized that posting scheduled gas flows at eligible delivery points dedicated to a single customer could have some effect on the competitive position of that customer. However, the Commission found that posting such information will provide useful information to the Commission, market participants, and other market observers and will greatly increase market transparency. The Commission concluded that this benefit outweighs concerns about publicly posting information about scheduled flows to a customer with a dedicated delivery point.[35] The Commission pointed out that interstate pipelines are required to post daily scheduled volumes for delivery points dedicated to a single customer, and there have been no indications that competitive balance

[30] Order No. 720–A at P 94.

[31] *Id.* P 116.

[32] *Id.*

[33] *Id.*

[34] This time period is consistent with the time provided under Order No. 720 for major non-interstate pipelines to comply initially with the rule. Order No. 720 at P 168.

[35] Order No. 720 at P 88–89.

has been harmed since the interstate requirement to post was instituted.

38. In Order No. 720–A, the Commission denied rehearing of its requirement that all postings be public.[36] The Commission rejected contentions that this requirement would cause disclosure of potentially sensitive information regarding the physical location of receipt and delivery points or actual natural gas flows that would implicate national security.[37] The Commission also found that there had been no showing that the public posting requirement would result in the violation of state commission rules regarding the disclosure of private customer data.[38]

1. Request for Clarification or Rehearing

39. AGA requests that the Commission clarify that major non-interstate pipelines have flexibility in the manner in which they comply with the rule's posting requirements in order to prevent the disclosure of confidential information or the violation of state law or other regulatory requirements. Alternatively, AGA seeks rehearing on the grounds that the Commission's explanations for dismissing AGA's concerns are unsupported and contrary to law. AGA raises generally the same arguments that were discussed and rejected in Order Nos. 720 and 720–A.

40. AGA contends that not affording pipelines flexibility in this regard would be contrary to section 23 of the NGA, which provides that in determining the information to be disclosed, "the Commission shall seek to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anti-competitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information." [39] AGA contends that, under the revised regulations, if a particular delivery point services a single large customer and the current Location Name of the delivery point were designated as the name of the customer, then listing the Location Name as the name of the customer, the Posted Capacity of the customer's delivery point, and the customer's Scheduled Volumes on a daily basis would each disclose customer-specific information. AGA contends that this could be a violation of state law if a utility were prohibited from disclosing customer-specific information under state law. Likewise, AGA contends that if a Location Name is the name of a military installation, disclosing daily scheduled volumes could have national security implications. Further, AGA argues that the posting of scheduled natural gas volumes could have anti-competitive effects.

41. AGA contends that potential ways of affording flexibility to major non-interstate pipelines would be to allow: (a) The Location Name to be changed to a region or county to protect the identity of the customer (*e.g.,* [County Name] 1—Delivery, [County Name] 2—Delivery); (b) the pipeline to post information at an upstream aggregation point served by more than one customer; (c) the aggregation of customer data within given regions, instead of requiring the posting of the scheduled volumes of a single customer. Atmos supports AGA's request for clarification and rehearing.

2. Commission Determination

42. The Commission grants in part AGA's request for clarification in order to give major non-interstate pipelines some flexibility in how they comply with the requirement that they publicly post scheduled flows at delivery points dedicated to a single customer. As the Commission pointed out in Order No. 720–A, the major non-interstate posting requirements do not mandate the disclosure of the physical location or composition of receipt and delivery point facilities.[40] Nonetheless, the Commission will allow, although not require, a major non-interstate pipeline labeling a customer-specific point according to the city or county within which it is located, as opposed to the specific name of the customer, as proposed by AGA. Such an identification should provide the Commission, market participants, and other market observers sufficient information about the location where the gas flow is being delivered, to analyze and understand the demand conditions affecting price formation in that area, while not revealing the name of the specific customer to whom the gas is being delivered. The Commission will not require this alternative designation; if the major non-interstate pipeline chooses to identify a single-customer delivery point as interstate pipelines have for several years, it may do so.

43. However, AGA's other suggestions would appear to allow the pipeline to use broader geographic areas than just a single city or county for purposes of identifying the location of the delivery point. This could significantly reduce the value of the posted information to understand demand conditions affecting price formation. Therefore, the Commission denies AGA's request to allow pipelines to post information at an upstream aggregation point served by more than one customer or allow the aggregation of customer data within given regions.

44. With regard to AGA's concern about the posting requirement violating state regulatory requirements, the Commission will not, in this rulemaking proceeding, grant major non-interstate pipelines a blanket exemption from posting scheduled flows to delivery points dedicated to a single customer whenever they believe such a posting might violate a state regulatory requirement. In section 23(a)(2) of the NGA, Congress called for any transparency rule to provide for the "dissemination, on a timely basis, of information about the availability and prices of natural gas sold at wholesale and interstate commerce to the Commission, State commissions, buyers and sellers of wholesale natural gas, *and the public.*" [41] The Commission believes that requiring all postings to be public is specifically in keeping with this directive. Moreover, the posting information will provide useful information to the Commission, market participants, and other market observers, thereby greatly increasing market transparency. As stated previously, the Commission believes that this benefit outweighs the concerns about publicly posting information about scheduled volumes to a customer.

45. AGA points out that section 23(b)(2) provides, "In determining the information to be made available under this section and the time to make the information to be available, the Commission shall seek to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anti-competitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information." AGA appears to read this provision as requiring the Commission to exempt from public posting any information that might have some effect on the competitive position of a particular participant in the natural gas market. However, this provision only provides that, in requiring public disclosure, the Commission should seek to ensure that consumers and competitive markets are protected from "the adverse effects of *potential collusion or other anti-competitive behaviors*" (emphasis supplied). AGA has provided no

[36] Order No. 720–A at P 123.

[37] *Id.* P 124.

[38] *Id.* P 125.

[39] AGA Request for Rehearing at 11 (citing NGA § 23(b)(2)).

[40] Order No. 720–A at P 124.

[41] Section 23(a)(2) of the NGA; 15 U.S.C. 717t–2(a)(2) (2000 & Supp. V 2005) (emphasis added).

explanation as to how public disclosure of scheduled deliveries at points dedicated to a single customer would contribute to "collusion or other anti-competitive behaviors." In fact, as the Commission found in Order No. 720–A, "understanding * * * demand in large non-interstate pipelines downstream of the interstate market will enable market observers to better understand prices and, therefore, identify potential cases of market manipulation."[42] We therefore believe that the requirement to disclose scheduled flows at delivery points with significant load[43] likely to affect market prices is more likely to minimize anti-competitive behaviors, than contribute to them.

46. Moreover, the Commission is not persuaded, based upon the limited information provided by AGA, that, even without the clarification granted above, the Commission's requirement that major non-interstate pipelines post scheduled flows at major delivery points dedicated to a single customer conflict with state prohibitions regarding the disclosure of private customer data. For example, AGA cites a provision in the tariff of Pacific Gas and Electric Co. (PG&E), approved by the California Public Utilities Commission (CPUC), providing that "to preserve customer privacy, PG&E will not release confidential information, including financial information, to a third party without the customers electronic signature or the written consent."[44] However, it is not clear that scheduled deliveries at a major delivery point would be considered confidential information, subject to this provision. As we noted in Order No. 720–A, not a single state commission has raised this issue in this proceeding.

47. Nevertheless, if a major non-interstate pipeline believes that posting scheduled flows to eligible delivery points dedicated to a single customer violates a state regulatory confidentiality requirement, and if the flexibility provided in this order to identify the point by county or city is insufficient to avoid a violation of that requirement, the pipeline may request a waiver from the posting requirement. In any such waiver request, the pipeline should provide a complete explanation of why the state regulatory requirement is applicable, together with citations to any applicable state agency or court precedent supporting its interpretation of the state regulatory requirement. The Commission would also expect that in such a waiver request the applicant would affirmatively demonstrate that it has spoken with and obtained the support of the applicable state regulatory agency with respect to its waiver request.

E. Interstate Pipeline Posting of No-Notice Service

48. Order No. 720 required interstate natural gas pipelines to post volumes of no-notice service flows at each receipt and delivery point before 11:30 a.m. central clock time three days after the day of gas flow.[45] The Commission found that such information is valuable, even posted three days after gas flow, because it allows market participants to increase their understanding of historical patterns of no-notice gas flows and enables them to better anticipate future no-notice flows.

49. In Order No. 720–A, the Commission clarified that, because interstate pipelines have varying metering and measurement equipment, they are only required to post information that is available to them.[46] The Order No. 720 regulations do not require construction of new metering equipment. Instead, the interstate pipelines should post whatever data it has available after three days, noting any deficiencies in the posting on its website. Order No. 720–A added that an interstate pipeline should update previously posted information if, subsequent to an initial posting, more complete no-notice service data becomes available.[47]

1. Request for Clarification or Rehearing

50. INGAA's request for clarification or rehearing focuses on Order No. 720–A's statement that, "if subsequent to an initial posting, more complete no-notice service data becomes available, interstate pipelines must update previously posted information." INGAA requests that the Commission clarify that an interstate pipeline's obligation to update previously posted information is limited to providing no-notice information where none was available within three days after the day of gas flow, as opposed to revising information that has already been posted.[48] If, however, the obligation to update previously posted data goes beyond supplying missing data to revising data that has already been posted, INGAA prefers that the Commission eliminate the update requirement in its entirety or, in the alternative, limit it to one update for each posted figure, to be provided within ten business days after the end of the month in which the posted service was rendered.[49]

51. INGAA argues that the Commission promulgated the after-the-fact obligation to update initially posted no-notice information without developing a record on the cost of assembling and reporting this information or the benefit that updated no-notice data would provide either to market participants, price formation and other market behavior, or market transparency. INGAA contends that updated no-notice data is of no value to market participants, price formation or market transparency and that the minor and non-substantive changes that would be made to the originally posted data do not warrant the additional costs associated with providing it.

52. INGAA contends that meter adjustments and the receipt of corrected data from third parties cause minor departures from initially posted no-notice information and as a result, certain no-notice quantities are not fully known until the "close of measurement," which is defined by NAESB as five business days after the end of the month. If the Commission insists on some form of updating, INGAA urges limiting it to one update for each posted figure, to be provided within ten business days after the end of the month in which the posted service was rendered.

2. Commission Determination

53. The Commission grants INGAA's request for rehearing in part and modifies 18 CFR 284.13(d) to provide that an interstate pipeline must provide no-notice transportation information based on its best estimate before 11:30 a.m. central clock time three days after the day of gas flow and make one update to each posted figure as necessary within ten business days after the month in which the posted service was performed. The Commission finds that requiring a single update should ensure that interstate pipelines provide accurate information about no-notice gas flows, without burdening pipelines with a requirement to make frequent, minor changes in posted volumes. As stated in Order No. 720, information on no-notice volumes is valuable even posted after the no-notice gas flows because it allows market participants and other market observers to understand the historical patterns of

[42] Order No. 720–A at P 62.

[43] As discussed in Order No. 720, at P 90, the posting requirement only applies at delivery points with significant load, such as major pipeline interconnections and points with substantial industrial load.

[44] AGA Request for Rehearing at 14.

[45] Order No. 720 at P 160.

[46] Order No. 720–A at P 190.

[47] Order No. 720–A at P 190.

[48] INGAA Request for Rehearing and Clarification at 2–3.

[49] *Id.* at 3–4.

flows and will enable them to better predict future no-notice flows.[50] Updating the initially posted flow data based on corrected information obtained through the close of the NAESB measurement period will assist in understanding historical flow patterns and predicting future no-notice flows. We therefore decline to limit an interstate pipeline's obligation to update previously posted information to providing no-notice information where none was available within three days after the day of gas flow. Of course, if the no-notice information posted three days after the flow date does not change before the close of the NAESB measurement period, no update will be necessary.

54. Based upon INGAA's comments, interstate pipelines have access to reasonably accurate no-notice information within 3 days after gas flow, but within 5 business days of the end of the month of gas flow the no-notice information is more fully known by the interstate pipelines. The revised regulation takes into account this lag time in information, thus reducing the burden on interstate pipelines to continuously update estimated no-notice information. At the same time, however, this modification presents the Commission and the market with continued access to the most-accurate data, thereby enhancing transparency.

IV. Information Collection Statement

55. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, recordkeeping, and public disclosure (collections of information) imposed by and for an agency.[51] The information collection requirements or FERC–551 were approved by OMB under OMB Control No. 1902–0243. This order further revises these requirements in order to more clearly state the obligations imposed in Order Nos. 720 and 720–A. In response to the requests for rehearing, the Commission has made several revisions that can be considered as "substantive or material modifications" to the information collection requirements,[52] and we will submit them for OMB review under the Paperwork Reduction Act.[53] The revisions in this order will not have a significant impact on the Commission's burden estimates expressed in Order No. 720–A and so the Commission will retain those estimates.

56. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director]; e-mail: *DataClearance@ferc.gov,* Phone: (202) 502–8415, Fax: (202) 273–0873. For submitting comments concerning the collection of information, please send your comments to the contact listed above and to: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, [Attention: Desk Officer for the Federal Energy Regulatory Commission] Phone: (202) 395–4638, Fax: (202) 395–7285. Due to security concerns, comments should be sent electronically to the following e-mail address: *oira_submission@omb.eop.gov.* Please reference OMB Control No. 1902–0243 and the docket number of this order in your submission.

V. Document Availability

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

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

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

VI. Effective Date and Compliance Deadlines

60. Changes to Order Nos. 720 and 720–A made in this Order on Rehearing will become effective on October 1, 2010. Accordingly, the compliance deadline for major non-interstate pipelines shall be extended to October 1, 2010.

List of Subjects in 18 CFR Part 284

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

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

■ For the reasons set forth in the preamble, the Federal Energy Regulatory Commission amends 18 CFR part 284 as follows:

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

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

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

■ 2. In § 284.13, paragraph (d)(1), the last two sentences are revised and a third final sentence is added, to read as follows:

§ 284.13 Reporting requirements for interstate pipelines.

* * * * *

(d) * * *

(1) * * * An interstate pipeline must also provide information about the volumes of no-notice transportation provided pursuant to § 284.7(a)(4). This information must be posted at each receipt and delivery point before 11:30 a.m. central clock time three days after the day of gas flow and must reflect the pipeline's best estimate. Updated information must be posted at each receipt and delivery point as necessary within ten business days after the month of gas flow.

* * * * *

■ 3. Amend § 284.14 by adding paragraph (a)(5) to read as follows:

§ 284.14. Posting requirements of major non-interstate pipelines.

* * * * *

(5) Newly constructed major non-interstate pipelines, which commence service after the effective date of this section, must comply with the requirements of this section upon their in-service date. Except for newly constructed major non-interstate pipelines, a major non-interstate pipeline that becomes subject to the requirements of this section in any year after the effective date of this section

[50] Order No. 720 at P 162.

[51] 5 CFR 1320.12 (2009).

[52] 5 CFR 1320.5(g).

[53] *See* 44 U.S.C. 3507(h)(3).

has until June 1 of that year to comply with the requirements of this section.

* * * * *

[FR Doc. 2010–18312 Filed 7–29–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9490]

RIN 1545–BJ12

Extended Carryback of Losses to or From a Consolidated Group; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final and temporary regulations (TD 9490) that were published in the **Federal Register** on Wednesday, June 23, 2010 (75 FR 35643) affecting corporations filing consolidated returns under section 1502. These regulations contain rules regarding the implementation of section 172(b)(1)(H) within a consolidated group and also permit certain acquiring consolidated groups to elect to waive all or a portion of the pre-acquisition carryback period pursuant to section 172(b)(1)(H) for specific losses attributable to certain acquired members.

DATES: This correction is effective on July 30, 2010, and is applicable on June 23, 2010.

FOR FURTHER INFORMATION CONTACT: Grid Glyer, (202) 622–7930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (TD 9490) that are the subject of this document are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations (TD 9490) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

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 1.1502–21T(b)(3)(v) is amended by revising paragraphs (B), (C)(*1*), (C)(*2*), the last sentence of paragraph (E) *Example 1*(i), the fourth sentence of paragraph (E) *Example 1*(iii) and the fourth sentence of paragraph (E) *Example 2*(ii) to read as follows:

§ 1.1502–21T Net operating losses (temporary).

* * * * *

(B) *Taxpayer's taxable income.* For purposes of computing the limitation under section 172(b)(1)(H)(iv) on a Five-Year Carryback to any consolidated return year from any consolidated return year or separate return year, *taxpayer's taxable income* as used in section 172(b)(1)(H)(iv)(I) means consolidated taxable income (CTI) in the consolidated return year that is the fifth taxable year preceding the year of the loss. For purposes of the preceding sentence, CTI is computed without regard to any CNOL deduction attributable to the particular Five-Year Carryback or any NOL from any member's taxable year ending on the same date as the taxable year in which the Five-Year Carryback arises, or any taxable year thereafter.

(C) *Limitation on Five-Year Carrybacks to a consolidated group*—(*1*) *Annual limitation.* The aggregate amount of Five-Year Carrybacks from years ending on the same date (Testing Date) to any consolidated return year may not exceed the excess of 50 percent of the CTI for that year over the total of Five-Year Carrybacks to that consolidated return year from years ending before the Testing Date (Annual Limitation). For purposes of the preceding sentence, CTI is computed without regard to—

(*i*) Any CNOL deduction attributable to Five-Year Carrybacks to such year; or

(*ii*) Any NOL from any member's taxable year ending on the Testing Date or any taxable year thereafter.

(*2*) *Pro rata absorption of limited and non-limited losses.* Any Five-Year Carryback, and other net operating losses, from years ending on the same date that are available to offset CTI in the same year are absorbed on a pro rata basis. *See* § 1.1502–21(b)(1).

* * * * *

(E) * * *

Example 1. * * * (i) * * * There are no other NOL carrybacks into the X Group's 2004 consolidated taxable year.

* * * * *

(iii) * * * The Annual Limitation on Five-Year Carrybacks will be $250 ($500 × 50 percent), with CTI determined without taking into account the portion of P's 2008 CNOL carried back to the X Group's 2004 consolidated return year or the X Group's 2008 CNOL, which arises from a taxable year ending on the same date as the Five-Year Carryback. * * *

Example 2. * * *

(ii) * * * Because S is making the sole Five-Year Carryback to the X Group's 2004 consolidated return year, S will make a Five-Year Carryback of the full $400. * * *

* * * * *

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2010–18677 Filed 7–29–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9495]

RIN 1545–BC61

Qualified Zone Academy Bonds; Obligations of States and Political Subdivisions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document removes the temporary regulations and provides final regulations that provide guidance to state and local governments that issue qualified zone academy bonds and to banks, insurance companies, and other taxpayers that hold those bonds on the program requirements for qualified zone academy bonds. The final regulations implement the amendments to section 1397E (discussed in this preamble) and provide guidance on the maximum term, permissible use of proceeds, and remedial actions for qualified zone academy bonds.

DATES: *Effective Date:* These regulations are effective on July 30, 2010.

Applicability Date: For dates of applicability, see § 1.1397E–1(m) of these regulations.

FOR FURTHER INFORMATION CONTACT: Zoran Stojanovic, (202) 622–3980 (not a toll-free number).

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 1545–1908. This information will be used to identify issuers of qualified zone academy bonds that have established a defeasance escrow as a remedial action taken because of failure to satisfy certain requirements of section 1397E.

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.

Books and 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.

Background

Section 1397E(a) of the Internal Revenue Code (Code) provides that an eligible taxpayer (within the meaning of section 1397E(d)(6)) that holds a qualified zone academy bond ("QZAB" or "QZABs") on a credit allowance date is allowed a credit against Federal income tax for the taxable year that includes the credit allowance date. In general, a QZAB is a bond issued by a state or local government to finance certain eligible public school purposes under section 1397E(d). Section 1397E(b) provides that the amount of the QZAB credit equals the product of the credit rate and the face amount of the bond held by the taxpayer on the credit allowance date. Under section 1397E(b)(2), the credit rate is determined by the Treasury Department and equals the percentage that the Department estimates generally will permit the issuance of QZABs without discount and without interest cost to the issuer. Section 1397E(i)(1) defines *credit allowance date* as the last day of the one-year period beginning on the issue date of the issue and the last day of each successive one-year period thereafter. Under section 1397E(d)(3), the maximum term of a QZAB is determined by the Treasury Department and equals the term that the Department estimates will result in the present value of the obligation to repay the principal on the bond being equal to 50 percent of the face amount of the bond.

Section 1397E(j) provides that the amount of the QZAB credit allowed to the taxpayer is included in the taxpayer's gross income.

Section 1397E(e) imposes a national limitation on the amount of QZABs that may be issued for each calendar year. The limitation is allocated by the Treasury Department among the States on the basis of their respective populations of individuals below the poverty line.

Section 1397E was amended by section 107 of the Tax Relief and Health Care Act of 2006, Public Law 109–432, 120 Stat. 2922 (2006) (the "2006 Act"), by adding certain requirements for a bond to be a QZAB. In general, the 2006 Act added a new five-year spending period requirement, arbitrage investment restrictions, and information reporting requirements. Specifically, the 2006 Act added new section 1397E(f), which generally imposes spending period restrictions under which an issuer of QZABs must reasonably expect, as of the issue date, that: (1) At least 95 percent of the proceeds from the sale of the issue are to be spent for one or more qualified purposes with respect to qualified zone academies within the 5-year period beginning on the issue date of the QZAB; (2) a binding commitment with a third party to spend at least 10 percent of the proceeds from the sale of the issue will be incurred within the six-month period beginning on the issue date of the QZAB; and (3) such purposes will be completed with due diligence and the proceeds from the sale of the issue will be spent with due diligence. New section 1397E(f)(2) added by the 2006 Act provides authority to the Secretary of the Treasury to extend the five-year spending period. To the extent that less than 95 percent of the proceeds of the issue are spent within the five-year spending period (plus any extension granted by the Secretary of the Treasury), the 2006 Act requires the issuer to redeem the nonqualified bonds within 90 days after the end of such period.

In addition, the 2006 Act added new section 1397E(g), which generally requires that an issue of QZABs satisfy the arbitrage investment restrictions of section 148 with respect to the proceeds of the issue.

Finally, the 2006 Act added new section 1397E(h), which generally requires that issuers of QZABs submit information reporting returns to the IRS similar to the information reporting returns required to be submitted to the IRS under section 149(e) for tax-exempt state or local bonds.

Section 15316 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246, 122 Stat. 1651 (2008) (the "2008 Energy Act"), added section 54A to the Code. Section 54A(a) provides that a taxpayer that holds a qualified tax credit bond on one or more credit allowance dates of the bond occurring during any taxable year is allowed as a credit against Federal income tax for the taxable year an amount equal to the sum of the credits determined under section 54A(b) with respect to such dates. Section 54A(d)(1) provides that the term *qualified tax credit bond* ("QTCB") means a certain bond which is part of an issue that meets the requirements of section 54A(d)(2), (3), (4), (5), and (6) regarding expenditures of bond proceeds, information reporting, arbitrage, maturity limitations, and prohibitions against financial conflicts of interest. At the time of its enactment, the 2008 Energy Act did not treat QZABs as QTCBs.

Section 313 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Div. C of Public Law 110–343, 122 Stat. 3765 (2008) (the "2008 Act") added new section 1397E(m) providing that section 1397E shall not apply to any obligation issued after the date of the enactment of the 2008 Act on October 3, 2008. Effective for obligations issued after October 3, 2008, the 2008 Act amended section 54A(d)(1) defining a QTCB to include a qualified zone academy bond under section 54E of the Code. The 2008 Act also added section 54E, which provides revised program provisions for QZABs in lieu of the existing provisions under section 1397E and amended section 54A(d)(2)(C) to provide that, for purposes of section 54A(d)(2), the term "qualified purpose" for a QZAB means a purpose specified in section 54E(a)(1).

Section 301 of the Hiring Incentives to Restore Employment Act, Public Law 111–147, 124 Stat. 71 (2010) (the "HIRE Act") added subsection (f) to section 6431 of the Code, which authorizes issuers to elect irrevocably to receive Federal direct payments of allowances of refundable tax credits to subsidize a prescribed portion of their borrowing costs instead of the Federal tax credits that otherwise would be allowed to holders of certain qualified tax credit bonds under section 54A. Under section 6431(f)(3)(A)(iii), the direct payment subsidy option under section 6431(f) applies to qualified zone academy bonds issued under section 54E that meet the requirements to be qualified tax credit bonds under section 54A.

Temporary regulations (TD 8755) interpreting section 1397E were published on January 7, 1998 (63 FR 671), and amended on July 1, 1999 (TD 8826; 64 FR 35573). Final regulations under section 1397E (TD 8903) were published on September 26, 2000 (65 FR 57732) (the "First Final Regulations"). On March 26, 2004, a notice of proposed

rulemaking (REG–121475–03) was published in the **Federal Register** (69 FR 15747) (the "2004 Proposed Regulations"). The 2004 Proposed Regulations proposed to amend the First Final Regulations by providing guidance on the maximum term, permissible use of proceeds, and remedial actions for QZABs. A public hearing was scheduled for July 21, 2004. The public hearing was cancelled because no requests to speak were received. Written comments on the 2004 Proposed Regulations were received. After consideration of the written comments, and in light of the statutory changes made by the 2006 Act, the need for regulatory guidance on those statutory changes, and the close connection between that needed guidance and the guidance in the 2004 Proposed Regulations, the IRS and the Treasury Department determined to issue coordinated guidance as temporary regulations under TD 9339 which were published in the **Federal Register** on July 16, 2007 (72 FR 38767) and which became effective as of September 14, 2007 (the "Temporary Regulations"), with an opportunity for public comment in the corresponding proposed regulations (the "2007 Proposed Regulations"). The 2004 Proposed Regulations were withdrawn. No public hearing was requested and no written comments were received pursuant to the 2007 Proposed Regulations.

Accordingly, the IRS and the Treasury Department adopt the 2007 Proposed Regulations, in substantially the same form as the 2007 Proposed Regulations, as final regulations by this Treasury Decision.

Effective/Applicability Dates

In general, except as otherwise provided, these final regulations generally apply to QZABs issued under section 1397E that are sold on or after September 14, 2007.

Pursuant to section 313(b) of the 2008 Act, effective for QZABs that are sold on or after October 3, 2008, section 1397E is inapplicable and successor modified statutory provisions for QZABs apply under sections 54A and 54E. These final regulations generally do not apply to QZABs issued under sections 54A and 54E. However, Notice 2009–30, 2009–16 IRB 852 (April 20, 2009) and Notice 2010–22, 2010–10 IRB 435 (March 8, 2010) (relating to 2009 and 2010 volume cap allocations for QZABs respectively), provide that for QZABs issued under sections 54A and 54E that are sold on or after October 4, 2008, pending the promulgation and effective date of future administrative or regulatory guidance, taxpayers may rely on the interim guidance provided in these notices and, to the extent not inconsistent with these notices and the provisions of sections 54A and 54E, the Temporary Regulations issued under section 1397E. See § 601.601 (d)(2)(ii)(*b*).

The final regulations include a limited reliance provision for QZABs issued under sections 54A and 54E. Under this reliance provision, except to the extent inconsistent with the successor statutory provisions for QZABs in sections 54A and 54E and public administrative or regulatory guidance under those provisions and except as otherwise provided in a special restriction against reliance on the remedial action provisions in the final regulations, issuers and taxpayers may rely on the final regulations for QZABs that are issued under sections 54A and 54E. In the case of QZABs that are issued under sections 54A and 54E for which the issuer elects the Federal direct payment subsidy option under section 6431(f), issuers and taxpayers may not rely on the remedial action provisions in § 1.1397E–1(h) of the final regulations. The IRS and Treasury Department expect to announce appropriate remedial actions tailored to bonds involving the Federal direct payment subsidy option under section 6431 in future public guidance.

In addition, except as otherwise provided, § 1.1397E–1(h)(2), (h)(3), (h)(4), (i), and (j) of the final regulations regarding the five-year spending period, the arbitrage investment restrictions, and the information reporting requirement added by the 2006 Act apply to bonds issued under section 1397E pursuant to allocations of the national qualified zone academy bond volume cap authority arising in calendar years after 2005 and sold on or after September 14, 2007.

In addition, issuers and taxpayers also may apply the final regulations in whole, but not in part, to bonds issued under section 1397E that are sold before September 14, 2007.

Certain other special effective dates apply to particular provisions under § 1.1397E–1(m).

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 contained in this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The collection of information in this proposed regulation is in § 1.1397E–1(h)(8). This collection of information is required by the IRS to verify compliance with section 1397E. This information will be used to identify issuers of qualified zone academy bonds that have established a defeasance escrow as a remedial action taken because of failure to satisfy certain requirements of section 1397E. The collection of information is required to obtain or retain a benefit. The likely respondents are states or local governments that issue qualified zone academy bonds. The estimated number of respondents is 6, and the estimated average annual burden hours per respondent is 30 minutes. In addition, the establishment of a defeasance escrow need only be reported once. Accordingly, the number of, and the burden on, affected small entities is not significant. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is Zoran Stojanovic, Office of Associate Chief Counsel, IRS (Financial Institutions and Products). 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 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entry for "1.1397E–1T" and revising the entry for "§ 1.1397E–1" to read as follows:

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

Section 1.1397E–1 also issued under 26 U.S.C. 1397E. * * *

■ **Par. 2.** Section 1.1397E–1 is amended by revising paragraphs (a), (d), (h), (i), (j) and (m) to read as follows:

§ 1.1397E–1 Qualified zone academy bonds.

(a) *In general*—(1) *Overview.* In general, a qualified zone academy bond (QZAB or QZABs) is a taxable bond issued by a state or local government the proceeds of which are used to improve certain eligible public schools. An eligible taxpayer that holds a QZAB generally is allowed annual Federal income tax credits in lieu of periodic interest payments. These credits compensate the eligible taxpayer for lending money to the issuer and function as payments of interest on the bond. Accordingly, this section generally treats the allowance of a credit as if it were a payment of interest on the bond. This section also provides other rules for QZABs, including rules governing the credit rate, the private business contribution requirement, the maximum term, use and expenditure of proceeds, remedial actions, eligible issuers, arbitrage investment restrictions, and information reporting.

(2) *Certain definitions*—(i) *In general.* For purposes of this section, except as otherwise provided in this section, the following definitions apply: the definitions set forth in this section; the definitions used for general tax-exempt bond purposes in § 1.150–1; and the definitions used for purposes of the arbitrage investment restrictions on tax-exempt bonds in § 1.148–1(b).

(ii) *Applicable definition of proceeds*—(A) *Use and expenditure provisions.* Except as provided in paragraphs (a)(2)(ii)(B) and (a)(2)(ii)(C) of this section, for purposes of all applicable requirements regarding use and expenditure of proceeds of QZABs under section 1397E and this section, "proceeds" means "sale proceeds," as defined in § 1.148–1(b), plus "investment proceeds," as defined in § 1.148–1(b).

(B) *Private business contribution requirement.* For purposes of the private business contribution requirement of section 1397E(d)(2), "proceeds" means "sale proceeds," as defined in § 1.148–1(b).

(C) *Arbitrage investment restrictions.* For purposes of the scope of application of the arbitrage investment restrictions under section 1397E(g) and paragraph (i) of this section, "proceeds" generally means gross proceeds, as defined in § 1.148–1(b). In addition, in applying the arbitrage investment restrictions under paragraph (i) of this section and under section 148, the various applicable definitions of the various types of proceeds of tax-exempt bonds under § 1.148–1(b) shall apply.

* * * * *

(d) *Maximum term.* The maximum term for a QZAB is determined under section 1397E(d)(3) by using a discount rate equal to 110 percent of the long-term adjusted applicable Federal rate (AFR), compounded semi-annually, for the month in which the bond is sold. The Internal Revenue Service publishes this figure each month in a revenue ruling that is published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(*b*) of this chapter. A bond is sold on the sale date, as defined in § 1.150–1(c)(6), which is the first day on which there is a binding contract in writing for the sale or exchange of the bond.

* * * * *

(h) *Use of proceeds*—(1) *In general.* Section 1397E(d)(1) provides that a bond issued as part of an issue is a QZAB only if, among other requirements, at least 95 percent of the proceeds of the issue are to be used for a qualified purpose with respect to a qualified zone academy established by an eligible local education agency (as defined in section 1397E(d)(4)(B)), and the issue meets the requirements of section 1397E(f) and (g). Section 1397E(d)(5) defines *qualified purpose,* with respect to any qualified zone academy, as rehabilitating or repairing the public school facility in which such academy is established, providing equipment for use at such academy, developing course materials for education to be provided at such academy, and training teachers and other school personnel in such academy. Section 1397E(d)(4)(A) defines *qualified zone academy* as any public school (or academic program within a public school) that is established by and operated under the supervision of an eligible local education agency to provide education or training below the postsecondary level and that meets the requirements of section 1397E(d)(4)(A)(i), (ii), (iii) and (iv).

(2) *Use of proceeds requirements.* An issue meets the requirements of sections 1397E (d)(1)(A) and (f) only if—

(i) The issuer reasonably expects, as of the issue date of the issue, that—

(A) At least 95 percent of the proceeds from the sale of the issue are to be spent for qualified purposes with respect to qualified zone academies within the 5-year period beginning on the issue date of the QZAB;

(B) A binding commitment with a third party to spend at least 10 percent of the proceeds from the sale of the issue will be incurred within the 6-month period beginning on the issue date of the QZAB;

(C) At least 95 percent of the proceeds from the sale of the issue will be spent for qualified purposes with respect to a qualified zone academy with due diligence (with due diligence measured by the reasonableness standard under § 1.148–1(b)); and

(D) At least 95 percent of the proceeds of the issue will be used for qualified purposes with respect to a qualified zone academy for the entire term of the issue (without regard to any redemption provision); and

(ii) Except as otherwise provided in paragraph (h)(8) of this section, at least 95 percent of the proceeds of the issue are actually used for qualified purposes with respect to a qualified academy for the entire term of the issue (without regard to any redemption provision).

(3) *Extension of 5-year period.* The Commissioner may extend the period described in paragraph (h)(2)(i)(A) of this section if the issuer, prior to the end of such period, submits a private ruling request, and establishes to the satisfaction of the Commissioner that—

(i) The failure to satisfy the 5-year spending requirement is due to reasonable cause; and

(ii) The expenditure of at least 95 percent of the proceeds from the sale of the issue for a qualified purpose with respect to a qualified zone academy will continue to proceed with due diligence.

(4) *Unspent proceeds.* For purposes of paragraphs (h)(2)(i)(D) and (h)(2)(ii) of this section, during the period described in paragraph (h)(2)(i)(A) of this section, including any extension under paragraph (h)(3) of this section, unspent proceeds are treated as used for a qualified purpose with respect to a qualified zone academy if the issuer reasonably expects to proceed with due diligence to spend those proceeds for a qualified purpose with respect to a qualified zone academy during that period.

(5) *Proceeds spent for rehabilitation, repair or equipment*—(i) *In general.* Under section 1397E(d)(5)(A) the term *qualified purpose* with respect to any qualified zone academy includes rehabilitating or repairing the public school facility in which such academy is established. For this purpose, in determining whether proceeds are spent for rehabilitation, rules similar to those under section 47(c) (other than sections 47(c)(1)(B) and 47(c)(2)(B)(iv)) shall apply. Under section 1397E(d)(5)(B) the term *qualified purpose* also includes providing equipment for use at such academy. If proceeds of an issue are spent for a purpose described in section

1397E(d)(5)(A) or (B) with respect to a qualified zone academy, then those proceeds are treated as used for a qualified purpose with respect to the academy during any period after such expenditure that—

(A) The property financed with those proceeds is used for the purposes of the academy; and

(B) The academy maintains its status as a qualified zone academy under section 1397E(d)(4).

(ii) *Retirement from service.* The retirement from service of financed property due to normal wear or obsolescence does not cause the property to fail to be used for a qualified purpose with respect to a qualified zone academy.

(6) *Proceeds spent to develop course materials or train teachers.* Section 1397E(d)(5)(C) and (D) provides that the term *qualified purpose* with respect to any qualified zone academy includes developing course materials for education to be provided at such academy, and training teachers and other school personnel in such academy. If proceeds of an issue are spent for a purpose described in section 1397E(d)(5)(C) or (D) with respect to a qualified zone academy, then those proceeds are treated as used for a qualified purpose with respect to the academy during any period after such expenditure.

(7) *Special rule for determining status as qualified zone academy.* Section 1397E(d)(4)(A)(iv) provides that a public school (or academic program within a public school) is a qualified zone academy only if, among other requirements, the public school is located in an empowerment zone or enterprise community (as defined in section 1393), or there is a reasonable expectation (as of the issue date of the issue) that at least 35 percent of the students attending the school or participating in the program (as the case may be) will be eligible for free or reduced-cost lunches under the school lunch program established under the Richard B. Russell National School Lunch Act. For purposes of determining whether an issue complies with section 1397E(d)(4)(A)(iv)—

(i) A public school is treated as located in an empowerment zone or enterprise community for the entire term of the issue if the public school is located in an empowerment zone or enterprise community on the issue date of the issue; and

(ii) The determination of whether there is a reasonable expectation (as of the issue date of the issue) that at least 35 percent of the students attending the school or participating in the program (as the case may be) will be eligible for free or reduced-cost lunches under the school lunch program established under the Richard B. Russell National School Lunch Act is based on expectations regarding the one-year period following the issue date.

(8) *Remedial actions*—(i) *General rule.* If less than 95 percent of the proceeds of an issue are properly used (as determined under paragraph (h)(8)(ii)(D) of this section), the issue will be treated as meeting the requirements of section 1397E(d)(1)(A) if the issue met the requirements of paragraph (h)(2)(i) of this section and a remedial action is taken under paragraph (h)(8)(ii) or (iii) of this section.

(ii) *Redemption or defeasance*—(A) *In general.* A remedial action is taken under this paragraph (h)(8)(ii) if the requirements of paragraphs (h)(8)(ii)(B) and (C) of this section are met.

(B) *Retirement of nonqualified bonds*—(*1*) *In general.* The requirements of this paragraph (h)(8)(ii)(B) are met if—

(*i*) All of the nonqualified bonds of the issue (as determined under § 1.142–2(e)) are redeemed within 90 days after the date on which the failure to properly use proceeds occurs; or

(*ii*) To the extent proceeds of the issue that have been actually spent for a qualified purpose with respect to a qualified zone academy, if any nonqualified bonds of the issue are not redeemed within 90 days after the date on which the failure to properly use such proceeds occurs (the unredeemed nonqualified bonds), a defeasance escrow is established for the unredeemed nonqualified bonds within 90 days after the date on which the failure to properly use proceeds occurs.

(*2*) *Special rule for dispositions for cash.* If the failure to properly use proceeds occurs because of a disposition of financed property described in section 1397E(d)(5)(A) or (B) and the consideration for the disposition is exclusively cash, the requirements of this paragraph (h)(8)(ii)(B) are met if all of the disposition proceeds (as defined in paragraph (h)(8)(iv) of this section) are used within 90 days after the date of the disposition to redeem, or establish a defeasance escrow for, the nonqualified bonds (as determined under § 1.142–2(e)).

(*3*) *Definition of defeasance escrow.* For purposes of this section, a defeasance escrow is an irrevocable escrow established to retire nonqualified bonds on the earliest call date after the date on which the failure to properly use proceeds occurs in an amount that is sufficient to retire nonqualified bonds on that call date. At least 90 percent of the weighted average amount in a defeasance escrow must be invested in investments (as defined in § 1.148–1(b)), except that no amount in a defeasance escrow may be invested in any investment the obligor (or any person that is a related party with respect to the obligor within the meaning of § 1.150–1(b)) of which is a user of proceeds of the bonds. All purchases or sales of an investment in a defeasance escrow must be made at the fair market value of the investment within the meaning of § 1.148–5(d)(6).

(C) *Additional rules*—(*1*) *Limitation on source of funding.* Proceeds of an issue of QZABs (other than unspent proceeds of the issue for which the failure to properly use proceeds occurs) must not be used to redeem or defease nonqualified bonds under paragraph (h)(8)(ii)(B) of this section.

(*2*) *Rebate requirement.* The issuer must pay to the United States, at the same time and in the same manner as rebate amounts are required to be paid under § 1.148–3 (or at such other time or in such other manner as the Commissioner may prescribe), any investment earnings on amounts in a defeasance escrow established under paragraph (h)(8)(ii)(B) of this section that are in excess of the yield on the issue of QZABs with respect to which the defeasance escrow was established. For this purpose, the first computation period begins on the date on which the defeasance escrow is established.

(*3*) *Notice of defeasance.* The issuer must provide written notice to the Commissioner, at the place designated in § 1.150–5(a), of the establishment of the defeasance escrow within 90 days of the date the defeasance escrow is established.

(D) *When a failure to properly use proceeds occurs*—(*1*) *Unspent proceeds.* For unspent proceeds, a failure to properly use proceeds occurs on the earliest of—

(*i*) The first date on which the public school (or academic program within the public school) fails to constitute a qualified zone academy;

(*ii*) The first date on which the issuer fails to have a reasonable expectation to proceed with due diligence to spend at least 95 percent of the proceeds of the issue for a qualified purpose with respect to a qualified zone academy; or

(*iii*) The last day of the period described in paragraph (h)(2)(i)(A) of this section, including any extension, if less than 95 percent of the proceeds of the issue are actually spent for a qualified purpose with respect to a qualified zone academy.

(*2*) *Proceeds spent for rehabilitation, repair or equipment.* For proceeds that

have been spent for a purpose described in section 1397E(d)(5)(A) or (B) with respect to a qualified zone academy, a failure to properly use proceeds occurs on the earlier of—

(*i*) The first date on which the public school (or academic program within the public school) fails to constitute a qualified zone academy; and

(*ii*) The first date on which an action is taken that causes the issuer to fail actually to use at least 95 percent of the proceeds of the issue for a qualified purpose with respect to a qualified zone academy.

(*3*) *Proceeds spent for course materials or training.* If proceeds have been spent for a purpose described in section 1397E(d)(5)(C) or (D) with respect to a qualified zone academy, no event subsequent to such expenditure shall constitute a failure to properly use such proceeds.

(iii) *Alternative use of disposition proceeds.* A remedial action is taken under this paragraph (h)(8)(iii) if all of the requirements of paragraphs (h)(8)(iii)(A) through (D) of this section are met—

(A) The failure to properly use proceeds (as determined under paragraph (h)(8)(ii)(D) of this section) is a disposition of financed property described in section 1397E(d)(5)(A) or (B) and the consideration for the disposition is exclusively cash;

(B) The issuer reasonably expects as of the date of the disposition that—

(*1*) All of the disposition proceeds will be spent within the two-year period beginning with the date of the disposition for a qualified purpose with respect to a qualified zone academy; or

(*2*) To the extent not expected to be so spent, the disposition proceeds will be used within 90 days after the date of the disposition to redeem or defease bonds in a manner that meets the requirements of paragraph (h)(8)(ii) of this section;

(C) The disposition proceeds are treated as proceeds for purposes of section 1397E; and

(D) If all of the disposition proceeds are not actually used in the manner described in paragraph (h)(8)(iii)(B) of this section, the remainder of such amounts are used within 90 days after the end of the period described in paragraph (h)(8)(iii)(B)(*1*) of this section for a remedial action that meets the requirements of paragraph (h)(8)(ii) of this section.

(iv) *Definition of disposition proceeds and allocation among multiple funding sources.* For purposes of this paragraph (h)(8), *disposition proceeds* means disposition proceeds, as defined in § 1.141–12(c)(1), plus amounts derived from investing disposition proceeds. If property has been financed with an issue of QZABs and one or more other funding sources, any disposition proceeds from that property are allocated to the issue under the principles of § 1.141–12(c)(3).

(9) *Payment of principal, interest or redemption price*—(i) *In general.* Except as provided in paragraphs (h)(9)(ii) and (h)(9)(iii) of this section, the use of proceeds of a bond to pay principal, interest, or redemption price of the bond or another bond is not a qualified purpose within the meaning of section 1397E(d)(5).

(ii) *Exception for certain eligible reimbursements of interim refinancings.* The use of proceeds of a bond (the refinancing bond) to pay principal, interest, or redemption price of another bond (the prior bond) is a qualified purpose within the meaning of section 1397E(d)(5) to the extent that—

(A) The prior bond was not a QZAB (and, in the case of a series of refinancings, no earlier bond in the series was a QZAB);

(B) The proceeds of the prior bond (or the original bond in the case of a series of refinancings, as applicable) were spent for a qualified purpose under section 1397E(d)(5) with respect to a qualified zone academy (the original expenditure); and

(C) The issuer makes a valid reimbursement allocation to allocate the proceeds of the refinancing bond to the payment of the original expenditure (the reimbursement allocation), which allocation satisfies the requirements for reimbursements under paragraph (h)(10) of this section. For purposes of applying the rules for reimbursement, a refinancing bond which otherwise meets the requirements of this paragraph (h)(9)(ii) is eligible for reimbursement and is not treated as a disqualified refunding under § 1.150–2(g).

(iii) *Reissuance of a QZAB.* For purposes of determining whether the establishing of a defeasance escrow under paragraph (h)(8)(ii)(B)(*1*)(*ii*) of this section results in an exchange under § 1.1001–1(a), the QZAB is treated as a tax-exempt bond under § 1.1001–3(e)(5)(ii)(B)(*1*).

(10) *Reimbursement.* An expenditure for a qualified purpose may be reimbursed with proceeds of a QZAB. For this purpose, rules similar to those on reimbursement of expenditures in § 1.142–4(b) and § 1.150–2 shall apply. In applying these reimbursement rules, expenditures eligible for reimbursement under § 1.150–2(d)(3) shall be deemed to mean any expenditure for a qualified purpose under section 1397E(d)(5).

(i) *Arbitrage investment restrictions*—(1) *In general.* Under section 1397E(g) and this paragraph (i), and except as otherwise provided in this paragraph (i), the arbitrage investment restrictions and rebate requirements under section 148 and §§ 1.148–1 through 1.148–11, inclusive, and the exceptions to those restrictions, apply broadly to gross proceeds of QZABs issued under section 1397E to the same extent and in the same manner as they apply to gross proceeds of tax-exempt state or local governmental bonds. For this purpose, references in those sections to tax-exempt bonds generally shall be deemed to refer to QZABs and, to the extent that any particular arbitrage restriction depends on whether bonds are private activity bonds under section 141, the determination of whether QZABs are private activity bonds shall be based on the general definition of private activity bonds under section 141. In applying section 148 and the regulations under that section to QZABs, the modifications set forth in paragraphs (i)(2) through (i)(6) of this section shall apply.

(2) *5-year temporary period exception to arbitrage yield restriction.* If an issue of QZABs meets the requirements of section 1397E(f)(1) and paragraph (h)(2)(i) of this section, then the proceeds of the issue of QZABs are treated as qualifying for a 5-year temporary period exception to arbitrage yield restriction under § 1.148–2(e)(2) beginning on the issue date of the issue.

(3) *Disregard QZAB credit in QZAB yield for arbitrage purposes.* In determining the yield on an issue of QZABs for arbitrage purposes under § 1.148–4, the QZAB credit allowed under section 1397E(a) is disregarded.

(4) *Non-AMT tax-exempt bond investment exception inapplicable.* The exception to arbitrage yield restriction for investments of gross proceeds of tax-exempt bonds in specified tax-exempt bond investments not subject to section 148(b)(3)(B) (relating to an exception to the definition of "investment property" for specified tax-exempt bonds) and § 1.148–2(d)(2)(v) (relating to a corresponding exception to arbitrage yield limitations) is inapplicable.

(5) *Application of small issuer exception to the arbitrage rebate requirement.* Except as otherwise provided in paragraph (i)(6) of this section, for purposes of the small issuer exception to the arbitrage rebate requirement under section 148(f)(4)(D) and § 1.148–8, QZABs that are actually issued or reasonably expected to be issued by the QZAB issuer (and applicable entities aggregated under section 148(f)(4)(D)) within a calendar

year are taken into account in measuring the applicable size limitation.

(6) *Certain defeasance escrow earnings.* With respect to a defeasance escrow established in a remedial action for an issue of QZABs that meets the special rebate requirement under paragraph (h)(8)(ii)(C)(*2*) of this section, the QZAB issuer is treated as ineligible for the small issuer exception to arbitrage rebate under section 148(f)(4)(D) and paragraph (i)(5) of this section and compliance with that special rebate requirement is treated as satisfying applicable arbitrage investment restrictions under section 148 for that defeasance escrow.

(j) *Information reporting requirement.* Under section 1397E(h) and this paragraph (j), issuers of QZABs are required to submit information reporting returns to the IRS similar to the information reporting returns required to be submitted to the IRS under section 149(e) for tax-exempt state or local governmental bonds at the same time and in the same manner as those reports are required to be submitted to the IRS on such forms as shall be prescribed by the Commissioner for such purpose.

* * * * *

(m) *Effective/applicability dates*—(1) *In general.* Except as otherwise provided in this paragraph (m), this section applies to bonds issued under section 1397E that are sold on or after September 14, 2007.

(2) *Special effective dates*—(i) *Effective dates for paragraphs (h)(2), (h)(3), (h)(4), (i), and (j) of this section in general.* Paragraphs (h)(2), (h)(3), (h)(4), (i), and (j) of this section apply to bonds issued under section 1397E pursuant to allocations of the national qualified zone academy bond volume cap authority for calendar years after 2005 and sold on or after September 14, 2007.

(ii) *Permissive retroactive application*—(A) *In general.* Except as otherwise provided in this paragraph (m), issuers and taxpayers may apply this section in whole, but not in part, to bonds issued under section 1397E that are sold before September 14, 2007.

(B) *Special rule for certain provisions.* For purposes of the permissive retroactive application rule in paragraph (m)(2)(ii)(A) of this section, paragraphs (h)(2), (h)(3), (h)(4), (i), and (j) of this section need not be applied to any bonds issued under section 1397E to which those provisions do not otherwise apply under the general effective date provisions for those provisions in paragraph (m)(2)(i) of this section.

(C) *Definition of proceeds.* Issuers and taxpayers may apply paragraph (h) of this section, without regard to the definition of proceeds in paragraph (a)(2)(ii) of this section, to bonds issued under section 1397E that are sold before September 14, 2007.

(D) *Bonds issued before July 1, 1999.* Paragraphs (b) and (h)(10) of this section may not be applied to bonds issued under section 1397E that are issued before July 1, 1999.

(3) *Scope of reliance for bonds issued under sections 54A and 54E.* Except to the extent inconsistent with the successor statutory provisions for QZABs in sections 54A and 54E or applicable public administrative or regulatory guidance under those provisions and except as otherwise provided in this paragraph (m)(3), issuers and taxpayers may apply these regulations to QZABs issued under sections 54A and 54E that are sold on or after October 3, 2008. In the case of QZABs that are issued under sections 54A and 54E for which the issuer makes an irrevocable election under section 6431(f) to receive payments with respect to credits under section 6431, issuers and taxpayers may not apply the remedial action provisions under paragraph (h)(8) of this section.

§ 1.1397E–1T [Removed]

■ **Par. 3.** Section 1.1397E–1T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 4.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 5.** In § 602.101, paragraph (b) is amended by removing the entry for "1.1397E–1T"and 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.
* * *	*
1.1397E–1	1545–1908
* * *	*

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: July 16, 2010.

Michael Mundaca,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2010–18678 Filed 7–29–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 549

Lebanon Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control ("OFAC") is adding regulations to implement Executive Order 13441 of August 1, 2007, "Blocking Property of Persons Undermining the Sovereignty of Lebanon or Its Democratic Processes and Institutions."

DATES: *Effective Date:* July 30, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Compliance, Outreach & Implementation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Assistant Director for Policy, tel.: 202/622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On August 1, 2007, the President, invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA"), issued Executive Order 13441 (72 FR 43499, Aug. 3, 2007) ("E.O. 13441"). In E.O. 13441, the President determined that the actions of certain persons to undermine Lebanon's legitimate and democratically elected government or democratic institutions, to contribute to the deliberate

breakdown of the rule of law in Lebanon, including through politically motivated violence and intimidation, to reassert Syrian control or contribute to Syrian interference in Lebanon, or to infringe upon or undermine Lebanese sovereignty contribute to political and economic instability in Lebanon and the region and constitute an unusual and extraordinary threat to the national security and foreign policy of the United States. To deal with that threat, the President declared a national emergency. E.O. 13441 then sets forth the actions ordered by the President.

Section 1(a) of E.O. 13441 blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, including any overseas branch, of any person determined by the Secretary of the Treasury, in consultation with the Secretary of State: (1) To have taken, or to pose a significant risk of taking, actions, including acts of violence, that have the purpose or effect of undermining Lebanon's democratic processes or institutions, contributing to the breakdown of the rule of law in Lebanon, supporting the reassertion of Syrian control or otherwise contributing to Syrian interference in Lebanon, or infringing upon or undermining Lebanese sovereignty; (2) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, such actions, including acts of violence, or any person whose property and interests in property are blocked pursuant to E.O. 13441; (3) to be a spouse or dependent child of any person whose property and interests in property are blocked pursuant to E.O. 13441; or (4) to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to E.O. 13441. The property and interests in property of the persons described above may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

In Section 1(b) of E.O. 13441, the President determined that the making of donations of certain articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, as specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)), by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to E.O. 13441 would seriously impair his ability to deal with the national emergency declared in E.O. 13441. The President therefore prohibited the donation of such items unless authorized by OFAC.

Section 1(c) of E.O. 13441 provides that the prohibition on any transaction or dealing in blocked property or interests in property includes, but is not limited to, the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to E.O. 13441, and the receipt of any contribution or provision of funds, goods, or services from any such person.

Section 2 of E.O. 13441 prohibits any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in E.O. 13441, as well as any conspiracy formed to violate such prohibitions.

Section 5 of E.O. 13441 authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA, as may be necessary to carry out the purposes of E.O. 13441. Section 5 of E.O. 13441 also provides that the Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the U.S. Government. In furtherance of the purposes of E.O. 13441, OFAC is promulgating the Lebanon Sanctions Regulations, 31 CFR part 549 (the "Regulations").

The Regulations implement targeted sanctions that are directed at certain persons who meet the criteria set forth above. The sanctions generally do not prohibit trade or the provision of banking or other financial services to the country of Lebanon, unless the transaction or service in question involves a person whose property and interests in property are blocked pursuant to these sanctions.

Subpart A of the Regulations clarifies the relation of this part to other laws and regulations. Subpart B of the Regulations implements the prohibitions contained in sections 1 and 2 of E.O. 13441. *See, e.g.,* §§ 549.201 and 549.205. Persons designated by or under the authority of the Secretary of the Treasury pursuant to E.O. 13441 or otherwise subject to the blocking provisions of E.O. 13441 are referred to throughout the Regulations as "persons whose property and interests in property are blocked pursuant to § 549.201(a)." The names of persons designated pursuant to E.O. 13441 are published on OFAC's Specially Designated Nationals and Blocked Persons List, which is accessible via OFAC's Web site. Those names also are published in the **Federal Register** as they are added to the List, and the entire List is republished annually as Appendix A to 31 CFR chapter V.

Sections 549.202 and 549.203 of subpart B detail the effect of transfers of blocked property in violation of the Regulations and set forth the requirement to hold blocked funds, such as currency, bank deposits, or liquidated financial obligations, in interest-bearing blocked accounts. Section 549.204 of subpart B provides that all expenses incident to the maintenance of blocked physical property shall be the responsibility of the owners and operators of such property, and that such expenses shall not be met from blocked funds, unless otherwise authorized. The section further provides that blocked property may, in OFAC's discretion, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

Section 549.205 of subpart B implements the prohibitions of E.O. 13441 on any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in E.O. 13441, and on any conspiracy formed to violate such prohibitions.

Section 549.206 of subpart B details transactions that are exempt from the prohibitions of the Regulations pursuant to sections 203(b)(1), (3), and (4) of IEEPA (50 U.S.C. 1702(b)(1), (3), and (4)). These exempt transactions relate to personal communications, the importation and exportation of information or informational materials, and transactions ordinarily incident to travel.

Subpart C of the Regulations defines key terms used throughout the Regulations, and subpart D contains interpretive sections regarding the Regulations. Section 549.411 of subpart D explains that the property and interests in property of an entity are blocked if the entity is 50 percent or more owned by a person whose property and interests in property are blocked, whether or not the entity itself is designated pursuant to E.O. 13441.

Transactions otherwise prohibited under the Regulations but found to be consistent with U.S. policy may be authorized by one of the general licenses contained in subpart E of the Regulations or by a specific license issued pursuant to the procedures described in subpart E of 31 CFR part

501. Subpart E of the Regulations also contains certain statements of licensing policy in addition to the general licenses.

Subpart F of the Regulations refers to subpart C of part 501 for applicable recordkeeping and reporting requirements. Subpart G of the Regulations describes the civil and criminal penalties applicable to violations of the Regulations, as well as the procedures governing the potential imposition of a civil monetary penalty. Subpart G also refers to Appendix A of part 501 for a more complete description of these procedures.

Subpart H of the Regulations refers to subpart E of part 501 for applicable provisions relating to administrative procedures and contains a delegation of authority by the Secretary of the Treasury. Subpart I of the Regulations sets forth a Paperwork Reduction Act notice.

Public Participation

Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the "Reporting, Procedures and Penalties Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. 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 control number.

List of Subjects in 31 CFR Part 549

Administrative practice and procedure, Banks, Banking, Blocking of assets, Credit, Foreign Trade, Lebanon, Penalties, Reporting and recordkeeping requirements, Securities, Services.

■ For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control adds part 549 to 31 CFR chapter V to read as follows:

PART 549—LEBANON SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
549.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

549.201 Prohibited transactions involving blocked property.
549.202 Effect of transfers violating the provisions of this part.
549.203 Holding of funds in interest-bearing accounts; investment and reinvestment.
549.204 Expenses of maintaining blocked physical property; liquidation of blocked property.
549.205 Evasions; attempts; conspiracies.
549.206 Exempt transactions.

Subpart C—General Definitions

549.301 Blocked account; blocked property.
549.302 Effective date.
549.303 Entity.
549.304 Information or informational materials.
549.305 Interest.
549.306 Licenses; general and specific.
549.307 Person.
549.308 Property; property interest.
549.309 Transfer.
549.310 United States.
549.311 U.S. financial institution.
549.312 United States person; U.S. person.
549.313 Financial, material, or technological support.

Subpart D—Interpretations

549.401 Reference to amended sections.
549.402 Effect of amendment.
549.403 Termination and acquisition of an interest in blocked property.
549.404 Transactions ordinarily incident to a licensed transaction.
549.405 Provision of services.
549.406 Offshore transactions.
549.407 Payments from blocked accounts to satisfy obligations prohibited.
549.408 Charitable contributions.
549.409 Credit extended and cards issued by U.S. financial institutions.
549.410 Setoffs prohibited.
549.411 Entities owned by a person whose property and interests in property are blocked.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

549.501 General and specific licensing procedures.
549.502 Effect of license or authorization.
549.503 Exclusion from licenses.
549.504 Payments and transfers to blocked accounts in U.S. financial institutions.
549.505 Entries in certain accounts for normal service charges authorized.
549.506 Investment and reinvestment of certain funds.
549.507 Provision of certain legal services authorized.
549.508 Authorization of emergency medical services.

Subpart F—Reports

549.601 Records and reports.

Subpart G—Penalties

549.701 Penalties.
549.702 Pre-Penalty Notice; settlement.
549.703 Penalty imposition.
549.704 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

549.801 Procedures.
549.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

549.901 Paperwork Reduction Act notice.

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13441, 72 FR 43499, 3 CFR, 2008 Comp., p. 232.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 549.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 549.201 Prohibited transactions involving blocked property.

(a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: Any person determined by the

Secretary of the Treasury, in consultation with the Secretary of State:

(1) To have taken, or to pose a significant risk of taking, actions, including acts of violence, that have the purpose or effect of undermining Lebanon's democratic processes or institutions, contributing to the breakdown of the rule of law in Lebanon, supporting the reassertion of Syrian control or otherwise contributing to Syrian interference in Lebanon, or infringing upon or undermining Lebanese sovereignty;

(2) To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the activities described in paragraph (a)(1) of this section, including acts of violence, or any person whose property and interests in property are blocked pursuant to this paragraph (a);

(3) To be a spouse or dependent child of any person whose property and interests in property are blocked pursuant to this paragraph (a); or

(4) To be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this paragraph (a).

Note 1 to paragraph (a) of § 549.201: The names of persons designated pursuant to Executive Order 13441, whose property and interests in property are blocked pursuant to paragraph (a) of this section, are published on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List ("SDN" list) (which is accessible via the Office of Foreign Assets Control's Web site), published in the **Federal Register**, and incorporated into Appendix A to this chapter with the identifier "[LEBANON]." *See* § 549.411 concerning entities that may not be listed on the SDN list but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section.

Note 2 to paragraph (a) of § 549.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA"), in Section 203 (50 U.S.C. 1702), explicitly authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to this part also are published on the SDN list, published in the **Federal Register**, and incorporated into Appendix A to this chapter with the identifier "[BPI–LEBANON]."

Note 3 to paragraph (a) of § 549.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(b) The prohibitions in paragraph (a) of this section include, but are not limited to, prohibitions on the following transactions:

(1) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to paragraph (a) of this section; and

(2) The receipt of any contribution or provision of funds, goods, or services from any person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(c) Unless otherwise authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of, or known to be held for the benefit of, or issued by, any person whose property and interests in property are blocked pursuant to paragraph (a) of this section is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on, any such security on or after the effective date. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such security may have or might appear to have assigned, transferred, or otherwise disposed of the security.

(d) The prohibitions in paragraph (a) of this section apply except to the extent transactions are authorized by regulations, orders, directives, rulings, instructions, licenses, or otherwise, and notwithstanding any contracts entered into or any license or permit granted prior to the effective date.

§ 549.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 549.201(a), is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 549.201(a), unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of IEEPA, Executive Order 13441, this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other directive or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

Note to paragraph (d) of § 549.202: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which, on or since the effective date, there existed an interest of a person whose property and interests in property are blocked pursuant to § 549.201(a).

§ 549.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraphs (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 549.201(a) shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a Federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 549.201(a) may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraphs (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 549.201(a) may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 549.201(a), nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 549.204 Expenses of maintaining blocked physical property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of physical property blocked pursuant to § 549.201(a) shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 549.201(a) may, in the discretion of the Office of Foreign Assets Control, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

§ 549.205 Evasions; attempts; conspiracies.

(a) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any transaction by a U.S. person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any conspiracy formed to violate the prohibitions set forth in this part is prohibited.

§ 549.206 Exempt transactions.

(a) *Personal communications.* The prohibitions contained in this part do not apply to any postal, telegraphic, telephonic, or other personal communication that does not involve the transfer of anything of value.

(b) *Information or informational materials.* (1) The importation from any country and the exportation to any country of any information or informational materials, as defined in § 549.304, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions of this part.

(2) This section does not exempt from regulation or authorize transactions related to information or informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services. Such prohibited transactions include, but are not limited to, payment of advances for information or informational materials not yet created and completed (with the exception of prepaid subscriptions for widely circulated magazines and other periodical publications); provision of services to market, produce or co-produce, create, or assist in the creation of information or informational materials; and, with respect to information or informational materials imported from persons whose property and interests in property are blocked pursuant to § 549.201(a), payment of royalties with respect to income received for enhancements or alterations made by U.S. persons to such information or informational materials.

(3) This section does not exempt or authorize transactions incident to the exportation of software subject to the Export Administration Regulations, 15 CFR parts 730 through 774, or to the exportation of goods, technology, or software for use in the transmission of any data, or to the provision, sale, or leasing of capacity on telecommunications transmission facilities (such as satellite or terrestrial network connectivity) for use in the transmission of any data. The exportation of such items or services and the provision, sale, or leasing of such capacity or facilities to a person

whose property and interests in property are blocked pursuant to § 549.201(a) are prohibited.

(c) *Travel.* The prohibitions contained in this part do not apply to any transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

Subpart C—General Definitions

§ 549.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 549.201 held in the name of a person whose property and interests in property are blocked pursuant to § 549.201(a), or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

Note to § 549.301: *See* § 549.411 concerning the blocked status of property and interests in property of an entity that is 50 percent or more owned by a person whose property and interests in property are blocked pursuant to § 549.201(a).

§ 549.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part and, with respect to a person whose property and interests in property are blocked pursuant to § 549.201(a), refers to the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked.

§ 549.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 549.304 Information or informational materials.

(a) For purposes of this part, the term *information* or *informational materials* includes, but is not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.

Note to paragraph (a) of § 549.304: To be considered information or informational materials, artworks must be classified under chapter heading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term *information* or *informational materials,* with respect to United States exports, does not include items:

(1) That were, as of April 30, 1994, or that thereafter become, controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (1979) (the "EAA"), or section 6 of the EAA to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States; or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

§ 549.305 Interest.

Except as otherwise provided in this part, the term *interest,* when used with respect to property (*e.g.,* "an interest in property"), means an interest of any nature whatsoever, direct or indirect.

§ 549.306 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

Note to § 549.306: *See* § 501.801 of this chapter on licensing procedures.

§ 549.307 Person.

The term *person* means an individual or entity.

§ 549.308 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

§ 549.309 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation on the foregoing, it shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 549.310 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 549.311 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities,

commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes but is not limited to depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 549.312 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

§ 549.313 Financial, material, or technological support.

The term *financial, material, or technological support,* as used in § 549.201(a)(2) of this part, means any property, tangible or intangible, including but not limited to currency, financial instruments, securities, or any other transmission of value; weapons or related materiel; chemical or biological agents; explosives; false documentation or identification; communications equipment; computers; electronic or other devices or equipment; technologies; lodging; safe houses; facilities; vehicles or other means of transportation; or goods. "Technologies" as used in this definition means specific information necessary for the development, production, or use of a product, including related technical data such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, or other recorded instructions.

Subpart D—Interpretations

§ 549.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, directive, or license issued pursuant to this part refers to the same as currently amended.

§ 549.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 549.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person, such property shall no longer be deemed to be property blocked pursuant to § 549.201(a), unless there exists in the property another interest that is blocked pursuant to § 549.201(a) or any other part of this chapter, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 549.201(a), such property shall be deemed to be property in which that person has an interest and therefore blocked.

§ 549.404 Transactions ordinarily incident to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in property are blocked pursuant to § 549.201(a); or

(b) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

(c) *Example.* A license authorizing Company A, whose property and interests in property are blocked pursuant to § 549.201(a), to complete a securities sale also authorizes all activities by other parties required to complete the sale, including transactions by the buyer, broker, transfer agents, banks, *etc.,* provided that such other parties are not themselves persons whose property and interests in property are blocked pursuant to § 549.201(a).

§ 549.405 Provision of services.

(a) Except as provided in § 549.206, the prohibitions on transactions involving blocked property contained in § 549.201 apply to services performed in the United States or by U.S. persons, wherever located, including by an overseas branch of an entity located in the United States:

(1) On behalf of or for the benefit of a person whose property and interests in property are blocked pursuant to § 549.201(a); or

(2) With respect to property interests subject to § 549.201.

(b) *Example.* U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or other services to a person whose property and interests in property are blocked pursuant to § 549.201(a).

Note to § 549.405: *See* §§ 549.507 and 549.508 on licensing policy with regard to the provision of certain legal and medical services.

§ 549.406 Offshore transactions.

The prohibitions in § 549.201 on transactions or dealings involving blocked property apply to transactions by any U.S. person in a location outside the United States with respect to property held in the name of a person whose property and interests in property are blocked pursuant to § 549.201(a), or property in which a person whose property and interests in property are blocked pursuant to § 549.201(a) has or has had an interest since the effective date.

§ 549.407 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to § 549.201, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as authorized by or pursuant to this part.

§ 549.408 Charitable contributions.

Unless specifically authorized by the Office of Foreign Assets Control pursuant to this part, no charitable contribution of funds, goods, services, or technology, including contributions to relieve human suffering, such as food, clothing or medicine, may be made by, to, or for the benefit of, or received from, a person whose property and interests

in property are blocked pursuant to § 549.201(a). For the purposes of this part, a contribution is made by, to, or for the benefit of, or received from, a person whose property and interests in property are blocked pursuant to § 549.201(a) if made by, to, or in the name of, or received from or in the name of, such a person; if made by, to, or in the name of, or received from or in the name of, an entity or individual acting for or on behalf of, or owned or controlled by, such a person; or if made in an attempt to violate, to evade, or to avoid the bar on the provision of contributions by, to, or for the benefit of such a person, or the receipt of contributions from any such person.

§ 549.409 Credit extended and cards issued by U.S. financial institutions.

The prohibition in § 549.201 on dealing in property subject to that section prohibits U.S. financial institutions from performing under any existing credit agreements, including, but not limited to, charge cards, debit cards, or other credit facilities issued by a U.S. financial institution to a person whose property and interests in property are blocked pursuant to § 549.201(a).

§ 549.410 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 549.201 if effected after the effective date.

§ 549.411 Entities owned by a person whose property and interests in property are blocked.

A person whose property and interests in property are blocked pursuant to § 549.201(a) has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 549.201(a), regardless of whether the entity itself is designated pursuant to § 549.201(a).

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 549.501 General and specific licensing procedures.

For provisions relating to licensing procedures, *see* part 501, subpart E of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

§ 549.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of such license or other authorization, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any other part of this chapter unless the regulation, ruling, instruction, or license specifically refers to such part.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 549.503 Exclusion from licenses.

The Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 549.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to § 549.201(a) has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

Note to § 549.504: *See* § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. *See also* § 549.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 549.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, Internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 549.506 Investment and reinvestment of certain funds.

Subject to the requirements of § 549.203, U.S. financial institutions are authorized to invest and reinvest assets blocked pursuant to § 549.201, subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount that is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but funds shall not be transferred outside the United States for this purpose;

(b) The proceeds of such investments and reinvestments shall not be credited to a blocked account or subaccount under any name or designation that differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (*e.g.,* through pledging or other use) to a person whose property and interests in property are blocked pursuant to § 549.201(a).

§ 549.507 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in

property are blocked pursuant to § 549.201(a) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any Federal or State agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to persons whose property and interests in property are blocked pursuant to § 549.201(a), not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 549.201(a) is prohibited unless licensed pursuant to this part.

§ 549.508 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property and interests in property are blocked pursuant to § 549.201(a) is authorized, provided that all receipt of payment for such services must be specifically licensed.

Subpart F—Reports

§ 549.601 Records and reports.

For provisions relating to required records and reports, *see* part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 549.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) ("IEEPA"), which is applicable to violations of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA.

(1) A civil penalty not to exceed the amount set forth in section 206 of IEEPA may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under IEEPA.

Note to paragraph (a)(1) of § 549.701: As of the date of publication in the **Federal Register** of the final rule adding this part to 31 CFR chapter V (July 30, 2010), IEEPA provides for a maximum civil penalty not to exceed the greater of $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition may, upon conviction, be fined not more than $1,000,000, or if a natural person, be imprisoned for not more than 20 years, or both.

(b) *Adjustments to penalty amounts.* (1) The civil penalties provided in IEEPA are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in IEEPA are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Attention is also directed to 18 U.S.C. 1001, which provides that "whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully:

(1) Falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) Makes any materially false, fictitious, or fraudulent statement or representation; or

(3) Makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry" shall be fined under title 18, United States Code, imprisoned, or both.

(d) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 549.702 Pre-Penalty Notice; settlement.

(a) *When required.* If the Office of Foreign Assets Control has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA and determines that a civil monetary penalty is warranted, the Office of Foreign Assets Control will issue a Pre-Penalty Notice informing the alleged violator of the agency's intent to impose a monetary penalty. A Pre-Penalty Notice shall be in writing. The Pre-Penalty Notice may be issued whether or not another agency has taken any action with respect to the matter. For a description of the contents of a Pre-Penalty Notice, *see* Appendix A to part 501 of this chapter.

(b)(1) *Right to respond.* An alleged violator has the right to respond to a Pre-Penalty Notice by making a written presentation to the Office of Foreign Assets Control. For a description of the information that should be included in such a response, *see* Appendix A to part 501 of this chapter.

(2) *Deadline for response.* A response to a Pre-Penalty Notice must be made within the applicable 30-day period set forth in this paragraph. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(i) *Computation of time for response.* A response to a Pre-Penalty Notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to the Office of Foreign Assets Control by courier) on or before the 30th day after the postmark date on the envelope in which the Pre-Penalty Notice was mailed. If the Pre-Penalty Notice was personally delivered by a non-U.S. Postal Service agent authorized by the Office of Foreign Assets Control, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *Extensions of time for response.* If a due date falls on a Federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of the Office of Foreign

Assets Control, only upon specific request to the Office of Foreign Assets Control.

(3) *Form and method of response.* A response to a Pre-Penalty Notice need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof, must contain information sufficient to indicate that it is in response to the Pre-Penalty Notice, and must include the Office of Foreign Assets Control identification number listed on the Pre-Penalty Notice. A copy of the written response may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped in accordance with paragraph (b)(2) of this section.

(c) *Settlement.* Settlement discussion may be initiated by the Office of Foreign Assets Control, the alleged violator, or the alleged violator's authorized representative. For a description of practices with respect to settlement, *see* Appendix A to part 501 of this chapter.

(d) *Guidelines.* Guidelines for the imposition or settlement of civil penalties by the Office of Foreign Assets Control are contained in Appendix A to part 501 of this chapter.

(e) *Representation.* A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the Pre-Penalty Notice must be preceded by a written letter of representation, unless the Pre-Penalty Notice was served upon the alleged violator in care of the representative.

§ 549.703 Penalty imposition.

If, after considering any written response to the Pre-Penalty Notice and any relevant facts, the Office of Foreign Assets Control determines that there was a violation by the alleged violator named in the Pre-Penalty Notice and that a civil monetary penalty is appropriate, the Office of Foreign Assets Control may issue a Penalty Notice to the violator containing a determination of the violation and the imposition of the monetary penalty. For additional details concerning issuance of a Penalty Notice, *see* Appendix A to part 501 of this chapter. The issuance of the Penalty Notice shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in Federal district court.

§ 549.704 Administrative collection; referral to United States Department of Justice.

In the event that the violator does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Office of Foreign Assets Control, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Subpart H—Procedures

§ 549.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), *see* part 501, subpart E, of this chapter.

§ 549.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13441 of August 1, 2007 (72 FR 43499, Aug. 3, 2007), and any further Executive orders relating to the national emergency declared therein, may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 549.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, *see* § 501.901 of this chapter. 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 OMB.

Dated: July 21, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

Approved: July 26, 2010.

Stuart A. Levey,

Under Secretary, Office of Terrorism and Financial Intelligence, Department of the Treasury.

[FR Doc. 2010–18717 Filed 7–29–10; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–0679]

Drawbridge Operation Regulation; Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Cape Fear River Memorial Bridge, across the Cape Fear River, mile 26.8, at Wilmington, NC. The deviation restricts the operation of the draw span to facilitate the cleaning and painting of the structure.

DATES: This temporary deviation is effective with actual notice beginning 8 a.m. on July 13, 2010, and with constructive notice beginning 12:01 a.m. July 30, 2010 until 11:59 p.m. on December 31, 2010.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of the docket USCG–2010–0679 and are available online by going to *http://www.regulations.gov*, inserting USCG–2010–0679 in the "Keywords" 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 rule, call or e-mail Mr. Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District; telephone 757–398–6422, e-mail *Bill.H.Brazier@uscg.mil.* If you have questions on viewing the docket, call Renne V. Wright, Program Manager, Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION: The North Carolina Department of Transportation, who owns and operates this vertical-lift bridge, has requested a temporary deviation from the current operating schedule to facilitate painting of the structure. Under the regular operating schedule the bridge opens on signal as required by 33 CFR 117.5, except that under 33 CFR 117.823, the draw need not open for the passage of vessels from 8 a.m. to 10 a.m. on the second Saturday

of July and from 7 a.m. to 11 a.m. on the second Sunday of November every year.

The Cape Fear River Memorial Bridge across the Cape Fear River, mile 26.8, at Wilmington, NC has vertical clearances in the open and closed positions of 135 feet and 65 feet above mean high water respectively.

Under this temporary deviation, the drawbridge will operate as follows: (1) From 8 a.m. on July 13, 2010 until and including 11:59 p.m. on August 15, 2010 vessel openings will be provided if at least three hours advance notice is given to the bridge tender at (910) 251–5773 or via marine radio on channel 18 VHF; the vertical clearance of the bridge will not be changed in this period; (2) From 12 a.m. (midnight) on August 16, 2010 until and including 11:59 p.m. on December 31, 2010, vessel openings will be provided if at least three hours advance notice is given to the bridge operator at (910) 251–5773 or via marine radio on channel 18 VHF; in this period, the available vertical clearances of portions of the drawbridge (up to half of the drawbridge at one time) will be reduced by approximately four feet to 131 feet and 61 feet above mean high water, respectively, to accommodate scaffolding. There are no alternate routes for vessels transiting this section of the Cape Fear River.

The Coast Guard has carefully coordinated the restrictions with commercial and recreational waterway users. The Coast Guard will use Local and Broadcast Notice to Mariners to inform all users of the waterway of the closure periods for the bridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the draw must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 12, 2010.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 2010–18718 Filed 7–29–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0232; FRL–8835–3]

Castor Oil, Ethoxylated, Dioleate; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of castor oil, ethoxylated, dioleate; when used as an inert ingredient in a pesticide chemical formulation under 40 CFR 180.960. Exponent, on behalf of Plant Impact plc, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of castor oil, ethoxylated, dioleate on food or feed commodities.

DATES: This regulation is effective July 30, 2010. Objections and requests for hearings must be received on or before September 28, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0232. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Deirdre Sunderland, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 603–0851; e-mail address: *sunderland.deirdre@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0232 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 28, 2010. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please

submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0232, by one of the following methods.

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of May 19, 2010 (75 FR 28009) (FRL–8823–2), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP 9E7648) filed by, Exponent Inc., 1150 Connecticut Ave., NW., Suite 1100, Washington, DC 20036, on behalf of Plant Impact plc, 12 S. Preston Office Village, Cuerdan Way, Bamber Bridge, Preston, PR5 6BL, United Kingdom. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of castor oil, ethoxylated, dioleate; 110531–96–9. That notice included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments

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

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). Castor oil, ethoxylated, dioleate conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of 1,260 is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW1,000, and the polymer does not contain any reactive functional groups.

Thus, castor oil, ethoxylated, dioleate meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to castor oil, ethoxylated, dioleate.

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that castor oil, ethoxylated, dioleate could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of castor oil, ethoxylated, dioleate is 1,260 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since castor oil, ethoxylated, dioleate conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

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

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

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of castor oil, ethoxylated, dioleate, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of castor oil, ethoxylated, dioleate.

VIII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

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

The Codex has not established a MRL for castor oil, ethoxylated, dioleate.

IX. Conclusion

Accordingly, EPA finds that exempting residues of castor oil, ethoxylated, dioleate from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these rules from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

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

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

Although this action does not require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have a typical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must

submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: July 22, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. In §180.960, the table is amended by adding alphabetically the following polymer to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * * * * * *	
Castor oil, ethoxylated, dioleate, minimum number average molecular weight (in amu), 1260.	110531–96–9
* * * * * * *	

[FR Doc. 2010–18778 Filed 7–29; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1986–0005; FRL–9183–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the SMS Instruments, Inc. Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA), Region 2, announces the deletion of the SMS Instruments, Inc. Superfund Site (Site), located in Deer Park, Suffolk County, New York, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of New York, through the New York State Department of Environmental Conservation (NYSDEC), because EPA has determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion will be effective September 13, 2010 unless EPA receives significant adverse comments by August 30, 2010. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1986–0005, by one of the following methods:

- *Web site: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: dannenberg.mark@epa.gov.*
- *Fax:* to the attention of Mark Dannenberg at (212) 637–3966.
- *Mail:* Mark Dannenberg, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, NY 10007–1866.
- *Hand Delivery:* Superfund Records Center, 290 Broadway, 18th Floor, and New York, NY 10007–1866 (telephone: 212–637–4308). Such deliveries are only accepted during the Record Center's normal hours of operation (Monday to Friday from 9 a.m. to 5 p.m.) and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1986–0005. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider being CBI or otherwise protected through *http://www.regulations.gov* or via e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comments. If you send e-mail comments to EPA, your e-mail address will be included as part of the comment that is placed in the public docket and made available on the Web site. If you submit electronic comments, EPA recommends that you include your name and other contact information in the body of your comments and with any disks or CD–ROMs that you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

- Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866. *Hours:* Monday to Friday

from 9 a.m. to 5 p.m., *Phone:* 212–637–4308.

• New York State Department of Environmental Conservation, Region 1, SUNY @ Stony Brook, 50 Circle Road, Stony Brook, New York 11790, *Phone:* 631–444–0240.

FOR FURTHER INFORMATION CONTACT: Mark Dannenberg, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, NY 10007–1866, telephone (212) 637–4251; fax (212) 637–3966; or e-mail: *dannenberg.mark@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion
V. Deletion Action

I. Introduction

EPA Region 2 is publishing this direct final Notice of Deletion of the SMS Instruments Superfund Site (Site) from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in § 300.425(e)(3) of the NCP, a site deleted from the NPL remains eligible for remedial actions if conditions at the site warrant such action.

Because EPA considers this action to be noncontroversial and routine, this action will be effective September 13, 2010 unless EPA receives significant adverse comments by August 30, 2010. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the "Proposed Rules" section of the **Federal Register**. If adverse comments are received within the 30-day public comment period of this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and the deletion will not take effect. EPA will, if appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the SMS Instruments, Inc. Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the state, whether any of the following criteria have been met:

i. Responsible parties or other parties have implemented all appropriate response actions required; or

ii. All appropriate Fund-financed responses under CERCLA have been implemented, and no further action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release of hazardous substances poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the state of New York prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the "Proposed Rules" section of the **Federal Register**.

(2) EPA has provided the state 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the state, through the New York Department of Environmental Conservation, has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in *The South Bay News,* a major local newspaper. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following summary provides EPA's rationale for deleting SMS Instruments Superfund Site (EPA ID: NYD001533165) from the NPL:

Background

The Site is a 1.5-acre facility located at 120 Marcus Boulevard in Deer Park, New York. The facility was in operation from 1967 to 1990. The Site is in a light industrial and residential area and includes a 34,000 square-foot building. About 90% of the lot is covered by either the building or asphalt pavement. Primary operations at the SMS Instruments facility consisted of overhauling of military aircraft components which included the following operations: Cleaning, painting, degreasing, refurbishing, metal machining, and testing of components. Industrial wastes generated from degreasing and other refurbishing operations were discharged to a leaching pool on Site. Other sources of contamination included a 6,000 gallon Underground Storage Tank (UST) used for jet fuel storage and corroded and leaking drums stored outdoors in an unprotected area.

The site is located on the outwash plain of Long Island. The site elevation is approximately 75 feet above mean sea level. Topography is generally flat with the exception of a steep embankment leading to a large basin 50 feet from the eastern property line. The basin is within a major recharge zone for both

the Upper Glacial and Magothy aquifers, which supply water to the entire island. The uppermost aquifer, the Upper Glacial, underlies the site. The depth to the water table is approximately 20 feet below grade. The saturated portion of the Upper Glacial aquifer, with a thickness of 100 feet, begins at the water table and extends down to 120 feet below grade. The Upper Glacial aquifer is underlain by the Magothy aquifer which is approximately 900 feet thick in the vicinity of the site. The groundwater flow direction is southerly for the Upper Glacial aquifer. Land use within the immediate vicinity of the site is light industrial, but predominant land use in the surrounding area is commercial and residential. Approximately 5,000 residences are within 1 mile of the site.

A preliminary assessment of the Site was performed by EPA in 1982 to determine its hazard ranking. Based upon the analytical results, which indicated that the groundwater in the vicinity of the Site contained various volatile organic compounds, the Site was listed on the New York State Registry of Inactive Hazardous Waste Disposal Sites as a "Class 2 Inactive Hazardous Waste Site" in 1985.

The Site was added to the NPL on June 10, 1986 (51 FR 21054).

Remedial Investigation and Feasibility Study (RI/FS)

The first Remedial Investigation and Feasibility Study (RI/FS) for the site was initiated in April 1987 and completed in June 1989. Through the site investigations, EPA determined that the contaminants of concern present in soils, and in the groundwater were volatile organic compounds (VOCs). Contaminants of concern at the site included benzene, toluene, chlorobenzene and xylene in both soils and groundwater. The site-related VOC groundwater contaminant plume was determined to have a cross-width of less than 70 feet and to extend vertically into the shallow portion (upper 40 saturated feet) of the Upper Glacial aquifer. In addition, EPA determined from the risk assessment that the contaminants in the groundwater in the shallow portion of the Upper Glacial aquifer at the site, if not addressed, pose an unacceptable cancer risk and noncancer hazard. Groundwater contamination was also identified in the groundwater upgradient of the site which was attributed to upgradient sources other than those at the SMS Instruments site. Groundwater remediation addressed both site-related and upgradient contaminant to State and Federal drinking water standards.

Selected Remedy

A Record of Decision (ROD) was signed on September 29, 1989 for Operable Unit 1 (OU–1), which addressed contaminated soil and groundwater related to the Site. The ROD selected two media-specific remediation actions, one for soil and one for groundwater. The following are the Remedial Action Objectives: (1) Remove the site-related sources of contamination into the groundwater to expedite compliance with Federal and State groundwater standards; (2) prevent potential future ingestion of site-related contaminated groundwater; (3) restore the quality of groundwater contaminated from the site-related activities to levels consistent with the Federal and State drinking water and groundwater quality standards; and (4) mitigate migration from the site of the site-related contaminated groundwater. The ROD specified the following remedial action components: (1) In-situ air stripping (soil vapor extraction), of the contaminated soil in the southeastern portion of the property in the area of high VOC contamination; (2) extraction of the site-related groundwater contaminant plume present in the upper 50 feet of the saturated Upper Glacial aquifer; (3) treatment of contaminated groundwater to drinking water standards; (4) reinjection of the treated groundwater into the Upper Glacial aquifer; and (5) disposal of treatment residuals, as appropriate.

As a requirement of the first ROD for the Site a second RI/FS was performed (as Operable Unit 2 (OU–2)) to determine the presence/existence of offsite, upgradient sources of contamination. No upgradient sources of contamination were found and a ROD for OU–2 was signed on September 27, 1993 which selected a "no-action" remedy.

Response Actions

The owner of the property negotiated a settlement with EPA in 1988 and the EPA took over all work associated with OU–1 and OU–2 Remedial Design and Remedial Action activities. The Remedial Design of the remedies was performed by CDM Federal, Inc. on behalf of EPA. The Remedial Action was implemented in two phases: Soil remediation and groundwater remediation.

Soil Remediation

Based on data from the RI and knowledge of the locations of the two primary source areas, namely, the underground cesspool and former UST, EPA's contractor (CDM Federal, Inc.) prepared a remedial design for a Soil Vapor Extraction System (SVE) to remediate these source areas. CDM Federal, Inc. initiated the construction of the SVE system in October 1991; the construction was completed in April 1992 and operation of the SVE system began shortly thereafter. Soil contamination in the soil vadose zone, within each of the two source areas, was remediated of VOCs (predominantly benzene, toluene, ethylbenzene, and xylenes (BTEX)) down to the water table depth approximately 20 feet below ground surface. Operation of the SVE system continued until November 1993, when it was determined (and confirmed by soil sampling) that all soil cleanup levels had been achieved. During the soil remedial action activities, CDM collected groundwater samples to monitor the contaminant levels at the site. In addition, CDM's subcontractor continuously monitored the influent and effluent air streams to, and from, the SVE system to assure treatment was being performed in accordance with the performance requirements of the site-specific Monitoring Plan. Demobilization of soil remediation equipment occurred in March 1994. A *Remedial Action Report,* documenting the completion of the remedial action, was approved by EPA on September 22, 1994.

Groundwater Remediation

On-site construction activities were initiated in August 1993. Construction of the groundwater treatment system was completed in June 1994. The system began full operation in September 1994. The groundwater remedy consisted of pumping contaminated groundwater out of the aquifer, treating it through air stripping and carbon adsorption, and reinjecting it into the aquifer. The Remedial Action Report documenting the completion of the construction of the groundwater remediation system at the site was signed on March 31, 1995. The total flow rate through the treatment plant was approximately 90 gallons per minute (gpm), pumped from two extraction wells. The system was in almost continuous operation from September 1994 through September 2005, treating a total of approximately 500 million gallons of contaminated groundwater. It should be noted that, due to frequent clogging of the injection wells, permission was granted (from the Town of Babylon) to discontinue use of the injection wells and discharge the treated groundwater directly into the recharge basin located adjacent to the site. The requirements for this discharge

are the same as those for reinjection back into the aquifer. The groundwater treatment plant was decommissioned in 2007. The final building demolition and concrete foundation removal was completed in December 2007. In May 2008, NYSDEC issued the Final Pump and Treat System Dismantlement Report.

In 2005, EPA secured a REAC Contract with EarthTech, Inc. to pilot an alternative technology in order to decrease the time frame and the cost required to remediation groundwater contamination at the Site. EarthTech, Inc. built a transportable air-sparging system, installed the system on Site, attached the system to sparging wells, and began operating the system in May 2005. The air-sparging system successfully remediated the residual contamination that was the source of ongoing groundwater contamination. The air-sparging system was turned off in January 2010.

Cleanup Goals

The table below summarizes the cleanup goals for the soils and groundwater:

Contaminant	Cleanup objectives for subsurface soil (µg/kg)	Chemical specific ARAR for groundwater (µg/L)
Trans-1,2 dichloroethane	500	5
Tetrachloroethene	1,500	0.7
Trichloroethene	1,000	5
Total Xylenes	1,200	5
Ethylbenzene	5,500	5
Chlorobenzene	1,600	5
1,1-dichloroethane	.....	5
1,4-dichlorobenzene	1,000	4.7
1,3-dichlorobenzene	1,500	5
1,2-dichlorobenzene	1,000	4.7
Naphthalene	1,000	5
1,2,4-trimethylbenzene	3,600	5
1,3,5-trimethylbenzene	8,400	5

Groundwater monitoring was performed quarterly from 1994 to 2002 and at least semi-annually from 2003 to 2005. From 2005 to 2010, groundwater monitoring was conducted on an annual basis. When the groundwater pump and treat system was shut down in 2005, groundwater monitoring results indicated excursions of contaminant concentrations above cleanup goals localized in the vicinity of monitoring well MW–6S. Once the air-sparging unit began operation, groundwater monitoring data in 2008 and 2009 indicated three slight excursions above drinking water standards at the same monitoring well. The last groundwater monitoring event, in January 2010, indicated compliance with NYS Class GA drinking water standards for all site-related and upgradient contaminants in all site-related monitoring wells, including monitoring well MW–6S.

Five-Year Review

Hazardous substances at the Site are at levels that allow for unlimited use and unrestricted exposure. Pursuant to Section 121(c) of CERCLA, EPA reviews site remedies where such hazardous substances, pollutants, or contaminants remain no less often than every five years after the initiation of a remedy at a site. EPA conducted a five-year review of the Site in July 2006. The five-year review led EPA to conclude that human health and the environment are being protected by the remedial action implemented at the Site. As hazardous substances at the Site are at levels that allow for unlimited use and unrestricted exposure, no future five-year reviews are necessary.

Community Involvement

Public participation activities for this Site have been satisfied as required in CERCLA Sections 113(k) and 117. As part of the remedy selection process, the public was invited to comment on EPA's proposed remedies. All other documents and information which EPA relied on or considered in recommending this deletion are available for the public to review at the information repositories identified above.

Applicable Deletion Criteria/Statute Concurrence

All of the completion requirements for this Site have been met, as described in EPA's July 2010 Final Close Out Report. The State of New York, in a July 7, 2010 letter concurred on the proposed deletion of this Site from the NPL.

The NCP specifies that EPA may delete a site from the NPL if "all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate." 40 CFR 300.425(e)(1)(ii). EPA, with the concurrence of the State of New York, through NYSDEC, believes that this criterion for deletion has been met. Consequently, EPA is deleting this Site from the NPL. Documents supporting this action are available in the Site files.

V. Deletion Action

The EPA, with the concurrence of the State of New York, through NYSDEC, has determined that all appropriate responses under CERCLA have been completed and that no further response actions under CERCLA are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective September 13, 2010 unless EPA receives adverse comments by August 30, 2010. If adverse comments are received within the 30-day public comment period of this action, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and the deletion will not take effect. EPA will, if appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping

requirements, Superfund, Water pollution control, Water supply.

Dated: July 20, 2010.

Judith A. Enck,

Regional Administrator, USEPA, Region 2.

■ For the reasons set out in this document, 40 CFR Part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by removing "SMS Instruments, Inc," "Deer Park", "NY."

[FR Doc. 2010–18774 Filed 7–29–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0910051338–0151–02]

RIN 0648–XX64

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Trip Limit Reduction and Trawl Gear Restriction

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

ACTION: Temporary rule; inseason adjustment of landing limits and gear requirements.

SUMMARY: This action decreases the landing limit for Gulf of Maine (GOM) cod and implements a restriction on the use of certain types of trawl gear in parts of the U.S./Canada Management Area to reduce the harvest of Georges Bank (GB) yellowtail flounder for Northeast (NE) multispecies vessels fishing under common pool regulations for the 2010 fishing year (FY). This action is authorized by the regulations implementing Amendment 16 and Framework Adjustment 44 (FW 44) to the NE Multispecies Fishery Management Plan (FMP) and is intended to decrease the likelihood of harvest exceeding the subcomponent of the annual catch limit (ACL) allocated to the common pool (common pool sub-ACL) for each of these stocks during FY 2010 (May 1, 2010, through April 30, 2011). This action is being taken to ensure that common pool sub-ACLs for these stocks are not exceeded, thereby optimizing the harvest of NE regulated multispecies under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective July 30, 2010 through April 30, 2011.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, (978) 281–9341, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing possession and landing limits for vessels fishing under common pool regulations are found at 50 CFR 648.86. The regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies day-at-sea (DAS), or fishing under a NE multispecies Small Vessel or Handgear A or B category permit, to fish for and retain NE multispecies, under specified conditions. The vessels fishing in the common pool are allocated a sub-ACL equivalent to that portion of the commercial groundfish ACL that is not allocated to the 17 approved NE multispecies sectors for FY 2010. The final rule implementing FW 44 (75 FR 18356, April 9, 2010) established ACLs for FY 2010. A subsequent action published on May 26, 2010 (75 FR 29459), adjusted allocations based on final rosters of vessels participating in sectors for FY 2010. For FY 2010, the common pool has been allocated sub-ACLs of 240 mt (529,109 lb) for GOM cod and 23 mt (50,706 lb) for GB yellowtail flounder.

The regulations at § 648.86(o) authorize the Administrator, Northeast (NE) Region, NMFS (Regional Administrator) to increase or decrease the trip limits for vessels in the common pool to prevent over-harvesting or under-harvesting the common pool sub-ACL. Exceeding the common pool sub-ACL prior to April 30, 2011, would require drastic trip limit reductions and/or imposition of differential DAS counting for the remainder of FY 2010 to minimize the overage, and would trigger accountability measures (AMs) in FY 2011, including differential DAS counting, to prevent future overages.

GB yellowtail flounder is a transboundary stock whose Total Allowable Catch (TAC) is negotiated under the U.S./Canada Resource Sharing Understanding (Understanding). The regulations implementing the Understanding at § 648.85(a) grant the RA additional authority to implement gear requirements in the U.S./Canada Management Area to prevent over- or under-harvest of the TAC. The regulations also require that, if any sector or the common pool exceeds its allocation of a TAC, that group is prohibited from fishing in the Eastern U.S./Canada Area, and any TAC overage at the end of the FY is deducted from the corresponding allocation in the following FY. Therefore, if the common pool exceeds the FY 2010 GB yellowtail flounder sub-ACL, vessels in the common pool will be prohibited from fishing in the Eastern U.S./Canada Area for the remainder of FY 2010, and the FY 2011 common pool sub-ACL would be reduced by the amount of any overage.

A previous inseason action published in the **Federal Register** on May 27, 2010 (75 FR 29678), reduced the common pool trip limits for five stocks: GOM haddock, GB haddock, GOM winter flounder, GB winter flounder, and GB yellowtail flounder.

Initial Vessel Monitoring System (VMS) and dealer reports indicate that approximately 66.5 percent of the GOM cod and 70.9 percent of the GB yellowtail flounder common pool sub-ACLs have been harvested as of July 15, 2010. Based on the rate of catch for GOM cod to date, the Regional Administrator has determined that, unless a reduction in trip limit is implemented, the common pool fishery will exceed its sub-ACL for GOM cod by early August 2010, well before the end of the FY.

Based on this information, the Regional Administrator is reducing the trip limit for GOM cod, effective July 30, 2010 through April 30, 2011, from 800 lb (362.9 kg) per DAS, not to exceed 4,000 lb (1,814.3 kg) per trip; to 200 lb (90.7 kg) per DAS, not to exceed 1,000 lb (453.6 kg) per trip. This action is intended to prevent common pool vessels from exceeding their sub-ACL and to allow these vessels to fish for other NE multispecies. Vessels with a Small Vessel category permit will be proportionally limited to not more than 75 lb (34.0 kg) of cod within their trip limit of 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined. The regulations at §§ 648.82(a)(6) and 648.88(a)(1) require that the cod trip limit for vessels with a limited access Handgear A or open access Handgear B permit change proportionally (rounded up to the nearest 25 lb (11.3 kg)) with any change to the landing limit for DAS vessels. Therefore, trip limits are reduced from 300 lb (136.1 kg) per trip to 75 lb (34.0 kg) per trip, for Handgear A vessels; and from 75 lb (34.0 kg) trip, to 25 lb (11.3 kg) trip, for Handgear B vessels.

At-sea observer reports indicate that catch rates of yellowtail flounder on GB are higher south of 41° 40' N. lat than north of it. Requiring common pool trawl vessels that fish any part of a trip in the Western U.S./Canada Area south of 41° 40' N. lat. to use either a haddock separator trawl or a Ruhle trawl will reduce the catch rate of yellowtail flounder, reduce discards, and is likely to result in the achievement of the TAC, without exceeding it. The Regional Administrator has determined that, because the GB yellowtail flounder trip limit has already been reduced, it is sufficient to implement only a change in gear requirements in order to ensure that the common pool vessels do not exceed the sub-ACL for yellowtail flounder. Based on this information, the Regional Administrator is prohibiting the use of trawl gear, except for the haddock separator trawl and the Ruhle trawl, as specified at § 648.85(a)(3)(ix) and (b)(10)(iv)(J)(*3*), respectively, by any limited access NE multispecies common pool vessel that harvests, possesses, or lands fish from, or deploys its net during any part of a trip in, the Western U.S./Canada Area south of 41° 40' N. lat. under a NE multispecies DAS, to reduce catches and discards of GB yellowtail flounder, effective July 30, 2010 through April 30, 2011, or until modified by a subsequent action. For any such vessels, other gear may be on board the vessel but must be stowed according to the regulations at § 648.23(b) for the entire trip. For any limited access NE multispecies common pool vessel possessing, harvesting, or landing fish exclusively from the area north of 41° 40' N. lat., all trawl gear, except the haddock separator trawl or Ruhle trawl, must be stowed while transiting the Western U.S./Canada Area south of this line.

The FW 44 final rule (75 FR 18356, April 9, 2010) delayed the opening of the Eastern U.S./Canada Area for vessels using trawl gear until August 1, 2010. To prevent overharvest of yellowtail flounder from closing the Eastern U.S./Canada Area and preventing access to the transboundary stocks of GB cod and GB haddock, the Regional Administrator is prohibiting the use of a flounder net in the Eastern U.S./Canada Area by any limited access NE multispecies common pool vessel, effective August 1, 2010, through April 30, 2011. Common pool trawl vessels will be able to fish in the Eastern U.S./Canada Area only if they are using either a haddock separator trawl or a Ruhle trawl. Any other trawl gear must be stowed according to the regulations and not available for use.

The regulations at § 648.85(a)(3)(iv)(D) specify that, if the Regional Administrator requires use of a particular gear type in order to reduce catches of stocks of concern, the following gear performance incentives will apply: Possession of flounders (all species combined), monkfish, and skates is limited to 500 lb (226.8 kg) (whole weight) each (i.e., no more than 500 lb (226.8 kg) of all flounders, no more than 500 lb (226.8 kg) of monkfish, and no more than 500 lb (226.8 kg) of skates), and possession of lobsters is prohibited. Therefore, common pool vessels fishing any part of a trip in the Eastern U.S./Canada Area or in the Western U.S./Canada Area south of 41° 40' N. lat. are restricted to these catch limits for the duration of that trip.

If sufficient GB yellowtail flounder common pool sub-ACL remains available, the Regional Administrator may lift these gear restrictions before the end of FY 2010 to allow additional opportunity to achieve the FY 2010 common pool sub-ACLs for the transboundary stocks of GB yellowtail flounder, GB cod, and GB haddock.

Catch will be closely monitored through dealer-reported landings, VMS catch reports, and other available information. Further inseason adjustments to increase or decrease the trip limits, as well as differential DAS measures may be considered, based on updated catch data and projections.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), there is good cause to waive prior notice and opportunity for public comment, as well as the delayed effectiveness for this action, because notice, comment, and a delayed effectiveness would be impracticable and contrary to the public interest. The regulations at §§ 648.86(o) and 648.85(a)(3)(iv)(D) grant the Regional Administrator the authority to adjust NE multispecies trip limits and to implement gear restrictions in the U.S./Canada Management Area, respectively, to prevent over-harvesting or under-harvesting the common pool sub-ACLs. This action will implement a more restrictive trip limit for GOM cod and restrict the use of trawl gear in a portion of the U.S./Canada Management Area in order to ensure that the common pool sub-ACLs for GOM cod and GB yellowtail flounder are not overharvested, and the biological and economic objectives of the FMP are met.

It is important to take this action immediately because, based on current data and projections, continuation of the status quo will result in reaching the respective common pool sub-ACLs prior to the end of FY 2010. Attainment of any of the common pool sub-ACLs prior to the end of the FY on April 30, 2011, would result in lower trip limits and/or differential DAS counting for the remainder of FY 2010, and would result in end-of-the-year AMs to be put in place for the common pool in FY 2011. These restrictions could result in the loss of yield of other valuable species caught by vessels in the common pool.

The updated catch information that is the basis for this action only recently became available. The time necessary to provide for prior notice and comment, and delayed effectiveness for this action would prevent NMFS from implementing a reduced trip limit in a timely manner. A resulting delay in the curtailment of catch rate of these stocks could result in less revenue for the fishing industry and be counter to the objective of optimum yield.

The Regional Administrator's authority to decrease trip limits and to implement gear restrictions in the U.S./Canada Management Area for the common pool to help ensure that the common pool sub-ACL for all NE multispecies are harvested, but not exceeded, was considered and open to public comment during the development of Amendment 16 and FW 44. Therefore, any negative effect the waiving of public comment and delayed effectiveness may have on the public is mitigated by these factors.

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

Dated: July 26, 2010.

James P. Burgess,

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

[FR Doc. 2010–18785 Filed 7–27–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No.100218107–0199–01]

RIN 0648–XX18

Fisheries Off West Coast States; Modifications of the West Coast Commercial and Recreational Salmon Fisheries; Inseason Actions #1, #2, #3, and #4

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

ACTION: Modification of fishing seasons, gear restrictions, and landing and possession limits; request for comments.

SUMMARY: NOAA Fisheries announces four inseason actions in the ocean salmon fisheries. Inseason action #1 modified the commercial fishery in the area from Cape Falcon, Oregon to Humbug Mountain, Oregon, and from Humbug Mountain, Oregon to the Oregon/California Border. Inseason action #2 modified the recreational fishery in the area from Cape Falcon, Oregon to Humbug Mountain, Oregon. Inseason action #3 modified the commercial fishery in the area from U.S./Canada Border to Cape Falcon, Oregon. Inseason action #4 modified the commercial fishery from U.S./Canada Border to U.S./Mexico Border.

DATES: Inseason actions #1 and #2 were effective on March 15, 2010 until they were replaced by the 2010 management measures on May 1, 2010. Inseason action #3 was effective on June 12, 2010 and remains in effect until the closing date announced in the 2010 annual management measures or through additional inseason action. Inseason action #4 was effective on June 16, 2010 and remains in effect until the closing date of the 2010 salmon season announced in the 2010 annual management measures or through additional inseason action. Comments will be accepted through August 16, 2010.

ADDRESSES: You may submit comments, identified by 0648–XX18, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- Fax: 206–526–6736, Attn: Peggy Busby
- Mail: 7600 Sand Point Way NE, Building 1, Seattle, WA, 98115

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) 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). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Peggy Busby, by phone at 206–526–4323.

SUPPLEMENTARY INFORMATION: In the 2009 annual management measures for ocean salmon fisheries (74 FR 20610, May 5, 2009), NMFS announced the commercial and recreational fisheries in the area from the U.S./Canada Border to the U.S./Mexico Border. These management measures included 2010 salmon seasons opening earlier than May 1, 2010.

On March 10, 2010, the Regional Administrator (RA) consulted with representatives of the Pacific Fishery Management Council (Council), Washington Department of Fish and Wildlife, Oregon Department of Fish and Wildlife, and California Department of Fish and Game. The parties to this consultation considered information related to Chinook salmon abundance forecasts, Chinook salmon catch rates, and possible impacts to Sacramento River fall Chinook salmon from the fisheries scheduled to open March 15, 2010. The fisheries opening March 15, 2010 were to occur in the impact area for Sacramento River fall Chinook salmon. Preliminary projections suggested that there would be limited harvest opportunity for Sacramento River fall Chinook salmon and, by moving the opening dates of these fisheries to after May 1, 2010 NMFS and the Council would have more time to evaluate the impacts of these fisheries on the Sacramento River fall Chinook salmon stock.

As a result, on March 10, 2010, the states recommended, and the RA concurred, that NMFS should adopt inseason actions #1 and #2 that would cancel the previously scheduled March 15, 2010 opening date for the (a) commercial fishery in the area from Cape Falcon, Oregon to Humbug Mountain, Oregon, and from Humbug Mountain, Oregon to the Oregon/California Border and (b) the recreational fishery in the area from Cape Falcon, Oregon, to Humbug Mountain, Oregon. Modification of quota and/or fishing seasons by inseason action is authorized by 50 CFR 660.409(b)(1)(i).

In the 2010 annual management measures for ocean salmon fisheries (75 FR 24482, May 5, 2010), NMFS announced the commercial and recreational fisheries in the area from the U.S./Canada Border to the U.S./Mexico Border, beginning May 1, 2010.

The RA consulted with representatives of the Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife on June 10, 2010. The information considered during this consultation related to Chinook salmon catch to date and Chinook salmon catch rates compared to quotas and other management measures established preseason.

Inseason action #3 closed the commercial salmon fishery from the U.S./Canada Border to Cape Falcon, Oregon. This action was taken consistent with the 2010 management measures requirement that when it was projected that 35,000 Chinook salmon of the 42,000 Chinook salmon quota had been landed, NMFS would consider inseason action , to modify the open period and add landing and possession limits to extend the fishery through the end of June. On June 10, 2010, the states recommended this action and the RA concurred; inseason action #3 took effect on June 12, 2010, and was effective until it was modified by subsequent inseason action that will be described in a separate federal register notice. Modification of quota and/or fishing seasons is authorized by 50 CFR 660.409 (b)(1)(i).

The RA consulted with representatives of the Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife on June 15, 2010. The information considered during this consultation related to catch to date for salmon and incidental halibut harvest, and Chinook salmon catch rates compared to quotas and other management measures established preseason.

Inseason action #4 closed the retention of Pacific halibut caught incidentally while trolling for salmon in halibut management area 2A (the coasts of Washington, Oregon and California). This action was taken due to attainment of the 2010 incidental halibut harvest quota. On June 15, 2010, the states recommended this action and the RA concurred; inseason action #4 took effect on June 16, 2010. Modification of quota and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i) .

All other restrictions and regulations remain in effect as announced for the 2010 Ocean Salmon Fisheries and previous inseason actions.

The RA determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason actions recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice of the

described regulatory actions was given, prior to the date the action was effective, by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory actions was provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (74 FR 20610, May 5, 2009; 75 FR 24482, May 5, 2010), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data were collected to determine the extent of the fisheries, and the time the fishery modifications had to be implemented in order to ensure that fisheries are managed based on the best available scientific information, thus allowing fishers access to the available fish at the time the fish were available while ensuring that quotas are not exceeded. The AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3), as a delay in effectiveness of these actions would allow fishing at levels inconsistent with the goals of the Salmon Fishery Management Plan and the current management measures.

These actions are authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

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

Dated: July 27, 2010.

James P. Burgess,

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

[FR Doc. 2010–18800 Filed 7–29–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XX93

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock for American Fisheries Act Catcher Vessels in the Inshore Open Access Fishery in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by American Fisheries Act (AFA) trawl catcher vessels participating in the inshore open access fishery in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2010 pollock total allowable catch (TAC) allocated to the inshore open access fishery in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 27, 2010, through 1200 hrs, A.l.t., November 1, 2010.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2010 Bering Sea pollock TAC allocated to the AFA inshore open access fishery in the BSAI is 2,762 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010), and further described at *http://alaskafisheries.noaa.gov/sustainablefisheries/afa/10bsaicoopallocations.pdf.*

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the B season allowance of pollock TAC allocated to the AFA inshore open access fishery, which is catching pollock for processing by the inshore component in the Bering Sea subarea, has been reached. Therefore, the Regional Administrator is establishing the B season allowance of pollock TAC as the directed fishing allowance. Consequently, in accordance with § 679.20(d)(1)(iii), since this directed fishing allowance has been reached, NMFS is prohibiting directed fishing for pollock by AFA trawl catcher vessels participating in the inshore open access fishery in the Bering Sea subarea.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directing fishing for pollock by AFA trawl catcher vessels participating in the inshore open access fishery in the Bering Sea subarea. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 26, 2010.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: July 27, 2010.

James P. Burgess,

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

[FR Doc. 2010–18781 Filed 7–27–10; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 75, No. 146
Friday, July 30, 2010

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

DEPARTMENT OF AGRICULTURE

7 CFR Part 1

RIN 0503–AA42

Office of the Secretary: Procedures Relating to Awards Under the Equal Access to Justice Act

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: The U.S. Department of Agriculture (USDA) proposes to amend its regulations implementing the Equal Access to Justice Act (EAJA), which provides to certain parties in adversary agency adjudications reimbursement for attorney fees and other expenses under limited circumstances. In this document, USDA is proposing to raise the hourly fee.

DATES: In order to be considered, comments should be submitted within September 28, 2010.

ADDRESSES: You may submit comments, identified by RIN 0503–AA42, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: adam.hermann@ogc.usda.gov.* Include RIN 0503–AA42 in the subject line of the message.
- *Fax:* 202–720–5837.
- *Mail:* Paper, disk or CD–ROM submissions should be submitted to Adam J. Hermann, Esq., General Law Division, Office of the General Counsel, USDA, STOP 1415, 1400 Independence Avenue, SW., Washington, DC 20250.
- *Hand Delivery/Courier:* Adam J. Hermann, Esq., General Law Division, Office of the General Counsel, USDA, South Building Room 3311, 1400 Independence Ave., SW., Washington, DC 20250.

Instructions: All submissions received must include the agency name and the RIN for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Adam J. Hermann, Esq., Attorney Advisor, General Law Division, Office of the General Counsel, South Building Room 3311, USDA, 1400 Independence Ave., SW., Washington, DC 20250; Voice: (202) 720–9425; E-mail: *adam.hermann@ogc.usda.gov.*

SUPPLEMENTARY INFORMATION: The Equal Access to Justice Act (EAJA), 5 U.S.C. 504, provides to certain parties in adversary agency adjudications reimbursement for attorney fees and other expenses under limited circumstances. In the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, § 231 (1996), Congress amended EAJA at 5 U.S.C. 504(b)(1)(A) by raising the hourly maximum attorney fees rate from $75.00 per hour to $125.00 per hour. EAJA also permits agencies to increase the maximum if "the agency determines by regulation that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys or agents for the proceedings involved, justifies a higher fee." Departmental rules at 7 CFR 1.186 currently set the maximum EAJA attorney fees at $125.00 per hour. Section 1.187 provides for informal rulemaking to adjust the maximum rates for attorney fees.

On September 29, 2008, USDA received a Petition for Rulemaking (PFR) filed by Public Citizen Litigation Group, Five Points Road Joint Venture, and Charles Brown, Esq., under the provisions of 7 CFR 1.187 and 1.28. The PFR seeks an increase in the maximum attorney fees payable based on the U.S. Department of Labor Consumer Price All-Items Index for All Urban Consumers. In brief, the petitioners seek an automatic escalator clause using 1996 as the base year and $125.00 per hour as the base year maximum fee. The petitioners would have the escalated amount apply to all pending and future covered proceedings before USDA.

USDA has considered the petitioners' request, its rationale, and the practice before other Federal agencies and the Federal courts. The PFR emphasizes that Federal courts uniformly apply an escalator clause based upon the cost of living index under the parallel provision for EAJA fee reimbursement in 28 U.S.C. 2412, the analogue to 5 U.S.C. 504 applicable in Federal judiciary proceedings. USDA does not necessarily believe that the practice of the Federal courts in this regard should be controlling in light of the fact that the majority of Federal agencies have retained the statutory maximum of $125.00 per hour in administrative proceedings.

However, USDA does recognize that inflation has eroded the value of the $125.00 per hour fee set by Congress in 1996. Therefore, USDA is proposing to raise the hourly fee set forth in 7 CFR 1.186 from $125.00 to $150.00, to be applicable to covered proceedings initiated on and after the effective date of the publication of this regulation in final form.

This proposed rule has been reviewed under Executive Order No. 12866 and has been determined not to be a "significant regulatory action." This proposed rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; nor will it materially alter the budgetary impact of entitlements, grants, user fees, or loan programs; nor will it have an annual effect on the economy of $100 million or more; nor will it adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way. Furthermore, it does not raise a novel legal or policy issue arising out of legal mandates, the President's priorities or principles set forth in the Executive Order.

USDA certifies that this rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Public Law 96–534, as amended (5 U.S.C. 601 *et seq.*).

USDA has determined that the provisions of the Paperwork Reduction Act, as amended, (44 U.S.C. 3501 *et seq.*), do not apply to any collections of information contained in this rule because any such collections of information are made during the conduct of administrative action involving an agency against specific individuals or entities. 5 CFR 1320.4(a)(2).

List of Subjects in 7 CFR Part 1

Administrative practice and procedure.

Accordingly, USDA proposes to amend Title 7 of the Code of Federal Regulations as follows:

PART 1—ADMINISTRATIVE REGULATIONS

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

Authority: 5 U.S.C. 301, unless otherwise noted.

Subpart J—Procedures Relating to Awards Under the Equal Access to Justice Act in Proceedings Before the Department

2. Amend § 1.186 by revising paragraph (b) to read as follows:

§ 1.186 Allowable fees and expenses.

* * * * *

(b) In proceedings commenced on or after the effective date of this paragraph, no award for the fee of an attorney or agent under the rules in this subpart may exceed $150 per hour. No award to compensate an expert witness may exceed the highest rate at which the Department pays expert witnesses, which is set out at § 1.150 of this part. However, an award also may include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or witness ordinarily charges clients separately for such expenses.

* * * * *

3. Amend § 1.187 by revising paragraph (a) to read as follows:

§ 1.187 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the Department may adopt regulations providing that attorney fees may be awarded at a rate higher than $150 per hour in some or all of the types of proceedings covered by this part. The Department will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

* * * * *

Done at Washington, DC, July 13, 2010.

Thomas J. Vilsack,

Secretary of Agriculture.

[FR Doc. 2010–18099 Filed 7–29–10; 8:45 am]

BILLING CODE 3410–90–P

DEPARTMENT OF ENERGY

10 CFR Part 707

[Docket No. HS–RM–10–WSAP]

RIN 1992–AA41

Request for Information Regarding Workplace Substance Abuse Programs for Department of Energy Contractors

AGENCY: Office of Health, Safety and Security, Department of Energy.

ACTION: Request for information.

SUMMARY: The Department of Energy (DOE or the Department) requests information and comments on issues related to workplace substance abuse programs for its contractor employees. Specifically, the Department solicits comment and information on the addition of anabolic steroids and other drugs to its randomized drug testing program; the availability of analytical testing methods for anabolic steroids; whether alcohol and certain prescription and over-the-counter medications and/or supplements should be added to the substance abuse program; whether medical review officers should obtain and maintain certification; and other pertinent subjects. The information received in response to this request will assist DOE in determining the appropriate course of action in developing an amendment to the current substance abuse program for its contractor and subcontractor employees.

DATES: All comments on this issue presented in this document must be received by the Department by October 28, 2010.

ADDRESSES: Comments in response to this document may be submitted by hardcopy or electronically through e-mail. Hardcopies (2 copies) sent by regular mailing should be addressed to: Jacqueline D. Rogers, Office of Health, Safety and Security, Office of Worker Safety and Health Policy, Docket No. HS–RM–10–WSAP, 1000 Independence Avenue, SW., Washington, DC 20585.

Electronic submissions may be sent to *jackie.rogers@hq.doe.gov.* If you have additional information, such as studies or journal articles, and cannot attach them to your electronic submission, please send 2 copies to the address above. The additional material must clearly identify your electronic comments by name, date, subject, and Docket No. HS–RM–10–WSAP.

FOR FURTHER INFORMATION CONTACT: Jacqueline D. Rogers, U.S. Department of Energy, Office of Health, Safety and Security, Office of Worker Safety and Health Policy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–4714, or *jackie.rogers@hq.doe.gov.*

Electronic copies of this **Federal Register** notice, as well as other relevant DOE documents concerning this issue, will be available on a Web page at: *http://www.hss.energy.gov/healthsafety/WSHP/rule851/rule707.html.*

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to DOE's statutory authorities, including the Atomic Energy Act of 1954, as amended, and the Drug-Free Workplace Act of 1988, DOE promulgated a rule on July 22, 1992, on DOE contractor workplace substance abuse programs (57 FR 32652). The rule established minimum requirements for DOE contractors and subcontractors performing work at DOE sites to use in developing and implementing programs that deal with the use of illegal drugs by their employees. The minimum requirements address: (1) Prohibition on the use, possession, sale, distribution, or manufacture of illegal drugs; (2) education and training; (3) testing of certain employees in sensitive positions; (4) employee assistance; (5) removal, discipline, treatment, and rehabilitation of employees; and (6) notification to DOE. The rule provides for drug testing of contractor employees in, and applicants for, testing designated positions (TDP) at sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended. The Department determined that possible risks of harm to the environment and to public health, safety, and national security justified the imposition of a uniform rule establishing a baseline workplace substance abuse program, including drug testing.

Currently, the Department is considering more stringent requirements in various areas of the workplace substance abuse programs for its contactor. The Department urges those individuals interested in this issue to provide responses to the questions provided in this document.

II. Questions for Comment

The Department is especially interested in answers supported by evidence and rationale whenever possible to the questions below. When providing a response, please key your response to the number of the question.

1. Currently, DOE contractors and subcontractors performing work on DOE sites conduct randomized drug testing for the following drugs or classes of

drugs: Marijuana, cocaine, opiates, phencyclidine, and amphetamines. This testing is performed in conformance with the Department of Health and Human Services' *Mandatory Guidelines for Federal Workplace Drug Testing Programs.* Should the Department's contractor programs consider expanding randomized drug testing to include anabolic steroids, synthetic opiates, newer amphetamines, and other new prescription drugs, among others, to this list of drugs it routinely test for? If so, please specify what drugs should be added and why and provide evidence to support this addition.

2. Are there prescription and/or legal over-the-counter medications or supplements that provide false positives for anabolic steroids? If so, should use of these medications or supplements by employees of DOE contractors or subcontractors performing work at DOE sites be prohibited and tested for? If so, please identify these medications or supplements, explain the reasons for your answer, and provide evidence to support them.

3. Are there products available for sale in the United States or by import to the United States that mask prohibited drug use or anabolic steroid use? If so, what are these products and should their use by DOE contractor or subcontractor employees performing work at DOE sites be prohibited? Are there reliable and economically feasible means by which to test for these products? Please explain each of your answers and provide evidence to support your answers.

4. When conducting reasonable suspicion or occurrence testing, DOE contractors may test for any drug listed in Schedules I or II of the Controlled Substance Act. Should DOE consider expanding this requirement to include any drug listed in Schedules I through V of the Controlled Substance Act? If so, please explain why these drugs should be added and provide evidence to support these additions.

5. Are there reliable (*i.e.,* adequately sensitive and specific) analytical testing methods and/or procedures currently available for anabolic steroids? If so, please describe those methods, their reliability, and provide evidence to support your answer.

6. Compared to the types of drugs and classes of drugs currently being tested for, is it economically feasible (*i.e.,* cost effective) at this time to test for anabolic steroids? Please provide evidence to support your answer.

7. What is the cost per test for anabolic steroids? What other costs are associated with testing for anabolic steroids? Please describe the testing method(s) for which you provide cost information and provide evidence to support your answers.

8. Currently, DOE contractors' substance abuse programs do not include policies, procedures, and/or protocols for controlling the use of alcohol while performing work at a DOE site. The use of alcohol, even in small amounts, can impair judgment and affect the ability to perform critical duties. Should the Department consider adding the use of alcohol to its contractors' workplace substance abuse program for its contractors? If so, why, what means of measurement of consumed alcohol should be used, and what measure of consumed alcohol should be prohibited at DOE sites? Please provide evidence to support your answers.

9. Are there any Federal Agencies with policies and procedures for controlling the use of alcohol affecting the workplace? If so, which Agency, and should DOE consider adopting its protocols and procedures for the use of alcohol in the workplace? Please provide evidence to support your answers.

10. The use of alcohol, even in small amounts, can impair judgment and affect the ability to perform critical duties. If an individual in a critical or sensitive position at a DOE site consumes alcohol while off duty, how long should that individual be required to abstain from alcohol use prior to reporting for duty? Please explain the reasons for your answer and provide evidence to support your answer.

11. Should the Department consider requiring its medical review officers to obtain and maintain medical review officer certification? If so, how often should certification occur? Please provide evidence to support your answers.

Issued in Washington, DC, on July 21, 2010.

Glenn S. Podonsky,

Chief Health, Safety and Security Officer, Office of Health, Safety and Security.

[FR Doc. 2010–18740 Filed 7–29–10; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2010–0606; FRL–9182–1]

Stakeholder Input; Revisions to Water Quality Standards Regulation

AGENCY: Environmental Protection Agency.

ACTION: Listening sessions.

SUMMARY: The Environmental Protection Agency (EPA) is announcing its plans to initiate national rulemaking to make a limited set of targeted changes to EPA's water quality standards regulation. EPA expects to publish such proposed rule changes in the **Federal Register** in Summer 2011. EPA's intent is to improve the regulation's effectiveness in helping to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. The purpose of this notice is to announce EPA's intent to hold two informal public "listening sessions" in August 2010. The sessions will allow EPA to inform the public about the rulemaking, and will offer an opportunity for the public to express views on the general direction of the rulemaking, including the six specific elements of the rulemaking.

DATES: The two public listening sessions will be held as audio teleconferences on August 24 and 26, 2010, from 1 to 2:30 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Thomas J. Gardner, EPA Headquarters, Office of Water, Office of Science and Technology, at 202–566–0386 or *e-mail: gardner.thomas@epa.gov.*

In order to provide an adequate number of telephone lines for those wishing to attend EPA's sessions, interested individuals should register in advance following instructions on the Internet at *http://www.epa.gov/waterscience/standards/rules/wqs.* Although you may register at any time prior to the session of your choice, EPA prefers that you register at least three days in advance.

The agenda and resource materials will be identical for the two sessions. You do not need to attend both sessions.

If you do not have Internet access, please contact the person named in the **FOR FURTHER INFORMATION CONTACT** section above.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Public Listening Sessions

EPA will hold two informal public listening sessions via audio teleconference in August 2010 to inform the public about the rulemaking, and to hear views from the public regarding possible changes to EPA's water quality standards regulation at 40 CFR part 131 that are under consideration. The sessions will provide a review of EPA's current water quality standards regulation and a summary of the clarifications that EPA is considering. Clarifying questions and brief oral

comments (three minutes or less) will be accepted at the sessions, as time permits.

B. How can I get copies of this document and other related information?

1. Docket. EPA has established an official public docket for this action under Docket ID No. EPA–HQ–OW–2010–0606. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Although all documents in the docket are listed in an index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the EPA Docket Center Public Reading Room, open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. The docket can also accessed electronically at EPA Dockets at *http://www.epa.gov/edocket/.* Once in the system, select "search", then key in the appropriate docket identification number.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

Electronic versions of this notice and other water quality standards documents are available at EPA's water quality standards Web site *http://www.epa.gov/waterscience/standards.*

II. Background

Statutory and Regulatory Overview

Water quality standards serve as the foundation for the water quality-based approach to pollution control and are a fundamental component of watershed management. Water quality standards are provisions of state, tribal, or federal law that define the water quality goals of a water body, or segment thereof, by designating the use or uses to be made of the water body; establishing criteria based on sound science that are protective of applicable uses; and protecting water quality through antidegradation requirements. *See* 40 CFR part 131. States and tribes adopt water quality standards to protect public health or welfare, enhance the quality of water, and serve the purposes of the Act. *See* Clean Water Act (CWA or Act) 303(c). "Serve the purposes of the Act" (as defined in sections 101(a)(2), and 303(c) of the CWA) means that water quality standards should: (1) Include provisions for restoring and maintaining chemical, physical, and biological integrity of state and tribal waters; (2) provide, wherever attainable, water quality for the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water; and (3) consider the use and value of state and tribal waters for public water supplies, propagation of fish and wildlife, recreation, agricultural and industrial purposes, and navigation. *See* 40 CFR 131.2.

The statutory basis for water quality standards and EPA's regulation is section 303(c) of the CWA. Section 303(c)(2) of the CWA directs states to consider the use and value of waters for specific purposes, including public water supply, propagation of fish and wildlife, recreational purposes, agricultural and industrial water supplies and other purposes including navigation. Section 303(c)(2) also requires that standards protect public health or welfare, enhance the quality of water and serve the purposes of the Act. CWA section 303(c)(1) requires that states review their standards at least once every three years. CWA section 303(c)(3) establishes timelines for EPA review and approval or disapproval of new or revised standards, and CWA section 303(c)(4) specifies requirements regarding promulgation of federal water quality standards in cases where a new or revised standard is found by EPA not to be consistent with the CWA or in any case where the Administrator determines that a new or revised standard is necessary to meet the requirements of the CWA.

EPA's Water Quality Standards regulation is at 40 CFR part 131. The regulation implements the requirements of section 303(c) of the CWA. Fundamentally, the regulation: (1) Defines when and how designated uses may be revised; (2) requires criteria to protect those uses and be based on sound science; (3) requires EPA and states to prevent the degradation of water quality, except under certain circumstances; (4) requires states/tribes to review their water quality standards at least every three years and engage the public in any revisions to water quality standards; and (5) specifies roles of states and EPA and provides administrative procedures for EPA's review and approval or disapproval of any new or revised state water quality standards.

III. Changes to EPA's Water Quality Standards Regulation Under Consideration

EPA is planning to propose a limited set of targeted changes to its water quality standards regulation to improve its effectiveness in helping restore and maintain the chemical, physical, and biological integrity of the Nation's waters. EPA expects to publish a proposed rule in the **Federal Register** in Summer 2011.

The core requirements of the current regulation have been in place since 1983. These requirements have provided a solid foundation for water quality-based controls, including CWA section 303(d) assessments, listings, and Total Maximum Daily Loads (TMDLs), as well as discharge permits issued under the National Pollutant Discharge Elimination System (NPDES). The intent of the changes EPA is considering is to add or modify a limited number of provisions to address the specific areas described below.

The following is a brief summary of the clarifications to the water quality standards regulation that EPA is considering.

A. Antidegradation Implementation Methods

The current regulation specifies that states and authorized tribes must identify the methods to implement the antidegradation policies that they are required to adopt in their water quality standards. 40 CFR 131.12(a). The regulation does not specify what the implementation methods must include, but only states that such methods must be, as the policies must be, "consistent with" 40 CFR 131.12(a). EPA is considering modifying the regulation to specify that antidegradation implementation methods must meet specific minimum requirements. Specifically, EPA is considering adding a subparagraph (b) to 40 CFR 131.12 (which currently has a subparagraph (a) but not (b)) that would specify minimum elements to be included in state or authorized tribe antidegradation implementation methods. EPA is also considering requiring that antidegradation implementation methods be adopted into state and tribal water quality standards, and thus be subject to EPA review and approval under CWA section 303(c), rather than having them simply be identified. In the listening sessions, EPA will invite views from the public on these potential changes, including what the minimum requirements should include.

B. Administrator's "Determination"

The CWA provides that the Administrator may determine that a revised or new standard is necessary to meet the requirements of the CWA. Section 303(c)(4)(B). If such a determination is made, EPA must promptly propose a revised or new federal standard to augment or replace the state's or authorized tribe's water quality standards, and promulgate the proposed standard within 90 days of proposal. *See* CWA 303(c)(4). Since this provision was enacted by Congress in 1972, there have been recurring instances of confusion or misunderstanding about what constitutes such a determination. EPA is considering clarifying in the water quality standards regulation that an Administrator's determination must be signed by the Administrator or his/her duly authorized designee, and must include a statement that the document constitutes a determination under section 303(c)(4)(B) of the CWA. In the listening sessions, EPA will invite views from the public on these changes.

C. Designated Uses

Section 101(a)(2) of the Act establishes a goal, wherever attainable, of water quality that provides for the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water. The water quality standards regulation requires that the state or authorized tribe perform a use attainability analysis (that is, a structured scientific assessment of factors affecting attainment of designated uses) and submit this assessment to EPA in order to remove certain designated uses, including any designated use that is specified as a national goal in section 101(a)(2) of the CWA. *See* 40 CFR 131.10. The regulation does not, however, specify which uses, if any, must be adopted to replace the use that is being removed. EPA is considering clarifying that designated uses reflecting the CWA 101(a)(2) goals of the CWA are presumed attainable unless otherwise demonstrated and that states and authorized tribes must designate such uses unless they have conducted a use attainability analysis to support a lesser designated use and EPA has approved that action. EPA is also considering clarifying that the highest attainable use(s) closest to the section 101(a)(2) goal must be adopted if a CWA 101(a)(2) goal use is unattainable. In the listening sessions, EPA will invite views from the public on these changes.

D. Variances

The current regulation allows states and authorized tribes to adopt variances as general policies for applying and implementing their water quality standards. *See* 40 CFR 131.13. The regulation does not provide a definition of, a description of, or any requirements for the use of variances. EPA is considering establishing regulatory requirements for variances to ensure proper use of variances and reduce the possibility of inappropriate use. In the listening sessions, EPA will invite views from the public on these clarifications, and what the regulatory requirements should include.

E. Triennial Reviews

The CWA and the current water quality standards regulation require states and authorized tribes to review their water quality standards at least once every three years, and modify standards or adopt new standards as appropriate. CWA 303(c); 40 CFR 131.20. EPA is considering revising the regulatory requirements to clarify that states and authorized tribes must solicit and consider public comments in determining the scope of each such triennial review. EPA is also considering establishing a new triennial review requirement that states and authorized tribes must evaluate whether their existing water quality criteria continue to be protective of designated uses, taking into consideration any new information, including EPA's most recent national recommended CWA 304(a) water quality criteria, that has become available since the state or tribal criteria were adopted or last revised. In the listening sessions, EPA will invite views from the public on these changes.

F. Updates To Reflect Court Decisions

EPA is considering making three clarifications to the water quality standards regulation to codify the results of court decisions over the years.

First, EPA is considering revising the definition of "water quality standards" in 40 CFR 131.3 to reflect the results of and EPA's actions on remand from *Florida Public Interest Research Group Citizen Lobby, Inc., Save our Suwannee, Inc., et al.* v. *EPA, et al.,* 386 F.3d 1070 (11th Cir. 2004) concerning Florida's Impaired Water Rule (IWR). That court decision and EPA's response to it more clearly define which of state or tribal provisions constitute water quality standards that need to be submitted to EPA for review and approval. EPA is considering revising 40 CFR part 131 to reflect these developments.

Second, EPA is considering specifying that authorizing provisions for compliance schedules for implementing water quality-based effluent limits in NPDES permits must be adopted as part of a state's or tribe's water quality standards, and therefore be submitted to EPA for review and approval. *See In the Matter of Star-Kist Caribe, Inc.,* 1990 WL 324290 (EPA), 3 EAD 172 (April 16, 1990).

Third, EPA is considering clarifying that states and authorized tribes must submit to EPA records of public participation that has occurred in reviewing and revising state or tribal water quality standards. These records would include public comments, and the state's or tribe's responses to the comments. This change would reflect the results of *City of Albuquerque* v. *Browner,* 97 F.3d 415 (10th Cir. 1996).

In the listening sessions, EPA will invite views from the public on these changes.

IV. Other EPA Outreach

EPA expects to conduct outreach with additional stakeholders as well as local, state, and tribal governments before proposing any revisions to the water quality standards regulation. This outreach includes discussions and consultation with federally-recognized Indian tribes, consistent with Executive Order 13175 (Tribal Consultation); consultation with representatives of elected officials of state and local government, consistent with Executive Order 13132 (Federalism); and consultation with state water quality program officials as co-regulators. EPA will continue outreach efforts prior to finalizing any revisions.

Dated: July 22, 2010.

Ephraim S. King,

Director, Office of Science and Technology.

[FR Doc. 2010–18557 Filed 7–29–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1986–0005; FRL–9183–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Intent To Delete the SMS Instruments, Inc. Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA), Region 2, is issuing a Notice of Intent to Delete the SMS Instruments, Inc. Superfund Site (Site),

located in Deer Park, New York, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, is an Appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of New York, through the New York State Department of Environmental Conservation, have determined that all appropriate remedial actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by August 30, 2010.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1986–0005, by one of the following methods:

Web site: http://www.regulations.gov. Follow the on-line instructions for submitting comments.

E-mail: dannenberg.mark@epa.gov.

Fax: To the attention of Mark Dannenberg at 212–637–3966.

Mail: To the attention of Mark Dannenberg, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, NY 10007–1866.

Hand Delivery: Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866 (*telephone:* 212–637–4308). Such deliveries are only accepted during the Records Center's normal hours of operation (Monday to Friday from 9 a.m. to 5 p.m.). Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1986–0005. EPA's policy is that all comments received will be included in the Docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider CBI or otherwise protected through *http://www.regulations.gov* or via e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comments. If you send comments to EPA via e-mail, your e-mail address will be included as part of the comment that is placed in the Docket and made available on the Web site. If you submit electronic comments, EPA recommends that you include your name and other contact information in the body of your comments and with any disks or CD–ROMs that you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses.

Docket: All documents in the Docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available Docket materials can be viewed electronically at *http://www.regulations.gov* or obtained in hard copy at:

U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866, *Phone:* 212–637–4308, *Hours:* Monday to Friday from 9 a.m. to 5 p.m.

and

New York State Department of Environmental Conservation, Region 1, SUNY @ Stony Brook, 50 Circle Road, Stony Brook, New York 11790, *Phone:* 631–444–0240.

FOR FURTHER INFORMATION CONTACT: Mark Dannenberg, Remedial Project Manager, by mail at Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th floor, New York, NY 10007–1866; telephone at 212–637–4251; fax at 212–637–3966; or e-mail at *dannenberg.mark@epa.gov.*

SUPPLEMENTARY INFORMATION: In the "Rules and Regulations" Section of today's **Federal Register**, we are publishing a direct final Notice of Deletion of the SMS Instruments, Inc. Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Deletion Notice based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion which is located in the "Rules" section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, hazardous waste, Hazardous substances, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: July 20, 2010.

Judith A. Enck,

Regional Administrator, EPA, Region 2.

[FR Doc. 2010–18775 Filed 7–29–10; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 75, No. 146

Friday, July 30, 2010

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–DA–10–0061; DA–10–05]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for report forms under the Federal milk marketing order program.

DATES: Comments on this notice must be received by September 28, 2010 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments electronically at *http://www.regulations.gov* or to the Office of the Deputy Administrator, Dairy Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 2968 South, Stop 0225, Washington, DC 20250–0225. Comments should make reference to the date and page number of this issue of the **Federal Register**. All comments will be posted electronically without change; including any personal information provided at *http://regulations.gov*. Comments will also be available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: William F. Newell, Chief, Order Operations Branch, Dairy Programs, (202) 690–2375, *FAX:* (202)720–2454.

SUPPLEMENTARY INFORMATION:

Title: Report Forms Under Federal Milk Orders (From Milk Handlers and Milk Marketing Cooperatives).

OMB Number: 0581–0032.

Expiration Date of Approval: December 31, 2010.

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

Abstract: Federal milk marketing order regulations authorized under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), require milk handlers to report in detail the receipts and utilization of milk and milk products handled at each of their plants that are regulated by a Federal order. The data are needed to administer the classified pricing system and related requirements of each Federal order.

A Federal milk marketing order (hereinafter, Order) is a regulation issued by the Secretary of Agriculture that places certain requirements on the handling of milk in the area it covers. Each Order is established under the authority of the Act. The Order requires that handlers of milk for a marketing area pay not less than certain minimum class prices according to how the milk is used. These prices are established under each Order after a public hearing at which evidence is received on the supply and demand conditions for milk in the market. An Order requires that payments for milk be pooled and paid to individual farmers or cooperative associations of farmers on the basis of a uniform or average price. Thus, all eligible farmers (producers) share in the market wide use-values of milk by regulated handlers.

Milk Orders help ensure adequate supplies of milk and dairy products for consumers and adequate returns to producers.

The Orders also provide for the public dissemination of market statistics and other information for the benefit of producers, handlers, and consumers.

Formal rulemaking amendments to the Orders must be approved in referenda conducted by the Secretary.

During 2009, 46,677 dairy farmers delivered over 123 billion pounds of milk to handlers regulated under the milk orders. This volume represents 66 percent of all milk marketed in the U.S. and 66 percent of the milk of bottling quality (Grade A) sold in the country. The value of this milk delivered to Federal milk order handlers at minimum order blend prices was nearly $15.9 billion. Producer deliveries of milk used in Class I products (mainly fluid milk products) totaled 47 billion pounds—37 percent of total producer deliveries. More than 239 million Americans reside in Federal milk order marketing areas—80 percent of the total U.S. population.

Each Order is administered by a market administrator who is an agent of the Secretary of Agriculture. The market administrator is authorized to levy assessments on regulated handlers to carry out the market administrator's duties and responsibilities under the Orders. Additional duties of the market administrators are to prescribe reports required of each handler, to assure that handlers properly account for milk and milk products, and to assure that such handlers pay producers and associations of producers according to the provisions of the Order. The market administrator employs a staff that verifies handlers' reports by examining records to determine that the required payments are made to producers. Most reports required from handlers are submitted monthly to the market administrator.

The forms used by the market administrators are required by the respective Orders that are authorized by the Act. The forms are used to establish: The quantity of milk received by handlers, the pooling status of the handler, the class-use of the milk used by the handler, and the butterfat content and amounts of other components of the milk.

The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the Orders, and their use is necessary to fulfill the intent of the Act as expressed in the Orders and in the rules and regulations issued under the Orders.

The information collected is used only by authorized employees of the market administrator and authorized representatives of the USDA, including AMS Dairy Programs' headquarters staff.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.07 hours per response.

Respondents: Milk handlers and milk marketing cooperatives.

Estimated Number of Respondents: 740

Estimated Number of Responses: 20,565

Estimated Number of Responses per Respondent: 28

Estimated Total Annual Burden on Respondents: 21,818 hours

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

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

Dated: July 27, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–18759 Filed 7–29–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2010-0068]

Notice of Request for Extension of Approval of an Information Collection; Certificate for Poultry and Hatching Eggs for Export

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the export of poultry and poultry hatching eggs from the United States.

DATES: We will consider all comments that we receive on or before September 28, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0068*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS-2010-0068, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2010-0068.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: For information on the export of poultry and poultry hatching eggs from the United States, contact Dr. Sara Kaman, Senior Staff Veterinarian, Technical Trade Services Team—Animals, NCIE, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 734-8364. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

SUPPLEMENTARY INFORMATION:

Title: Certificate for Poultry and Hatching Eggs for Export.

OMB Number: 0579-0048.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA), among other things, collects information and conducts inspections to ensure that poultry and hatching eggs exported from the United States are free of communicable diseases. The export of agricultural commodities, including poultry and hatching eggs, is a major business in the United States and contributes to a favorable balance of trade. Receiving countries have specific health requirements for poultry and hatching eggs exported from the United States. Most countries require a certification that our poultry and hatching eggs are free of diseases of concern to the receiving country. This certification generally must carry the USDA seal and be endorsed by an authorized APHIS veterinarian.

Veterinary Services Form 17-6, Certificate for Poultry and Hatching Eggs for Export, is used to meet these requirements.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: Accredited veterinarians, poultry owners, hatching egg production facility owners, and poultry and hatching egg exporters.

Estimated annual number of respondents: 300.

Estimated annual number of responses per respondent: 34.

Estimated annual number of responses: 10,200.

Estimated total annual burden on respondents: 5,100 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 27th day of July 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–18750 Filed 7–29–10; 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2010-0049]

Notice of Request for Extension of Approval of an Information Collection; Phytophthora Ramorum; Quarantine and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the interstate movement of regulated articles to prevent the spread of *Phytophthora ramorum*.

DATES: We will consider all comments that we receive on or before September 28, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0049*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS-2010-0049, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2010-0049.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: For information on regulations for the interstate movement of regulated articles to prevent the spread of *Phytophthora ramorum*, contact Mr. Prakash Hebbar, Program Manager, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 160, Riverdale, MD 20737; (301) 734-5717. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

SUPPLEMENTARY INFORMATION:

Title: Phytophthora Ramorum; Quarantine and Regulations.

OMB Number: 0579-0310.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture, either independently or in cooperation with States, to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests that are new to or not widely distributed within the United States.

In accordance with the regulations in "Subpart—Phytophthora Ramorum" (§§ 301.92 through 301.92-12), the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture restricts the interstate movement of certain articles to prevent the spread of *Phytophthora ramorum*, the plant pathogen that causes the disease commonly known as sudden oak death. The regulations contain requirements for the interstate movement of regulated articles, such as nursery stock and certain trees, from both quarantined and nonquarantined areas and involve information collection activities, including certificates, compliance agreements, and recordkeeping.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.3131 hours per response.

Respondents: Nurseries in California, Oregon, and Washington.

Estimated annual number of respondents: 1,427.

Estimated annual number of responses per respondent: 5.0644709.

Estimated annual number of responses: 7,227.

Estimated total annual burden on respondents: 2,263 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 27th day of July 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–18755 Filed 7–29–10; 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Forest Service

Ochoco National Forest, Lookout Mountain Ranger District; Oregon; Howard Elliot Johnson Fuels and Vegetation Management Project EIS

Correction

In notice document 2010–17803 beginning on page 43138 in the issue of Friday, July 23, 2010 make the following correction:

On page 43138, in the second column, under the **ADDRESSES** section, in the seventh and eighth lines, "*comments-pacificnorthwes tochoco@fs.fed.us*" should read "*comments-pacificnorthwest-ochoco@fs.fed.us*".

[FR Doc. C1–2010–17803 Filed 7–29–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Forest Service

Uinta-Wasatch-Cache National Forest Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Uinta-Wasatch-Cache National Forest Resource Advisory Committee will conduct a meeting in Salt Lake City, Utah. 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 is to continue organizing the newly formed committee.

DATES: The meeting will be held on August 12, 2010, from 3 p.m. to 7 p.m.

ADDRESSES: The meeting will be held at the Salt Lake County Government Center, Room N3005, 2001 South State Street, Salt Lake City, Utah. Written comments should be sent to Loyal Clark, Uinta-Wasatch-Cache National Forest, 88 West 100 North, Provo, Utah 84601. Comments may also be sent via e-mail to *lfclark@fs.fed.us*, via facsimile to 801–342–5144.

All comments, including names and addresses when provided, are placed in the record and are available for inspection and copying. The public may inspect comments received at the Uinta-Wasatch-Cache National Forest, 88 West 100 North, Provo, Utah 84601.

FOR FURTHER INFORMATION CONTACT: Loyal Clark, RAC Coordinator, USDA, Uinta-Wasatch-Cache National Forest, 88 West 100 North, Provo, Utah 84601; 801–342–5117; *lfclark@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Approve bylaws, (2) approve project submission process, and (3) develop timelines. 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.

Dated: July 23, 2010.

Cheryl Probert,

Designated Federal Officer.

[FR Doc. 2010–18640 Filed 7–29–10; 8:45 am]

BILLING CODE 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: 2010 Census Coverage Measurement Final Housing Unit Followup Operation.

Form Number(s): D–1340, D–1340(PR), D–1325, D–1325(PR).

OMB Control Number: None.

Type of Request: New collection.

Burden Hours: 3,034.

Number of Respondents: 57,969.

Average Hours Per Response: 3 minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget to conduct the Census Coverage Measurement (CCM) Final Housing Unit Followup (FHUFU) and Final Housing Unit Followup Quality Control (FHUFU QC) Operations as part of the 2010 Census. The CCM program will provide estimates of *net coverage error* and *components of census coverage* (including omissions and erroneous enumerations) for housing units and persons in housing units. The data collection and matching methodologies for previous coverage measurement programs were designed only to measure *net coverage error,* the difference between the estimate of the true population count and the actual census count.

The 2010 CCM will be composed of two samples selected to measure census coverage of housing units and the household population: the population sample (P sample) and the enumeration sample (E sample). The primary sampling unit is a block cluster, which consists of one or more contiguous census blocks. The P sample is a sample of housing units and persons obtained independently from the census for a sample of block clusters. The E sample is a sample of census housing units and enumerations in the same block of clusters as the P sample.

The paper FHUFU form will be used to collect additional address information for addresses selected for followup. The CCM FHUFU operation attempts to collect additional information that might allow a resolution of match/nonmatched codes for addresses in the CCM address list and the census address list, including whether occupied or vacant on Census Day (April 1, 2010) and also to resolve potential duplicates of the two lists.

A quality control operation, FHUFU QC, will also be conducted on 55 percent of the FHUFU cases. The purpose of the operation is to ensure the work performed is of acceptable quality.

In addition to the CCM FHUFU and FHUFU QC Operations, the Evaluation of AFAQ will be conducted, as part of the 2010 Census Program for Evaluations and Experiments (CPEX). The purpose of this evaluation is to evaluate the accuracy of the Master Address File (MAF) after the completion of all Census operations, including the 2010 Address Canvassing operation. While the majority of the Evaluation of AFAQ will rely heavily on the results of CCM, two additional small field operations are required.

The first field operation scheduled for the Evaluation of AFAQ will provide information on the accuracy of the delete and duplicate actions applied to living quarters in the 2010 Address Canvassing operation. Clerical matchers will attempt to match the living quarters with a delete or duplicate action to the living quarters found in the CCM operation and unresolved cases will be sent to the field for followup. Enumerators will only follow up on cases where the status of the living quarters is in question, to determine the true status.

The second field operation of the Evaluation of AFAQ will provide information on the accuracy of the geocodes in the 2010 Census. Clerical matchers will attempt to identify addresses coded by CCM as "missing" from the census, by searching outside the CCM sample block cluster. Enumerators will follow up on any unresolved cases, and also any cases where census units were listed in the wrong block within a CCM sample cluster.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: The CCM operation is mandatory. The AFAQ evaluation is voluntary.

Legal Authority: Title 13 U.S.C., Sections 141 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: July 27, 2010.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–18734 Filed 7–29–10; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XX28

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Atlantic Coastal Shark Fishery

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

ACTION: Notice of cancellation of Federal moratorium.

SUMMARY: NMFS announces the cancellation of the Federal moratorium on fishing for Atlantic coastal sharks in the State waters of New Jersey. NMFS canceled the moratorium, as required by the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), based on the determination that New Jersey is now in compliance with the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan for Atlantic Coastal Sharks (Coastal Shark Plan).

DATES: Effective July 30, 2010.

ADDRESSES: Emily Menashes, Acting Director, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Room 13362, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Brian Hooker, Fishery Management Specialist, NMFS Office of Sustainable Fisheries, (301) 713–2334.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 2010, the Commission found that the State of New Jersey was out of compliance with the Commission's Coastal Shark Plan. Specifically, the Commission found that New Jersey had not implemented regulations that are necessary to rebuild depleted shark stocks, ensure sustainable harvest of others, and provide protection for sharks in nursing and pupping grounds found within State waters. The Commission forwarded the findings of their vote on February 4, 2010, in a formal non-compliance referral letter that was received by NMFS on February 8, 2010.

On March 16, 2010, NMFS notified the State of New Jersey and the Commission of its determination that New Jersey failed to carry out its responsibilities under the Commission's Coastal Shark Plan and that the measures New Jersey has failed to implement and enforce are necessary for the conservation of the shark resource. In this determination and notification, NMFS detailed the actions necessary to avoid the implementation of a Federal moratorium for sharks in New Jersey waters. Details of this determination were provided in a **Federal Register** notice published on April 27, 2010 (75 FR 22103), and are not repeated here.

Activities Pursuant to the Atlantic Coastal Act

The Atlantic Coastal Act specifies that, if, after a moratorium is declared with respect to a State, the Secretary is notified by the Commission that it is withdrawing the determination of noncompliance, the Secretary shall immediately determine whether the State is in compliance with the applicable plan. If the State is determined to be in compliance, the moratorium shall be terminated. On July 20,2010, NMFS received a letter from the Commission that New Jersey has taken corrective action to comply with the Coastal Shark Plan, and that the Commission has withdrawn its determination of noncompliance.

Cancellation of the Moratorium

Based on the Commission's July 20, 2010, letter, information received from the State of New Jersey, and NMFS review of New Jersey's revised coastal shark regulations, NMFS concurs with the Commission's determination that New Jersey is now in compliance with the Coastal Shark Plan. Therefore, the moratorium on fishing for, possession of, and landing of Atlantic coastal sharks by the recreational and commercial fishermen within New Jersey waters is canceled. NMFS, however, wishes to remind the public that although the Federal non-compliance moratorium is withdrawn, other State and Federal coastal shark regulations continue to remain in effect, including regulations that prohibit the landing of some shark species. NMFS urges the shark fishing public to be knowledgeable of all shark fishing regulations before engaging in the fishery.

Authority: 16 U.S.C. 5101 *et seq.*

Dated: July 26, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–18784 Filed 7–27–10; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Extension of Time Limit for Preliminary Results of the 6th Antidumping Duty Administrative and 6th New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* July 30, 2010.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2243.

Background

On September 22, 2009, the Department of Commerce ("Department") published a notice of initiation on the 6th antidumping duty administrative review for certain frozen fish fillets from the Socialist Republic of Vietnam covering the period August 1, 2008, through July 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 74 FR 48224, (September 22, 2009). On September 17, 2009, the Department initiated the 6th antidumping duty new shipper review on CUU Long Fish Joint Stock Company ("CL–Fish"), covering the period August 1, 2008, through July 31, 2009. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Initiation of New Shipper Review,* 74 FR 48908, (September 25, 2009). On January 29, 2010, the Department replaced a mandatory respondent in the instant administrative review with Vinh Quang Fisheries Corporation ("Vinh Quang"). *See* Memorandum to the File, from Emeka Chukwudebe, Case Analyst, Import Administration, through Alex Villanueva, Program Manager, Import Administration, RE: Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam ("Vietnam"): Replacement of Mandatory Respondent, dated January 29, 2010.

On January 29, 2010, the Department extended the deadline for parties to file surrogate country comments and surrogate value data. *See* Memorandum to the File, from Emeka Chukwudebe, Case Analyst, Import Administration,

through Alex Villanueva, Program Manager, Import Administration, RE: Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension Request for Surrogate Country Selection Comments and Surrogate Value Submissions, dated January 29, 2010. On February 12, 2010, the Department tolled administrative deadlines, including in the instant review, by one calendar week. *See* Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm, dated February 12, 2010 ("Tolling Memo"). On March 9, 2010, the Department aligned the 6th new shipper review with the 6th administrative review. *See* Memorandum to the File, from Javier Barrientos, Senior Case Analyst, Import Administration, through Alex Villanueva, Program Manager, Import Administration, RE: Alignment of 6th New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam with the 6th Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, dated March 9, 2010. On April 2, 2010, the Department received surrogate country comments. Between April 2, 2010, and July 9, 2010, the Department received surrogate value data and surrogate rebuttal comments from interested parties. On April 22, 2010, the Department extended the deadline for the preliminary results in the instant review. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limit for Preliminary Results of the 6th Antidumping Duty Administrative and 6th New Shipper Reviews,* 75 FR 20983 (April 22, 2010). The preliminary results are currently due on August 8, 2010 (inclusive of the seven day extension per the Tolling Memo).

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("Act"), and 19 CFR 351.213(h)(1) require the Department to issue the preliminary results in an administrative review of an antidumping duty order 245 days after the last day of the anniversary month of the order for which the administrative review was requested. The Department may, however, extend the deadline for completion of the preliminary results of an administrative review to 365 days if it determines it is not practicable to complete the review within the foregoing time period. *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

The Department finds that it is not practicable to complete the preliminary results within this time limit. The Department is extending the deadline because it needs more time to analyze the supplemental responses of the new mandatory respondent. In addition, parties have submitted voluminous surrogate country comments and surrogate value data, and thus will require additional time to analyze these data. Thus, the Department requires additional time to address these circumstances in these reviews. We are, therefore, extending the time for the completion of the preliminary results of these reviews by 30 days, from the date of the presently tolled due date of August 8, 2010, for the preliminary results, to September 7, 2010.

This notice is published in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: July 23, 2010.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–18782 Filed 7–29–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–501]

Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China: Final Results of Changed Circumstance Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On June 16, 2010, the Department of Commerce ("Department") published a notice of initiation and preliminary results of a changed circumstances review with the intent to revoke the antidumping duty order on natural bristle paint brushes and brush heads from the People's Republic of China ("PRC"). In our notice of initiation and preliminary results, we gave interested parties an opportunity to comment; however, none were received. We are now revoking the order based on the fact that domestic parties have expressed a lack of interest in antidumping duty relief from imports of the subject merchandise. Therefore, we will instruct U.S. Customs and Border Protection ("CBP") to terminate the suspension of liquidation of all unliquidated entries of subject merchandise covered by the scope of the order entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results in the **Federal Register**.

EFFECTIVE DATE: July 30, 2010.

FOR FURTHER INFORMATION CONTACT: Bob Palmer or Catherine Bertrand, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–9068 and (202) 482–3207, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department issued its antidumping duty order on natural paint brushes and brush head in March 1986. *See Antidumping Duty Order; Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China*, 51 FR 5580 (February 14, 1986) and *Amended Antidumping Duty Order; Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China*, 51 FR 8342 (March 11, 1986) ("*Order*"). On May 7, 2010, the Department received a request, pursuant to sections 751(d)(1) and 782(h)(2) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.222(g), to revoke the *Order* based on an expression of no interest from the Paint Applicators Trade Action Coalition, an *ad hoc* coalition of producers of the domestic like product, and the Paint Applicator Division of the American Brush Manufacturers Association, a trade association, (collectively the "Paint Applicators"). On June 16, 2010, in response to the request, the Department published the notice of initiation and preliminary results of a changed circumstances review. *See Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China: Notice of Initiation and Preliminary Results of Changed Circumstance Review, and Intent To Revoke the Order*, 75 FR 34097 (June 16, 2010) ("Initiation and Preliminary Results"). As noted above, we gave interested parties and opportunity to comment on the *Initiation and Preliminary Results*. We received no comments from interested parties.

Scope of the Order

The merchandise covered by the scope of the *Order* are natural bristle paintbrushes and brush heads from the PRC. Excluded from the scope of the *Order* are paint brushes and brush heads with a blend of 40 percent natural bristles and 60 percent synthetic filaments. The merchandise under review is currently classifiable under item 9603.40.40.40 of the Harmonized

Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the Department's written description of the scope of the merchandise is dispositive.

Final Results of Changed Circumstances Review and Revocation of the Order

Pursuant to sections 751(d)(1) and 782(h)(2) of the Act, the Department may revoke an antidumping duty order after conducting a changed circumstances review under section 751(b) of the Act. Section 751(b)(1) requires a changed circumstances review to be conducted upon the receipt of a request which shows changed circumstances sufficient to warrant a review.

We have determined that the affirmative statement of no interest by the Paint Applicators concerning the *Order*, along with the fact that no other domestic interested party commented on the *Initiation and Preliminary Results*, constitutes sufficient support on the part of substantially all domestic producers of like merchandise to warrant revocation of this *Order*. Therefore, the Department is revoking the *Order* on natural bristle paint brushes and brush heads from the PRC in accordance with sections 751(d)(1) and 782(h)(2) the Act and 19 CFR 351.216(d) and 351.222(g)(1)(i).

Effective Date of Revocation

In accordance with section 751(d)(3) of the Act, and 19 CFR 351.222(g)(4), the Department will instruct CBP to terminate the suspension of liquidation of all unliquidated entries of natural bristle paint brushes and brush heads from the PRC, entered or withdrawn from warehouse, for consumption on or after the publication of these final results in the **Federal Register** and to refund any estimated antidumping duties collected on or after the publication of these final results in the **Federal Register**. The Department will further instruct CBP to refund with interest any estimated duties collected with respect to unliquidated entries of natural bristle paint brushes and brush heads from the PRC, entered or withdrawn from warehouse, for consumption on or after the publication of these final results in the **Federal Register**, in accordance with section 778 of the Act.

This notice is in accordance with section 777(i)(1) of the Act and 19 CFR 351.216(e) and 351.222(g)(3)(vii).

Dated: July 26, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–18787 Filed 7–29–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Withdrawal of Application for Duty–Free Entry of Scientific Instruments

Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 2104, Statutory Import Programs Staff, U.S. Department of Commerce 14th and Constitution Ave., NW, Room 2104 Washington, D.C. 20230.

Docket Number: 10–039. Applicant: Northwestern University, 2205 Tech Drive Hogan 2–100, Evanston, IL 60201. Instrument: Electron Microscope. Manufacturer: JEOL, Ltd., Japan. Intended Use: See notice at 75 FR 37384, June 29, 2010.

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), the Department of Commerce and the Department of Homeland Security determine, *inter alia*, whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States as well as whether the instrument or apparatus is for the exclusive use of the applicant institution and is not intended to be used for commercial purposes.

On July 16, 2010, Northwestern University officials notified the Department that they wished to withdraw the above–referenced application for duty–free entry of a scientific instrument. They noted that the instrument will be used at a show/demonstration. As noted in the regulations at section 301.4(a)(3), in order for an application to be considered within the scope of the Act and the regulations, the instrument or apparatus must be for the exclusive use of the applicant institution and is not intended to be used for commercial purposes. For the purposes of this section, commercial uses would include the use of the instrument for demonstration purposes in return for a fee.

Therefore, the Department of Commerce has discontinued the processing of this application, in accordance with section 301.5(g) of the regulations. *See 15 CFR 301.5(g).*

Gregory W. Campbell,

Acting Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2010–18786 Filed 7–29–10; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds services to the Procurement List that will be provided by nonprofit agencies employing persons who are blind or have other severe disabilities and deletes products and services from the Procurement List previously furnished by such agencies.

DATES: Effective Date: 8/30/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 6/4/2010 (75 FR 31768–31769), the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small

entities other than the small organizations that will provide the services to the Government.

2. The action will result in authorizing small entities to provide the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Custodial Service, FAA ARTCC Complex, 37075 Aviation Lane, Hilliard, FL.
NPA: The Right 2 Work Corporation, Jacksonville, FL.
Contracting Activity: Dept. Of Transportation, Federal Aviation Administration, College Park, GA.

Service Type/Location: Recycling Service, Kennedy Space Center, NASA Mail Code: OP–ES, Kennedy Space Center, FL.
NPA: Bridges BTC, Inc., Rockledge, FL.
Contracting Activity: National Aeronautics and Space Administration, Kennedy Space Center, Kennedy Space Center, FL.

Service Type/Location: Custodial Service, Social Security Administration Woodlawn Child Care Center, 6401 Security Blvd., Baltimore, MD.
NPA: Goodwill Industries of the Chesapeake, Inc., Baltimore, MD.
Contracting Activity: Social Security Administration, Hdqtrs—Office of Acquisition & Grants, Baltimore, MD.

Deletions

On 5/21/2010 (75 FR 28589–28590); 6/4/2010 (75 FR 31768–31769); and 6/11/2010 (75 FR 33270–33271), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

Urinal, Incontinent

NSN: 6530–01–451–7652
NSN: 6530–01–451–7653
NSN: 6530–01–451–7654
NSN: 6530–01–451–7655
NSN: 6530–01–451–7656
NSN: 6530–01–451–7657
NSN: 6530–01–451–7658
NSN: 6530–01–451–7659
NPA: Lighthouse for the Blind, St. Louis, MO.
Contracting Activity: Department of Veterans Affairs, NAC, Hines, IL.

Services

Service Type/Location: Grounds Maintenance, National Advocacy Center, 1620 Pendleton Street, Columbia, SC.
NPA: The Genesis Center, Sumter, SC.
Contracting Activity: Dept Of Justice, Federal Prison System, Terminal Island, FCI, Terminal Island, CA.

Service Type/Location: Janitorial/Custodial Service, Caribou-Targhee Forest Supervisor Office, St. Anthony, ID.
NPA: Development Workshop, Inc., Idaho Falls, ID.
Contracting Activity: Department of Agriculture, Procurement Operations Division,Washington, DC.

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2010–18771 Filed 7–29–10; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, August 4, 2010; 2 p.m.–4 p.m.

PLACE: Room 410, 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: July 27, 2010.

Todd A. Stevenson,
Secretary.

[FR Doc. 2010–18910 Filed 7–28–10; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, August 4, 2010, 10 a.m.–12 Noon.

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 Matter:* Public Accommodation—Virginia Graeme Baker Pool and Spa Safety Act.

2. *Strategic Plan:* 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: July 27, 2010.

Todd A. Stevenson,
Secretary.

[FR Doc. 2010–18907 Filed 7–28–10; 4:15 pm]

BILLING CODE 6355–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act; Notice of Public Meeting Accessibility Roundtable Discussion

DATE AND TIME: Thursday, August 5, 2010; 9 a.m.–12 p.m. EDT (morning session); 1–4 p.m. EDT (afternoon session).

PLACE: U.S. Access Board, 1331 F Street, NW., Suite 1000, Washington, DC 20004, (202) 272–0080 (Metro Stop: Metro Center).

AGENDA: The Commission will host a roundtable discussion regarding the various accessibility issues the EAC is exploring with its work with the revision to the 2005 Voluntary Voting System Guidelines (VVSG). The goal of the roundtable is to provide the EAC with relevant information and implementable suggestions that the Commission can use as it attempts to make these policy decisions.

The discussion will be focused upon the following topics: (1) New issues that were not addressed or anticipated by the 2005 VVSG; (2) Use of transferrable technologies and use of adaptive devices; (3) Issues with verification of vote and/or paper ballot by disabled voters; (4) Improvements to conformance and summative testing to accessible requirements by the EAC and manufacturer(s); (5) The possible benefits and drawbacks of component testing and certification; (6) Telephone voting systems and accessibility requirements; (7) The strengths and weaknesses of allowing submission for certification of systems in two categories, systems without accessibility components and accessible voting systems.

Members of the public may observe but not participate in EAC meetings unless this notice provides otherwise. Members of the public may use small electronic audio recording devices to record the proceedings. The use of other recording equipment and cameras requires advance notice to and coordination with the Commission's Communications Office.*

* View EAC Regulations Implementing Government in the Sunshine Act.

This meeting and hearing will be open to the public.

PERSON TO CONTACT FOR INFORMATION: Matthew Masterson, Telephone: (202) 566–3100.

Alice Miller,

Chief Operating Officer, U.S. Election Assistance Commission.

[FR Doc. 2010–18934 Filed 7–28–10; 4:15 pm]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Western Area Power Administration

2015 Resource Pool—Sierra Nevada Customer Service Region

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Power Allocations.

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing administration of the Department of Energy (DOE), published its 2004 Power Marketing Plan (Marketing Plan) for the Sierra Nevada Customer Service Region (SNR) in the **Federal Register** on June 25, 1999. The Marketing Plan specifies the terms and conditions under which Western will market power from the Central Valley Project (CVP) and the Washoe Project beginning January 1, 2005, and continuing through December 31, 2024. The Marketing Plan provided for a portion of SNR's resources to be reallocated through a 2015 Resource Pool. On June 3, 2009, Western published a Call for 2015 Resource Pool Applications. On September 28, 2009, Western published a Notice of Extension to file applications. This notice announces Western's proposed allocations of power from the 2015 Resource Pool.

DATES: Entities interested in commenting on Western's proposed allocations must submit written comments to Western's SNR Office at the address below. Western must receive written comments by the close of the comment period. The comment period closes at 4 p.m., Pacific Daylight Time, on August 30, 2010. Entities are encouraged to submit comments through electronic mail or to use certified mail. Comments will also be accepted via regular mail through the United States Postal Service if postmarked at least 3 days before August 30, 2010, and received no later than September 1, 2010. Western reserves the right not to consider comments that are not timely received. After considering the comments, Western will publish a Notice of Final 2015 Resource Pool Allocations in the **Federal Register**.

ADDRESSES: Written comments should be sent to Ms. Sonja Anderson, Power Marketing Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630, or by electronic mail to *2015RPApps@wapa.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Sonja Anderson, Power Marketing Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630, (916) 353–4421, or by electronic mail at *sanderso@wapa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the Marketing Plan (64 FR 34417, June 25, 1999), Western published the Call for 2015 Resource Pool Applications in the **Federal Register** (74 FR 26671, June 3, 2009). Western subsequently published a Notice of Extension in the **Federal Register** (74 FR 49366, September 28, 2009). The Call for 2015 Resource Pool Applications required that applications for Federal power from the CVP and Washoe Projects be submitted by August 3, 2009, and the Notice of Extension extended the submission date to October 28, 2009.

CVP power facilities are operated by the U.S. Department of the Interior, Bureau of Reclamation (Reclamation), and include 11 powerplants with a maximum operating capability of about 2,044 megawatts (MW), and an estimated average annual generation of 3.3 million megawatthours (MWh). Western markets and transmits power available from the CVP.

The Washoe Project's Stampede Powerplant also is operated by Reclamation and has a maximum operating capability of 3.65 MW with an estimated annual generation of 10,000 MWh. The Sierra Pacific Power Company owns and operates the only transmission system available for access to the Stampede Powerplant.

Western owns the 94 circuit-mile Malin-Round Mountain 500-kilovolt (kV) transmission line and the 84 circuit-mile Los Banos-Gates No. 3 500-kV transmission line (both integral parts of the Pacific Northwest-Pacific Southwest Intertie), 803 circuit miles of 230-kV transmission line, 7 circuit miles of 115-kV transmission line, and approximately 63 circuit miles of 69-kV and below transmission line. Western also has part ownership in the 342-mile California-Oregon Transmission Project. Many of Western's existing customers have no direct access to Western's transmission lines and receive service over transmission lines owned by other utilities.

The Marketing Plan describes how SNR will market its power resources beginning January 1, 2005, through December 31, 2024. Western proposes to allocate portions of the 2015 Resource Pool to applicants meeting the eligibility criteria listed in the Marketing Plan. Once the 2015 Resource Pool allocations have been finalized, Western will offer contracts to allottees for a percentage of the Base Resource. If requested, Western will work with the allottees to develop a customized product to meet their needs, as more fully described in the Marketing Plan.

Proposed 2015 Resource Pool Allocations

Pursuant to the Marketing Plan, a two-step process was undertaken by Western to determine proposed power allocations. First, Western determined which applicants met the eligibility criteria. Next, Western used the allocation criteria to determine allocation amounts. Western then determined which eligible entities received a proposed allocation and the amount of the proposed allocation. Western received 44 applications from existing customers and 13 applications from entities who are not currently customers.

The proposed 2015 Resource Pool allocations are preliminary and may be changed based on comments received. This notice formally requests comments related to the proposed allocations. After considering timely comments, Western will publish a Notice of Final 2015 Resource Pool Allocations in the **Federal Register**. Western will respond to comments received on the proposed allocations in that notice.

The proposed 2015 Resource Pool allottees, the allocations expressed as percentages of the Base Resource, and the estimated MWh amounts of each allocation are listed below. The estimated MWh for each allocation assumes an estimated average annual Base Resource of 3,342,000 MWh and are rounded to the nearest MWh. The proposed allocations are as follows:

Applicant	Base resource allocation (percent)	Estimated (MWh)
Alameda Municipal Power	0.06140	2,052
Bay Area Rapid Transit District	0.06140	2,052
California State University, Sacramento	0.06140	2,052
Cawelo Water District	0.06140	2,052
Dry Creek Rancheria Band of Pomo Indians	0.07795	2,605
East Bay Municipal Utility District	0.06140	2,052
Fallon, City of	0.06140	2,052
Healdsburg, City of	0.06140	2,052
Hoopa Valley Tribe	0.12274	4,102
Kings River Conservation District	0.00491	164
Klamath Water and Power Agency	0.04668	1,560
Lassen Municipal Utility District	0.06140	2,052
Lodi, City of	0.06140	2,052
Lompoc, City of	0.06140	2,052
Marin Energy Authority	0.62094	20,752
Merced Irrigation District	0.06140	2,052
Navy, U.S. Dept of, Monterey Post Graduate School	0.04873	1,628
Picayune Rancheria of the Chukchansi Indians	0.00674	225
Presido Trust	0.03503	1,170
Santa Clara Valley Water District	0.06140	2,052
Sonoma County Water Agency	0.06140	2,052
South San Joaquin Irrigation District	0.01400	468
Stockton, Port of	0.02421	809
Truckee Donner Public Utility District	0.06140	2,052
Turlock Irrigation District	0.06140	2,052
University of California, San Francisco	0.06140	2,052
Zone 7, Alameda County Flood Control & Water Conservation District	0.01573	525
	2.00000	66,840

Contracting Process

Once the final 2015 Resource Pool allocations have been determined and published, Western will work with the allottees to develop a customized product to meet their needs as requested by such allottees and as more fully described in the Marketing Plan. It is each allottee's responsibility to obtain transmission arrangements for the delivery of power to its load. Upon request, Western may assist an allottee in obtaining transmission arrangements for the delivery of power. If an allottee fails to secure delivery arrangements acceptable to Western, Western will withdraw the allocation. Western will offer a prototype contract for power allocated under the final 2015 Resource Pool allocations. Allottees will be required to execute a contract within 6 months of the contract offer. Electric service contracts will be effective upon Western's signature, and service will begin on January 1, 2015.

Authorities

The Marketing Plan, published in the **Federal Register** (64 FR 34417) on June 25, 1999, was established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101–7352); the Reclamation Act of June 17, 1902 (ch. 1093, 32 Stat. 388) as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485(c)); and other acts specifically applicable to the projects involved. This action falls within the Marketing Plan and, thus, is covered by the same authority.

Regulatory Procedure Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4347), Council on Environmental Quality NEPA implementing regulations (40 CFR parts 1500–1508), and DOE NEPA implementing regulations (10 CFR part 1021), Western completed an Environmental Impact Statement (EIS) on its Energy Planning and Management Program. The Record of Decision was published in the **Federal Register** (60 FR 53181, October 12, 1995). Western also completed the 2004 Power Marketing Program EIS (2004 EIS), and the Record of Decision was published in the **Federal Register** (62 FR 22934, April 28, 1997). The Marketing Plan falls within the range of alternatives

considered in the 2004 EIS. This NEPA review identified and analyzed environmental effects related to the Marketing Plan. This action falls within the Marketing Plan and, thus, is covered by the 2004 EIS.

Dated: July 22, 2010.

Timothy J. Meeks,

Administrator.

[FR Doc. 2010–18742 Filed 7–29–10; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2007–0468; ER–FRL–8991–9]

Agency Information Collection Activities; Proposed Collection; Comment Request; Environmental Impact Assessment of Nongovernmental Activities in Antarctica; EPA ICR No. 1808.06, OMB Control No. 2020–0007

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on January 31, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 27, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OECA–2007–0468, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: hessert.aimee@epa.gov.*
- *Fax:* 202–564–0072.
- *Mail:* Enforcement and Compliance Docket, Environmental Protection Agency, *Mailcode:* 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Headquarters West Building, Room 3334, located at 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OECA–2007–0468. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access"system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Aimee Hessert, Office of Federal Activities, Mail Code 2252A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–0993; fax number: 202–564–0072; e-mail address: *hessert.aimee@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OECA–2007–0468, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in 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 Enforcement and Compliance Docket is 202–566–1752.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are all nongovernmental operators with activities in Antarctica, including tour operators, for which the United States is required to give advance notice under paragraph 5 of Article VII of the Antarctic Treaty of 1959; this includes all nongovernmental expeditions to and within Antarctica organized in or proceeding from the territory of the United States.

Title: Agency Information Collection Activities; Proposed Collection; Comment Request; Environmental Impact Assessment of Nongovernmental Activities in Antarctica (Renewal)

ICR numbers: EPA ICR No. 1808.06, OMB Control No. 2020–0007.

ICR status: This ICR is currently scheduled to expire on January 31, 2011. 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: The Environmental Protection Agency's (EPA's) regulations at 40 CFR part 8, Environmental Impact Assessment of Nongovernmental Activities in Antarctica (Rule), were promulgated pursuant to the Antarctic Science, Tourism, and Conservation Act of 1996 (Act), 16 U.S.C. 2401 *et seq.,* as amended, 16 U.S.C. 2403a, which implements the Protocol on Environmental Protection (Protocol) to the Antarctic Treaty of 1959 (Treaty). The Rule provides for assessment of the environmental impacts of nongovernmental activities in Antarctica, including tourism, for which the United States is required to give advance notice under Paragraph 5 of Article VII of the Treaty, and for coordination of the review of information regarding environmental impact assessments received from other Parties under the Protocol. The requirements of the Rule apply to operators of nongovernmental expeditions organized or proceeding from the territory of the United States to Antarctica and include commercial and non-commercial expeditions. Expeditions may include ship-based tours; yacht, skiing or mountaineering expeditions; privately funded research expeditions; and other nongovernmental activities. The Rule does not apply to individual U.S. citizens or groups of citizens planning travel to Antarctica on an expedition for which they are not acting as an operator. (Operators, for example, typically acquire use of vessels or aircraft, hire expedition staff, plan itineraries, and undertake other organizational responsibilities.) The rule provides nongovernmental operators with the specific requirements they need to meet in order to comply with the requirements of Article 8 and Annex I to the Protocol. The provisions of the Rule are intended to ensure that potential environmental effects of nongovernmental activities undertaken in Antarctica are appropriately identified and considered by the operator during the planning process and that to the extent practicable appropriate environmental safeguards which would mitigate or prevent adverse impacts on the Antarctic environment are identified by the operator.

Environmental Documentation. Persons subject to the Rule must prepare environmental documentation to support the operator's determination regarding the level of environmental impact of the proposed expedition. Environmental documentation includes a Preliminary Environmental Review Memorandum (PERM), an Initial Environmental Evaluation (IEE), or a Comprehensive Environmental Evaluation (CEE). The environmental document is submitted to the Office of Federal Activities (OFA). If the operator determines that an expedition may have: (1) Less than a minor or transitory impact, a PERM needs to be submitted no later than 180 days before the proposed departure to Antarctica; (2) no more than minor or transitory impacts, an IEE needs to be submitted no later than 90 days before the proposed departure; or (3) more than minor or transitory impacts, a CEE needs to be submitted. Operators who anticipate such activities are encouraged to consult with EPA as soon as possible regarding the date for submittal of the CEE. (Article 3(4), of Annex I of the Protocol requires that draft CEEs be distributed to all Parties and the Committee for Environmental Protection 120 days in advance of the next Antarctic Treaty Consultative Meeting (ATCM) at which the CEE may be addressed.)

The Protocol and the Rule also require an operator to employ procedures to assess and provide a regular and verifiable record of the actual impacts of an activity which proceeds on the basis of an IEE or CEE. The record developed through these measures needs to be designed to: (a) Enable assessments to be made of the extent to which environmental impacts of nongovernmental expeditions are consistent with the Protocol; and (b) provide information useful for minimizing and mitigating those impacts and, where appropriate, on the need for suspension, cancellation, or modification of the activity. Moreover, an operator needs to monitor key environmental indicators for an activity proceeding on the basis of a CEE. An operator may also need to carry out monitoring in order to assess and verify the impact of an activity for which an IEE would be prepared. For activities that require an IEE, an operator should be able to use procedures currently being voluntarily utilized by operators to provide the required information. Should an activity require a CEE, the operator should consult with EPA to: (a) Identify the monitoring regime appropriate to that activity, and (b) determine whether and how the operator might utilize relevant monitoring data collected by the U.S. Antarctic Program. OFA would consult with the National Science Foundation and other interested Federal agencies regarding the monitoring regime.

In cases of emergency related to the safety of human life or of ships, aircraft, equipment and facilities of high value, or the protection of the environment which would require an activity to be undertaken without completion of the documentation procedures set out in the Rule, the operator would need to notify the Department of State within 15 days of any activities which would have otherwise required preparation of a CEE, and provide a full explanation of the activities carried out within 45 days of those activities. (During the time the Interim Final and Final Rules have been in effect, there were no emergencies requiring notification by U.S. operators. An Interim Final Rule was in effect from April 30, 1997, until replaced on December 6, 2001, by the Final Rule.)

Environmental documents (*e.g.,* PERM, IEE, CEE) are submitted to OFA. Environmental documents are reviewed by OFA, in consultation with the

National Science Foundation and other interested Federal agencies, and also made available to other Parties and the public as required under the Protocol or otherwise requested. OFA notifies the public of document availability via the World Wide Web at: *http://www.epa.gov/compliance/international/antarctica/index.html.* The types of nongovernmental activities currently being carried out (*e.g.,* ship-based tours, land-based tours, flights, and privately funded research expeditions) are typically unlikely to have impacts that are more than minor or transitory, thus an IEE is the typical level of environmental documentation submitted. For the 1997–1998 through 2009–2010 austral summer seasons during the time the Rule has been in effect, all respondents submitted IEEs with the exception of one PERM. Paperwork reduction provisions in the Rule that are used by the operators include: (a) Incorporation of material in the environmental document by referring to it in the IEE, (b) inclusion of all proposed expeditions by one operator within one IEE; (c) use of one IEE to address expeditions being carried out by more than one operator; and (d) use of multi-year environmental documentation to address proposed expeditions for a period of up to five consecutive austral summer seasons.

Coordination of Review of Information Received From Other Parties to the Treaty. The Rule also provides for the coordination of review of information received from other Parties and the public availability of that information including: (1) A description of national procedures for considering the environmental impacts of proposed activities; (2) an annual list of any IEEs and any decisions taken in consequence thereof; (3) significant information obtained and any action taken in consequence thereof with regard to monitoring from IEEs to CEEs; and (4) information in a final CEE. This provision fulfills the United States' obligation to meet the requirements of Article 6 of Annex I to the Protocol. The Department of State is responsible for coordination of these reviews of drafts with interested Federal agencies, and for public availability of documents and information. This portion of the Rule does not impose paperwork requirements on any nongovernmental person subject to U.S. regulation.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1,708 hours annually, or 78 hours per response. This hourly burden reflects annual submission of different levels of environmental documentation by an anticipated 22 respondents (*e.g.,* U.S.-based nongovernmental operators). Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 22.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 1,708 hours.

Estimated total annual costs: $136,675. This includes an estimated burden cost of $132,419 and an estimated cost of $4,256 for capital investment or maintenance and operational costs.

Are there changes in the estimates from the last approval?

There is an increase of 45 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase is a result of a change in the type of environmental documentation EPA anticipates the respondents will submit.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: July 27, 2010.

Susan E. Bromn,

Director, Office of Federal Activities.

[FR Doc. 2010–18801 Filed 7–29–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0178; FRL–8838–2]

Spirotetramat; Receipt of Application for Emergency Exemption for Use on Dry Bulb Onions in Minnesota, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Minnesota Department of Agriculture to use the pesticide spirotetramat (CAS No. 203313–25–1) to treat up to 275 acres of dry bulb onions to control thrips. The applicant sought the use of a chemical whose registration was recently cancelled.

DATES: Comments must be received on or before August 16, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0178, by one of the following methods:

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2010–0178. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Keri Grinstead, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703)308–8373; fax number: (703) 605–0781; e-mail address: *grinstead.keri@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Minnesota Department of Agriculture requested the Administrator to issue a specific exemption for the use of spirotetramat on dry bulb onions to control thrips. Information in accordance with 40 CFR part 166 was submitted as part of this request and is available for review at *www.regulations.gov* under Docket ID Number 2010–0178.

This is the first request from this applicant for this use. The rationale for emergency approval of the use in the application is that onion thrips are sucking insects which both directly damage the crop and also vector the plant disease Iris Yellow Spot Virus. The use of spirotetramat is necessary to ensure thrips control in areas experiencing thrips resistance to available alternatives and, in particular, where 6–8 seasonal applications of alternative pesticides are required to achieve adequate control. The application package for Minnesota is available for review at *www.regulations.gov* under Docket ID Number 2010–0178.

The Applicant proposes to make no more than two applications of Movento (22.4% spirotetramat) on a maximum of 275 acres of dry bulb onions between July and September in Minnesota. Total amount of pesticide to be used is 2,750 fluid ounces of movento (44 lbs of spirotetramat).

This notice does not constitute a decision by EPA on the application itself but provides an opportunity for public comment on the application. EPA has determined that publication of a notice of receipt of this application for a specific exemption is appropriate, taking into consideration that the registration of the spirotetramat product that is the subject of this emergency exemption request was recently cancelled as a result of the December 23, 2009 decision of the U.S. District Court for the Southern District of New York vacating its registration on procedural grounds. The vacatur decision is available for review at *www.regulations.gov* under Docket ID Number 2010–0178.

The notice provides an opportunity for public comment on the application.

The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the Minnesota Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 21, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2010–18777 Filed 7–29–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9183–3]

California State Motor Vehicle Pollution Control Standards; Within-the-Scope Determination for Amendments to California's Low Emission Vehicle Program; Notice of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of within-the-scope determination.

SUMMARY: EPA is confirming that technical amendments promulgated by the California Air Resources Board (CARB) are within-the-scope of existing waivers of preemption for CARB's Low Emission Vehicle (LEV II) program. These technical amendments were adopted by CARB in 2006, and include amendments to California's evaporative emission test procedures, onboard refueling vapor recovery and spitback test procedures, exhaust emission test procedures, and vehicle emission control label requirements. These amendments align each of California's test procedures and label requirements with its federal counterpart, in an effort to streamline and harmonize the California and federal programs. California believes these amendments will reduce manufacturer testing burdens and increase in-use compliance, without compromising the stringency of its numerical LEV II emission standards.

DATES: Any objections to the findings in this notice regarding EPA's determination, that California's amendments are within-the-scope of previous waivers, must be filed by August 30, 2010. Upon receipt of a timely objection, EPA will consider scheduling a public hearing to reconsider these findings, which would be announced in a subsequent **Federal Register** notice. Otherwise, these findings will become final on September 28, 2010.

ADDRESSES: Any objections to the within-the-scope findings in this **Federal Register** notice should be filed with Kristien Knapp at the address noted below. All documents relied upon in making this decision, including those submitted to EPA by CARB, are contained in the public docket.

EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2010–0238. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open to the public on all federal government work days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.gov/oar/docket.html.* The electronic mail (e-mail) address for the Air and Radiation Docket is: *a-and-r-Docket@epa.gov*, the telephone number is (202) 566–1742, and the fax number is (202) 566–9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov.* After opening the *www.regulations.gov* Web site, enter EPA HQ–OAR–2010–0238 in the "Enter Keyword or ID" fill-in box to view documents in the record of CARB's LEV II technical amendments within-the-scope waiver request. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality also maintains a webpage that contains general information on its review of California waiver requests. Included on that page are links to several of the prior waiver **Federal Register** notices which are cited throughout today's notice; the page can be accessed at *http://www.epa.gov/otaq/cafr.htm.*

FOR FURTHER INFORMATION CONTACT: Kristien Knapp, Compliance and Innovative Strategies Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue (6405J), NW., Washington, DC 20460. *Telephone:* (202) 343–9949. *Fax:* (202) 343–2800. *E-mail: knapp.kristien@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. CARB's 2006 Technical Amendments

On April 30, 2007, CARB submitted a request to EPA for confirmation that CARB's 2006 Technical Amendments to California's LEV II program are within-the-scope of previously granted waivers of preemption. CARB's 2006 Technical Amendments generally include amendments to its evaporative emission test procedures, four-wheel drive dynamometer provisions, and vehicle label requirements. Each of these general areas amends previously promulgated—and waived—amendments to CARB's LEV II program.

CARB originally received a waiver of preemption for its LEV II program from EPA on April 22, 2003.[1] The LEV II program itself exists as the result of a series of amendments to California's older LEV I program. The LEV II program set stringent evaporative emission standards and test procedures beginning with the 2004 model year. California subsequently enacted two sets of "follow-up" amendments to its LEV II program. The first set of follow-up amendments established exhaust emission standards and test procedures for light-duty and medium-duty gasoline-fueled vehicles. The following set of follow-up amendments revised

[1] 60 FR 19811 (April 22, 2003).

vehicle labeling provisions and refueling emission standards and test procedures. Both sets of follow-up amendments were determined by EPA to be within-the-scope of previous waivers on April 28, 2005.[2] CARB presents that its 2006 Technical Amendments are within-the-scope of EPA's LEV II waiver, and EPA's within-the-scope confirmation for California's LEV II follow-up amendments.[3]

CARB's 2006 Technical Amendments directly incorporate a direct final rule issued by EPA on December 8, 2005,[4] in order to streamline California's exhaust, evaporative, and refueling test procedures to the corresponding federal procedures. CARB considered and approved the 2006 Technical Amendments at a June 22, 2006 hearing by adopting Resolution 06–20;[5] the technical amendments became effective California state law on February 17, 2007, pending EPA's waiver review. CARB believes its effort to harmonize its procedures with EPA's procedures in the 2006 Technical Amendments will reduce manufacturer testing burdens and compliance requirements without compromising the stringency or efficacy of its numerical emission standards.

CARB's 2006 Technical Amendments affect only evaporative emission test procedures and not the underlying standards. Specifically, the 2006 Technical Amendments: (1) Authorize manufacturers to opt to certify new vehicles to the Two-Day Diurnal plus Hot Soak (2D+HS) test sequence on the basis of an engineering judgment; (2) clarify that when a manufacturer has certified vehicles using an alternative running loss test procedure, CARB may conduct certification confirmatory tests and in-use compliance tests using either the specified procedures or that manufacturer's approved alternative running loss test procedure; (3) provide manufacturers an option to use an alternative canister preconditioning method; (4) clarify that only one evaporative test demonstration is required for all applicable fuel types of each evaporative/refueling family; (5) modify the Onboard Refueling Vapor Recovery (ORVR) requirements to make optional the disconnection of the canister and fuel tank-vent hose assembly when the drain-and-ten-percent-fill step of the refueling test sequence is performed; (6) include several minor, non-substantive amendments to maintain federal harmonization; (7) modify existing test procedures to allow a manufacturer to perform certification emission tests of four-wheel drive (4WD) vehicles on 4WD dynamometers; (8) eliminate the requirement that manufacturers include certain outdated information on their vehicle labels.[6] These changes amend title 13, California Code of Regulations (CCR), sections 1961, 1976, and 1978;[7] these three amended code sections incorporate by reference three contemporaneously amended test procedure documents.[8]

B. Clean Air Act Waivers of Preemption

Section 209(a) of the Clean Air Act preempts states and local governments from setting emission standards for new motor vehicles and engines; it provides:

> No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No state shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

Through operation of section 209(b) of the Act, California is able to seek and receive a waiver of section 209(a)'s preemption. If certain criteria are met, section 209(b)(1) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a). Section 209(b)(1) only allows a waiver to be granted for any State that had adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the State determines that its standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards (this is known as California's "protectiveness determination"). Because California was the only state to have adopted standards prior to 1966, it is the only state that is qualified to seek and receive a waiver.[9] The Administrator must grant a waiver unless she finds that: (A) California's above-noted "protectiveness determination" is arbitrary and capricious;[10] (B) California does not need such State standards to meet compelling and extraordinary conditions;[11] or (C) California's standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act.[12] EPA has previously stated that consistency with section 202(a) requires that California's standards must be technologically feasible within the lead time provided, given due consideration of costs, and that California and applicable Federal test procedures be consistent.[13]

If California amends regulations that were previously granted a waiver of preemption, EPA can confirm that the amended regulations are within-the-scope of the previously granted waiver if three conditions are met. First, the amended regulations must not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as applicable federal standards. Second, the amended regulations must not affect consistency with section 202(a) of the Act. Third, the amended regulations must not raise any "new issues" affecting EPA's prior waivers.

II. Discussion

As stated above, EPA can confirm that amended regulations are within-the-scope of a previously granted waiver if three conditions are met. CARB, in its Resolution 06–20, expressly found that its 2006 Technical Amendments met each of these criteria.[14]

A. California's Protectiveness Determination

When granting a waiver for CARB's LEV II amendments, which established the LEV II standards at the heart of the LEV II program, EPA declined to find that California's protectiveness determination was arbitrary and capricious.[15] The protectiveness

[2] 70 FR 22034 (April 28, 2005).

[3] 68 FR 77 (April 22, 2003), 70 FR 22034 (April 28, 2005). *See also* 67 FR 162 (August 21, 2002) (EPA's waiver for California's onboard refueling vapor recovery standards and procedures, which pre-existed and were modified by CARB's second set of LEV II follow-up amendments.).

[4] 70 FR 72917 (December 8, 2005).

[5] CARB, "Resolution 06–20," EPA–HQ–OAR–2010–0238–0006.

[6] CARB, Waiver Support Document, EPA–HQ–OAR–2010–0238–0002 at pp. 4–8.

[7] *See* CARB, "Final Regulation Order," EPA–HQ–OAR–2010–0238–0008.

[8] *See* CARB, Attachment 7, EPA–HQ–OAR–2010–0238–0009.

[9] *See* S. Rep. No. 90–403 at 632 (1967).

[10] CAA section 209(b)(1)(A).

[11] CAA section 209(b)(1)(B).

[12] CAA section 209(b)(1)(C).

[13] *See, e.g.,* 74 FR at 32767 (July 8, 2009); *see also Motor and Equipment Manufacturers Association* v. *EPA (MEMA I),* 627 F.2d 1095, 1126 (DC Cir. 1979).

[14] CARB, "Resolution 06–20," EPA–HQ–OAR–2010–0238–0006, pp. 4–5.

[15] 68 FR 19812 (April 22, 2003). *See also* EPA's LEV II Waiver Decision Document at pp. 9–11 ("EPA did not receive any comments stating that CARB's LEV II requirement are not, in the aggregate, as stringent as applicable federal standards. Therefore, based on the record before me, I cannot find that CARB's LEV II regulations, as noted, would cause the California motor vehicle emission standards, in the aggregate, to be less protective of

Continued

determination at issue in the original LEV II proceeding was based upon a comparison of California's LEV II emission standards, as amended by the LEV II follow-up amendments, to federal Tier 2 standards. CARB notes that its LEV II-to-Tier 2 comparison showed that LEV II standards were more stringent than the applicable federal Tier 2 standards, particularly taking into account CARB's more stringent NO_X standards for the 2007 through 2010 model years and CARB's more stringent evaporative emission standards.[16] CARB also notes that the LEV II follow-up amendments increased the protectiveness of California's LEV II program by ensuring that federal vehicles that are cleaner than their California counterparts would be certified in California.[17]

CARB's 2006 Technical Amendments do not increase or decrease the stringency of the LEV II standards; they only affect test procedures and label requirements, in an effort to harmonize California compliance requirements with federal compliance requirements. We see no reason to think that application of compliance requirements that mirror federally-promulgated compliance requirements would undermine—rather than reinforce—California's protectiveness determination.

After reviewing the materials submitted by CARB, EPA can confirm that the 2006 Technical Amendments do not undermine California's previous determination that its standards, in the aggregate, are as protective of public health and welfare as applicable federal standards.

B. Consistency With Section 202(a) of the Clean Air Act

EPA has stated in the past that California standards and accompanying test procedures would be inconsistent with section 202(a) of the Clean Air Act if: (1) There is inadequate lead time to permit the development of technology necessary to meet those requirements, giving appropriate consideration to cost of compliance within the lead time provided, or (2) the federal and California test procedures impose inconsistent certification requirements.[18]

The first prong of EPA's inquiry into consistency with section 202(a) of the Act depends upon technological feasibility. This requires EPA to determine whether adequate technology already exists; or if it does not, whether there is adequate time to develop and apply the technology before the standards go into effect. CARB points out that in the course of its rulemaking, no manufacturer raised any lead time concerns.[19] Additionally, CARB notes that these procedures have already been promulgated and applied by EPA. Consequently, EPA cannot identify any lead time issue posed by application of procedures that are already used for federal compliance.[20] We find that adequate technology already exists.

The second prong of EPA's inquiry into consistency with section 202(a) of the Act depends on the compatibility of the federal and California test procedures. CARB points out, again here, that its technical amendments are designed to harmonize its test procedures with federal test procedures.[21] In fact, CARB found that without the technical amendments, inconsistent test procedures would exist.[22] EPA agrees with this analysis; because identical test procedures cannot be incompatible, we cannot find that California's test procedures are inconsistent with our own.

For those reasons, EPA can confirm that the 2006 Technical Amendments are not inconsistent with section 202(a) of the Clean Air Act.

C. New Issues

EPA has stated that if CARB amendments raise "new issues" affecting previously granted waivers, we cannot confirm that those amendments are within-the-scope of previous waivers.[23] Here, CARB determined that there are no new issues presented by CARB's 2006 Technical Amendments.[24] CARB notes that in the course of its rulemaking, it received only two public comments: One comment from a manufacturer in support and one comment unrelated to the rulemaking.[25] After our own review of CARB's 2006 Technical Amendments, EPA is similarly unable to identify any new issues.

III. Decision

CARB's April 30, 2007 letter seeks confirmation from EPA that CARB's 2006 Technical Amendments to California's LEV II program are within-the-scope of previous waivers of preemption that EPA has granted. After evaluating the 2006 Technical Amendments, EPA confirms that CARB meets the three criteria that EPA traditionally uses to determine whether a present request from California is within-the-scope of previous waivers. First, EPA agrees with CARB that the technical amendments do not undermine California's protectiveness determination from its previous LEV II waiver requests. Second, EPA agrees with CARB that its 2006 Technical Amendments are not inconsistent with section 202(a) of the Act. Third, EPA agrees with CARB that its 2006 Technical Amendments do not present any "new issues," which would affect its previous waivers. Therefore, EPA confirms that CARB's 2006 Technical Amendments are within-the-scope of EPA's waivers of preemption for California's LEV II program.

The Administrator has delegated the authority to grant California a section 209(b) waiver of preemption to the Assistant Administrator for Air and Radiation. Having given consideration to all the material submitted for this record, and other relevant information, I find that I cannot make the determinations required for a denial of a waiver pursuant to section 209(b) of the Act. EPA's analysis confirms CARB's finding that these amendments meet the criteria for receiving a within-the-scope determination; therefore, EPA finds that the 2006 Technical Amendments are within-the-scope of previous waivers for California's LEV II program.

Because these amendments are within-the-scope of a previous waiver, a public hearing to consider them is not necessary. However, if any party asserts an objection to these findings by August 30, 2010, EPA will consider holding a public hearing to provide interested parties an opportunity to present oral testimony and written evidence to show that there are issues to be addressed through a section 209(b) waiver proceeding and that EPA should reconsider its findings. Otherwise, these findings will become final on September 28, 2010.

My decision will affect not only persons in California, but also manufacturers outside the State who must comply with California's requirements in order to produce engines for sale in California. For this reason, I determine and find that this is a final action of national applicability for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1) of the

public health and welfare than applicable Federal standards.") (citation omitted).

[16] CARB, "Waiver Support Document," EPA–HQ–OAR–2010–0238–0002 at 11.

[17] *Id.*

[18] *See, e.g.,* 75 FR 8056 (February 23, 2010); 70 FR 22034 (April 28, 2005).

[19] CARB, "Waiver Support Document," EPA–HQ–OAR–2010–0238–0002 at 12.

[20] *Id.*

[21] *Id.*

[22] CARB, "Resolution 06–20," EPA–HQ–OAR–2010–0238–0006 at 3.

[23] *See, e.g.,* 75 FR 8056 (February 23, 2010); 70 FR 22034 (April 28, 2005).

[24] CARB, "Waiver Support Document," EPA–HQ–OAR–2010–0238–0002 at 13.

[25] *Id.*

Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by September 28, 2010. Judicial review of this final action may not be obtained in subsequent enforcement proceedings, pursuant to section 307(b)(2) of the Act.

As with past authorization and waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Further, the Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

Dated: July 22, 2010.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2010–18791 Filed 7–29–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8991–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly Receipt of Environmental Impact Statements

Filed 07/19/2010 Through 07/23/2010 Pursuant to 40 CFR 1506.9

EIS No. 20100273, Final EIS, BLM, UT, West Tavaputs Plateau Natural Gas Full Field Development Plan, Develop the Natural Gas Resource on Leased and Unleased Lands, Carbon County, UT, *Wait Period Ends:* 08/30/2010, *Contact:* Tyler Ashcraft 435–636–3600.

EIS No. 20100274, Draft EIS, BLM, UT, Kerr-McGee Oil & Gas Onshore LP (KMG), Proposes to Conduit Infill Drilling to Develop the Hydrocarbon Resources Oil and Gas Leases, Application for Permit to Drill and Approval Right-of-Way Grants, Uintah County, UT, *Comment Period Ends:* 09/13/2010, *Contact:* Stephanie Howard 435–781–4400.

EIS No. 20100275, Final EIS, BLM, WY, Wright Area Coal Lease Project, Applications for Leasing Six Tracts of Federal Coal Reserves Adjacent to the Black Thunder, Jacob Ranch, and North Antelope Rochelle Mines, Wyoming Powder River Basin, Campbell County, WY, *Wait Period Ends:* 08/30/2010, *Contact:* Sarah Bucklin 307–261–7541.

EIS No. 20100276, Final EIS, USFS, ID, Clear Prong Project, To Implement Silvicultural Activities, Including Thinning of Sub-Merchantable Trees, Prescribed Fires and Aspen Enhancement on 2,190 Acres, Bois National Forest, Cascade Ranger District, Valley County, ID, *Wait Period Ends:* 08/30/2010, *Contact:* Keith Dimmett 208–382–7400.

EIS No. 20100277, Final EIS, FERC, 00, Apex Expansion Project, Proposal to Expand its Natural Gas Pipeline System, WY, UT and NV, *Wait Period Ends:* 08/30/2010, *Contact:* Mary O'Driscoll 1–866–208–3372.

EIS No. 20100278, Final EIS, BLM, OR, Vegetation Treatments Using Herbicides on Bureau of Land Management (BLM) Lands in Oregon, Implementation, OR, *Wait Period Ends:* 08/30/2010, *Contact:* Todd Thompson 503–808–6326.

EIS No. 20100279, Final EIS, USAF, 00, Southwest Idaho Ecogroup Land and Resource Management Plan, Updated Information to Reanalyze the Effects of Current and Proposed Management on Rock Mountain Bighorn Sheep Viability in the Payette National Forest 2003 FEIS, Boise National Forest, Payette National Forest and Sawtooth National Forest, Forest Plan Revision, Implementation, Several Counties, ID; Malhaur County, OR and Box Elder County, UT, *Wait Period Ends:* 08/30/2010, *Contact:* Sue Dixon 208–634–0796.

EIS No. 20100280, Draft EIS, STB, PA, R.J. Corman Railroad/Pennsylvania Lines Project, Construction, Operation, and Reactivation to Approximately 20 Miles of Railline in Clearfield and Centre Counties, PA, *Comment Period Ends:* 09/28/2010, *Contact:* Danielle Gosselin 202–245–0300.

EIS No. 20100281, Draft EIS, FHWA, IN, I–69 Evansville to Indianapolis Tier 2 Section 4 Project, From U.S. 231 (Crane NSWC) to IN–37 South of Bloomington in Section 4, Greene and Monroe Counties, IN, *Comment Period Ends:* 09/28/2010, *Contact:* Janice Osadczuk 317–226–7486.

EIS No. 20100282, Final EIS, WAPA, SD, South Dakota PrairieWinds Project, Proposes to Construct, Own, Operate, and Maintain a 151.5 megawatt (MW) Nameplate Capacity Wind-Powered Generation Facility, Aurora, Brule, and Jerauld, Tripp Counties, SD, *Wait Period Ends:* 08/30/2010, *Contact:* Liana Reilly 800–336–7288.

Dated: July 27, 2010.

Ken Mittelholtz,

Deputy Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–18802 Filed 7–29–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2010–0609; FRL–9181–3]

Inquiry To Learn Whether Businesses Assert Business Confidentiality Claims

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment.

SUMMARY: The Environmental Protection Agency (EPA) receives from time to time Freedom of Information Act (FOIA) requests for documentation received or issued by EPA or data contained in EPA database systems pertaining to the export and import of Resource Conservation and Recovery Act (RCRA) hazardous waste from/to the United States, the export of cathode ray tubes (CRTs) and Spent Lead Acid Batteries (SLABs) from the United States, and the export and import of RCRA universal waste from/to the United States. These documents and data may identify or reference multiple parties, and describe transactions involving the movement of specified materials in which the parties propose to participate or have participated. The purpose of this notice is to inform "affected businesses" about the documents or data sought by these types of FOIA requests in order to provide the businesses with the opportunity to assert claims that any of the information sought that pertains to them is entitled to treatment as confidential business information (CBI), and to send comments to EPA supporting their claims for such treatment. Certain businesses, however, do not meet the definition of "affected business," and are not covered by today's notice. They consist of any business that actually submitted to EPA any document at issue pursuant to applicable RCRA regulatory requirements and did not assert a CBI claim as to information that pertains to that business in connection with the document at the time of its submission;

they have waived their right to do so at a later time. Nevertheless, other businesses identified or referenced in the documents that were submitted to EPA by the submitting business may have a right to assert a CBI claim concerning information that pertains to them and may do so in response to this notice.

DATES: Comments must be received on or before August 30, 2010. The period for submission of comments may be extended if, before the comments are due, you make a request for an extension of the comment period and it is approved by the EPA legal office. Except in extraordinary circumstances, the EPA legal office will not approve such an extension without the consent of any person whose request for release of the information under the FOIA is pending.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OECA–2010–0609, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: kreisler.eva@epa.gov.*
- *Address:* Eva Kreisler, International Compliance Assurance Division, Office of Federal Activities, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, Mailcode: 2254A, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OECA–2010–0609. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. Instructions about how to submit comments claimed as CBI are given later in this notice.

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. Please include your name and other contact information with any disk or CD–ROM you submit by mail. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index.

Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the HQ EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the docket for this notice is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Eva Kreisler, International Compliance Assurance Division, Office of Federal Activities, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, Mailcode: 2254A, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8186; e-mail address: *kreisler.eva@epa.gov.*

SUPPLEMENTARY INFORMATION: Today's notice relates to any documents or data in the following areas: (1) Export of Resource Conservation and Recovery Act (RCRA) hazardous waste under 40 CFR part 262, subparts E and H; (2) import of RCRA hazardous waste under 40 CFR part 262, subparts F and H; (3) transit of RCRA hazardous waste under 40 CFR part 262, subpart H, through the United States and foreign countries; (4) export of cathode ray tubes under 40 CFR part 261, subpart E; (5) exports of non-crushed spent lead acid batteries with intact casings under 40 CFR part 266 subpart G; (6) export and import of RCRA universal waste under 40 CFR part 273, subparts B, C, D, and F; and (7) submissions from transporters under 40 CFR part 263, or from treatment, storage or disposal facilities under 40 CFR parts 264 and 265, related to exports or imports of hazardous waste, including receiving facility notices under 40 CFR 264.12(a)(1) and 265.12(a)(1) and import consent documentation under 40 CFR 264.71(a)-3) and 265.71(a)(3).

I. General Information

EPA has previously published notices similar to this one in the **Federal Register**, the latest one being at 75 FR 4812, January 29, 2010, that address issues similar to those raised by today's notice. The Agency did not receive any comments on the previous notices. Since the publication of the January 29, 2010 notice, the Agency has continued to receive FOIA requests for documents and data contained in EPAs database related to hazardous waste exports and imports.

II. Issues Covered by This Notice

Specifically, EPA receives FOIA requests from time to time for documentation or data related to hazardous waste exports and imports that may identify or reference multiple parties, and that describe transactions involving the movement of specified materials in which the parties propose to participate or have participated. This notice informs "affected businesses," [1] which could include, among others, "transporters" [2] and "consignees," [3] of the requests for information in EPA database systems and/or contained in one or more of the following documents: (1) Documents related to the export of Resource Conservation and Recovery Act (RCRA) hazardous waste under 40 CFR part 262, subparts E and H, including but not limited to the "notification of intent to export," [4] "manifests," [5] "annual reports," [6] "EPA acknowledgements of consent," [7] "any subsequent communication withdrawing a prior consent or

[1] The term "affected business" is defined at 40 CFR 2.201(d), and is set forth in this notice, below.

[2] The term "transporter" is defined at 40 CFR 260.10.

[3] The term "consignee" is defined, for different purposes, at 40 CFR 262.51 and 262.81(c).

[4] The term "notification of intent to export" is described at 40 CFR 262.53.

[5] The term "manifest" is defined at 40 CFR 260.10.

[6] The term "annual reports" is described at 40 CFR 262.56.

[7] The term "EPA acknowledgement of consent" is defined at 40 CFR 262.51.

objection,"[8] "responses that neither consent nor object," "exception reports,"[9] "transit notifications,"[10] and "renotifications;"[11] (2) documents related to the import of hazardous waste under 40 CFR part 262, subparts F and H, including but not limited to notifications of intent to import hazardous waste into the U.S. from foreign countries; (3) documents related to the transit of hazardous waste under 40 CFR part 262, subpart H, including notifications from U.S. exporters of intent to transit through foreign countries, or notifications from foreign countries of intent to transit through the U.S.; (4) documents related to the export of cathode ray tubes (CRTs) under 40 CFR part 261, subpart E, including but not limited to notifications of intent to export CRTs; (5) documents related to the export of non-crushed spent lead acid batteries (SLABs) with intact casings under 40 CFR part 266, subpart G, including but not limited to notifications of intent to export SLABs; (6) submissions from transporters under 40 CFR part 263, or from treatment, storage or disposal facilities under 40 CFR parts 264 and 265, related to exports or imports of hazardous waste, including receiving facility notices under 40 CFR 264.12(a)(1) and 265.12(a)(1) and import consent documentation under 40 CFR 264.71(a)(3) and 265.71(a)(3); and (7) documents related to the export and import of RCRA "universal waste"[12] under 40 CFR part 273, subparts B, C, D, and F.

Certain businesses, however, do not meet the definition of "affected business," and are not covered by today's notice. They consist of any business that actually submitted information responsive to a FOIA request, under the authority of 40 CFR parts 260 through 266 and 268, and did not assert a claim of business confidentiality covering any of that information at the time of submission. As set forth in the RCRA regulations at 40 CFR 260.2(b), "if no such [business confidentiality] claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to the person submitting it." Thus, for purposes of this notice and as a general matter under 40 CFR 260.2(b), a business that submitted to EPA the documents at issue, pursuant to applicable regulatory requirements, and that failed to assert a claim as to information that pertains to it at the time of submission, cannot later make a confidentiality claim.[13] Nevertheless, other businesses identified or referenced in the same documents that were submitted to EPA by the submitting business may have a right to assert a CBI claim concerning information that pertains to them and may do so in response to this notice.

In addition, EPA may develop its own documents and organize into its database systems information that was originally contained in documents from submitting businesses relating to exports and imports of hazardous waste. If a submitting business fails to assert a CBI claim for the documents it submits to EPA at the time of submission, not only does it waive its right to claim CBI for those documents, but it also waives its right to claim CBI for information in EPA's documents or databases that is based on or derived from the documents that were originally submitted by that business.[14]

In accordance with 40 CFR 2.204(c) and (e), this notice inquires whether any affected business asserts a claim that any of the requested information constitutes CBI, and affords such business an opportunity to comment to EPA on the issue. This notice also informs affected businesses that, if a claim is made, EPA would determine under 40 CFR part 2, subpart B, whether any of the requested information is entitled to confidential treatment.

1. Affected Businesses

EPA's FOIA regulations at 40 CFR 2.204(c)(1) require an EPA office that is responsible for responding to a FOIA request for the release of business information ("EPA office") "to determine which businesses, if any, are affected businesses * * *." "Affected business" is defined at 40 CFR 2.201(d) as, "* * * with reference to an item of business information, a business which has asserted (and not waived or withdrawn) a business confidentiality claim covering the information, or a business which could be expected to make such a claim if it were aware that disclosure of the information to the public was proposed."

2. The Purposes of This Notice

This notice encompasses two distinct steps in the process of communication with affected businesses prior to EPA's making a final determination concerning the confidentiality of the information at issue: The preliminary inquiry and the notice of opportunity to comment.

a. Inquiry To Learn Whether Affected Businesses (Other Than Those Businesses That Previously Asserted a CBI Claim) Assert Claims Covering Any of the Requested Information

Section 2.204(c)(2)(i) provides, in relevant part:

> If the examination conducted under paragraph (c)(1) of this section discloses the existence of any business which, although it has not asserted a claim, might be expected to assert a claim if it knew EPA proposed to disclose the information, the EPA office shall contact a responsible official of each such business to learn whether the business asserts a claim covering the information.

b. Notice of Opportunity To Submit Comments

Sections 2.204(d)(1)(i) and 2.204(e)(1) of Title 40 of the Code of Federal Regulations require that written notice be provided to businesses that have made claims of business confidentiality for any of the information at issue, stating that EPA is determining under 40 CFR part 2, subpart B, whether the information is entitled to confidential treatment, and affording each business an opportunity to comment as to the reasons why it believes that the information deserves confidential treatment.

*3. The Use of Publication in the **Federal Register***

Section 2.204(e)(1) of Title 40 of the Code of Federal Regulations requires that this type of notice be furnished by certified mail (return receipt requested), by personal delivery, or by other means which allows verification of the fact and date of receipt. EPA, however, has determined that in the present circumstances the use of a **Federal Register** notice is the only practical and efficient way to contact affected businesses and to furnish the notice of opportunity to submit comments. The Agency's decision to follow this course was made in recognition of the administrative difficulty and impracticality of directly contacting potentially thousands of individual businesses.

[8] The requirement to forward to the exporter "any subsequent communication withdrawing a prior consent or objection" is found at 42 U.S.C. 6938(e).

[9] The term "exception reports" is described at 40 CFR 262.55.

[10] The term "transit notifications" is described at 40 CFR 262.53(e).

[11] The term "renotifications" is described at 40 CFR 262.53(c).

[12] The term "universal waste" is defined at 40 CFR 273.9.

[13] However, businesses having submitted information to EPA relating to the export and import of RCRA universal waste are not subject to 40 CFR 260.2(b) since they submitted information in accordance with 40 CFR part 273, and not parts 260 through 266 and 268, as set forth in 40 CFR 260.2(b). They are therefore affected businesses that could make a claim of CBI at the time of submission or in response to this notice.

[14] With the exception, noted above, of the submission of information relating to the export and import of RCRA universal waste.

4. Submission of Your Response in the English Language

All responses to this notice must be in the English language.

5. The Effect of Failure To Respond to This Notice

In accordance with 40 CFR 2.204(e)(1) and 2.205(d)(1), EPA will construe your failure to furnish timely comments in response to this notice as a waiver of your business's claim(s) of confidentiality for any information in the types of documents identified in this notice.

6. What To Include in Your Comments

If you believe that any of the information contained in the types of documents which are described in this notice and which are currently, or may become, subject to FOIA requests, is entitled to confidential treatment, please specify which portions of the information you consider confidential. Information not specifically identified as subject to a confidentiality claim may be disclosed to the requestor without further notice to you.

For each item or class of information that you identify as being subject to your claim, please answer the following questions, giving as much detail as possible:

1. For what period of time do you request that the information be maintained as confidential, *e.g.,* until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

2. Information submitted to EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question no. 1?

3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?

4. Is the information contained in any publicly available material such as the Internet, publicly available data bases, promotional publications, annual reports, or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?

5. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

6. For each category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

7. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If the business asserts that the information is voluntarily submitted information, please explain whether and why disclosure of the information would tend to lessen the availability to EPA of similar information in the future.

8. Any other issue you deem relevant.

Please note that you bear the burden of substantiating your confidentiality claim. Conclusory allegations will be given little or no weight in the determination. If you wish to claim any of the information in your response as confidential, you must mark the response "CONFIDENTIAL" or with a similar designation, and must bracket all text so claimed. Information so designated will be disclosed by EPA only to the extent allowed by, and by means of, the procedures set forth in, 40 CFR part 2, subpart B. If you fail to claim the information as confidential, it may be made available to the requestor without further notice to you.

III. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Please submit this information by mail to the address identified in the **ADDRESSES** section of today's notice for inclusion in the non-public CBI docket. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. Information so marked will not be disclosed except in accordance with the procedures set forth in 40 CFR part 2, subpart B. In addition to the submission of one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the notice by docket number and other identifying information (subject heading, Federal Register date and page number).
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Describe any assumptions and provide any technical information and/or data that you used.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Make sure to submit your comments by the comment period deadline identified.

Dated: July 20, 2010.

Susan E. Bromm,

Director, Office of Federal Activities.

[FR Doc. 2010–18776 Filed 7–29–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–1017; FRL–8837–1]

Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 of Unit II. pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a June 16, 2010 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II. to voluntarily cancel these product registrations. In the June 16, 2010 notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 30–day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency did not receive any comments on the notice. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is

permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective July 30, 2010.

FOR FURTHER INFORMATION CONTACT: Maia Tatinclaux, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–0123; fax number: (703) 308–8090; e-mail address: *tatinclaux.maia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–1017. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. What Action is the Agency Taking?

This notice announces the cancellation, as requested by registrants, of 192 products registered under FIFRA section 3. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1. — PRODUCT CANCELLATIONS

Product Number	Product Name	Active Ingredients
000004-00388	Bonide Pyrenone Garden Spray Pressurized	Piperonyl butoxide Pyrethrins
000121-00084	Cutter Insect Repellent Medusa	Bioallethrin
000192-00153	Dexol Tender Leaf African Violet Insect Spray	Tetramethrin Phenothrin
000192-00184	Dexol Hornet & Wasp Killer II	Tetramethrin Phenothrin
000192-00189	Dexol Flying & Crawling Insect Killer II	Tetramethrin Phenothrin
000192-00196	Dexel Flea Free Carpet Spray	Tetramethrin Phenothrin Pyriproxyfen
000228-00636	Imida E-AG 5 F ST Insecticide	Imidacloprid
000228-00656	ETI 105 28 I	Imidacloprid
000228-00668	Imida E-Pro 4F Pre/Post Construction Insecticide	Imidacloprid
000228-00682	ETI 105 12 I	Imidacloprid
000228-00691	Imida E-Pro 0.5 - Turf Insecticide	Imidacloprid
000228-00692	Imida E-Pro 1% G - ORN Insecticide	Imidacloprid
000228-00693	Imida E-AG - 4F Cotton Insecticide	Imidacloprid
000228-00694	Imida E-AG 1.6 F Insecticide	Imidacloprid
000228-00696	ET-025	Imidacloprid
000228-00697	ET-024	Imidacloprid
000228-00701	ETI 105 25 I	Imidacloprid
000239-02512	Ortho Indoor Insect Killer	Bioallethrin Phenothrin
000270-00218	Flys-Off Insect Repellent for Dogs	Butoxypolypropylene glycol Pyrethrins Piperonyl Butoxide

TABLE 1. — PRODUCT CANCELLATIONS—Continued

Product Number	Product Name	Active Ingredients
000270-00225	Flys-Off Lotion Insect Repellent for Dogs	Butoxypolypropylene glycol Pyrethrins Piperonyl Butoxide
000270-00257	Farnam Permacap ME-2	Permethrin
000270-00269	Purina Hard Hitter Aqueous Spray	Permethrin
000270-00352	Flea and Tick Mist	Bioallethrin MGK 326 MGK 264
000270-00353	Fastact 2 Long-Acting Flea & Tick Dip	MGK 264 Permethrin Esbiothrin
000270-00365	Mycodex Pet Shampoo with Permethrin	Permethrin
000279-03026	Ammo Technical Insecticide	Cypermethrin
000279-03039	Pounce Mushroom Spray Mist Insecticide	Permethrin
000279-03040	Pounce Mushroom Dust Insecticide	Permethrin
000279-03092	Flea Insecticide	Permethrin
000279-03111	Pounce WP Insecticide	Permethrin
000279-03144	Astro Interior Insecticide	Permethrin
000279-03186	Pounce 25 Std Seed Treatment Insecticide	Permethrin
000279-03187	Pounce 3.2 St Seed Treatment Insecticide	Permethrin
000402-00076	Hill Vapo-Mist “35”	MGK 264 Permethrin Piperonyl butoxide
000499-00239	Whitmire X-clude PT 1600A	MGK 264 Piperonyl butoxide Pyrethrins
000499-00495	TC-233	S-Bioallethrin Phenothrin
000538-00026	Scotts Proturf Weedgrass Preventer	Bensulide
000538-00072	Scotts Super Turf Builder Plus 2 for Grass	Mecoprop-P 2,4-D
000538-00083	Scotts Shrub & Tree Weed Preventer Plus Fertilizer 20-4-8	Trifluralin
000538-00102	Stop Weeds Before They Start	Trifluralin
000538-00155	Halts Plus Turf Builder	Bensulide
000538-00164	Goosegrass/Crabgrass Control	Oxadiazon
000538-00167	Super Plus 2 Weed Control Plus Lawn Fertilizer	Dicamba Mecoprop-P 2,4-D
000538-00183	Proturf Fluid Fungicide	Thiophanate-methyl Iprodione
000538-00196	Proturf Fertilizer Plus Turf Weedgrass Control	Pendimethalin
000538-00205	Scotts Lawn Pro Weed & Feed Weed Control Plus Lawn Fertilizer	Mecoprop-P 2,4-D

TABLE 1. — PRODUCT CANCELLATIONS—Continued

Product Number	Product Name	Active Ingredients
000538-00208	Fertilizer Plus Weed Control	Dicamba 2,4-D
000538-00209	Turf Builder w/Plus 2 For Lawns Plus Lawn Fertilizer	Dicamba 2,4-D
000538-00210	Scotts Turf Builder Plus 2 for Lawns Plus Lawn Fertilizer	Dicamba 2,4-D
000538-00213	Proturf Turf Fertilizer Plus Preemergent Weed Control	Pendimethalin
000538-00215	Scotts Lawn Pro Weed and Feed	Mecoprop-P 2,4-D
000538-00227	Fertilizer Plus Weedgrass Control	Pendimethalin
000538-00251	Fertilizer with Weed Control	Mecoprop 2,4-D Pendimethalin
000538-00257	Fertilizer Plus Preemergent Weed Control II	Pendimethalin Oxadiazon
000538-00294	Grubex II	Benzoic acid, 4-chloro-,2-benzoyl-2-(1,1-dimethylethyl) hydrazide
000748-00068	Para-Dichlorobenzene	Paradichlorobenzene
000769-00598	R & M Flea & Tick Shampoo #6	Bioallethrin MGK 264 Phenothrin
000769-00604	R & M Carpet Powder #5	Phenothrin
000769-00609	R & M Aerosol Flying Insect Spray	Phenothrin Tetramethrin
000769-00709	SMCP 53% Neutral Copper	Basic copper sulfate
000769-00840	Miller Tupersan Granular	Siduron
000769-00931	Drop Dead Household Fly & Insect Spray	Tetramethrin Phenothrin
001021-01217	D-Trans Allethrin (technical grade)	Bioallethrin
001021-01242	MGK Esbiol Concentrate 90% (F-1967)	S-Bioallethrin
001021-01291	Esbiol Technical	S-Bioallethrin
001021-01390	Multicide Intermediate 2119	Bioallethrin Phenothrin
001021-01428	Multicide Pynamin Forte 90% Concentrate	d-Allethrin
001021-01638	Multicide Intermediate 2661	d-Allethrin Phenothrin
001021-01653	Evercide Permethrin 80% Concentrate 25/75	Permethrin
001021-01725	Evercide Pressurized Pet Spray 2642	Pyriproxyfen Permethrin Pyrethrins
001021-01835	Permethrin 3.2 T&O	Permethrin
001021-01836	Permethrin 3.2 TC	Permethrin
001021-01837	Permethrin 3.2 PCO	Permethrin
001021-01838	Permethrin 10% EC	Permethrin

TABLE 1. — PRODUCT CANCELLATIONS—Continued

Product Number	Product Name	Active Ingredients
002596-00071	Hartz Rid Flea Dog Shampoo with Allethrin	Bioallethrin MGK 264
002596-00075	Hartz Luster Bath for Cats- with Allethrin	Bioallethrin MGK 264 Phenothrin
002596-00076	Hartz Luster Bath for Dogs- with Allethrin	Bioallethrin MGK 264 Phenothrin
002596-00124	Hartz Control Pet Care System Flea and Tick Conditioning Shampoo for Dogs	Bioallethrin MGK 264
002596-00133	Hartz Rid Flea Conditioning Dog Shampoo with Aloe and Allethrin	Bioallethrin MGK 264
002596-00149	Hartz Ref. 111	Bioallethrin MGK 264 S-Methoprene
002724-00453	Zoecon 9206 Fogger	Permethrin
002724-00464	Sandoz 9309 Fogger	S-Methoprene Permethrin
002724-00465	Sandoz 9311 Aerosol	S-Methoprene Permethrin
002724-00555	Speer Bee, Wasp, Hornet & Yellow Jacket Jet-Stream Killer	Bioallethrin Phenothrin
002724-00582	Speer Roach Spray I	Permethrin
002724-00584	SPI Total Release Aerosol Fogger II	Bioallethrin Esfenvalerate
002724-00590	Speer Flea & Tick Spray III	Permethrin
002724-00591	SPI Residual Pressurized Spray I	Bioallethrin MGK 264 Permethrin
002724-00593	Speer Residual Flea and Tick Dip	MGK 264 Permethrin
002724-00608	Permethrin House & Carpet Residual Spray	Permethrin
002724-00654	HHP General Purpose Aqueous Insecticide	Permethrin
002724-00678	Speer Roach Spray 1 with Nylar	Pyriproxyfen Permethrin
002724-00679	Speer 3.5% Permethrin Dry Fogger with Nylar	Pyriproxyfen Permethrin
002724-00680	SPI Deltamethrin Aerosol Insecticide	S-Bioallethrin Deltamethrin
002724-00693	Pramex H&G Ready to Use Insect Control	Permethrin
002724-00694	Pramex 13.3% H&G Insect Control	Permethrin
002724-00714	Elite Permethrin Flea and Tick Dip	Permethrin
002724-00715	Elite Permethrin Flea & Tick Dip II	MGK 264 Permethrin
002724-00722	Elite Permethrin 13.3% EC for Insects	Permethrin
002724-00724	Elite Flea and Tick Shampoo VII	Permethrin

TABLE 1. — PRODUCT CANCELLATIONS—Continued

Product Number	Product Name	Active Ingredients
002724-00746	SPHSOP-1 Spot-On	Permethrin
002724-00771	Permalool Home & Carpet Spray	Permethrin Prallethrin Linalool MGK 264
002724-00782	Permethrin Plus Pet Spray	MGK 264 Permethrin Prallethrin Pyriproxyfen
002724-00783	Permethrin Plus Pet Spray II	MGK 264 Permethrin Prallethrin Pyriproxyfen
004822-00173	Raid Household Flying Insect Killer Formula 4	d-Allethrin Phenothrin
004822-00290	Raid House and Garden Bug Killer Formula 6	Bioallethrin Phenothrin
004822-00300	Raid Mosquito Coils	Bioallethrin
004822-00437	Off! Repellent DH	d-Allethrin
005887-00118	Black Leaf Fog-it 1 Shot Automatic Insecticide Fogger	Phenothrin Tetramethrin
005887-00123	Black Leaf Fly & Mosquito Formula III Spray	Phenothrin Tetramethrin
005887-00126	Black Leaf White Fly & Mealy Bug Spray	Phenothrin
005887-00158	Black Leaf Wasp and Hornet Killer Formula IV	Phenothrin Tetramethrin
005887-00159	Black Leaf Flying & Crawling Insect Killer	Phenothrin Tetramethrin
008660-00023	Vertagreen Crabgrass Preventer with Tupersan	Siduron
008660-00087	Vertagreen Fertilizer for Professional Turf with Tupersan	Siduron
008845-00063	Hot Shot Flying Insect Killer	Phenothrin Tetramethrin
008845-00067	Hot Shot Hit Flying Insect Killer Formula 621	Phenothrin Tetramethrin
008845-00068	Hot Shot House and Garden Insect Killer Formula 721	Phenothrin Tetramethrin
008845-00082	Hot Shot Indoor/Outdoor Ornamental Plant Spray Formula 116	Bioallethrin Phenothrin
008845-00083	Hot Shot Flea and Tick Spray for Dogs and Cats Formula 117	Phenothrin Tetramethrin
008845-00084	Hot Shot Flea & Tick Spray - Formula 118	Phenothrin Tetramethrin
008848-00052	707 Formula Roach & Insect Bomb	MGK 264 Piperonyl butoxide Pyrethrins
009152-00018	Acidisol	Phosphoric Acid Dodecylbenzenesulfonic acid

TABLE 1. — PRODUCT CANCELLATIONS—Continued

Product Number	Product Name	Active Ingredients
009444-00084	CB MothOFF	Permethrin
009444-00136	Time Mist Air Sanitizer	Triethylene glycol Dipropylene glycol Alkyl* dimethyl benzyl ammonium chloride *(61% C_{12}, 23% C_{14}, 11% C_{16}, 5% C_{18})
009444-00143	CB-305 Fogger	Esfenvalerate Bioallethrin
009444-00173	CV-40 AG	Piperonyl butoxide Pyrethrins
009444-00174	CB-40-2 WB for Insect Control	Piperonyl butoxide Pyrethrins
009444-00235	Country Vet 38	Piperonyl butoxide Pyrethrins
009688-00038	Total Release Insect Fogger "A"	Bioallethrin Phenothrin
009688-00041	Chemsico Dual Flea Control	Bioallethrin MGK 264 Phenothrin
009688-00051	Chemsico Automatic Insect Fogger "B"	Bioallethrin MGK 264 Phenothrin
009688-00054	Chemsico Total Release Fogger "C"	Phenothrin Tetramethrin
009688-00079	Chemsico Tralomethrin Insecticide A	Bioallethrin Tralomethrin
009688-00086	Chemsico Tralomethrin Insecticide B	Bioallethrin Tralomethrin
009688-00090	Chemsico Spray Insecticide	Phenothrin
009688-00117	Chemsico Wasp & Hornet Killer T	Bioallethrin Tralomethrin
009688-00125	Chemsico Tralomethrin Plus D-Trans Allethrin Insecticide S	Bioallethrin Tralomethrin
009688-00145	Saga MC	Bioallethrin Tralomethrin
009688-00151	Tralex Aerosol	Bioallethrin MGK 264 Tralomethrin
009688-00164	Chemsico Aerosol Insecticide T	Bioallethrin Tralomethrin
009688-00276	Chemsico Insecticide Concentrate 320P	Pyrethrins
010404-00058	Lesco Granular Turf Fungicide	Triadimefon
010404-00065	Lesco Bayleton 0.5% Plus Fertilizer	Triadimefon
010806-00032	Little Pal Spray Mist	MGK 264 Piperonyl Butoxide Pyrethrins
010806-00034	Contact Personal Insect Repellent	MGK 326 MGK 264 Dethyl Toluamide

TABLE 1. — PRODUCT CANCELLATIONS—Continued

Product Number	Product Name	Active Ingredients
010806-00065	Contact Flea & Tick Killer III	Pyrethrins Permethrin
019713-00163	Drexel Propachlor Flake Technical	Propachlor
028293-00125	Unicorn Permethrin RTU Spray	Permethrin
028293-00147	Unicorn 14–day Flea & Tick Spray	Pyrethrins Permethrin
028293-00148	Unicorn Permethrin Pet Dip II	Permethrin
028293-00154	Unicorn Pertran Aerosol	Bioallethrin Permethrin
028293-00155	Unicorn Crawling & Flying Insect Spray E.C.	Permethrin
028293-00166	Unicorn 14–day Flea & Tick Spray II	Pyrethrins Permethrin
028293-00179	Unicorn General Purpose Aqueous Insecticide II	Permethrin
028293-00181	Unicorn Insecticide E.C.13.3% Crawling Insect Spray	Permethrin
028293-00182	Unicorn Backup Pour-On Insecticide	Permethrin
028293-00185	Unicorn Liquid Plant Spray No. 1	Pyrethrins Permethrin
028293-00218	Unicorn Growers Spray	Pyrethrins
028293-00231	Unicorn Aqueous Pressurized Spray	Bioallethrin Permethrin
028293-00263	Unicorn Permethrin Pour-On Insecticide II	Permethrin
028293-00290	Unicorn Permethrin WB Spray	Permethrin
028293-00294	Unicorn .20% Permethrin WB II	Permethrin
028293-00326	Unicorn Permethrin Dust II	Permethrin
028293-00330	Unicorn 5.7% Permethrin Termite Concentrate	Permethrin
028293-00331	Unicorn Ready-to-Use Permethrin Garden Spray	Permethrin
034704-00110	Clean Crop 6% Malathion Grain Protector	Malathion
035935-00064	ET-016	Imidacloprid
045600-00019	Insecta Spray	Permethrin
046515-00021	Super K-Gro Liquid House Plant Insect Spray	Phenothrin Tetramethrin
046515-00030	Indoor and Outdoor Plant and African Violet Spray	Phenothrin Tetramethrin
046515-00040	K Rid Flying Insect Killer 2	Phenothrin Tetramethrin
046515-00041	K Rid Ant and Roach Killer 3	Phenothrin
046515-00043	House & Garden Bug Killer	Phenothrin Tetramethrin
046515-00044	K Rid Wasp & Hornet Killer 2	Phenothrin Tetramethrin

TABLE 1. — PRODUCT CANCELLATIONS—Continued

Product Number	Product Name	Active Ingredients
053883-00057	Martin's Pet Guard Flea and Tick Spray	Pyrethrins Permethrin
055206-00003	BVA Spray 15	Mineral Oil - includes paraffin oil from 063503
066330-00212	Malathion 25 WP	Malathion
066330-00213	Stored Grain Dust M-1	Malathion
066330-00219	Malathion ULV	Malathion
066330-00227	Simazine 4 FL Herbicide	Simazine
067690-00036	Camelot	Copper salts of fatty and rosin acids
068077-00001	Brilliance Flea & Tick Shampoo	Piperonyl butoxide Pyrethrins
070627-00040	Johnson Wax Professional Wasp & Hornet Killer	Bioallethrin Phenothrin
071096-00010	Slug-fest All Weather Formula RTU	Metaldehyde
073049-00362	Esbiothrin Mosquito Repellent Coils	Bioallethrin
073049-00363	Derringer Mosquito Mats	Bioallethrin
082542-00005	Ethofumesate Technical	Ethofumesate
083558-00012	Hexazinone Technical	Hexazinone
084396-00008	Numb Bug Fogging and Contact Spray	Bioallethrin MGK 264 Piperonyl Butoxide
FL 760015	Pyrocide Fogging Formula 7067 for ULV Mosquito Aduticiding	Piperonyl butoxide Pyrethrins
MS 060006	Co-Starr	Gyphosate-isopropylammonium Dicamba

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2. — REGISTRANTS OF CANCELLED PRODUCTS

EPA Company Number	Company Name and Address
4	Bonide Products, Inc. Agent Registrations By Design, Inc. P.O. Box 1019 Salem, VA 24153-3805
121	Spectrum, a div. of United Industries Corp. P.O. Box 142642 St. Louis, MO 63114-0642

TABLE 2. — REGISTRANTS OF CANCELLED PRODUCTS—Continued

EPA Company Number	Company Name and Address
192	Value Gardens Supply, LLCD/B/A Garden Value Supply P.O. Box 585 Saint Joseph, MO 64502
228	Nufarm Americas Inc. 150 Harvester Dr, Suite 200 Burr Ridge, IL 60527
239	The Scotts Company 14111 Scottslawn Road Marysville, OH 43041
270	Farnam Companies, Inc. D/B/A Central Life Sciences 301 West Osborn Road Phoenix, AZ 85013

TABLE 2. — REGISTRANTS OF CANCELLED PRODUCTS—Continued

EPA Company Number	Company Name and Address
279	FMC Corp. Agricultural Products Group 1735 Market St, RM 1978Philadelphia, PA 19103
402	Hill Manufacturing Co., Inc. 1500 Jonesboro Rd SE Atlanta, GA 30315
499	Whitmire Micro-Gen Research Laboratories, Inc. Agent Name: BASF CORP., 3568 Tree Court Industrial Blvd. St. Louis, MO 63122-6682

TABLE 2. — REGISTRANTS OF CANCELLED PRODUCTS—Continued

EPA Company Number	Company Name and Address
538	The Scotts Company, 14111 Scottslawn Road, Marysville, OH 43041
748	PPG Industries, Inc. 1001 G St, NW, Suite 500 West, Washington, DC 20001
769	Value Gardens Supply, LLC, P.O. Box 585, Saint Joseph, MO 64502
1021	McLaughlin Gormley King Co., 8810 Tenth Ave North, Minneapolis, MN 55427-4319
2596	The Hartz Mountain Corp., 400 Plaza Drive, Secaucus, NJ 07094
2724	Wellmark International, 1501 E. Woodfield Rd, Suite 200 West, Schaumburg, IL 60173
4822	S.C. Johnson & Son, Inc., 1525 Howe St., Racine, WI 53403
5887	Value Gardens Supply, LLCD/B/A Garden Value Supply, P.O. Box 585, Saint Joseph, MO 64502
8660	United Industries Corp., d/b/a Sylorr Plant Corp., P.O. Box 142642, St. Louis, MO 63114-0642
8845	Spectrum Group, a div. of United Industries Corp., P.O. Box 142642, St. Louis, MO 63114-0642
8848	Safeguard Chemical Corp., 411 Wales Ave., Bronx, NY 10454
9152	Morgan-Gallacher Inc., 8707 Millergrove Dr., Santa Fe Springs, CA 90670
9444	Waterbury Companies, Inc., 129 Calhoun St., P.O. Box 640, Independence, LA 70443

TABLE 2. — REGISTRANTS OF CANCELLED PRODUCTS—Continued

EPA Company Number	Company Name and Address
9688	Chemsico, Div of United Industries Corp., P.O. Box 142642, St Louis, MO 63114-0642
10404	Lesco, Inc., 1301 East 9th St, Suite 1300, Cleveland, OH 44114-1849
10806	Contact Industries, Div. of Safeguard Chemical Corp., 411 Wales Ave., Bronx, NY 10454
19713	Drexel Chemical Company, 1700 Channel Ave., P.O. Box 13327, Memphis, TN 38113-0327
28293	Phaeton Corporation, Agent Registrations By Design, Inc., P.O. Box 1019, Salem, VA 24153
34704	Loveland Products, Inc., P.O. Box 1286, Greeley, CO 80632-1286
35935	Nufarm Limited, P.O. Box 13439, RTP, NC 27709
45600	Insecta Marketing, Inc., 3601 NE 5th Ave., Oakland Park, FL 33334-2214
46515	Celex, Div. of United Industries Corp., P.O. Box 142642, St Louis, MO 63114-0642
53883	Control Solutions, Inc., 427 Hide Away Circle, Cub Run, KY 42729
55206	B V Associates Inc., P.O. Box 930301, Wixom, MI 48393
66330	Arysta Lifescience North America, LLC, 155401 Weston Parkway, Suite 150, Cary, NC 27513
67690	Sepro Corp., 11550 N. Meridian St., Suite 600, Carmel, IN 46032
68077	First Priority Inc., 1590 Todd Farm Drive, Elgin, IL 60123-1146

TABLE 2. — REGISTRANTS OF CANCELLED PRODUCTS—Continued

EPA Company Number	Company Name and Address
70627	Diversey, Inc., 8310 16th St., P.O. Box 902, Sturtevant, WI 53177
71096	OR-CAL Inc., 17220 Westview Rd, Oswego, OR 97034
73049	Valent BioSciences Corporation, 870 Technology Way, Suite 100, Libertyville, IL 60048-6316
82542	Source Dynamics, LLC, 10039 E. Troon North Drive, Scottsdale, AZ 85262
83558	Celsius Property B.V., Amsterdam (NL), 4515 Falls of Neuse Rd, Suite 300, Raleigh, NC 27609
84396	Sungro Products, LLC., 810 E. 18th St., Los Angeles, CA 90021
FL760015	Lee County Mosquito Control District, P.O. Box 60005, Fort Myers, FL 33906
MS060006	Albaugh, Inc., 1525 NE 36th St., Ankeny, IA 50021

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the June 16, 2010 **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations of products listed in Table 1 of Unit II.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of the registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II are canceled. The effective date of the cancellations that are subject of this notice is July 30, 2010. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

V. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** issue of June 16, 2010 (75 FR 34126) (FRL–8827–2). The comment period closed on July 16, 2010.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

The registrants may continue to sell and distribute existing stocks of products listed in Table 1 of Unit II. until August 1, 2011, which is 1 year after the publication of the Cancellation Order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1, except for export in accordance with FIFRA section 17, or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1 of Unit II. until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 22, 2010.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2010–18773 Filed 7–29–10; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 10–51; FCC 10–111]

Structure and Practices of the Video Relay Service Program

Correction

In notice document 10–17575 beginning on page 41863, in the issue of Monday, July 19, 2010 make the following correction:

On page 41863, in the third column, under the **DATES** heading "August 3, 2010" should read "September 2, 2010".

[FR Doc. C1–2010–17575 Filed 7–29–10; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL ELECTION COMMISSION

[Notice 2010–15]

Filing Dates for the West Virginia Senate Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: West Virginia has scheduled special elections on August 28, 2010, and November 2, 2010, to fill the vacant U.S. Senate seat held by the late Senator Robert C. Byrd.

Committees required to file reports in connection with only the Special Primary Election on August 28, 2010, shall file a 12-day Pre-Primary Report. Committees required to file reports in connection with both the Special Primary and Special General Election on November 2, 2010, shall file a 12-day Pre-Primary Report, a 12-day Pre-General Report, and a 30-day Post-General Report.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the West Virginia Special Primary and Special General Elections shall file a 12-day Pre-Primary Report on August 16, 2010; a 12-day Pre-General Report on October 21, 2010; and a 30-day Post-General Report on December 2, 2010. (*See* chart below for the closing date for each report).

All principal campaign committees of candidates participating only in the Special Primary Election shall file a 12-day Pre-Primary Report on August 16, 2010. (*See* chart below for the closing date for each report).

Note that these reports are in addition to the campaign committee's quarterly filings due in October 2010 and January 2011. (*See* chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a quarterly basis in 2010 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the West Virginia Special Primary or Special General Elections by the close of books for the applicable report(s). (*See* chart below for the closing date for each report).

Committees filing monthly that make contributions or expenditures in connection with the West Virginia Special Primary or Special General Elections will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the West Virginia Special Elections may be found on the FEC Web site at *http://www.fec.gov/info/report_dates_2010.shtml.*

Disclosure of Lobbyist Bundling Activity

Campaign committees, party committees and Leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of $16,000 during the special election reporting periods (*see* charts below for closing date of each period). 11 CFR 104.22(a)(5)(v).

Calendar of Reporting Dates for West Virginia Special Election

Report	Close of books [1]	Reg./Cert. & overnight mailing deadline	Filing deadline
Committees Involved in Only the Special Primary (08/28/10) Must File			
Pre-Primary	08/08/10	08/13/10	08/16/10
October Quarterly	09/30/10	10/15/10	10/15/10
Committees Involved in Both the Special Primary (08/28/10) and Special General (11/02/10) Must File			
Pre-Primary	08/08/10	08/13/10	08/16/10
October Quarterly	09/30/10	10/15/10	10/15/10
Pre-General	10/13/10	10/18/10	10/21/10
Post-General	11/22/10	12/02/10	12/02/10
Year-End	12/31/10	01/31/11	01/31/11
Committees Involved in Only the Special General (11/02/10) Must File			
Pre-General	10/13/10	10/18/10	10/21/10
Post-General	11/22/10	12/02/10	12/02/10
Year-End	12/31/10	01/31/11	01/31/11

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee with the Commission up through the close of books for the first report due.

Dated: July 23, 2010.

On behalf of the Commission.

Matthew S. Petersen,

Chairman, Federal Election Commission.

[FR Doc. 2010–18704 Filed 7–29–10; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 27, 2010.

A. Federal Reserve Bank of Atlanta (Clifford Stanford, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. First Peoples Bancorp, Inc., Jefferson City, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of First Peoples Bank of Tennessee, Jefferson City, Tennessee.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Independent Bank Group, Inc., McKinney, Texas; to merge with Farmersville Bancsshares, and thereby indirectly acquire voting shares of First Bank, both of Farmersville, Texas.

Board of Governors of the Federal Reserve System, July 27, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–18732 Filed 7–29–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

[Petition No. P1–10]

Petition of Hainan P O Shipping Co., Ltd. For an Exemption From the First Sentence of Section 9(C) of the Shipping Act of 1984; Notice of Filing and Request for Comments

Notice is hereby given that Hainan P O Shipping Co., Ltd. ("Petitioner"), has petitioned the Commission pursuant to Section 16 of the Shipping Act of 1984, 46 U.S.C. 40103, and 46 CFR 502.69 of the Commission's Rules of Practice and Procedure, for an exemption from the first sentence of Section 9(c) of the Shipping Act, 46 U.S.C. 40703. Petitioner is an ocean common carrier currently providing container service outside the U.S. trades. In Mid-August 2010, Petitioner will commence operations in the U.S. transpacific trades, initially serving the trades between the People's Republic of China, Vietnam, and the Republic of Korea, and the U.S. Ports of Los Angeles and Long Beach and inland points via Los Angeles and Long Beach. Petitioner is a controlled carrier as defined by the Shipping Act and subject to Section 9—Controlled Carriers, 46 U.S.C. 40701–40706.

Petitioner seeks an exemption so that it can lawfully reduce its tariff rates, charges, classifications, rules or regulations effective upon publication. Petitioner also notes that the requested relief, if granted, will permit it to operate in the U.S trades on the same terms available to other ocean common carriers, including many controlled carriers that previously have been granted similar relief.

In order for the Commission to make a thorough evaluation of the Petition, interested persons are requested to submit views or arguments in reply to the Petition no later than August 20, 2010. Replies shall consist of an original and 15 copies, be directed to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, and be served on Petitioner's counsel, Neal M. Mayer, Esq., and Paul D. Coleman, Esq., Hoppel, Mayer & Coleman, 10th Floor, 1050 Connecticut Avenue, NW., Washington, DC 20036. One copy of the reply shall be submitted in electronic form (Microsoft Word) by e-mail to *Secretary@fmc.gov.* Please note that providing the electronic copy does not relieve the filing requirement of an original and 15 copies specified above.

The Petition will be posted on the Commission's Web site at *http://www.fmc.gov/reading/Petitions.asp.* Replies filed in response to this Petition also will be posted on the Commission's Web site at this location.

Parties participating in this proceeding may elect to receive service of the Commission's issuances in this proceeding through e-mail in lieu of service by U.S. mail. A party opting for electronic service shall advise the Office of the Secretary in writing and provide an e-mail address where service can be made.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–18706 Filed 7–29–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from the Bethlehem Steel Corporation, Lackawanna, New York, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On July 14, 2010, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employer employees who worked at the Bethlehem Steel Corporation facility in Lackawanna, New York from January 1, 1949 to December 31, 1952, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation will become effective August 13, 2010, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–18764 Filed 7–29–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from BWX Technologies, Inc., in Lynchburg, Virginia, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On July 13, 2010, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employer employees who worked at BWX Technologies, Inc., in Lynchburg, Virginia from January 1, 1959 through December 31, 1959; and/or from January 1, 1968 through December 31, 1972, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation will become effective August 12, 2010, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–18765 Filed 7–29–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from the De Soto Avenue Facility in Los Angeles County, California, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On July 14, 2010, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked at the De Soto Avenue Facility in Los Angeles County, California, from January 1, 1959 through December 31, 1964, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for

one or more other classes of employees in the Special Exposure Cohort.

This designation will become effective August 13, 2010, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–18766 Filed 7–29–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from the Downey Facility in Los Angeles County, California, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On July 13, 2010, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked at the Downey Facility in Los Angeles County, California from January 1, 1948 through December 31, 1955, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation will become effective August 12, 2010, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–18767 Filed 7–29–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from the Mound Plant in Miamisburg, Ohio, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On July 14, 2010, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy (DOE), its predecessor agencies, and its contractors and subcontractors who had at least one tritium bioassay sample and worked at the Mound Plant in Miamisburg, Ohio from March 1, 1959 through March 5, 1980, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation will become effective August 13, 2010, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–18769 Filed 7–29–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from the University of Rochester Atomic Energy Project in Rochester, New York, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On July 13, 2010, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and its contractors and subcontractors who worked at the University of Rochester Atomic Energy Project in Rochester, New York, from September 1, 1943 through October 30, 1971, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more of the other classes of employees in the SEC.

This designation will become effective August 12, 2010, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition

of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–18772 Filed 7–29–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from the St. Louis Airport Storage Site in St. Louis, Missouri, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On July 14, 2010, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and its contractors and subcontractors who worked in any area and in any job capacity at the St. Louis Airport Storage Site in St. Louis, Missouri from January 3, 1947 through November 2, 1971, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more of the other classes of employees in the Special Exposure Cohort.

This designation will become effective August 13, 2010, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–18770 Filed 7–29–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from the Los Alamos National Laboratory in Los Alamos, New Mexico, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On July 13, 2010, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked at the Los Alamos National Laboratory in Los Alamos, New Mexico from March 15, 1943 through December 31, 1975, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation will become effective August 12, 2010, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–18768 Filed 7–29–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary, Office of the Assistant Secretary for Planning and Evaluation; Technical Review Panel on the Medicare Trustees Reports

AGENCY: Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation.

ACTION: Notice of Reestablishment of the Technical Review Panel on the Medicare Trustees Reports.

Authority: The Technical Review Panel on the Medicare Trustees Reports is authorized by § 222 of the the Public Health Service Act (PHSA), Public Law 92–463. The Panel is governed by provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C., App. 2), which sets forth standards for the formation and use of advisory committees.

DATES: Submit nominations on or before August 10, 2010.

ADDRESSES: Office of the Assistant Secretary for Planning and Evaluation, Room 447–D, Humphrey Building, Department of Health and Human Services, Washington, DC 20201.

SUMMARY: In accordance with the provisions of FACA, and after consultation with the General Services Administration (GSA), the Secretary of Health and Human Services (HHS) has determined that the reestablishment of the Technical Review Panel on the Medicare Trustees Reports is in the public interest. This Panel shall advise the HHS Secretary about the econometric techniques and economic assumptions utilized in the Hospital Insurance (HI) and Supplementary Medical Insurance (SMI) Trust Fund reports, thus enhancing her ability to fulfill duties and responsibilities imposed by the PHSA (42 U.S.C. 201 *et seq.*)

FOR FURTHER INFORMATION CONTACT: Marian Robinson, Department of Health

and Human Services; Telephone (202) 690–6870, Fax (202) 690–2524.

SUPPLEMENTARY INFORMATION: The Board of Trustees of the Medicare Trust Funds report annually on the financial condition of the HI and SMI trust funds. These reports describe the trust funds' current and projected financial condition over the "short term," or next decade, and the "long term" (75+ years). The Medicare Board of Trustees has requested that the Secretary of Health and Human Services (who is one of the Trustees) establish a panel of technical experts to review the methods used in the HI and SMI annual reports.

The Secretary reestablished the Technical Review Panel on the Medicare Trustees Reports when she signed the charter on July 23, 2010.

Objectives and Scope of Activities

The Technical Review Panel on the Medicare Trustees Reports shall counsel the HHS Secretary regarding the Hospital Insurance and Supplementary Medical Insurance Trust Fund annual reports. The panel's duties shall include, but not be limited to, a review of the following topics: the long-term rate of growth, future changes in utilization of care, and alternate projection methodologies. The panel may also examine other methodological issues identified by panelists. The Panel's final report and its recommendations to the Secretary shall be only advisory in nature.

Membership and Designation

The Secretary is soliciting nominations for appointment to the 7-member Technical Review Panel from among members of the general public who are experts in health economics, actuarial science, statistics, public policy, or other fields that could inform and substantively contribute to panel deliberations. Each member of the panel shall be appointed for a term of 2 years. Nominations should be submitted to Marian Robinson, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, 200 Independence Avenue, SW., Room 447D, Washington, DC 20201 no later than August 10, 2010.

When selecting members for this Technical Review Panel, HHS will give close attention to equitable geographic distribution and to minority and female representation so long as the effectiveness of the Panel is not impaired. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, HIV status, disability, and cultural, religious, or socioeconomic status.

The Secretary, or her designee, shall appoint one of the members to serve as the Chair. Members shall be invited to serve for the duration of the panel. If members are selected from the Federal sector, they will be classified as regular government employees. Members who are selected from the public and/or private sector will be classified as special government employees. Any vacancy on the Technical Review Panel shall not affect its powers, but shall be filled in the same manner as the original appointment was made. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member that is replaced.

Administrative Management and Support

HHS will provide funding and administrative support for the Technical Review Panel to the extent permitted by law within existing appropriations. Staff will be assigned to support the activities of the Panel. Management and oversight for support services provided to the Panel will be the responsibility of the Office of the Assistant Secretary for Planning and Evaluation and the Office of the Actuary, and the Centers for Medicare & Medicaid Services (CMS). All executive departments and agencies and all entities within the Executive Office of the President shall provide information and assistance to the Panel as the Chair may request for purposes of carrying out the Panel's functions, to the extent permitted by law.

A copy of the Panel's charter can be obtained from the designated contacts or by accessing the FACA database that is maintained by the GSA Committee Management Secretariat. The Web site for the FACA database is *http://fido.gov/facadatabase/*.

Dated: July 23, 2010.

Sherry Glied,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 2010–18697 Filed 7–29–10; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10171, CMS–460 and CMS–10318]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506I(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Coordination of Benefits between Part D Plans and Other Prescription Coverage Providers; *Use:* Section 1860D–23 and 1860D–24 of the Social Security Act requires the Secretary to establish requirements for prescription drug plans to ensure the effective coordination between Part D plans, State pharmaceutical Assistance programs and other payers. The requirements must relate to the following elements: (1) Enrollment file sharing; (2) claims processing and payment; (3) claims reconciliation reports; (4) application of the protections against high out-of-pocket expenditures by tracking True out-of-pocket (TrOOP) expenditures; and (5) other processes that the Secretary determines. CMS, via the TrOOP facilitation contractor, automated the transfer of beneficiary coverage information when a beneficiary changes Part D plans. This information is necessary to assist with coordination of prescription drug benefits provided to the Medicare beneficiary. Refer to the crosswalk document for a list of the current changes. *Form Number:* CMS–10171 (OMB#: 0938–0978); *Frequency:* Yearly; *Affected Public:* Business or other for-profits; *Number of Respondents:* 57,227 *Total Annual Responses:* 248,018; *Total Annual Hours:* 754,788 (For policy questions regarding this collection contact Christine Hinds at 410–786–4578. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Participating Physician or Supplier

Agreement; *Form No.:* CMS–460 (OMB# 0938–0373); *Use:* The CMS–460 is the agreement a physician, supplier or their authorized official signs to participate in Medicare Part B. By signing the agreement to participate in Medicare, the physician, supplier or their authorized official agrees to accept the Medicare-determined payment for Medicare covered services as payment in full and to charge the Medicare Part B beneficiary no more than the applicable deductible or coinsurance for the covered services. For purposes of this explanation, the term a supplier means any person or entity that may bill Medicare for Part B services (*e.g.* DME supplier, nurse practitioner, supplier of diagnostic tests) except a Medicare provider of services (*e.g.* hospital), which must participate to be paid by Medicare for covered care.

There are additional benefits associated with payment for services paid under the Medicare fee schedule. Payments made under the Medicare fee schedule for physician services to participating physicians and suppliers are based on 100 percent of the Medicare fee schedule amount, while the Medicare fee schedule payment for physician services by nonparticipating physicians and suppliers is based on 95 percent of the fee schedule amount. Physicians and suppliers who do not participate in Medicare are subject to limits on their actual charges for unassigned claims for physician services. These limits, known as limiting charges, cannot exceed 115 percent of the non-participant fee schedule, which is set at 95 percent of the full fee schedule amount. In addition, if a physician or supplier does not accept assignment on a claim for Medicare payment, the physician or supplier must collect payment from the beneficiary. If the physician or supplier accepts assignment on the claim, Medicare pays its share of the payment directly to the physician or supplier, resulting in faster and more certain payment. *Frequency:* Reporting, Other—when starting a new business; *Affected Public:* Business or other for-profit; *Number of Respondents:* 8,000; *Total Annual Responses:* 8,000; *Total Annual Hours:* 2,000. (For policy questions regarding this collection contact April Billingsley at 410–786–0410. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Survey to Inform the Children's Health Insurance Program (CHIP) National Outreach & Education Campaign; *Form No.:* CMS–10318 (OMB# 0938–New); *Use* The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA or Pub. L. 111–3) reauthorized the Children's Health Insurance Program (CHIP) through FY 2013. It will preserve coverage for the millions of children who rely on CHIP today and provide the resources for States to reach millions of additional uninsured children. This legislation will help ensure the health and well-being of our nation's children. To support this legislation and to help people who would benefit from CHIP make more informed decisions, CMS will be conducting outreach. The outreach will employ numerous communications channels to educate people who would benefit from CHIP concerning the program benefits, eligibility and enrollment requirements, utilization, and retention. As part of the outreach, CMS will seek to increase awareness, enrollment and retention in CHIP for the eligible audiences. The primary target audience for the outreach includes parents and guardians of potentially eligible children as well as pregnant women. Secondary audiences are information intermediaries including State, local, and tribal governments, educators (including non-parental caregivers) health care providers/social workers, national and local partners. The challenge is reaching the population segments that have access barriers to information including language, literacy, location, and culture to understand health insurance. To support the outreach and education, CMS needs to conduct survey research to be able to effectively reach the target audiences. *Frequency:* Reporting—Once; *Affected Public:* Individuals or Households; *Number of Respondents:* 1,850; *Total Annual Responses:* 1,850; *Total Annual Hours:* 2,000. (For policy questions regarding this collection contact Barbara Allen at 410–786–6716. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *August 30, 2010.* OMB, Office of Information and Regulatory Affairs, *Attention:* CMS Desk Officer, *Fax Number:* (202) 395–6974, *E-mail: OIRA_submission@omb.eop.gov.*

Dated: July 26, 2010.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–18610 Filed 7–29–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–244]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare and Medicaid Programs: Programs of All-Inclusive Care for the Elderly (PACE); *Use:* PACE organizations must demonstrate their ability to provide quality community-based care for the frail elderly who meet their State's nursing home eligibility standards using capitated payments from Medicare and the state. The model of care includes as core services the provision of adult day health care and multidisciplinary team case management, through which access to and allocation of all health services is controlled. Physician, therapeutic, ancillary, and social support services are provided in the participant's residence or on-site at the adult day health center. PACE programs must

provide all Medicare and Medicaid covered services including hospital, nursing home, home health, and other specialized services. Financing of this model is accomplished through prospective capitation of both Medicare and Medicaid payments. The information collection requirements are necessary to ensure that only appropriate organizations are selected to become PACE organizations and that CMS has the information necessary to monitor the care provided to the frail, vulnerable population served. *Form Number:* CMS–R–244 (OMB#: 0938–0790); *Frequency:* Once and Occasionally; *Affected Public:* State, Local, or Tribal Governments and Not-for-profit institutions; *Number of Respondents:* 99; Total *Annual Responses:* 99; *Total Annual Hours:* 81,911.5. (For policy questions regarding this collection contact Daniella Stanley at 410–786–3723. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *September 28, 2010:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission"or "More Search Options"to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, *Attention:* Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 26, 2010.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–18611 Filed 7–29–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2480–NC]

Medicaid Program; Request for Comments on Legislative Changes To Provide Quality of Care to Children

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with Comments.

SUMMARY: This notice requests comments from the public for our consideration in developing the Secretary's recommendations for legislative changes to improve the quality of care provided to children under Medicaid and the Children's Health Insurance Program, including recommendations for quality reporting by the States. The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) requires the Secretary of Health and Human Services to provide to Congress recommendations for legislative changes to improve the quality of care provided to children under Medicaid and the Children's Health Insurance Program.

DATES: *Comment Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on August 30, 2010.

ADDRESSES: In commenting, please refer to file code CMS–2480–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the "More Search Options" tab.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2480–NC, P.O. Box 8010, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2480–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850. [**Note:** This zip code for express mail or courier delivery only. This zip code specifies the agency's physical location.]

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses: a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850. [**Note:** This zip code for express mail or courier delivery only. This zip code specifies the agency's physical location.]

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members. Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Charles K. MacKay (410) 786–2106.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid

Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Section 401(a) of the Children's Health Insurance Program Reauthorization Act of 2009 (Pub. L. 111–3) (CHIPRA), added section 1139A to the Social Security Act (the Act). Section 1139A(a)(6), as added by section (401)(a), requires the Secretary to report to the Congress by January 1, 2011, and every 3 years thereafter, on the status of the following factors that influence the quality of care given to children under the Medicaid and Children's Health Insurance Program.

• The duration and stability of health insurance coverage for children under titles XIX and XXI of the Social Security Act.

• The quality of care provided under titles XIX and XXI for:

+ Preventive health care services.
+ Health care for acute conditions.
+ Chronic health care.
+ Health services to ameliorate the effects of physical and mental conditions and to aid in the growth and development of infants, young children, school-age children, and adolescents with special health care needs.

• The quality of children's health care under titles XIX and XXI, across the various domains of quality, including:

+ Clinical quality.
+ Health care safety.
+ Family experience with health care.
+ Health care in the most integrated setting.
+ Elimination of racial, ethnic, and socio-economic disparities in health and health care.

• The status of voluntary reporting by States under titles XIX and XXI, utilizing the initial core quality measurement set. Based on the assessment of these factors affecting the quality of care given to children under titles XIX and XXI, the Secretary is also required to make any recommendations for legislative changes that are needed to improve the quality of care provided to children under titles XIX and XXI, including recommendations for quality reporting by the States.

II. Solicitation of Comments

We request public comments for consideration in the formulation of legislative changes to be recommended by the Secretary, including requirements for the process and content of quality reporting by the States. We request that these suggestions address the dimensions of quality and the subject areas listed above.

III. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: July 19, 2010.

Marilyn Tavenner,

Principal Deputy Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–18140 Filed 7–29–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1579–NC]

Medicare and Medicaid Programs; Announcement of an Application From a Hospital Seeking To Enter Into an Agreement With a Different Organ Procurement Organization

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with comment period.

SUMMARY: A hospital that had previously been granted a waiver under section 1138(a)(2) of the Social Security Act (the Act), has requested to enter into an agreement with a different Organ Procurement Organization (OPO). This notice requests comments from hospitals, OPOs, and the general public for our consideration in determining whether we should grant the request. We are particularly interested in information and material that will help determine whether the change is likely to increase organ donation and will ensure equitable treatment for patients in both affected OPO service areas.

DATES: *Comment Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on September 28, 2010.

ADDRESSES: In commenting, please refer to file code CMS–1579–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1579–NC, P.O. Box 8010, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1579–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD: Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

FOR FURTHER INFORMATION CONTACT: Mark A. Horney, (410) 786–4554.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments

received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Organ Procurement Organizations (OPOs) are not-for-profit organizations that are responsible for the procurement, preservation, and transport of transplantable organs to transplant centers throughout the country. Qualified OPOs are designated by the Centers for Medicare & Medicaid Services (CMS) to recover or procure organs in CMS-defined exclusive geographic service areas, pursuant to section 371(b)(1) of the Public Health Service Act (42 U.S.C. 273(b)(1) and our regulations at 42 CFR 486.306. Once an OPO has been designated for an area, hospitals in that area that participate in Medicare and Medicaid are required to work with that OPO in providing organs for transplant, pursuant to section 1138(a)(1)(C) of the Social Security Act (the Act) and our regulations at § 482.45.

Section 1138(a)(1)(A)(iii) of the Act provides that a hospital must notify the designated OPO (for the service area in which it is located) of potential organ donors. Under section 1138(a)(1)(C) of the Act, every participating hospital must have an agreement to identify potential donors only with its designated OPO.

However, section 1138(a)(2)(A) of the Act provides that a hospital may obtain a waiver of the above requirements from the Secretary under certain specified conditions. A waiver allows the hospital to have an agreement with an OPO other than the one initially designated by CMS, if the hospital meets certain conditions specified in section 1138(a)(2)(A) of the Act. In addition, the Secretary may review additional criteria described in section 1138(a)(2)(B) of the Act to evaluate the hospital's request for a waiver.

Section 1138(a)(2)(A) of the Act states that in granting a waiver, the Secretary must determine that the waiver: (1) Is expected to increase organ donations; and (2) will ensure equitable treatment of patients referred for transplants within the service area served by the designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement under the waiver. In making a waiver determination, section 1138(a)(2)(B) of the Act provides that the Secretary may consider, among other factors: (1) Cost-effectiveness; (2) improvements in quality; (3) whether there has been any change in a hospital's designated OPO due to the changes made in definitions for metropolitan statistical areas; and (4) the length and continuity of a hospital's relationship with an OPO other than the hospital's designated OPO. Under section 1138(a)(2)(D) of the Act, the Secretary is required to publish a notice of any waiver application received from a hospital within 30 days of receiving the application, and to offer interested parties an opportunity to comment in writing during the 60-day comment period beginning on the publication date of the notice in the **Federal Register**.

On June 11, 2010, we published a **Federal Register** notice (75 FR 33313) that established a public process for hospitals that had previously been granted a waiver under section 1138(a)(2) of the Act. Under the notice, a hospital may request approval to work with a different OPO.

II. Procedures for Requesting a Change in OPOs

For hospitals that had previously been granted a waiver request under section 1138(a)(2) of the Act but are now seeking to enter into an agreement with a different OPO, the hospital may file a request, by letter, to CMS containing the information set forth in the June 11, 2010 notice (75 FR 33313). Upon receipt of a request, we publish a **Federal Register** notice to solicit public comments, modeled after the procedures set forth in section 1138(a)(2)(D) of the Act.

Under these procedures, we will review the request and comments received. During the review process, we may consult on an as-needed basis with the Health Resources and Services Administration's Division of Transplantation, the United Network for Organ Sharing, and our regional offices. If necessary, we may request additional clarifying information from the applying hospital or others. We will then make a final determination on the request to change the OPO and notify the hospital and the OPOs involved.

III. Hospital Requests To Change OPOs

As permitted by the June 11, 2010 notice (75 FR 33313), the following hospital has requested to work with an OPO other than the OPO it had been designated to work through based on a previous waiver request:

OSF St. Anthony Medical Center of Rockford, Illinois, Provider Number 14–0233, is requesting to work with: Gift of Hope Organ & Tissue Donor Network, 425 Spring Lake Drive, Itasca, IL 60143.

OSF St. Anthony Medical Center has an existing waiver to work with: UW Health Organ Procurement Organization, 450 Science Drive, Suite 220, Madison, WI 53711.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance, and Program No. 93.778, Medical Assistance Program)

Dated: July 21, 2010.

Marilyn Tavenner

Principal Deputy Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–18370 Filed 7–29–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0260]

Report: A New Approach to Targeting Inspection Resources and Identifying Patterns of Adulteration: The Reportable Food Registry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a report entitled "A New Approach to Targeting Inspection Resources and Identifying Patterns of Adulteration: The Reportable Food Registry." The report presents FDA's experience with the Reportable Food Registry (RFR or the Registry) from the opening of the Reportable Food electronic portal on September 8, 2009, until March 31, 2010.

ADDRESSES: Submit written requests for single copies of the report to the Office of Food Defense, Communication and Emergency Response (HFS–005), Center for Food Safety and Applied Nutrition,

Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the report.

FOR FURTHER INFORMATION CONTACT: Kathy Gombas, Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1807.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Reportable Food Registry was created by Public Law 110–85 which mandated that the FDA establish an electronic portal to which industry must and public health officials may report when there is a reasonable probability that an article of human food or animal food/feed (including pet food) will cause serious adverse health consequences or death to humans or animals. The Congressional intent of the Registry is to help FDA better protect public health by tracking patterns of food and feed adulteration and targeting inspection resources. This report presents FDA's experience with the RFR from the opening of the Reportable Food electronic portal on September 8, 2009, until March 31, 2010. Because the Registry has been operational for only a short period, FDA cautions that it is too early to draw inferences concerning patterns of food and feed adulteration.

II. Background

The RFR was established by section 1005 of the Food and Drug Administration Amendments Act of 2007 (Public Law 110–85) which amended the Federal Food, Drug, and Cosmetic Act by creating a new section 417, Reportable Food Registry (21 U.S.C. 350f), and required FDA to establish an electronic portal by which reports about instances of reportable food must be submitted to FDA within 24 hours by responsible parties and may be submitted by public health officials. These reports may be *primary*, the initial submission about a reportable food, or *subsequent*, a report by either a supplier (upstream) or a recipient (downstream) of a food or food ingredient for which a primary report has been submitted.

The RFR covers all human and animal food/feed (including pet food) regulated by FDA except infant formula and dietary supplements. Other mandatory reporting systems exist for problems with infant formula and dietary supplements. Submissions to the Reportable Food electronic portal provide early warning to FDA about potential public health risks from reportable foods and increase the speed with which the agency and its partners at the State and local levels can investigate the reports and take appropriate followup action, including ensuring that the reportable foods are removed from commerce when necessary.

The RFR does not receive reports about drugs or other medical products, reports about products under the exclusive jurisdiction of the U.S. Department of Agriculture, or reports from consumers.

The RFR is helping FDA better protect public health by tracking patterns of adulteration in human and animal food/feed (including pet food). The report presents FDA's experience with the RFR from the opening of the Reportable Food electronic portal on September 8, 2009, until March 31, 2010.

III. Electronic Access

Persons with access to the Internet may obtain the report at *http://www.fda.gov/Food/FoodSafety/FoodSafetyPrograms/RFR/ucm200958.htm*.

Dated: July 12, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–18763 Filed 7–29–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information: Sensitive Security Information Threat Assessments

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0042, abstracted below that we will submit to OMB for renewal in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves TSA determining whether the party or representative of a party seeking access to sensitive security information (SSI) in a civil proceeding in federal court may be granted access to the SSI.

DATES: Send your comments by September 28, 2010.

ADDRESSES: Comments may be e-mailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227–3651.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), 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 OMB control number. The ICR documentation is available at *www.reginfo.gov*. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

TSA is seeking to renew the control number (1652–0042) for the maximum three-year period in order to continue compliance with sec. 525(d) of the Department of Homeland Security Appropriations Act of 2007 (DHS Appropriations Act, Public Law 109–295, 120 Stat 1382), as reenacted, and to continue the process TSA developed whereby a party seeking access to SSI in a civil proceeding in federal court who demonstrates a substantial need for relevant SSI in the preparation of the party's case, and who is unable without undue hardship to obtain the substantial equivalent of the information by other means, may request that the party or party's representative be granted conditional access to the SSI at issue in the case. The procedures also apply to

witnesses retained by a party as experts or consultants and court reporters that are required to record or transcribe testimony containing specific SSI and do not have a current security threat clearance required for access to classified national security information as defined by E.O. 12958 as amended. In order to determine if the individual may be granted access to SSI for this purpose, TSA will conduct a threat assessment that includes: (1) A fingerprint-based criminal history records check (CHRC), (2) a name-based check to determine whether the individual poses or is suspected of posing a threat to transportation or national security, including checks against terrorism, immigration or other databases TSA maintains or uses; and (3) a professional responsibility check (for attorneys and court reporters).

TSA will use the information collected to conduct the security threat assessment for the purpose of determining whether the provision of such access to the information for the proceeding presents a risk of harm to the Nation. The results of the security threat assessment will be used to make a final determination on whether the individual may be granted access to the SSI at issue in the case. TSA estimates that the total annual hour burden for this collection will be 180 hours, based on an estimated 180 annual respondents and a one-hour burden per respondent.

Issued in Arlington, Virginia, on July 26, 2010.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2010–18723 Filed 7–29–10; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–29]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date:* July 30, 2010.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 22, 2010.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2010–18423 Filed 7–29–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORE00000–L58820000.PE0000.LXRSEE990000; HAG10–0288]

Notice of Intent To Solicit Nominations, Western Oregon Resource Advisory Committees

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Call for Nominations.

SUMMARY: The Secretary of the Interior is requesting 64 nominations for representatives to serve on the Coos Bay, Eugene, Medford, Roseburg, and Salem District Resource Advisory Committees (RACs). The Committees will advise the Secretary, through the Bureau of Land Management (BLM), on the selection and prioritization of projects funded under Title II of the Secure Rural Schools and Community Self-Determination Act. Terms will begin on the date of appointment and will expire three years from the date of appointment. The initial call for nominations, published in the **Federal Register** on April 29, 2010, did not result in a sufficient number of candidates to fill all vacant positions. Nominations received during the earlier Call for Nominations will be considered after this closing date, so applicants do not need to submit a new form.

DATES: Submit nomination packages to one or more of the addresses listed below, on or before August 30, 2010.

ADDRESSES: Advisory Council nomination forms are available at the District Offices in western Oregon, and completed nominations should be submitted to the office of the specific RAC where the applicant would serve:

Coos Bay District Resource Advisory Committee: Glenn Harkleroad, 1300 Airport Lane, North Bend, Oregon 97459, (541) 756–0100;

Eugene District Resource Advisory Committee: Pat Johnston, 3106 Pierce Parkway, Suite E, Springfield, Oregon 97477, (541) 683–6600;

Medford District Resource Advisory Committee: Jim Whittington, 3040 Biddle Road, Medford, Oregon 97504, (541) 618–2200;

Roseburg District Resource Advisory Committee: Jake Winn, 777 NW Garden Valley Blvd., Roseburg, Oregon 97470, (541) 440–4930; and

Salem District Resource Advisory Committee: Richard Hatfield, 1717 Fabry Road SE, Salem, Oregon 97306, (503) 375–5657.

FOR FURTHER INFORMATION CONTACT: Pam Robbins, Oregon/Washington Bureau of Land Management, Oregon State Office, PO Box 2965, Portland, Oregon 97208, (503) 808–6306; *pam_robbins@blm.gov.*

SUPPLEMENTARY INFORMATION: The Secure Rural Schools and Community Self Determination Act was extended to provide stability for local counties by compensating them, in part, for the decrease in funds formerly derived from timber harvests on Federal lands. Pursuant to the Act, the five Committees serve western Oregon BLM districts that contain Oregon and California grant lands and Coos Bay Wagon Road grant lands. Committees consist of 15 local citizens representing a wide array of interests.

The RACs provide a mechanism for local community collaboration with Federal land managers as they select projects to be conducted on Federal lands or that will benefit resources on Federal lands using funds under Title II of the Act.

Committee membership must be balanced in terms of the categories of interest represented. Prospective members are advised that membership on a Resource Advisory Committee calls for a substantial commitment of time and energy.

Any individual or organization may nominate one or more persons to serve on the Committees. Individuals may also nominate themselves or others. Nominees must reside within one of the counties that are (in whole or in part)

within the BLM District boundaries of the Committee(s) on which membership is sought. A person may apply for more than one Committee. Nominees will be evaluated based on their education, training, and experience relating to land use issues and knowledge of the geographical area of the Committee. Nominees must also demonstrate a commitment to collaborative resource decision-making. The Obama Administration prohibits individuals who are currently federally registered lobbyists from serving on all Federal Advisory Committee Act (FACA) and non-FACA boards, committees, or councils.

You may make nominations for the following categories of interest:

Category One—5 persons who:

1. Represent organized labor or non-timber forest product harvester groups;
2. Represent developed outdoor recreation, off-highway vehicle users, or commercial recreation activities;
3. Represent energy and mineral development interests or commercial or recreational fishing interests;
4. Represent the commercial timber industry; or
5. Hold Federal grazing permits, or other land permits, or represent nonindustrial private forest land owners within the area for which the committee is organized.

Category Two—5 persons who represent:

1. Nationally recognized environmental organizations;
2. Regionally or locally recognized environmental organizations;
3. Dispersed recreational activities;
4. Archaeological and historical interests; or
5. Nationally or regionally recognized wild horse and burro interest groups, wildlife or hunting organizations, or watershed associations.

Category Three—5 persons who:

1. Hold State elected office (or a designee);
2. Hold county or local elected office;
3. Represent American Indian tribes within or adjacent to the area for which the committee is organized;
4. Are school officials or teachers; or
5. Represent the affected public-at-large.

The Resource Advisory Committees will be based on western Oregon BLM District boundaries. Specifically, the BLM Committees are as follows:

Coos Bay District Resource Advisory Committee advises Federal officials on projects associated with Federal lands within the Coos Bay District which includes lands in Coos, Curry, Douglas, and Lane Counties.

Eugene District Resource Advisory Committee advises Federal officials on projects associated with Federal lands within the Eugene District boundary which includes lands in Benton, Douglas, Lane, and Linn Counties.

Medford District Resource Advisory Committee advises Federal officials on projects associated with Federal lands within the Medford District and Klamath Falls Resource Area in the Lakeview District which includes lands in Coos, Curry, Douglas, Jackson, and Josephine Counties and small portions of west Klamath County.

Roseburg District Resource Advisory Committee advises Federal officials on projects associated with Federal lands within the Roseburg District boundary which includes lands in Douglas, Lane, and Jackson Counties.

Salem District Resource Advisory Committee advises Federal officials on projects associated with Federal lands within the Salem District boundary which includes lands in Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, and Yamhill Counties.

Authority: Title VI, Section 205 of Pub. L. 110–343.

Edward W. Shepard,

State Director Oregon/Washington.

[FR Doc. 2010–18761 Filed 7–29–10; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT020000–10–L13110000–EJ0000–24–1A]

Notice of Availability of the West Tavaputs Plateau Natural Gas Full Field Development Plan Final Environmental Impact Statement and Record of Decision

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (EIS) for the West Tavaputs Natural Gas Full Field Development Plan and by this notice is announcing its availability. Concurrently, the BLM announces the availability of the Record of Decision (ROD) for this project, located in Carbon, Duchesne, and Uintah Counties, Utah. The Utah State Director signed the ROD on July 2, 2010, which constitutes the final decision of the BLM.

DATES: The decision is effective 30 days from the date that the Environmental Protection Agency (EPA) publishes its notice in the **Federal Register**. The Council on Environmental Quality regulations normally requires a minimum 30-day availability period between the Notice of Availability for the Final EIS and the issuance of a ROD. Because this ROD is subject to a 30-day appeal to the Interior Board of Land Appeals (IBLA), the BLM has decided to issue this ROD at the same time as the Final EIS as allowed by 40 CFR 1506.10(b). This allows the 30-day appeal period for this ROD and the 30-day availability period for the Final EIS to run concurrently.

ADDRESSES: Copies of the Final EIS and ROD are available for public inspection at the Price Field Office, Bureau of Land Management, 125 South 400 West, Price, Utah 84501, or via the Internet at *http://www.blm.gov/ut/st/en/fo/price.html.*

FOR FURTHER INFORMATION CONTACT: For further information contact Tyler Ashcroft, Planning and Environmental Coordinator, telephone (435) 636–3613; address 125 South 600 West, Price, Utah 84501; e-mail *Tyler_Ashcroft@blm.gov.*

SUPPLEMENTARY INFORMATION: The West Tavaputs Plateau (WTP) Project Area is located in Carbon, Duchesne, and Uintah counties approximately 30 miles east-northeast of Price, Utah. All surface disturbance related to the project would be located in Carbon County. The WTP Project Area is bounded on the west by Sheep Canyon, on the north by Nine Mile Canyon, and on the east by Desolation Canyon of the Green River. The southern boundary of the WTP Project Area is a straight line reflecting an anticline in the sub-surface that limits the southern extent of the natural gas resources targeted by the project. Surface ownership in the 137,930-acre WTP Project Area is approximately 87 percent Federal, 8 percent State of Utah, and 5 percent private. Mineral ownership closely parallels surface ownership.

During preparation of the WTP EIS, the Environmental Protection Agency (EPA), United States Fish and Wildlife Service, State of Utah, Carbon County, Duchesne County, and Uintah County participated as Cooperating Agencies.

Under the Proposed Action (Alternative A) of the WTP EIS, the project proponent, Bill Barrett Corporation (BBC), and other operators with leases in the WTP Project Area, proposed development of up to 807 natural gas wells from up to 538 well pads. The BLM considered four additional alternatives: Alternative B—

No Action Alternative; Alternative C—Transportation Impact Reduction Alternative; Alternative D—Conservation Alternative; and Alternative E—Agency Preferred Alternative. Major differences between alternatives focused on the mitigation measures applied to protect resources.

Public scoping was initiated on August 26, 2005, with the publication of the Notice of Intent in the **Federal Register**. On February 1, 2008, a Notice of Availability announcing the availability of the Draft EIS for a 90-day public comment period was published in the **Federal Register** (*http://www.gpoaccess.gov/fr/*) and the EPA's **Federal Register** of Environmental Documents (*http://www.epa.gov/fedrgstr/*). The public comment period officially closed on May 1, 2008. During the Draft EIS public comment period, the Price Field Office received approximately 55,000 comment letters from Federal agencies, state and local governments, Indian tribes, and interested groups and publics. The majority of the concerns that were raised by the public on the Draft EIS were focused on impacts to cultural resources, air quality, lands with wilderness characteristics, and wildlife.

In December 2008, between the Draft EIS and Final EIS, and as a result of concerns regarding impacts to cultural resources, the BLM recommended development of a Programmatic Agreement. Sixteen governmental and non-governmental agencies and organizations participated in the development of, and were signatories to, the Agreement on January 5, 2010. The Agreement identifies measures that will minimize the impacts of project-related activity on cultural resources.

In addition, the BLM conducted project specific air quality modeling for ozone for analysis in the Final EIS. The BLM has determined that the range of alternatives considered within the Draft EIS evaluates sufficient mitigation measures to address wildlife and wilderness concerns.

The Agency Preferred Alternative identified in the Draft EIS and Final EIS was not carried forward as the Selected Alternative in ROD. Rather, the decision is a combination of elements selected from the alternatives discussed in the EIS. Regulations allow the agency to select a combination of alternatives if the effects of such combined elements of alternatives are reasonably apparent from the analysis in the relevant environmental document (43 CFR 46.420(c)).

During preparation of the Final EIS, BBC voluntarily contracted their plan of development from their original Proposed Action (Alternative A). According to BBC, as a result of interim drilling during the preparation of the EIS, they increased their knowledge of the extent of the natural gas deposits, and refined their operational practices, which will allow BBC to maximize natural gas recovery while minimizing surface disturbance.

The Selected Alternative in the ROD provides for natural gas drilling on leased Federal lands as proposed within the contracted plan of development, with minor modifications. The ROD also provides for development of leased lands held by other lessors within the WTP Project Area. The decision in the ROD to approve the Selected Alternative is consistent with the goals, objectives, and decisions in the Price and Vernal Field Offices' RMPs, which were completed in October 2008.

When compared to the action alternatives considered in the Final EIS, the Selected Alternative in the ROD will substantially reduce the footprint of the project upon the land by making extensive use of directional drilling from a lesser number of well pads. Under the Selected Alternative, BBC will not construct new well pads within the Jack and Desolation Canyon Wilderness Study Areas (WSAs), and will minimize the amount of development on non-WSA lands with wilderness characteristics. In addition, the ROD includes a decision to restrict public motorized access on certain roads in the WTP Project Area. Restricted use of these roads is in conformance with the goals and objectives of the 2008 Price RMP and modifies the Travel Management Plan Map contained in that document.

The ROD is effective 30 days from the date that the EPA publishes its Notice of Availability of the Final EIS and ROD in the **Federal Register**. During the 30 days between the EPA publication and the effective date of the ROD, the ROD may be appealed to the IBLA, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Suite 300, Arlington, Virginia 22203, in accordance with the regulations contained in 43 CFR part 4. The appeal must also be filed with the State Director, BLM, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155.

If you wish to file a petition for stay of the ROD pursuant to 43 CFR 4.21 during the pendency of your appeal before the IBLA, the petition for stay must accompany your notice of appeal. A petition for stay must show sufficient justification based on the standards listed in 43 CFR 4.21(b) which include:

(1) The relative harm to the parties if the stay is granted or denied;

(2) The likelihood of the appellant's success on the merits;

(3) The likelihood of irreparable harm to the appellant or resource if the stay is not granted; and

(4) Whether the public interest favors granting the stay.

If a petition for stay is submitted with the notice of appeal, a copy of the notice of appeal and petition for stay must be served on the IBLA at the same time it is filed with the State Director.

A copy of the notice of appeal, and statement of reasons and all pertinent documents must be served on each adverse party named in the decision from which the appeal is taken and on the Office of the Regional Solicitor, U.S. Department of the Interior, 6201 Federal Building, 125 South State Street, Salt Lake City, Utah 84138–1180, no later than 15 days after filing documents with the State Director or IBLA.

Authority: 40 CFR 1506.6, 40 CFR 1506.10.

Jeff Rawson,

Associate State Director.

[FR Doc. 2010–18863 Filed 7–29–10; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan/Abbreviated Final Environmental Impact Statement, Roosevelt-Vanderbilt National Historic Sites, Hyde Park, NY

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the Abbreviated Final Environmental Impact Statement for the General Management Plan, Roosevelt-Vanderbilt National Historic Sites, Hyde Park, NY.

SUMMARY: Pursuant to National Environmental Policy Act of 1969, 42 U.S.C. 4332 (2) (C), the National Park Service (NPS) announces the availability of the Abbreviated Final Environmental Impact Statement for the General Management Plan (GMP/EIS) for Roosevelt-Vanderbilt National Historic Sites, Hyde Park, New York.

The Abbreviated Final GMP/EIS includes an analysis of agency and public comments received on the Draft GMP/EIS with NPS responses, errata sheets detailing editorial corrections to the Draft GMP/EIS, and copies of agency and substantive public comments. No changes have been made to the alternatives or to the impact analysis presented in the Draft GMP/EIS.

Therefore, Action Alternative Two remains as the National Park Service Preferred Alternative.

The public release of the Abbreviated Final GMP/EIS will be followed by a 30-day no-action period, after which a Record of Decision will be prepared to document the selected alternative and set forth any stipulations for implementation of the GMP. The Abbreviated Final GMP/EIS and the Draft GMP/EIS constitute the complete and final documentation upon which the Record of Decision will be based.

DATES: The NPS will execute a Record of Decision no sooner than 30 days following publication by the Environmental Protection Agency of the Notice of Availability of the Abbreviated Final GMP/EIS in the **Federal Register**.

ADDRESSES: The Abbreviated Final GMP/EIS is available online at the NPS Planning, Environment and Public Comment (PEPC) Web site (*http://parkplanning.nps.gov/rova*). Hard-copies of the document are available for inspection at the Hyde Park Free Library, 2 Main Street, Hyde Park, NY.

FOR FURTHER INFORMATION CONTACT: Superintendent, Roosevelt-Vanderbilt National Historic Sites, 4097 Albany Post Road, Hyde Park, NY 12538, Phone: 845.229.9116, ext. 33, *Sarah_Olson@nps.gov.*

SUPPLEMENTARY INFORMATION: The Draft GMP/EIS addresses the three units of the national park system that compose Roosevelt-Vanderbilt National Historic Sites: Home of Franklin D. Roosevelt National Historic Site (NHS); Eleanor Roosevelt NHS; and Vanderbilt Mansion NHS. The three national historic sites are combined into a single administrative unit, but each was established by separate legislation. The Draft GMP/EIS evaluates alternatives to guide the management of the national historic sites over the next 20 years. The No-Action Alternative continues the current management direction. Action Alternative One emphasizes restoring historic appearance of the properties and encouraging visitors to explore more of the estate buildings and landscape. Action Alternative Two seeks to make the parks relevant to more audiences by encouraging greater civic participation in park activities, while significantly enhancing the historic character of park resources. Action Alternative Two is the agency Preferred Alternative. The Draft GMP/EIS was available for public and agency review from December 24, 2009 through February 28, 2010. Copies of the document were sent to individuals, agencies, and organizations, and were made available at park visitor centers, local library, and on the NPS Planning, Environment, and Public Comment (PEPC) Web site (*http://parkplanning.nps.gov/rova*). Public open houses were held on January 28 and 29, 2010.

Dennis R. Reidenbach,

Regional Director, Northeast Region, National Park Service.

[FR Doc. 2010–18705 Filed 7–29–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYP00000–L13200000–EL0000, LLWYP00000–L51100000–GA0000–LVEMK09CK320, LLWYP00000–L51100000–GA0000–LVEMK09CK340, LLWYP00000–L51100000–GA0000–LVEMK09CK370; WYW164812, WYW174596, WYW172388, WYW172685, WYW173408, WYW176095]

Notice of Availability of the Wright Area Coal Final Environmental Impact Statement That Includes Four Federal Coal Lease-by-Applications, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA) and the Federal Land Policy and Management Act of 1976 (FLPMA), the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (EIS) for the Wright Area Coal project that contains four Federal coal Lease-by-Applications (LBAs), and by this notice announces the availability of the Wright Area Coal Final EIS for review.

DATES: To ensure comments will be considered, the BLM must receive written comments on the Wright Area Coal Final EIS within 30 days following the date the Environmental Protection Agency (EPA) publishes its Notice of Availability in the **Federal Register**.

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

- *E-mail: Wright_WY@blm.gov.* Please include "Wright Area Coal FEIS—Sarah Bucklin" in the subject line.
- *FAX:* 307–261–7587, *Attn:* Sarah Bucklin.
- *Mail:* Wyoming High Plains District Office, Bureau of Land Management, Attn: Sarah Bucklin, 2987 Prospector Drive, Casper, Wyoming 82604.
- Written comments may also be hand-delivered to the BLM Wyoming High Plains District Office in Casper.

Copies of the Final EIS are available at the following BLM office locations: The BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009; and the BLM Wyoming High Plains District Office, 2987 Prospector Drive, Casper, Wyoming 82604. The Final EIS is available electronically at the following Web site: *http://www.blm.gov/pgdata/content/wy/en/info/NEPA/HighPlains/Wright-Coal.html.*

FOR FURTHER INFORMATION CONTACT: Sarah Bucklin or Mike Karbs, BLM Wyoming High Plains District Office, 2987 Prospector Drive, Casper, Wyoming 82604. Ms. Bucklin or Mr. Karbs may also be reached at (307) 261–7600 or by e-mail at *casper_wymail@blm.gov.*

SUPPLEMENTARY INFORMATION: The Final EIS analyzes the potential impacts of issuing leases for six Federal coal maintenance tracts serialized as WYW164812 (North Hilight Field Tract), WYW174596 (South Hilight Field Tract), WYW172388 (West Hilight Field Tract), WYW172685 (West Jacobs Ranch Tract), WYW173408 (North Porcupine Tract), and WYW176095 (South Porcupine Tract) in the decertified Powder River Federal Coal Production Region, Wyoming. The BLM is considering issuing these six coal leases as a result of four applications filed in accordance with 43 CFR part 3425 between October 2005 and September 2006. Supplementary information by tract is as follows:

North and South Hilight Field Tracts

On October 7, 2005, Ark Land Company applied for Federal coal reserves in two maintenance tracts encompassing approximately 4,590.19 acres and 588.2 million tons of coal as estimated by the applicant. The tracts are adjacent to the Black Thunder Mine operated by Thunder Basin Coal Company. The BLM determined that the application would be processed as two separate tracts. The tracts are referred to as the North Hilight Field Tract, case file number WYW164812, and the South Hilight Field Tract, case file number WYW174596. As applied for, the coal in the tracts would potentially extend the life of the mine by as many as four years.

As applied for, the North Hilight Field Tract includes approximately 263.4 million tons of recoverable coal underlying the following lands in Campbell County, Wyoming:

T. 44 N., R. 70 W., 6th PM, Wyoming
Section 19: Lots 5 through 20.
T. 44 N., R. 71 W., 6th PM, Wyoming
Section 23: Lots 1 through 16;
Section 24: Lots 1 through 16;
Section 26: Lots 1 through 16.

Containing 2,613.50 acres, more or less.

As applied for, the South Hilight Field Tract includes approximately 213.6 million tons of recoverable coal underlying the following lands in Campbell County, Wyoming:

T. 43 N., R. 71 W., 6th PM, Wyoming
Section 23: Lots 1 through 16;
Section 26: Lots 1 through 16;
Section 35: Lots 1 through 16.

Containing 1,976.69 acres, more or less.

West Hilight Field Tract

On January 17, 2006, Ark Land Company applied for Federal coal reserves in a maintenance tract containing approximately 2,370.52 acres and approximately 428 million tons of coal as estimated by the applicant. The tract is adjacent to the Black Thunder Mine operated by Thunder Basin Coal Company. The tract, which is referred to as the West Hilight Field Tract, has been assigned case file number WYW172388. As applied for, the coal in the tract would potentially extend the life of the mine by as many as three years.

As applied for, the West Hilight Field Tract includes approximately 377.9 million tons of recoverable coal underlying the following lands in Campbell County, Wyoming:

T. 43 N., R. 71 W., 6th PM, Wyoming
Section 8: Lots 1, 2, 7 through 16;
Section 9: Lots 1 through 16;
Section 10: Lots 3 through 6, 11 through 14;
Section 17: Lots 1 through 16;
Section 20: Lots 1 through 4;
Section 21: Lots 3, 4.

Containing 2,370.52 acres, more or less.

West Jacobs Ranch Tract

On March 24, 2006, Jacobs Ranch Coal Company applied for Federal coal reserves in a maintenance tract containing approximately 5,944.37 acres and approximately 956 million tons of coal as estimated by the applicant. The tract is adjacent to the Jacobs Ranch Mine. The tract, which is referred to as the West Jacobs Ranch Tract, has been assigned case file number WYW172685. As applied for, the coal in the tract would potentially extend the life of the mine by as many as 17 years.

As applied for, the West Jacobs Ranch Tract includes approximately 669.6 million tons of recoverable coal underlying the following lands in Campbell County, Wyoming:

T. 43 N., R. 71 W., 6th PM, Wyoming
Section 3: Lots 2, 5 through 19;
Section 4: Lots 5 through 20;
Section 5: Lots 5 through 20.
T. 44 N., R. 71 W., 6th PM, Wyoming
Section 22: Lots 9 through 16;
Section 27: Lots 1 through 16;
Section 28: Lots 1 through 3, 5 through 16;
Section 29: Lots 5 through 15, SE¼SE¼;
Section 32: Lots 1 through 15, SW¼SE¼;
Section 33: Lots 1 through 15, NE¼SE¼;
Section 34: Lots 1 through 16.

Containing 5,944.37 acres, more or less.

North and South Porcupine Tracts

On September 29, 2006, BTU Western Resources, Inc. applied for Federal coal reserves in three maintenance tracts encompassing approximately 5,116.65 acres and approximately 598 million tons of coal as estimated by the applicant. The tracts are adjacent to the North Antelope Rochelle Mine. On October 12, 2007, BTU Western Resources, Inc. filed a request with the BLM to modify its application and increase the lease area and coal volume to approximately 8,981.74 acres and approximately 1,179.1 million tons of coal as estimated by the applicant. The BLM determined that the modified application would be processed as two separate maintenance tracts. The tracts are referred to as the North Porcupine Tract, case file number WYW173408, and the South Porcupine Tract, case file number WYW176095. As applied for, the coal in the tracts would potentially extend the life of the mine by as many as 10 years.

As applied for, the North Porcupine Tract includes approximately 601.2 million tons of recoverable coal underlying the following lands in Campbell County, Wyoming:

T. 42 N., R. 70 W., 6th PM, Wyoming
Section 19: Lots 13 through 20;
Section 20: Lots 9 through 16;
Section 21: Lots 9 through 16;
Section 22: Lots 9 through 16;
Section 26: Lots 3 through 6, 9 through 16;
Section 27: Lots 1 through 16;
Section 28: Lots 1 through 4;
Section 29: Lots 1 through 4;
Section 30: Lots 5 through 8.
T. 42 N., R. 71 W., 6th PM, Wyoming
Section 22: Lots 10 through 15, 21 through 24;
Section 23: Lots 9 through 16;
Section 24: Lots 9 through 16;
Section 25: Lots 1 through 4;
Section 26: Lots 1 through 6, 11 through 14;
Section 27: Lots 2 through 6, 9, 12, 15 through 30;
Section 34: Lots 1 through 3, 6 through 11;
Section 35: Lots 3 through 6, 11 through 14.

Containing 5,795.78 acres, more or less.

As applied for, the South Porcupine Tract includes approximately 309.7 million tons of recoverable coal underlying the following lands in Campbell County, Wyoming:

T. 41 N., R. 70 W., 6th PM, Wyoming
Section 7: Lots 7 through 10, 15 through 18;
Section 18: Lots 6 through 11, 14 through 19.
T. 41 N., R. 71 W., 6th PM, Wyoming
Section 1: Lots 5 through 20;
Section 12: Lots 1 through 16;
Section 13: Lots 1 through 16;
Section 14: Lots 1, 8, 9, 16;
Section 23: Lots 1, 8 (N½);
Section 24: Lots 2 through 4, 5 (N½), 6 (N½), 7 (N½).

Containing 3,185.96 acres, more or less.

Consistent with Federal regulations under NEPA and the Mineral Leasing Act of 1920, as amended, the BLM must prepare an environmental analysis prior to holding competitive Federal coal lease sales. The Powder River Regional Coal Team recommended that the BLM process these four coal lease applications after it reviewed the tracts that were applied for by Ark Land Company and Jacobs Ranch Coal Company at a public meeting held on April 19, 2006, in Casper, Wyoming, and the tracts that were applied for by BTU Western Resources, Inc., at a public meeting held on January 18, 2007, in Casper, Wyoming.

Lands in the North Hilight Field, South Hilight Field, West Hilight Field, North Porcupine, and South Porcupine Tracts contain Federal surface estate administered by the U.S. Forest Service (USFS) and private surface estate which overlies the Federal coal. Lands in the West Jacobs Ranch Tract contain all private surface estate which overlies the Federal coal.

Cooperating agencies in the preparation of this EIS include: the Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of Agriculture, Forest Service (USFS), Wyoming Department of Transportation, Wyoming Department of Environmental Quality (WDEQ) Land Quality and Air Quality Divisions, and the Converse County Board of Commissioners. Before the tracts can be leased, the USFS must consent to leasing the Federal coal that is located on USFS-administered lands.

On July 3, 2007, the BLM published a Notice of Intent to prepare an EIS for the Wright Area coal lease applications in the **Federal Register**. A notice announcing the availability of the Draft EIS was published in the **Federal Register** by the EPA on June 26, 2009. A 60-day comment period on the Draft EIS commenced with publication of the EPA's Notice of Availability and ended on August 24, 2009. The BLM published a Notice of Availability and Notice of Public Hearing in the **Federal Register** on July 8, 2009. The BLM's **Federal Register** notice announced the date and time of a public hearing, which was held on July 29, 2009, in Gillette, Wyoming. The purpose of the hearing was to solicit comments on the Draft EIS and on the fair market value and the

maximum economic recovery of the Federal coal. Comments received at this hearing and during the Draft EIS comment period will be available to the public for review in an appendix to the Final EIS. The BLM responses to substantive comments will also be available in the Final EIS.

The Black Thunder Mine, Jacobs Ranch Mine, and North Antelope Rochelle Mine are operating under approved mining permits from the WDEQ Land Quality and Air Quality Divisions.

If the tracts are leased to existing mines, the new leases must be incorporated into the existing mining and reclamation plans for those mines. Before the Federal coal in each tract can be mined, the Secretary of the Interior must approve the revised Mineral Leasing Act (MLA) mining plan for the mine in which each tract will be included. The OSM is the Federal agency that is responsible for recommending approval, approval with conditions, or disapproval of the revised MLA mining plan to the Office of the Secretary of the Interior.

The Final EIS analyzes and discloses to the public the direct, indirect, and cumulative environmental impacts associated with leasing six Federal coal tracts in the Wyoming portion of the Powder River Basin. A copy of the Final EIS has been sent to affected Federal, State, and local government agencies; persons and entities identified as potentially being affected by a decision to lease the Federal coal in each of the tracts; and persons who indicated to the BLM that they wished to receive a copy of the Final EIS.

The Final EIS analyzes leasing the six Wright Area coal tracts as the Proposed Action. Under the Proposed Action, competitive sales would be held and leases issued for Federal coal contained in each of the tracts as applied for by each of the applicants. As part of the coal leasing process, the BLM is evaluating adding additional Federal coal to the tracts to avoid bypassing coal or to prompt competitive interest in unleased Federal coal in the area. The alternate tract configurations for each of the LBAs that the BLM is evaluating are described and analyzed as separate alternatives in the Final EIS. Under these alternatives, competitive sales would be held and leases would be issued for Federal coal lands included in tracts modified by the BLM. The Final EIS also analyzes the alternative of rejecting the application(s) to lease Federal coal as the No Action Alternative. The Proposed Action and alternatives for each of the LBAs being considered in the Final EIS are in conformance with the approved Resource Management Plan for Public Lands Administered by the Bureau of Land Management Buffalo Field Office (2001) and the USDA-Forest Service Land and Resource Management Plan for the Thunder Basin National Grassland (2002). A separate Record of Decision (ROD) will be prepared for each of the tracts after the close of the 30-day review period for the Final EIS. Comments received on the Final EIS will be considered during preparation of the ROD.

Requests to be included on the mailing list for this project and requests for copies of the Final EIS may be sent in writing, by facsimile, or electronically to the addresses previously stated at the beginning of this notice. The BLM asks that those submitting comments on the Final EIS make them as specific as possible with reference to page numbers and sections of the document. Comments that contain only opinions or preferences will not receive a formal response; however, they will be considered as part of the BLM decision-making process.

Please note that comments and information submitted including names, street addresses, and e-mail addresses of respondents will be available for public review and disclosure at the above address during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays.

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.

Larry Claypool,

Acting State Director.

[FR Doc. 2010–18641 Filed 7–29–10; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYP00000–L13200000–EL0000; WYW161248]

Notice of Availability of the Record of Decision for the Environmental Impact Statement for the South Gillette Area Belle Ayr North Coal Lease-by-Application, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, the Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Belle Ayr North Coal Lease-by-Application (LBA) included in the South Gillette Area Coal Lease Applications Environmental Impact Statement (EIS).

ADDRESSES: The document is available electronically on the following Web site: *http://www.blm.gov/wy/st/en/info/NEPA/HighPlains/SouthGillette.html.* Paper copies of the ROD are also available at the following BLM office locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming; and
- Bureau of Land Management, Wyoming High Plains District Office, 2987 Prospector Drive, Casper, Wyoming.

FOR FURTHER INFORMATION CONTACT: Mr. Tyson Sackett, Acting Wyoming Coal Coordinator, at 307–775–6487, or Ms. Mavis Love, Land Law Examiner, at 307–775–6258. Both Mr. Sackett and Ms. Love are located at the BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.

SUPPLEMENTARY INFORMATION: The ROD covered by this Notice of Availability (NOA) is for the Belle Ayr North Coal Tract and addresses leasing Federal coal in Campbell County, Wyoming, administered by the BLM Wyoming High Plains District Office. The BLM approves Alternative 2, which is the preferred alternative of the South Gillette Area Coal Lease Applications EIS. Under Alternative 2, the Belle Ayr North Coal LBA area, as modified by the BLM, includes 1,671.03 acres, more or less, and contains an estimated 221.7 million tons of mineable coal. The BLM will announce a competitive coal lease sale in the **Federal Register** at a later date. The Environmental Protection

Agency published a **Federal Register** notice announcing the Final EIS was publicly available on August 17, 2009 (74 FR 41431).

This decision is subject to appeal to the Interior Board of Land Appeals (IBLA), as provided in 43 CFR part 4, within thirty (30) days from the date of publication of this NOA in the **Federal Register.** The ROD contains instructions for filing an appeal with the IBLA.

Donald A. Simpson,

State Director.

[FR Doc. 2010–18617 Filed 7–29–10; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR932000–L16100000–DF0000–LXSS062H0000; HAG 10–0177]

Notice of Availability of the Final Environmental Impact Statement for Vegetation Treatments Using Herbicides on Bureau of Land Management Lands in Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (EIS) for Vegetation Treatments Using Herbicides on Bureau of Land Management lands in Oregon and by this notice is announcing its availability. The EIS proposes to increase the number of herbicides currently in use on BLM-managed lands in Oregon and increase the number of objectives for which they can be used.

DATES: The BLM anticipates signing a Record of Decision within 30 to 90 days of publication of the Final EIS. There will be a 30-day appeal period following issuance of the Record of Decision (ROD) before the decision can take effect. The availability of the ROD will be announced via a subsequent **Federal Register** notice. Information about the appeal period will be included in the ROD.

FOR FURTHER INFORMATION CONTACT: For further information contact Todd Thompson, EIS Project Manager, telephone (503) 808–6326; address Bureau of Land Management—OR932, P.O. Box 2965, Portland, Oregon 97208; e-mail *orvegtreatments@blm.gov*.

Copies of the Vegetation Treatments Final EIS are available at the following Web site: *http://www.blm.gov/or/plans/vegtreatmentseis/*. Copies have been sent to libraries and BLM district offices throughout Oregon. Copies have also been sent to affected Federal, State, tribal, and local government agencies, to persons who have asked to be on the project mailing list, and to everyone who submitted comments on the Draft EIS. Requests to receive printed or Compact Disk copies of the Final EIS should be sent to one of the addresses listed above.

SUPPLEMENTARY INFORMATION: The Draft EIS for Vegetation Treatments Using Herbicides on BLM Lands in Oregon was released for public comment in October 2009. Approximately 1,050 comments were received on the Draft EIS and the ideas presented in these comments were used to improve the analysis presented in the Final EIS. The Proposed Action, Alternative 4, would allow for the use of 16 herbicides east of the Cascades and 13 herbicides west of the Cascades to control noxious and invasive weeds; treat vegetation along roads, rights-of-way, and BLM improvements; and conduct certain habitat improvement projects. The Oregon BLM currently utilizes four herbicides and uses them only for the treatment of noxious weeds.

In 1984, the BLM was prohibited from using herbicides in Oregon by a U.S. District Court injunction issued in *Northwest Coalition for Alternatives to Pesticides, et al.* v. *Block, et al.,* (Civ. No. 82–6273–E). Following completion of an EIS examining the use of four herbicides for the treatment of noxious weeds only, the injunction was modified by the court in November 1987, (Civ. No. 82–6272–BU). For the subsequent 23 years, the BLM in Oregon has limited its herbicide use to the four herbicides analyzed and limited the use of those four herbicides to the control and eradication of Federal, State, or county listed noxious weeds. In that time, new herbicides have become available that can be used in smaller doses, are more target-specific, and are lower risk to people and other non-target organisms. In 2007, the BLM Washington Office Rangeland Resources Division completed the Vegetation Treatments Using Herbicides on BLM Lands in 17 Western States Programmatic EIS and related ROD (Programmatic EIS), making 18 herbicides available for a full range of vegetation treatments in 17 western states, including Oregon. Oregon cannot fully implement that decision, however, until and unless the 1984 District Court injunction is lifted. The Final EIS being released today, Vegetation Treatments Using Herbicides on BLM Lands in Oregon, tiers to the Programmatic EIS, incorporates standard operating procedures for the use of herbicides, provides additional detailed analysis regarding the potential for human and environmental risks generated in support of the Programmatic EIS and addresses the concerns raised in the 1984 District Court injunction.

This Final EIS addresses all 15.7 million acres of BLM lands in Oregon and all 18 herbicides approved for use by the 2007 ROD for the Programmatic EIS, which are being used in the other 16 western states. The Final EIS analyzes a "no action" and three action alternatives which were shaped in part by the comments received during 12 public scoping meetings held throughout Oregon in July 2008. A "no herbicides" reference analysis is also included. The alternatives address eight "Purposes" or issues also identified during scoping.

The Final EIS analysis indicates that by using standard operating procedures identified in applicable BLM manuals and policy direction, along with Programmatic EIS-adopted mitigation measures, human and environmental risk from the use of herbicides is both minimized and reduced from current levels. The proposed action would also slow the spread of noxious weeds on BLM lands by about 50 percent and result in an estimated 2.2 million fewer infested acres in 15 years than under current program capabilities. The Final EIS and forthcoming ROD do not authorize any specific herbicide treatment projects. Site-specific projects will be subject to additional NEPA analysis.

Consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service is being conducted to ensure continued applicability of informal consultation and the Biological Opinion issued on the Programmatic EIS by those two agencies respectively.

The responsible official for the EIS is the BLM Oregon and Washington State Director.

Edward W. Shepard,

State Director, Oregon/Washington.

[FR Doc. 2010–18615 Filed 7–29–10; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Arkansas Valley Conduit (AVC) and Long-Term Excess Capacity Master Contract, Fryingpan-Arkansas Project (Fry-Ark Project) Colorado

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a draft Environmental Impact Statement (EIS).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) and the Council on Environmental Quality's (CEQ) regulations for implementing the procedural provisions of NEPA, the Bureau of Reclamation (Reclamation) proposes to prepare a draft EIS that analyzes effects associated with construction of the AVC, a proposed feature of the Fryingpan-Arkansas (Fry-Ark) Project, and the issuance of an Excess Capacity Master Contract to Southeastern Colorado Water Conservancy District (Southeastern). The proposed Federal action is to construct the pipeline to provide treated water to the service area in southeastern Colorado. Towns in the service area need to construct new or improved water treatment systems, supplement their current water supply, and/or purchase other water supplies to replace poor quality water. Some also need more water to meet demands of a growing population. The proposed Federal action associated with the Excess Capacity Master Contract is to issue a long-term contract to Southeastern for storage of non-Fry-Ark Project water in Pueblo Reservoir, a feature of the Fry-Ark Project. The water would be used by several water providers within Southeastern's boundaries.

DATES: Written or e-mailed comments will be accepted through September 13, 2010. Public scoping meetings will be held in August 2010. See the Supplemental Information section for dates and locations of these meetings.

ADDRESSES: Written comments and requests to be added to the mailing list may be submitted to Bureau of Reclamation, Dakotas Area Office, Attention: J. Signe Snortland, P.O. Box 1017, Bismarck, ND 58502.

FOR FURTHER INFORMATION CONTACT: J. Signe Snortland, telephone (701) 221–1278; facsimile (701) 250–4326. You may submit comments, requests, and/or other information by e-mail to *jsnortland@usbr.gov.*

SUPPLEMENTARY INFORMATION:

Dates of Public Scoping Meetings

- August 16, 2010, 6:30 p.m.–8 p.m., Salida, CO
- August 17, 2010, 6:30 p.m.–8 p.m., La Junta, CO
- August 18, 2010, 6:30 p.m.–8 p.m., Lamar, CO
- August 19, 2010, 1 p.m.–3 p.m., Fountain, CO
- August 19, 2010, 6:30 p.m.–8 p.m., Pueblo, CO

Locations of Public Scoping Meetings

- Salida Community Center—305 F Street, Salida, CO 81201
- Koshare Indian Museum—115 West 18th Street, La Junta, CO 81050–3302
- Lamar Community Center—610 South 6th Street, Lamar, CO 81052
- Lorraine Education and Community Center—301 E. Iowa Avenue, Fountain, CO 80817
- Southeastern Colorado Water Conservancy District—31717 United Avenue, Pueblo, CO 81001

Meeting facilities are accessible to people with disabilities. People needing special assistance to attend and/or participate should contact Kara Lamb at (970) 962–4326, Bureau of Reclamation, Eastern Colorado Area Office, as soon as possible. To allow sufficient time to process special requests, please call no later than one week before the public meeting of interest.

Background Information

The AVC, an authorized feature of the Fry-Ark Project, would transport water about 135 miles east from Pueblo Dam along the lower Arkansas River to near Lamar, Colorado. It was not constructed after Fry-Ark was authorized primarily because of the inability of project beneficiaries to repay allocated construction costs. On March 30, 2009, however, the Omnibus Public Land Management Act of 2009 (Pub. L. 111–11) amended the original Fry-Ark authorization. Public Law 111–11 authorized annual appropriations as necessary for construction of the AVC, and included a cost sharing plan. Construction costs would be paid from Federal appropriations, with 65 percent non-reimbursable and 35 percent reimbursable from other sources. These other sources include crediting revenues from Fry-Ark Project excess capacity and exchange contracts and payments from the local beneficiaries if the AVC would be completed. Approximately 40 municipalities or water districts have expressed interest in participating in the AVC Project.

Recently, water users in the Lower Arkansas Valley have expressed renewed interest in the AVC due to higher water treatment costs because of poor groundwater quality and changes to the Safe Drinking Water Act. The Colorado Water Conservation Board and State Legislature approved a $60.6 million loan to meet part of the local share of AVC Project cost. In 2009, the Environmental Protection Agency awarded Southeastern a State and Tribal Assistance Grant to begin project planning. Southeastern, a cooperating agency for the draft EIS, has assumed an administrative role, including securing grants and loans for local funding, supporting legislation, and working with project beneficiaries.

The proposed Excess Capacity Master Contract is being pursued by Southeastern to provide about 28,200 acre-feet of excess capacity storage in Pueblo Reservoir for entities within its boundaries in the Upper Arkansas basin, Lower Arkansas basin, and Fountain Creek basin, including AVC participants. This excess capacity storage space would be available for use by participating entities. Non-Fry-Ark Project water stored in Fry-Ark reservoirs would be subject to spill priorities in accordance with a proposed contract between the United States and Southeastern.

Reclamation has scheduled five scoping meetings to determine potentially significant issues, alternatives, and impacts to be considered in the draft EIS. Through these meetings, Reclamation is inviting agencies, tribes, non-governmental organizations, and the public to participate in an open exchange of information and to provide comments on the proposed scope of the EIS.

Preliminary Identification of Relevant Environmental Issues

Reclamation invites you to comment on the following potentially significant issues thought to be of widespread public interest about the proposed Federal action. We encourage comments about other potentially significant issues that you believe should be addressed in the draft EIS. This list is preliminary and is intended to facilitate public comment.

- Short-term and long-term impacts on water quality in the Arkansas River from reduced stream flow
- Changes in storage levels and water quality at Pueblo Reservoir due to AVC and Excess Capacity Master Contract operations and potential contributions to flooding
- Relevant cumulative environmental impacts to the Arkansas River and Pueblo Reservoir from past, present, and reasonably foreseeable future actions

- Water quantity associated with AVC and Excess Capacity Master Contract operations and climate change
- Arkansas River Compact, change in water quantity at the Colorado/Kansas state border
- Aquatic communities and habitats in the lower Arkansas River, particularly downstream of Pueblo Reservoir
- Changes in Arkansas River flow upstream from Pueblo Reservoir
- Changes in aquifer and groundwater levels and soil saturation as a result of altered well use and pumping
- Water-based recreation, such as changes to fishing and boating and other river-associated activities, such as hiking and observation of riparian wildlife
- Water rights and irrigated agriculture, such as impacts from exchange of agricultural water for domestic use by project participants
- Spread of invasive species, such as salt cedar (tamarisk) growth
- Floodplain, wetland, playa, and riparian communities
- Aquatic and terrestrial plants and animals and their habitats, including species that are federally or State-listed as threatened or endangered, proposed, candidate, or of special concern and/or critical habitat
- Social and economic conditions in affected communities associated with repayment responsibility for water provided by the AVC
- Environmental justice, particularly whether or not water delivery activities have a disproportionate adverse effect on minority and low-income populations
- Changes in social and economic conditions from improved domestic water supplies and construction
- Cultural resources such as historic, archaeological, architectural, or traditional properties
- Construction effects on local communities and coordinating the AVC Project with improvements to Highway 50
- Private property: how would the proposed project impact private property
- Compliance with all applicable Federal, State, and local statutes and regulations and with international agreements and required Federal and State environmental permits, consultations, and notifications
- Compliance with all applicable executive orders

Preliminary Alternatives

As required by Council on Environmental Quality (CEQ) implementing regulations (40 CFR 1502.2[e]), a range of reasonable alternatives will be evaluated in detail in the EIS. These alternatives will include No Action and may include alternatives such as development of alternative project configurations, water supplies, and types of water treatment. A preferred alternative has not been identified yet.

Public Disclosure Statement

To assist Reclamation in determining issues related to the proposed Federal action, comments made during formal scoping and later on the draft EIS should be as specific as possible. It is very important that those interested in this proposed Federal action participate by the close of the scoping period so that substantive comments are made available to Reclamation at a time when the agency can meaningfully consider and respond to them.

If you wish to comment, you may mail or e-mail your comments as indicated under the Addresses section. Before including your name, address, phone number, e-mail address, or any other personal identifying information in your comment, you should be aware that your entire comment (including your personal identifying information) may be made available to the public at any time. While you can request in your comment for us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 27, 2010.

Robert Quint,

Acting Deputy Commissioner-Operations, Bureau of Reclamation.

[FR Doc. 2010–18779 Filed 7–29–10; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO921000–L13200000–EL0000, COC–74235]

Notice of Invitation To Participate; Exploration for Coal in Colorado; License Application COC–74235

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: All interested parties are hereby invited to participate with Bowie Resources, LLC, on a pro rata cost-sharing basis, in a program for the exploration of coal deposits owned by the United States of America in lands located in Delta County, Colorado.

DATES: Any party electing to participate in this exploration program must send written notice to Bowie Resources, LLC and the Bureau of Land Management (BLM) as provided in the **ADDRESSES** section below by August 30, 2010 or 10 calendar days after the last publication of this notice in the *Delta County Independent* newspaper, whichever is later. This notice will be published once a week for two consecutive weeks in the *Delta County Independent,* Paonia, Colorado.

ADDRESSES: The exploration plan, as submitted by Bowie Resources, LLC is available for review in the BLM, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215 and the BLM, Uncompahgre Field Office, 2505 S. Townsend Avenue, Montrose, Colorado 81401 during normal business hours (9 a.m. to 4 p.m.), Monday through Friday. Any party electing to participate in this exploration program shall notify the BLM State Director, in writing, at the BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215 and Bowie Resources, LLC, Attn: Art Etter, P.O. Box 483, Paonia, Colorado 81428. The written notice must include a justification for participation and any recommended changes in the exploration plan with specific reasons for such changes.

FOR FURTHER INFORMATION CONTACT: Kurt M. Barton at 303–239–3714, *Kurt_Barton@blm.gov;* or Desty Dyer at 970–240–5302, *Desty_Dyer@blm.gov.*

SUPPLEMENTARY INFORMATION: The authority for the notice is section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976 and the regulations adopted as 43 CFR part 3410. The purpose of the exploration program is to gain additional geologic knowledge of the coal underlying the exploration area for the purpose of assessing the reserves contained in a potential lease. The Federal coal resources are located in Delta County, Colorado.

T. 12 S., R. 91 W., 6th P.M.,
Sec. 29, S1/2;
Sec. 31, Lots 12 to 26, inclusive;
Sec. 32, All;
Sec. 33, W1/2NW1/4.
T. 12 S., R. 92 W., 6th P.M.
Sec. 36, S1/2.
T. 13 S., R. 91 W., 6th P.M.
Sec. 5, Lot 3, inclusive, N1/2SW1/4, and SW1/4SW1/4.

These lands contain 2,200 acres, more or less.

The proposed exploration program will be conducted pursuant to an exploration plan to be approved by the BLM. The plan may be modified to

accommodate the legitimate exploration needs of persons seeking to participate.

Authority: 43 CFR 3410.2–1(c)(1).

Helen Hankins,

State Director.

[FR Doc. 2010–18757 Filed 7–29–10; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLID9570000.LL14200000.BJ0000]

IDAHO: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the 1868 left bank meanders of the Snake River in section 28, and the subdivision of sections 28 and 29, T. 1 S., R. 2 W., of the Boise Meridian, Idaho, Group Number 1281, was accepted April 7, 2010.

The plat representing the dependent resurvey of a portion of the subdivision of section 1, and a metes-and-bounds survey of lot 7, in sec. 1, T. 4 N., R. 17 E., Boise Meridian, Idaho, Group Number 1291, was accepted May 7, 2010.

The plat constituting the entire survey record of the dependent resurvey of portions of the First Standard Parallel North and the subdivision of sec. 36, T. 5 N., R. 17 E., Boise Meridian, Idaho, Group Number 1292, was accepted May 7, 2010.

The plat constituting the entire survey record of the dependent resurvey of a portion of the south boundary, T. 2 N., R. 43 E., Boise Meridian, Idaho, Group Number 1297, was accepted June 10, 2010.

These surveys were executed at the request of the Bureau of Reclamation to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey of former Tract G in section 12 (now Tracts 37 and 38), and the metes-and-bounds survey of Tracts 37 and 38, T. 8 S., R. 24 E., of the Boise Meridian, Idaho, Group Number 1279, was accepted May 13, 2010.

The plat representing the dependent resurvey of former Tract E in section 32 (now Tracts 39 and 40) and former Tract F in section 32 (now Tracts 41 and 42), and the metes-and-bounds survey of Tracts 39 through 42, T., 8 S., R., 24 E., of the Boise Meridian, Idaho, Group Number 1279, was accepted May 24, 2010.

The plat representing the dependent resurvey of portions of the subdivisional lines, the subdivision of section 34, and former Tract E in section 34 (now Tracts 37 and 38), and a metes-and-bounds survey of Tracts 37 and 38, T. 8 S., R. 21 E., of the Boise Meridian, Idaho, Group Number 1280, was accepted May 24, 2010.

This survey was executed at the request of the Bureau of Indian Affairs to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey of a portion of the west boundary of T. 46 N., R. 4 W., Boise Meridian, Idaho, Group Number 1299, was accepted April 6, 2010.

July 6, 2010.

Stanley G. French,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 2010–18727 Filed 7–29–10; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA 942000 L57000000 BX0000]

Filing of Plats of Survey: California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of lands described below are scheduled to be officially filed in the Bureau of Land Management California State Office, Sacramento, California, on the next business day following the plat acceptance date.

ADDRESSES: A copy of the plats may be obtained from the Land Office at the California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825, upon required payment.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Geographic Services, Bureau of Land Management, California State Office, 2800 Cottage Way, Room W–1623, Sacramento, California 95825, (916) 978–4310.

SUPPLEMENTARY INFORMATION: These surveys were executed to meet the administrative needs of various agencies; the Bureau of Land Management, Bureau of Indian Affairs, National Park Service, US Forest Service or the Army Corps of Engineers. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the California State Director, Bureau of Land Management, Sacramento, California. The lands surveyed are:

Humboldt Meridian, California

T. 3 S., R. 2 W., accepted September 12, 2003.
T. 3 S., R. 2 E., accepted September 29, 2003.
T. 4 S., R. 7 E., accepted March 15, 2004.
T. 5 S., R. 7 E., accepted April 7, 2004.
T. 5 N., R. 7–8 E., accepted September 28, 2004.
T. 3 N., R.8 E., accepted December 13, 2004.
T. 10 N., R. 4 E., accepted February 23, 2005.
T. 4 N., R. 2 W., accepted March 10, 2005.
T. 4 N., R. 4 E., accepted June 22, 2005.
T. 9 N., R 3 E., accepted September 15, 2005.
T. 10 N., R. 3 E., accepted September 20, 2005.
T. 16 N., R. 7 E., accepted September 29, 2005.
T. 4 S., R.2 E., accepted April 5, 2006.
T. 10 N., R. 3 E., accepted September 14, 2006.
T. 10 N., R. 3 E., accepted September 14, 2006.
T. 11 N., R. 3 E., accepted September 14, 2006.
T. 10 N., R.6 E., accepted October 2, 2006.
T. 9 N., R. 4 E., accepted November 7, 2006.
T. 12 N., R. 6 E., accepted December 4, 2006.
T. 14 N., R. 6 E., accepted December 11, 2006.
T. 13 N., R.1 E., accepted January 8, 2007.
T. 11 N., R. 6 E., accepted February 14, 2007.
T. 11 N., R. 3 E., accepted April 26, 2007.
T. 11 N., R. 3 E., accepted May 2, 2007.
T. 6 N., R.1 W., accepted May 3, 2007.
T. 7 N., R.1 E., accepted May 7, 2007.
T. 8 N., R.1 W., accepted May 7, 2007.
T. 3 S., R. 1 W., accepted March 6, 2008.
T. 13 N., R. 1 E., accepted March 20, 2008.
T. 9 N., R. 4 E., accepted April 8, 2008
T. 6 N., R. 1 W., accepted July 11, 2008.
T. 4 N., R. 2 W., accepted August 4, 2008.
T. 5 N., R. 7 E., accepted September 9, 2008.
T. 5 N., R. 8 E., accepted September 9, 2008.
T. 9 N., R. 4 E., accepted March 17, 2009.
T. 11 N., R. 2 E., accepted March 26, 2009.
T. 11 N., R. 3 E., accepted March 31, 2009.
T. 5 S., R. 7 E., accepted January 7, 2010.
T. 11 N., R. 3 E., accepted March 3, 2010.

Mount Diablo Meridian, California

T. 10 N., R. 18 E., accepted September 30, 2002.
T. 25 N., R. 17 E., accepted November 14, 2002.
T. 33 N., R. 5 W., accepted November 14,

2002.
T. 21 N., R. 9 E., accepted November 18, 2002.
T. 19–20 N., R. 10 E., accepted November 22, 2002.
T. 11 S., R. 20 E., accepted November 25, 2002.
T. 30 N., R. 11 E., accepted December 17, 2002.
T. 6 N., R. 12 E., accepted December 24, 2002.
T. 10 S., R. 34 E., accepted January 31, 2003.
T. 22 N., R. 8 W., accepted January 31, 2003.
T. 5 N., R. 25 E., accepted February 21, 2003.
T. 36 N., R. 8 W., accepted March 17, 2003.
T. 39 N., R. 5 E., accepted March 17, 2003.
T. 1 S., R. 14 E., accepted March 20, 2003.
T. 32 N., R. 5 W., accepted April 4, 2003.
T. 5 N., R. 31 E., accepted July 10, 2003.
T. 19 S., R. 34 E., accepted August 20, 2003.
T. 19 S., R. 35 E., accepted August 20, 2003.
T. 20 S., R. 34 E., accepted August 20, 2003.
T. 20 S., R. 36 E., accepted August 20, 2003.
T. 21 S., R. 32 E., accepted August 20, 2003.
T. 21 S., R. 33 E., accepted August 20, 2003.
T. 21 S., R. 35 E., accepted August 20, 2003.
T. 21 S., R. 36 E., accepted August 20, 2003.
T. 21 S., R. 37 E., accepted August 20, 2003.
T. 22 S., R. 35 E., accepted August 20, 2003.
T. 22 S., R. 37 E., accepted August 20, 2003.
T. 23 S., R. 37 E., accepted August 20, 2003.
T. 25 S., R. 33 E., accepted August 20, 2003.
T. 25 S., R. 34 E., accepted August 20, 2003.
T. 25 S., R. 35 E., accepted August 20, 2003.
T. 25 S., R. 37 E., accepted August 20, 2003.
T. 27 S., R. 34 E., accepted August 20, 2003.
T. 29 N., R. 15 E., accepted August 20, 2003.
T. 9 S., R. 22 E., accepted September 10, 2003.
T. 16 N., R. 9 E., accepted September 29, 2003.
T. 20 S., R. 31 E., accepted September 29, 2003.
T. 21 S., R. 32 E., accepted September 29, 2003.
T. 22 S., R. 32 E., accepted September 29, 2003.
T. 31 N., R. 13 E., accepted September 29, 2003.
T. 31 N., R. 13 E., accepted September 29, 2003.
T. 31 N., R. 5 E., accepted September 29, 2003.
T. 9 N., R. 13 W., accepted September 29, 2003.
T. 20 S., R. 31 E., accepted October 21, 2003.
T. 5 N., R. 21 E., accepted November 3, 2003.
T. 25 S., R. 36–37 E., accepted November 7, 2003.
T. 2 N., R. 25 E., accepted November 7, 2003.
T. 9 N., R. 20 E., accepted November 24, 2003.
T. 9 N., R. 21 E., accepted December 12, 2003.
T. 12 S., R. 24 E., accepted December 19, 2003.
T. 4 S., R. 27 E., accepted January 28, 2004.
T. 4 N., R. 26 E., accepted January 29, 2004.
T. 20 S., R. 27 E., accepted February 12, 2004.
T. 9 S., R. 20 E., accepted February 24, 2004.
T. 21 S., R. 30 E., accepted February 24, 2004.
T. 20 N., R. 11 W., accepted April 16, 2004.
T. 16 N., R. 9 W., accepted April 23, 2004.
T. 16 N., R. 8 W., accepted April 29, 2004.
T. 4 S., R. 18 E., accepted May 6, 2004.
T. 36 N., R. 1 E., accepted May 20, 2004.
T. 36 N., R. 2 E., accepted May 20, 2004.
T. 4 S., R. 18 E., accepted May 24, 2004.
T. 39 N., R. 4 E., accepted June 9, 2004.
T. 38 N., R. 4 E., accepted June 9, 2004.
T. 18 S., R. 2 E., accepted July 8, 2004.
T. 19 S., R. 3 E., accepted July 28, 2004.
T. 19 N., R. 18 E., accepted August 5, 2004.
T. 19 N., R. 18 E., accepted August 5, 2004.
T. 31 N., R. 11 W., accepted August 12, 2004.
T. 46 N., R. 5 E., accepted August 19, 2004.
T. 16 S., R. 38 E., accepted September 16, 2004.
T. 16 N., R. 5 E., accepted September 20, 2004.
T. 9 N., R. 20 E., accepted September 20, 2004.
T. 20 S., R. 31 E., accepted November 18, 2004.
T. 18 N., R. 10 W., accepted December 20, 2004.
T. 43 N., R. 17 E., accepted December 20, 2004.
T. 30 N., R. 14 E., accepted March 4, 2005.
T. 25 S., R. 6 E., accepted March 17, 2005.
T. 35 N., R. 1 W., accepted April 11, 2005.
T. 40 N., R. 4 W., accepted April 11, 2005.
T. 34 N., R. 15 E., accepted June 2, 2005.
T. 34 N., R. 16 E., accepted June 2, 2005.
T. 35 N., R. 16 E., accepted June 2, 2005.
T. 46 N., R. 5 E., accepted July 13, 2005.
T. 29 S., R. 22 E., accepted July 14, 2005.
T. 16 N., R. 10 E., accepted July 28, 2005.
T. 40 N., R. 17 E., accepted July 28, 2005.
T. 31 S., R. 46 E., accepted August 4, 2005.
T. 31 S., R. 47 E., accepted August 4, 2005.
T. 32 S., R. 47 E., accepted August 4, 2005.
T. 32 N., R. 12 W., accepted August 4, 2005.
T. 8 S., R. 33 E., accepted August 8, 2005.
T. 42 N., R. 3 E., accepted August 11, 2005.
T. 42 N., R. 12 E., accepted August 24, 2005.
T. 46 N., R. 16 E., accepted August 29, 2005.
T. 41 N., R. 3 E., accepted August 31, 2005.
T. 47 N., R. 16 E., accepted August 31, 2005.
T. 18 N., R. 7 W., accepted September 13, 2005.
T. 37 N., R. 1 W., accepted September 13, 2005.
T. 10 S., R. 19 E., accepted September 14, 2005.
T. 8 S., R. 29 E., accepted September 16, 2005.
T. 27 S., R. 36 E., accepted September 21, 2005.
T. 45 N., R. 7 W., accepted September 29, 2005.
T. 8 S., R. 23 E., accepted September 30, 2005.
T. 9 N., R. 16 E., accepted January 11, 2006.
T. 21 S., R. 42 E., accepted January 12, 2006.
T. 30 N., R. 11 E., accepted February 6, 2006.
T. 26 N., R. 17 E., accepted February 7, 2006.
T. 38 N., R. 11 E., accepted February 16, 2006.
T. 26 S., R. 33 E., accepted April 17, 2006.
T. 29 S., R. 12 E., accepted April 17, 2006.
T. 33 N., R. 5 W., accepted May 2, 2006.
T. 32 S., R. 23 E., accepted May 5, 2006.
T. 32 S., R. 24 E., accepted May 10, 2006.
T. 30 N., R. 12 E., accepted June 6, 2006.
T. 4 S., R. 31 E., accepted June 16, 2006.
T. 2 N., R. 18 E., accepted July 31, 2006.
T. 22 S., R. 38 E., accepted August 8, 2006.
T. 12 S., R. 2 E., accepted August 21, 2006.
T. 1 S., R. 1 W., accepted August 21, 2006.
T. 30 N., R. 12 E., accepted September 18, 2006.
T. 26 N., R. 16 E., accepted September 20, 2006.
T. 9 S., R. 34 E., accepted September 21, 2006.
T. 8 N., R. 17 E., accepted September 26, 2006.
T. 8 N., R. 18 E., accepted September 26, 2006.
T. 8 N., R. 19 E., accepted September 26, 2006.
T. 9 N., R. 17 E., accepted September 26, 2006.
T. 9 N., R. 18 E., accepted September 26, 2006.
T. 7 S., R. 20 E., accepted October 10, 2006.
T. 18 N., R. 10 W., accepted October 10, 2006.
T. 30 N., R. 17 E., accepted November 7, 2006.
T. 26 S., R. 34 E., accepted November 16, 2006.
T. 4 S., R. 29 E., accepted November 20, 2006.
T. 22 S., R. 38 E., accepted November 22, 2006.
T. 19 S., R. 37 E., accepted December 4, 2006.
T. 8 S., R. 32 E., accepted December 14, 2006.
T. 21 N., R. 15 W., accepted December 28, 2006.
T. 23 N., R. 15 E., accepted January 10, 2007.
T. 21 N., R. 8 W., accepted February 6, 2007.
T. 35 N., R. 4 E., accepted April 19, 2007.
T. 3 S., R. 27 E., accepted April 27, 2007.
T. 10 S., R. 23 E., accepted May 9, 2007.
T. 4 N., R. 18 E., accepted May 15, 2007.
T. 10 N., 17 E., accepted June 11, 2007.
T. 11 N., R. 10 E., accepted June 11, 2007.
T. 42 N., R. 11 E., accepted July 12, 2007.
T. 3 S., R. 27 E., accepted August 15, 2007.
T. 18 N., R. 10 W., accepted August 23, 2007.
T. 5 S., R. 30 E., accepted, August 27, 2007.
T. 43 N., R. 13 E., accepted August 27, 2007.
T. 22 S., R. 30 E., accepted September 13, 2007.
T. 22 S., R. 29 E., accepted, September 17, 2007.
T. 4 N., R. 14 E., accepted September 25, 2007.
T. 8 S., R. 21 E., accepted October 1, 2007.
T. 13 S., R. 34 E., accepted October 3, 2007.
T. 13 N., R. 9 E., accepted October 11, 2007.
T. 2 S., R. 32 E., accepted November 5, 2007.
T. 1 N., R. 29 E., accepted November 19, 2007.
T. 1 N., R. 30 E., accepted November 19, 2007.
T. 1 S., R. 29 E., accepted November 20, 2007.
T. 4 N., R. 17 E., accepted December 4, 2007.
T. 16 S., R. 28 E., accepted December 19, 2007.
T. 33 N., R. 6 W., accepted January 24, 2008.
T. 36 N., R. 6 E., accepted January 24, 2008.
T. 27 S., R. 10 E., accepted March 4, 2008.
T. 10 N., R. 8 W., accepted March 7, 2008.
T. 12 N., R. 17 W., accepted April 1, 2008.
T. 24 N., R. 13 W., accepted April 3, 2008.
T. 24 N., R. 14 W., accepted April 3, 2008.
T. 6 S., R. 1 W., accepted July 8, 2008.
T. 38 N., R. 11 E., accepted August 20, 2008.
T. 42 N., R. 10 E., accepted August 20, 2008
T. 24 N., R. 13 W., accepted August 28, 2008
T. 37 N., R. 14 E., accepted September 9, 2008.
T. 14 N., R. 9 W., accepted October 11, 2009.
T. 9 S., R. 22 E., accepted November 24,

2009.
T. 7 S., R. 30 E., accepted December 17, 2009.
T. 1 N., R. 16 E., accepted January 22, 2009.
T. 29 S., R. 41 E., accepted February 25, 2009.
T. 23 N., R. 12 W., accepted March 3, 2009.
T. 2 N., R. 16 E., accepted March 23, 2009.
T. 46 N., R. 16 E., accepted April 29, 2009.
T. 45 N., R. 16 E., accepted April 30, 2009.
T. 26 S., R. 33 E., accepted May 7, 2009.
T. 25 S., R. 33 E., accepted May 7, 2009.
T. 25 S., R. 33 E., accepted May 7, 2009.
T. 37 N., R. 15 E., accepted May 18, 2009.
T. 38 N., R. 8 E., accepted September 9, 2009.
T. 38 N., R. 9 E., accepted September 9, 2009.
T. 31 N., R. 5 W., accepted September 29, 2009.
T. 16 N., R. 10 E., accepted October 6, 2009.
T. 25 N., R. 17 E., accepted December 8, 2009.
T. 25 S., R. 9 E., accepted January 7, 2010.
T. 21 S., R. 31 E., accepted January 8, 2010.
T. 29 S., R. 20 E., accepted January 25, 2010.
T. 21 S., R. 29 E., accepted January 26, 2010.
T. 21 S., R. 30 E., accepted January 26, 2010.
T. 21 S., R. 31 E., accepted January 26, 2010.
T. 22 S., R. 29 E., accepted January 26, 2010.
T. 22 S., R. 30 E., accepted January 26, 2010.
T. 22 S., R. 31 E., accepted January 26, 2010.
T. 23 S., R. 31 E., accepted January 26, 2010.
T. 6 N., R. 7 E., accepted January 27, 2010.
T. 33 N., R. 6 W., accepted March 26, 2010.
T. 18 S., R. 11 E., accepted April 13, 2010.
T. 10 N., R. 17 E., accepted June 9, 2010.
T. 3 S., R. 19 E., accepted June 15, 2010.
T. 33 N., R. 5 W., accepted June 18, 2010.
T. 15 N., R. 12 W., accepted June 29, 2010.

San Bernardino Meridian, California

T. 6 S., R. 8 E., accepted July 31, 2002.
T. 5 S., R. 8 E., accepted August 22, 2002.
T. 5 N., R. 24 E., accepted November 12, 2002.
T. 5 N., R. 25 E., accepted November 12, 2002.
T. 6 N., R. 24 E., accepted November 12, 2002.
T. 1 S., R. 19 W., accepted March 14, 2003.
T. 11 S., R. 22 E., accepted March 20, 2003.
T. 9 S., R. 22 E., accepted March 20, 2003.
T. 2 S., R. 18 W., accepted March 28, 2003.
T. 3 N., R. 12 W., accepted April 25, 2003.
T. 10 N., R. 32 W., accepted May 29, 2003.
T. 5–6 S., R. 1–2 E., accepted June 18, 2003.
T. 5 S., R. 2 E., accepted June 18, 2003.
T. 17 S., R. 4 W., accepted August 20, 2003.
T. 17 S., R. 1 E., accepted September 12, 2003.
T. 1 S., R. 15 W., accepted September 29, 2003.
T. 1 S., R. 19 W., accepted October 29, 2003.
T. 1 N—1 S., R. 18 W., accepted October 29, 2003.
T. 1 S., R. 18 W., accepted December 31, 2003.
T. 11 N., R. 28 W., accepted January 22, 2004.
T. 26 N., R. 5 E., accepted February 27, 2004.
T. 27 N., R. 5 E., accepted February 27, 2004.
T. 14 N., R. 13 E., accepted April 27, 2004.
T. 12 S., R. 11 E., accepted August 5, 2004.
T. 3 N., R. 2 E., accepted August 13, 2004.
T. 3 N., R. 3 E., accepted August 13, 2004.
T. 1 S., R. 19 W., accepted September 24, 2004.
T. 4 S., R. 5 E., accepted January 31, 2005.
T. 14 N., R. 13 E., accepted March 16, 2005.
T. 15 N., R. 8 E., accepted March 16, 2005.
T. 4 S., R. 5 E., accepted March 31, 2005.
T. 4 S., R. 5 E., accepted April 11, 2005.
T. 10 S., R. 26 W., accepted April 27, 2005.
T. 11 S., R. 22 E., accepted May 5, 2005.
T. 6 S., R. 4 W., accepted May 10, 2005.
T. 1 N., R. 1 W., accepted May 12, 2005.
T. 12 N., R. 1 E., accepted August 4, 2005.
T. 15 N., R. 8 E., accepted August 4, 2005.
T. 16 N., R. 7 E., accepted August 4, 2005.
T. 9–10 S., R. 4 E., accepted August 18, 2005.
T. 7 S., R. 4 W., accepted August 23, 2005.
T. 6 S., R. 4 W., accepted August 24, 2005.
T. 7 S., R. 9 E., accepted January 10, 2006.
T. 7 S., R. 8 E., accepted January 11, 2006.
T. 18 S., R. 2 E., accepted January 18, 2006.
T. 5 S., R. 4 E., accepted February 6, 2006.
T. 7 S., R. 8 E., accepted February 8, 2006.
T. 4 S., R.4 E., accepted June 5, 2006.
T. 5 S., R. 4 E., accepted July 11, 2006.
T. 16 S., R. 1 E., accepted September 27, 2006.
T. 3 S., R. 5 E., accepted October 10, 2006.
T. 10 N., R. 25 W., accepted October 10, 2006.
T. 7 S., R. 8 E., accepted November 28, 2006.
T. 9 S., R. 2 W., accepted December 7, 2006.
T. 26 N., R. 5 E., accepted March 6, 2007.
T. 1 S., R. 4 E., accepted March 13, 2007.
T. 3 S., R. 5 E., accepted March 19, 2007.
T. 16 S., R. 6 E., accepted April 24, 2007.
T. 9 N., R. 20 W., accepted May 3, 2007.
T. 10 S., R. 4 E., accepted June 1, 2007.
T. 15 S., R. 16 E., accepted June 14, 2007.
T. 14 N., R. 13 E., accepted June 25, 2007.
T. 4 S., R. 5 E., accepted June 26, 2007.
T. 3 S., R. 5 E., accepted August 16, 2007.
T. 6 S., R. 22 E., accepted September 17, 2007.
T. 4 S., R. 5 E., accepted September 24, 2007.
T. 9 N., R. 13 W., accepted September 26, 2007.
T. 10 N., R. 36 W., accepted February 7, 2008.
T. 2 N., R. 4–5 W., accepted March 21, 2008.
T. 5 S., R. 4 E., accepted May 8, 2008.
T. 9 N., R. 13 W., accepted May 8, 2008.
T. 14 S., R. 12 E., accepted May 29, 2008.
T. 16 S., R. 22 E., accepted September 19, 2008.
T. 14 S., R. 2 E., accepted September 22, 2008.
T. 14 S., R. 2 E., accepted November 4, 2009.
T. 6 S., R. 13 E., accepted March 2, 2009.
T. 6 S., R. 12 E., accepted March 2, 2009.
T. 5 S., R. 13 E., accepted March 2, 2009.
T. 5 S., R. 12 E., accepted March 2, 2009.
T. 5 S., R. 12 W., accepted December 16, 2009.
T. 5 S., R. 12 W., accepted December 17, 2009.
T. 3 S., R. 4 E., accepted March 23, 2010.
T. 10 N., R. 24 W., accepted May 19, 2010.

Authority: 43 U.S.C., Chapter 3.

Dated: July 16, 2010.

Lance J. Bishop,

Chief, Branch of Geographic Services.

[FR Doc. 2010–18729 Filed 7–29–10; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-IA-2010-N154]
[96300-1671-0000-P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The Both laws require that we invite public comment before issuing these permits.

DATES: We must receive requests for documents or comments on or before August 30, 2010. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by August 30, 2010.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358-2280; or e-mail *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358-2104 (telephone); (703) 358-2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How Do I Request Copies of Applications or Comment on Submitted Applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice,

and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see DATES) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. 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.

II. Background

To help us carry out our conservation responsibilities for affected species, the Endangered Species Act of 1973, section 10(a)(1)(A), as amended (16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and our[Doc the Code of Federal Regulations (CFR) at 50 CFR 18 require that we invite public comment before final action on these permit applications. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: Lionshare Farm Zoological, Greenwich, CT; PRT-17384A

The applicant requests a permit to import 10 live captive-born Mhorr gazelles (*Nanger dama mhorr*) and three live captive-born Cuvier's gazelles (*Gazella cuvieri*) from Mountain View Conservation, British Columbia, Canada, for the purpose of enhancement of the survival of the species.

Applicant: Jackson Zoological Park, Jackson, MS; PRT-13163A

The applicant requests a permit to export 1 live captive-born Malayan tapir (*Tapirus indicus*) to Africam Safaris, Puebla, Mexico, for the purpose of enhancement of the survival of the species.

Applicant: Albert Spidle, Bellville, TX; PRT-10402A

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

B. Endangered Marine Mammals and Marine Mammals

Applicant: Vince Bacalan, American University, Washington, D.C.; PRT-14932A

The applicant requests a permit to acquire samples of bone of Florida manatee (*Trichechus manatus*) from various U.S. institutions and museums for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 2–year period.

Applicant: North Slope Borough Department of Wildlife Management, Barrow, AK; PRT-134907

The applicant requests an amendment to the permit for a change in investigators and to allow additional sampling for hair from polar bears (*Ursus maritimus*) for the purpose of scientific research. This notification covers activities to be conducted by the applicant over the remainder of the 5–year permit.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: July 23, 2010

Brenda Tapia

Program Analyst, Branch of Permits, Division of Management Authority

[FR Doc. 2010–18751 Filed 7–29–10; 8:45 am]

BILLING CODE S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-IA-2010-N153]

[96300-1671-0000-P5]

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species and marine mammals.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703-358-2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703-358-2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

Endangered Species

Permit number	Applicant	Receipt of application *Federal Register* notice	Permit issuance date
09009A	Luis Federico Carlo Mendoza	75 FR 22162, April 27, 2010	July 2, 2010

Permit number	Applicant	Receipt of application *Federal Register* notice	Permit issuance date
14520A	Katherine Lavie Fraser	75 FR 34766; June 18, 2010	July 21, 2010
14522A	Patrick B. Carrier	75 FR 34766; June 18, 2010	July 21, 2010

Marine Mammals

Permit number	Applicant	Receipt of application *Federal Register* notice	Permit issuance date
03086A	Robert F. Rockwell, American Museum of Natural History	75 FR 14627; March 26, 2010	July 21, 2010
04400A	Sea Studios Foundation	75 FR 14627; March 26, 2010	July 23, 2010

Dated: July 23, 2010.

Brenda Tapia,

Program Analyst, Branch of Permits, Division of Management Authority.

[FR Doc. 2010–18754 Filed 7–29–10; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–466 and 731–TA–1162 (Final)]

Wire Decking From China; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) and (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports of wire decking from China, provided for in subheadings 9403.90.80, 7217.10, 7217.20, 7326.20, 7326.90, and 9403.20.00 of the Harmonized Tariff Schedule of the United States, that the U.S. Department of Commerce has determined are subsidized and sold in the United States at less than fair value ("LTFV").[2]

Background

The Commission instituted these investigations effective June 5, 2009, following receipt of a petition filed with the Commission and Commerce by AWP Industries, Inc., Frankfort, KY; ITC Manufacturing, Inc., Phoenix, AZ; J&L Wire Cloth, Inc., St. Paul, MN; Nashville Wire Products Mfg. Co., Inc., Nashville, TN; and Wireway Husky Corp., Denver, NC. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of wire decking from China were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and dumped within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on January 28, 2010 (75 FR 4584). The hearing was held in Washington, DC, on May 27, 2010, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 26, 2010. The views of the Commission are contained in USITC Publication 4172 (July 2010), entitled *Wire Decking from China: Investigation Nos. 701–TA–466 and 731–TA–1162 (Final).*

Issued: July 26, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–18714 Filed 7–29–10; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioners Charlotte R. Lane and Irving A. Williamson dissented and determined that an industry in the United States is materially injured by reason of imports of wire decking from China.

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–731]

In the Matter of Certain Toner Cartridges and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 28, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Canon Inc., of Japan; Canon U.S.A., Inc. of Lake Success, New York; and Canon Virginia, Inc. of Newport News, Virginia. A letter supplementing the complaint was filed on July 15, 2010. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain toner cartridges and components thereof by reason of infringement of certain claims of U.S. Patent No. 5,903,803 ("the '803 patent") and U.S. Patent No. 6,128,454 ("the '454 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for

this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Benjamin Levi, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2781.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 26, 2010, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain toner cartridges or components thereof that infringe one or more of claims 128–130, 132, 133, and 139–143 of the '803 patent; and claims 24–30 of the '454 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Canon Inc., 30–2, Shimomaruko 3-chome, Ohta-ku, Tokyo 146–8501 Japan.

Canon U.S.A., Inc., One Canon Plaza, Lake Success, NY 11042, Canon Virginia, Inc., 12000 Canon Boulevard, Newport News, VA 23606.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Ninestar Image Int'l, Ltd., No. 63, Mingzhubei Road, Zhuhai, China 519075.

Ninestar Technology Co., Ltd., No. 63, Mingzhubei Road, Zhuhai, China 519075.

Ninestar Management Co., Ltd., No. 63, Mingzhubei Road, Zhuhai, China 519075, Zhuhai Seine Technology Co., Ltd., No. 63, Mingzhubei Road, Zhuhai, China 519075.

Seine Image Int'l Co., Ltd., 9/F Unit 18, New Commerce Centre, No. 9 On Lai Str., Shatin, Hong Kong.

Ninestar Image Co., Ltd., 9/F Unit 18, New Commerce Centre, No. 9 On Lai Str., Shatin, Hong Kong.

Ziprint Image Corp., 19805 Harrison Avenue, Walnut, CA 91789.

Nano Pacific Corp., 377 Swift Avenue, South San Francisco, CA 94080.

Ninestar Tech. Co., Ltd., 17950 East Ajax Circle, City of Industry, CA, 91748.

Town Sky, Inc., 5 S. Linden Avenue, Suite 4, South San Francisco, CA, 94080.

ACM Technologies, Inc., 2535 Research Drive, Corona, CA 92882.

LD Products, Inc., 2500 Grand Avenue, Long Beach, CA 90815.

Printer Essentials.com, Inc., 5190 Neil Road, Ste. 205, Reno, NV 89502.

XSE Group, Inc., d/b/a Image Star, 35 Philmack Drive, Middletown, CT. 06457

Copy Technologies, Inc., d/b/a ITM Corporation, 130 James Aldredge, Blvd. SW., Atlanta, GA 30336.

Red Powers, Inc., d/b/a LaptopTraveller.com, 120 West Grand Avenue #205, Alhambra, CA 91801.

Direct Billing International, Inc., d/b/a OfficeSupplyOutfitters.com, 5910 Sea Lion Place, Suite 100, Carlsbad, CA 92010.

Compu-Imaging, Inc., 8880 N.W. 18th Terrace, Doral, FL 33172.

EIS Office Solutions, Inc., 5803 Sovereign Drive, Suite 214, Houston, TX 77036.

123 Refills, Inc., 4981 Irwindale Avenue, Suite 200, Irwindale, CA 91706.

(c) The Commission investigative attorney, party to this investigation, is Benjamin Levi, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefore is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: July 26, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–18708 Filed 7–29–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–661]

In the Matter of Certain Semiconductor Chips Having Synchronous Dynamic Random Access Memory Controllers and Products Containing Same; Notice of Commission Final Determination of Violation of Section 337; Termination of Investigation; Issuance of Limited Exclusion Order and Cease and Desist Orders

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there is a violation of 19 U.S.C. 1337 in the above-captioned investigation by the respondents in the investigation. To remedy the violation it has found, the Commission has determined to issue a limited exclusion order and to issue cease and desist orders to certain respondents. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Paul M. Bartkowski, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5432. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired

persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Inv. No. 337–TA–661 on December 10, 2008, based on a complaint filed by Rambus, Inc. of Los Altos, California ("Rambus"). 73 FR 75131–2. The complaint, as amended and supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337"), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor chips having synchronous dynamic random access memory controllers and product containing the same by reason of infringement of certain claims of U.S. Patent Nos. 6,470,405 ("the '405 patent"); 6,591,353 ("the '353 patent"); 7,287,109 ("the '109 patent"); 7,117,998 ("the '998 patent); 7,210,016 ("the '016 patent"); 7,287,119 ("the '119 patent"); 7,330,952 ("the '952 patent"); 7,330,953 ("the '953 patent"); and 7,360,050 ("the '050 patent"). The Commission's notice of investigation named the following respondents: NVIDIA Corporation of Santa Clara, California; Asustek Computer, Inc. of Taipei, Taiwan; ASUS Computer International, Inc. of Fremont, California; BFG Technologies, Inc. of Lake Forest, Illinois; Biostar Microtech (USA) Corp. of City of Industry, California; Biostar Microtech International Corp. of Hsin Ten, Taiwan; Diablotek Inc. of Alhambra, California; EVGA Corp. of Brea, California; G.B.T. Inc. of City of Industry, California; Gigabyte Technology Co., Ltd. of Taipei, Taiwan; Hewlett-Packard Co. of Palo Alto, California; MSI Computer Corp. of City of Industry, California; Micro-star International Co., Ltd. of Taipei, Taiwan; Palit Multimedia Inc. of San Jose, California; Palit Microsystems Ltd. of Taipei, Taiwan; Pine Technology Holdings, Ltd. of Hong Kong; and Sparkle Computer Co. of Taipei, Taiwan (referred to collectively as "Respondents").

On July 13, 2009, the Commission issued a notice terminating the '119, '952, '953, and '050 patents and certain claims of the '109 patent from the investigation.

On January 22, 2010, the ALJ issued his Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond ("ID"). The ALJ found that Respondents violated section 337 by importing certain semiconductor chips having synchronous dynamic random access memory controllers and products containing same with respect to various claims of the '405, '353, and '109 patents ("the Barth I patents"). The ALJ determined that there was no violation of section 337 with respect to the asserted claims of the '016 and '998 patents ("the Ware patents").

On March 25, 2010, the Commission determined to review (1) the ID's anticipation and obviousness findings with respect to the Ware patents; (2) the ID's obviousness-type double patenting analysis regarding the asserted Barth I patents; and (3) the ID's analysis of the alleged obviousness of the asserted Barth I patents. The Commission invited briefing on the issues under review and on the issues of remedy, the public interest, and bonding. On May 26, 2010, the Commission requested further briefing on the impact of a license between Rambus and Samsung Electronics Co. on the ALJ's findings and conclusions. On June 22, 2010, the Commission requested further briefing regarding patent exhaustion in light of *Fujifilm Corp.* v. *Benun,* which was issued by the United States Court of Appeals for the Federal Circuit on May 27, 2010.

Having examined the record of this investigation and the submissions filed, the Commission has determined to affirm the ALJ's ID, with certain modifications that are set forth in the Commission's opinion. Accordingly, the Commission has determined that a violation of section 337 has occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain synchronous dynamic random access memory controllers and products containing the same by Respondents with respect to the Barth I patents. To remedy this violation, the Commission has determined to issue a limited exclusion order and cease-and-desist orders against respondents NVIDIA Corp.; Hewlett-Packard Co.; ASUS Computer International, Inc.; Palit Multimedia Inc.; Palit Microsystems Ltd.; MSI Computer Corp.; Micro-Star International; EVGA Corp.; DiabloTek, Inc.; Biostar Microtech Corp.; and BFG Technologies, Inc. The Commission has determined that this relief is not precluded by consideration of the factors set forth in 19 U.S.C. 1337(d), (f). The Commission has determined that the amount of the bond to permit importation during the Presidential review period under 19 U.S.C. 1337(j) is 2.65 percent of the entered value of the subject imports. The investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: July 26, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–18715 Filed 7–29–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Submission for OMB Review; Comment request.

SUMMARY: The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including, among other things, a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Linda Watts Thomas on 202–693–4223 (this is not a toll-free number) and e-mail mail to: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send written comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Employee Benefits Security Administration, Room 10235, Washington, DC 20503, Telephone: 202–395–4816/Fax 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the applicable OMB Control Number (*see* below).

The OMB is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employee Benefits Security Administration.

Type of Review: Revision of a currently approved collection.

Title of Collection: COBRA Notification Requirements—American Recovery and Reinvestment Act of 2009 as amended.

OMB Control Number: 1210–0123.

Frequency: Mandatory.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Cost to Federal Government: $0.

Total Respondents: 649,000.

Total Number of Responses: 15,662,333.

Total Burden Hours: 503,815.

Total Hour Burden Cost (operating/maintaining): $20,717,778.

Description: The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) provides that under certain circumstances participants and beneficiaries of group health plans that satisfy the definition of "qualified beneficiaries" under COBRA may elect to continue group health coverage temporarily following events known as "qualifying events" that would otherwise result in loss of coverage. COBRA provides that the Secretary of Labor (the Secretary) has the authority under section 608 of the Employee Retirement Income Security Act of 1974 (ERISA) to carry out the provisions of Part 6 of title I of ERISA. The Conference Report that accompanied COBRA authorized the Secretary to issue regulations implementing the notice and disclosure requirements of COBRA.

Under the regulatory guidelines, plan administrators are required to distribute notices as follows: a general notice to be distributed to all participants in group health plans subject to COBRA; an employer notice that must be completed by the employer upon the occurrence of a qualifying event; a notice and election form to be sent to a participant upon the occurrence of a qualifying event that might cause the participant to lose group health coverage; an employee notice that may be completed by a qualified beneficiary upon the occurrence of certain qualifying events such as divorce or disability; and, two other notices, one of early termination and the other a notice of unavailability. Also included in the ICR are two model notices that the Department believes will help reduce costs for service providers in preparing and delivering notices to comply with the regulations. For additional information, see related notice published in the **Federal Register** on April 2, 2010 (Vol. 75 page 16841).

Dated: July 26, 2010.

Linda Watts Thomas,

Acting Departmental Clearance Officer.

[FR Doc. 2010–18702 Filed 7–29–10; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Longshore and Harbor Workers' Compensation; Proposed Extension of Information Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)] This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs (OWCP) is soliciting comments concerning extension of the collection: Employer's First Report of Injury or Occupational Disease (LS–202) and Employer's Supplementary Report of Accident or Occupational Illness (LS–210). A copy of the proposed information collection extension request can be obtained by contacting the office listed below in the address section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before September 28, 2010.

ADDRESSES: Mr. Vincent Alvarez, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0372, fax (202) 693–1378, E-mail *Alvarez.Vincent@dol.gov*. Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background: The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act. The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States and adjoining area customarily used by an employee in loading, unloading, repairing, or building a vessel. The LS–202 is used by employers initially to report injuries that have occurred which are covered under the Longshore Act and its related statutes. The LS–210 is used to report additional periods of lost time from work. This information collection is currently approved for use through December 31, 2010.

II. Review Focus: The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks the extension of approval of this information collection in order to ensure that employers are complying with the reporting requirements of the Act and to ensure that injured claimants receive all compensation benefits to which they are entitled.

Agency: Office of Workers' Compensation Programs.

Type of Review: Extension.

Title: Request for Earnings Information.

OMB Number: 1240–0003.
Agency Number: LS–202 and LS–210.
Affected Public: Business or other for-profit, Not-for-profit institution.

Form	Time to complete (minutes)	Frequency of response	Number of respondents	Number of responses	Hours burden
LS–202	15	occasion	20,087	20,087	5,022
LS–210	15	occasion	996	996	249
Totals			21,083	21,083	5,271

Total Respondents: 21,083.
Total Annual Responses: 21,083.
Estimated Total Burden Hours: 5,271.
Estimated Time per Response: 15 minutes.
Frequency: On occasion.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $9,909.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 26, 2010.

Vincent Alvarez,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2010–18719 Filed 7–29–10; 8:45 am]

BILLING CODE 4510–CF–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0242]

Review of Management Directive 8.11

AGENCY: Nuclear Regulatory Commission.

ACTION: Opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is requesting public comment on Management Directive (MD) 8.11, "Review Process for 10 CFR 2.206 Petitions," dated July 1, 1999. MD 8.11 is a guidance document that details the internal procedures for NRC staff review and disposition of petitions submitted under Title 10 of the Code of Federal Regulations (10 CFR) 2.206. Because some of these internal procedures directly impact the interaction between members of the public and the NRC, the NRC is soliciting comments from the public, on what, if any, revisions should be made to the agency's internal process as described in MD 8.11.

DATES: Comments must be filed no later than October 13, 2010. Comments received after this date will be considered, if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2010–0242 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site *Regulations.gov*. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0242. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Cindy Bladey, Chief, Rules, Announcements and Directives Branch (RADB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at (301) 492–3446.

You can access publicly available documents related to this document using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* MD 8.11 is available electronically under ADAMS Accession Number ML041770328.

FOR FURTHER INFORMATION CONTACT: Tanya M. Mensah, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–3610 or Toll Free: 1–800–368–5642.

SUPPLEMENTARY INFORMATION:

Background

MD 8.11, "Review Process for 10 CFR 2.206 Petitions," is a guidance document that details the internal procedures for NRC staff review and disposition of petitions submitted under Title 10 of the Code of Federal Regulations (10 CFR) 2.206. Because some of these internal procedures directly impact the interaction between members of the public and the NRC, the NRC is soliciting comments from the public, on what, if any, revisions should be made to the agency's internal process as described in MD 8.11. The 10 CFR 2.206 process is the primary mechanism for a member of the public to request Commission review of a potential safety problem with an NRC licensed facility, outside of a licensing or rulemaking proceeding. Any person may file a petition under 10 CFR 2.206 to request that the Commission modify, suspend, or revoke a license, or take any other enforcement-related action that may be proper. This process provides the public with a mechanism to raise issues of concern to the Commission. Each 10 CFR 2.206 petition is reviewed by the

appropriate major program Office. Upon receipt of each petition, the appropriate program Office assembles a petition review board (PRB) typically consisting of a Senior Executive Service level manager, a petition manager, a petition coordinator, technical experts, regional inspectors, and legal and enforcement advisors. The PRB follows the guidance in MD 8.11 to determine if the petition meets the criteria for review. If the PRB determines that the petition meets the criteria for review, the office director issues a formal Director's Decision providing a specific disposition of the issues raised in the petition. If the Office Director finds that the petition raises a substantial safety concern, an enforcement order may be issued or other appropriate action taken, within the Office Director's discretion.

Discussion

In support of the NRC's efforts to update each MD every five years, the NRC staff is evaluating MD 8.11, which details the internal procedures for NRC staff review and disposition of petitions submitted under Title 10 of the Code of Federal Regulations (10 CFR) 2.206. The purpose of this evaluation is to ensure that the 10 CFR 2.206 process is an effective, equitable, and credible mechanism for the public to prompt Commission investigation and resolution of potential health and safety problems. This evaluation is consistent with current Commission efforts to ensure openness in the Commission's decision making process. The NRC plans to consider comments provided by members of the public during its evaluation of MD 8.11.

Dated at Rockville, Maryland, this *15th* day of July 2010.

For the Nuclear Regulatory Commission.

John R. Jolicoeur,

Chief, Licensing Processes Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–18739 Filed 7–29–10; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2010–27, CP2010–69; and CP2010–70, Order No. 493]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Global Plus 2A to the competitive product list. The Postal Service has also filed related contracts. This notice addresses procedural steps associated with the filing.

DATES: Comments are due: July 27, 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, *stephen.sharfman@prc.gov* or 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

The Postal Service seeks to add a new product, Global Plus 2A, to the competitive product list and to that end, filed notice, pursuant to 39 CFR 3015.5, announcing that it has entered into two additional Global Plus 2A contracts.[1] The Postal Service states that the instant contracts are functionally equivalent to one another and to previously submitted Global Plus 2 contracts, and are filed in accordance with Order No. 112.[2] It states further that the instant contracts are supported by Governors' Decision No. 08–10, which establishes prices and classifications not of general applicability for Global Direct, Global Bulk Economy and Global Plus Contracts.[3]

While the Postal Service's filing was not submitted pursuant to 39 U.S.C. 3020.30 *et seq.*, it appears to request the addition of a new product to the competitive product list. Docket No. MC2010–27 is established to consider this part of the filing.

The Postal Service contemporaneously filed copies of the contracts related to the proposed competitive product classification pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contracts have been assigned Docket Nos. CP2010–69 and CP2010–70, respectively.

The instant contracts. The Postal Service filed the instant contracts pursuant to 39 CFR 3015. The Postal Service states that the instant contracts are the immediate successor contracts to those in Docket Nos. CP2009–48 and CP2009–49 that are scheduled to expire July 31, 2010. Notice at 2–3. The instant contracts are expected to begin August 1, 2010, and expire on the day prior to the day of any changes in the published rates that affect the Qualifying Mail subject to the contracts. *Id.* at 3–4.

The Postal Service filed copies of the contracts, Governors' Decision with attachments, and supporting financial documentation under seal. *Id.* at 2.

Additionally, in support of its Notice, the Postal Service filed the following five attachments:

1. Attachment 1–a statement of supporting justification required by 39 CFR 3020.32;
2. Attachments 2A and 2B–a redacted copy of each contract;
3. Attachment 3A and 3B–a certified statement for each contract required by 39 CFR 3015.5(c)(2);
4. Attachment 4–a redacted copy of Governors' Decision No. 08–10, which establishes prices and classifications for Global Direct, Global Bulk Economy, and Global Plus Contracts, formulas for the prices, analysis and certification of the formulas and certification of the Governors' vote; and
5. Attachment 5–an application for non-public treatment of materials to maintain the contract and supporting documents under seal.

Functional equivalence. The Postal Service asserts that the instant contracts are functionally equivalent both to one another and to the precursor Global Plus 2 contracts in that they share similar cost and market characteristics. *Id.* at 4. It contends as a result the instant contracts should be grouped together as a single product. Id.

The Postal Service addresses similarities in the instant contracts and their predecessors, *e.g.*, that the customers are the same and that fundamental terms and conditions of the contracts remain essentially unchanged. In addition the Postal Service identifies what it characterizes as material changes in the contracts, *e.g.*, term, price incentives, and additional service options. It asserts that the differences do not affect either the

[1] Notice of the United States Postal Service of Filing of Two Functionally Equivalent Global Plus 2A Contracts Negotiated Service Agreements, July 13, 2010 (Notice); see Errata to Notice of the United States Postal Service of Filing of Two Functionally Equivalent Global Plus 2A Contracts Negotiated Service Agreements, July 14, 2010; see also Notice of the United States Postal Service of Filing a Signed Global Plus 2A Negotiated Service Agreement, July 15, 2010.

[2] *See* Docket Nos. MC2008–7, CP2008–16 and CP2008–17, Order Concerning Global Plus 2 Negotiated Service Agreements, October 3, 2008 (Order No. 112).

[3] *See* Docket No. MC2008–7, CP2008–16, and CP2008–17, Request of the United States Postal Service to Add Global Plus 2 Negotiated Service Agreements to the Competitive Product List, and Notice of Filing (Under Seal) the Enabling Governors' Decision and Two Functionally Equivalent Agreements, Attachment 1, August 8, 2010.

service provided or the structure of the contracts. *Id.* at 5–7.

Baseline treatment. The Postal Service also states that each of the instant contracts takes the place of its immediate predecessor which served as the baseline contracts for the Global Plus 2 Contracts product.[4] It requests that the instant contracts be considered "the new 'baseline' contracts for consideration of future such agreements' functional equivalency." *Id.* at 9.

Filing under part 3020. In support of its filing, the Postal Service submitted, as Attachment 1, a Statement of Supporting Justification. The Postal Service asserts that analysis under 39 U.S.C. 3642(b) is unnecessary here, because of the Commission's findings in Order No. 43 that Negotiated Service Agreements for outbound International Mail are classified as competitive. *Id.* at 8.

The Postal Service contends that its filings demonstrate that the instant contracts comply with the requirements of 39 U.S.C. 3633, fit within the Mail Classification Schedule language for Global Plus 2 Contracts and are functionally equivalent to each other. *Id.* at 9. It urges the Commission to add Global Plus 2A Contracts to the competitive product list. *Id.*

II. Notice of Filing

The Commission establishes Docket Nos. MC2010–27. CP2010–69, and CP2010–70 for consideration of matters raised in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR 3020 subpart B. Comments are due no later than July 27, 2010. The public portions of these filings can be accessed via the Commission's Website *(www.prc.gov)*.

The Commission appoints Paul L. Harrington to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is Ordered:

1. The Commission establishes Docket Nos. MC2010–27, CP2010–69, and CP2010–70 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 27, 2010.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–18701 Filed 7–29–10; 8:45 am]

BILLING CODE 7710–FW–S

[4] *See* Docket No. CP2009–48, Order Concerning Filing a Functionally Equivalent Global Plus Contract Negotiated Service Agreement, July 31, 2009, at 7; and Docket No. 2009–49, Order Concerning Filing a Functionally Equivalent Global Plus Contract Negotiated Service Agreement, July 31, 2009, at 7,

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12172]

Florida Disaster # FL–00056 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of an Economic Injury Disaster Loan (EIDL) declaration for the State of FLORIDA, dated 07/22/2010.

Incident: Deepwater BP Oil Spill.

Incident Period: 04/20/2010 and continuing.

DATES: *Effective Date:* 07/22/2010.

EIDL Loan Application Deadline Date: 02/14/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of an Economic Injury declaration for the State of Florida dated 05/13/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Collier, Lee, Monroe.

Contiguous Counties:

Florida: Broward, Glades, Hendry, Miami-Dade.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: July 22, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–18741 Filed 7–29–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12121 and # 12122]

Pennsylvania Disaster Number PA–00031

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of PENNSYLVANIA (FEMA—1898—DR), dated 04/16/2010.

Incident: Severe Winter Storms and Snowstorms.

Incident Period: 02/05/2010 through 02/11/2010.

DATES: *Effective Date:* 07/20/2010.

Physical Loan Application Deadline Date: 06/15/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 01/18/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of PENNSYLVANIA, dated 04/16/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Montgomery.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–18788 Filed 7–29–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62432; File No.

SR–CBOE–2010–066]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated: Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Reduce the Payments that CBOE Makes to CBOE Trading Permit Holders that Participate in a Program Under Which CBOE Subsidizes the Costs of Providing and/or Using Certain Order Routing Functionalities

Correction

In notice document 10–16686 beginning on page 39602, in the issue of Friday, July 9, 2010 make the following corrections:

1. On page 39602, on the second column, the heading is corrected to include the bracketed information [Release No. 34–62432; File No. SR–CBOE–2010–066].

2. On page 39603, in the second column, at the end of this document, the billing code is corrected to appear as **BILLING CODE 8010–01–P.**

[FR Doc. C1–2010–16686 Filed 7–29–10; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62568; File No. SR–ISE–2010–76]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Foreign Currency Options Orders Fee Discount for Market Makers and Non-ISE Market Makers

July 26, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 19, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently has a fee cap for large-size foreign currency ("FX") options orders. This fee discount applies for orders of 250 contracts or more and waives fees on incremental volume above 250 contracts.[3] Contracts at or under the threshold are charged the constituent's prescribed execution fee. Pursuant to an incentive plan currently in place, this fee discount currently applies to all customer[4] orders, Firm Proprietary orders, market maker orders and non-ISE market maker orders in options on the following FX option currencies traded on the Exchange: New Zealand dollar, Mexican peso, Swedish krona and the Brazilian real.

For all other FX option currencies traded on the Exchange, this fee discount currently applies only to customer orders and Firm Proprietary orders in those products. The Exchange now proposes to extend this fee discount to market maker orders and non-ISE market maker orders in all FX option currencies and specifically, to the orders that were previously not receiving this discount.

ISE adopted this fee discount to encourage members to execute large-sized FX options orders on the Exchange in a manner that is cost effective. The Exchange believes this proposed rule change will further that goal.

2. Basis

The basis under the Securities Exchange Act of 1934 (the "Exchange Act") for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, this proposed rule change would extend a current fee discount to all orders in FX options traded on the Exchange, thus effectively maintaining low fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act[5] and Rule 19b–4(f)(2)[6] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62506 (July 15, 2010) (SR–ISE–2010–67).

[4] The fee waiver applies to both professional and priority customer orders. A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2010–76 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2010–76. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2010–76 and should be submitted on or before August 20, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–18724 Filed 7–29–10; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62577; IA–3058; File No. 4–606]

Study Regarding Obligations of Brokers, Dealers, and Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Request for comment.

SUMMARY: The Securities and Exchange Commission is requesting public comment for a study to evaluate: The effectiveness of existing legal or regulatory standards of care for brokers, dealers, investment advisers, and persons associated with them when providing personalized investment advice and recommendations about securities to retail investors; and whether there are gaps, shortcomings, or overlaps in legal or regulatory standards in the protection of retail customers relating to the standards of care for these intermediaries.

DATES: The Commission will accept comments regarding issues related to the study on or before August 30, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number 4–606 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 4–606. This file number should be included on the subject line if e-mail is used. To help us 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*). Comments are also 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Holly Hunter-Ceci, Division of Investment Management, at (202) 551–6825 or Emily Russell, Division of Trading and Markets, at (202) 551–5550, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010.

Discussion

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Under section 913 of that Act, the Commission is required to conduct a study regarding the obligations of brokers, dealers, and investment advisers.

The study will evaluate the effectiveness of existing legal or regulatory standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice and recommendations about securities to retail customers imposed by the Commission and a national securities association, and other Federal and State legal or regulatory standards. In addition, the study will evaluate whether there are legal or regulatory gaps, shortcomings, or overlaps in legal or regulatory standards in the protection of retail customers relating to the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice about securities to retail customers that should be addressed by rule or statute.

For purposes of the study, the term "retail customer" means a natural person (or the legal representative of such natural person) who receives personalized investment advice about securities from a broker or dealer or investment adviser and uses such advice primarily for personal, family, or household purposes.

The Commission is required to submit a study report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives no later than 6 months after enactment of the Dodd-Frank Act.

In order to prepare the study report, the Commission is required to seek and consider public input, comments, and data.

Accordingly, we request comment on the following:

(1) The effectiveness of existing legal or regulatory standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice and recommendations about securities to retail customers imposed by the Commission and a national securities association, and other Federal and State legal or regulatory standards;

(2) Whether there are legal or regulatory gaps, shortcomings, or overlaps in legal or regulatory standards in the protection of retail customers relating to the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice about securities to retail customers that should be addressed by rule or statute;

(3) Whether retail customers understand that there are different standards of care applicable to brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers in the provision of personalized investment advice about securities to retail customers;

(4) Whether the existence of different standards of care applicable to brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers is a source of confusion for retail customers regarding the quality of personalized investment advice that retail customers receive;

(5) The regulatory, examination, and enforcement resources devoted to, and activities of, the Commission, the States, and a national securities association to enforce the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers when providing personalized investment advice and recommendations about securities to retail customers, including—

(A) The effectiveness of the examinations of brokers, dealers, and investment advisers in determining compliance with regulations;

(B) The frequency of the examinations; and

(C) The length of time of the examinations;

(6) The substantive differences in the regulation of brokers, dealers, and investment advisers, when providing personalized investment advice and recommendations about securities to retail customers;

(7) The specific instances related to the provision of personalized investment advice about securities in which—

(A) The regulation and oversight of investment advisers provide greater protection to retail customers than the regulation and oversight of brokers and dealers; and

(B) The regulation and oversight of brokers and dealers provide greater protection to retail customers than the regulation and oversight of investment advisers;

(8) The existing legal or regulatory standards of State securities regulators and other regulators intended to protect retail customers;

(9) The potential impact on retail customers, including the potential impact on access of retail customers to the range of products and services offered by brokers and dealers, of imposing upon brokers, dealers, and persons associated with brokers or dealers—

(A) The standard of care applied under the Investment Advisers Act of 1940 for providing personalized investment advice about securities to retail customers of investment advisers, as interpreted by the Commission and the courts; and

(B) Other requirements of the Investment Advisers Act of 1940;

(10) The potential impact of eliminating the broker and dealer exclusion from the definition of "investment adviser" under section 202(a)(11)(C) of the Investment Advisers Act of 1940, in terms of—

(A) The impact and potential benefits and harm to retail customers that could result from such a change, including any potential impact on access to personalized investment advice and recommendations about securities to retail customers or the availability of such advice and recommendations;

(B) The number of additional entities and individuals that would be required to register under, or become subject to, the Investment Advisers Act of 1940, and the additional requirements to which brokers, dealers, and persons associated with brokers and dealers would become subject, including—

(i) Any potential additional associated person licensing, registration, and examination requirements; and

(ii) The additional costs, if any, to the additional entities and individuals; and

(C) The impact on Commission and State resources to—

(i) Conduct examinations of registered investment advisers and the representatives of registered investment advisers, including the impact on the examination cycle; and

(ii) Enforce the standard of care and other applicable requirements imposed under the Investment Advisers Act of 1940;

(11) The varying level of services provided by brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers to retail customers and the varying scope and terms of retail customer relationships of brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers with such retail customers;

(12) The potential impact upon retail customers that could result from potential changes in the regulatory requirements or legal standards of care affecting brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers relating to their obligations to retail customers regarding the provision of investment advice, including any potential impact on—

(A) Protection from fraud;

(B) Access to personalized investment advice, and recommendations about securities to retail customers; or

(C) The availability of such advice and recommendations;

(13) The potential additional costs and expenses to—

(A) Retail customers regarding, and the potential impact on the profitability of, their investment decisions; and

(B) Brokers, dealers, and investment advisers resulting from potential changes in the regulatory requirements or legal standards affecting brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers relating to their obligations, including duty of care, to retail customers; and

(14) Any other considerations commenters would like to comment on to assist the Commission in determining whether to conduct a rulemaking, following the study, to address the legal or regulatory standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice and recommendations about securities to retail customers.

By the Commission.

Dated: July 27, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–18753 Filed 7–29–10; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[DOT Docket No. DOT–OST–2010–0074]

The Future of Aviation Advisory Committee (FAAC) Aviation Safety Subcommittee; Notice of Meeting

AGENCY: U.S. Department of Transportation, Office of the Secretary of Transportation.

ACTION: The Future of Aviation Advisory Committee (FAAC): Aviation Safety Subcommittee; Notice of meeting.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary of Transportation, announces a meeting of the FAAC Aviation Safety Subcommittee, which will be held August 24, 2010, in Chicago, Illinois. This notice announces the date, time, and location of the meeting, which will be open to the public. The purpose of the FAAC is to provide advice and recommendations to the Secretary of Transportation to ensure the competitiveness of the U.S. aviation industry and its capability to manage effectively the evolving transportation needs, challenges, and opportunities of the global economy. The Aviation Safety Subcommittee will receive a briefing from Federal Aviation Administration (FAA) officials on the agency's activities associated with the list of priority safety issues developed during the first meeting. The subcommittee will also develop a work plan for future meetings.

DATES: The meeting will be held on August 24, 2010, at 1 p.m. Central Daylight Time.

ADDRESSES: The meeting will be held at The Boeing Company, 100 North Riverside Plaza, Chicago, Illinois 60606.

Public Access: The meeting is open to the public. (*See* below for registration instructions.)

Public Comments: Persons wishing to offer written comments and suggestions concerning the activities of the advisory committee or subcommittee should file comments in the Public Docket (Docket Number DOT–OST–2010–0074 at *www.regulations.gov*) or alternatively through the *FAAC@dot.gov* e-mail address. If comments and suggestions are intended specifically for the Aviation Safety Subcommittee, the term "Aviation Safety" should be listed in the subject line of the message. To ensure such comments can be considered by the subcommittee before its August 24, 2010, meeting, public comments must be filed by close of business on Monday, August 16, 2010.

SUPPLEMENTARY INFORMATION:

Background

Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of an FAAC Aviation Safety Subcommittee meeting taking place on August 24, 2010, at 1 p.m. Central Daylight Time, at The Boeing Company, 100 North Riverside Plaza, Chicago, Illinois 60606. The subcommittee will—

1. Receive a briefing from the FAA on existing safety activities associated with the list of priority safety issues developed during the previous meeting.

2. Discuss any necessary revisions to the priority list.

3. Develop a work plan for future meetings.

Registration

Because of space constraints and planning considerations, persons desiring to attend must pre-register through e-mail to *FAAC@dot.gov.* The term "Registration: Safety Subcommittee" must be listed in the subject line of the message, and admission will be limited to the first 25 persons to pre-register and receive a confirmation of their pre-registration. No arrangements are being made for audio or video transmission, or for oral statements or questions from the public at the meeting. Minutes of the meeting will be posted on the FAAC Web site at *http://www.dot.gov/FAAC.*

Request for Special Accommodation

The DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please send a request to *FAAC@dot.gov* with the term "Special Accommodations" listed in the subject line of the message by close of business on August 13, 2010.

FOR FURTHER INFORMATION CONTACT: Tony Fazio, Deputy Director, Office of Accident Investigation and Prevention, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC; telephone (202) 267–9612; *Tony.Fazio@FAA.gov.*

Issued in Washington, DC, on July 27, 2010.

Pamela Hamilton-Powell,

Designated Federal Official, Future of Aviation Advisory Committee.

[FR Doc. 2010–18722 Filed 7–29–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

[Docket: DOT–OST–2010–0124]

Office of the Secretary: Notice of Order Soliciting Community Proposals

AGENCY: Department of Transportation.

ACTION: Notice of Order Soliciting Community Proposals (Order 2010–7–16, Docket: DOT–OST–2010–0124).

SUMMARY: The Department of Transportation is soliciting proposals from communities or consortia of communities interested in receiving a grant under the Small Community Air Service Development Program. The full text of the Department's order is attached to this document. There are two mandatory requirements for filing of applications, both of which must be completed for a community's application to be deemed timely and considered by the Department. The first requirement is the submission of the community's proposal, as described below; the second requirement is the filing of SF424 through *http://www.grants.gov.*

DATES: Grant Proposals as well as the SF424 should be submitted no later than August 27, 2010.

ADDRESSES: Interested parties can submit applications and the SF424 electronically through *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: Aloha Ley, Office of Aviation Analysis, 1200 New Jersey Ave., SE., W86–310, Washington, DC 20590, (202) 366–2347.

Dated: July 23, 2010.

Notice of Order Soliciting Community Proposals

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of Order Soliciting Community Proposals (Order 2010–7–16).

Overview

By this order, the Department invites proposals from communities and/or consortia of communities interested in obtaining a federal grant under the Small Community Air Service Development Program (Small Community Program) to address air

service and airfare problems in their communities. Proposals, including a completed "Summary Information" schedule as shown in Appendix B of this order, must be submitted in the above-referenced docket no later than 5 p.m., Eastern Daylight Time (EDT), on August 27, 2010.

The Small Community Program was established under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21), Public Law 106–181, and reauthorized under the Vision 100–Century of Aviation Reauthorization Act, Public Law 108–176 (Vision 100). The program is designed to provide financial assistance to small communities to help them enhance their air service. The Department provides this assistance in the form of financial grants that are disbursed on a reimbursable basis.[1] The FY 2010 Federal Aviation Administration Extension Act (Pub. L. 111–69) extends the authorization of appropriations through FY 2010. The Department was appropriated $6 million to carry out the Small Community Program.[2] However, the Department will make $7 million available for grant awards.[3]

The program is limited to a maximum of 40 grant awards, with a maximum of four grants per State, in each year the program is funded. There are no limits on the amounts of individual awards, and the amounts awarded will vary depending upon the features and merits of the proposals selected. Over the past nine years, the Department's individual grants have ranged from $20,000 to nearly $1.6 million. Authorized grant projects may include activities that extend over a multi-year period under a single grant award; however, because there is a priority established by statue for communities and consortia that show that they can use the assistance "in a timely fashion," applicants are advised to consider that criterion in making their proposals.

Applicants *must* first register with *http://www.grants.gov* before submitting an Application for Federal Domestic Assistance (SF424), a standard federal government grant application form, *and* must include their proposals as an attachment to the SF424. An application will *not* be deemed complete until and unless all required materials are filed by the August 27, 2010, deadline. Communities are reminded to register with Grants.gov early in the application period since the mandatory Grants.gov registration process can take up to three weeks to complete. Tutorials and other guidance for completing the required registration and application procedures are available at the "Applicant Resources" page of Grants.gov.[4]

Eligibility Information

Who is eligible to apply for a grant?

Basic criteria. Eligible applicants are those communities that (1) are served by an airport that was not larger than a small hub airport for calendar year 1997,[5] and (2) have insufficient air service or unreasonably high airfares. Communities that do not currently have commercial air service are also eligible, but they must have met or be able to meet in a reasonable period all necessary requirements of the Federal Aviation Administration for the type of service involved in their grant proposals. Communities served by medium and large hubs are *not* eligible to apply.

Essential Air Service communities may apply. Small communities that meet the basic criteria and currently receive subsidized air service under the Essential Air Service (EAS) program are eligible to apply for funds under the Small Community Program. Indeed, a number of EAS-subsidized communities applied in past years and some have received grant awards. However, *grant awards to EAS-subsidized communities are limited to marketing or promotion projects that support existing or newly subsidized air services.* Grant funds will *not* be authorized for EAS-subsidized communities to support any *new* competing air service. Furthermore, no funds will be authorized to support additional flights by EAS carriers or changes to those carriers' existing schedules. These restrictions are necessary to avoid conflicts with the EAS program. Additional consideration for communities/members of consortia that have previously received a grant. Communities or members of a consortia that were awarded grants in previous years and want to apply for a grant this year should be aware that (1) they are precluded from seeking new funds for projects for which they have already received an award under the Small Community Program and (2) they cannot accept a new grant while they are a party to an existing grant under the program, either as an individual community or as a member of a consortium.

Grant must be for a new project. No community may participate in the program in support of the same project more than once. 49 U.S.C. 41743(c)(4). In assessing whether a previous grantee's current proposal represents a new project, we would compare the goals and objectives of the earlier grant, including the key components of the means by which those goals and objectives were to be achieved, to the current proposal. For example, if a community received an earlier grant to support a revenue guarantee for service to a particular destination or direction, a new application for another revenue guarantee for the same service would be disqualified under § 41743(c), even if the revenue guarantee were structured differently or the type of carrier were different. However, we do not read § 41743(c) to disqualify a new application for service to a new destination or direction using a revenue guarantee, or for general marketing of the airport and the various services it offers. We recognize that not all revenue guarantees, marketing agreements, equipment purchases, etc. are of the same nature, and that if a subsequent proposal incorporates different goals or significantly different components, it may be sufficiently different to constitute a new project under § 41743(c).

In its application, a community that is a previous grant recipient should compare and contrast its proposed project with its previously funded one(s) to demonstrate why its latest proposal represents a new project. Communities should also note that in each of the prior eight years of the program, interest in participation exceeded both the funds available and the number of communities that could take part in any one year. For this reason, the fact that a community has already received one or more grants will be a consideration when comparing its new proposal with those of other applicant communities.

No concurrent grants are permitted. A community or member of a consortia may participate in the program a subsequent time only after its

[1] For detailed background on the Small Community Program, *see* our Web site at: *http://ostpxweb.dot.gov/aviation/X-50%20Role_files/smallcommunity.htm.*

[2] Program funding for this year may be affected by a provision that directs the Secretary to transfer funds from any program within or administered by the Office of the Secretary to the Essential Air Service program if that program does not have sufficient funds to meet its statutory obligations. In addition, a portion of the funds available for the Small Community Program are used by the Department for grants-management purposes. As of June, Congress appropriated $4,980,000 of the $6 million in funding; however, the remaining $1,020,000 is expected to be appropriated in the next reauthorization bill. If funds are not authorized by the time selections are made, grant funds will remain at the $4,980,000 level.

[3] The Department will be adding additional funds that can be reallocated from prior year recoveries.

[4] *See http://www07.grants.gov/applicants/app_help_reso.jsp.*

[5] The hub classifications are based on the Federal Aviation Administration's CY 1997 enplanement data.

participation in a prior grant has terminated. 49 U.S.C. 41743(c)(4). Simply stated, a community can have only one Small Community Program grant at any time. If a grant applicant is applying for a subsequent grant and its current grant has not yet expired, it must notify the Department of its intent to terminate the current grant prior to entering into the new grant. In addition, for grant applicants that are members of a consortia grant, permission must be granted from both the grant sponsor and the Department to withdraw from the current grant prior to being eligible to receive a subsequent grant.

Subsidies for a carrier to compete against an incumbent raise concerns. The Department is reluctant to subsidize one carrier but not others in a competitive market. For this reason, communities that propose to use the grant funds for service in a city-pair market that is already served by a carrier must explain in detail why the existing service is insufficient or unsatisfactory, or provide other compelling information to support such proposals. This information is necessary for the Department to consider the competitive implications of giving financial or other tangible incentives for one carrier that the other carrier is not receiving.

Subsidy proposals should reflect market analysis and a complementary marketing commitment. A thorough understanding of the target market is essential for the ultimate success of new or expanded air service. Likewise, the chances that such a service will become self-sustaining are enhanced when its implementation is supported by a well-designed marketing campaign. For these reasons, communities requesting funds for a revenue guarantee/subsidy/financial incentive are encouraged to include in their proposals an in-depth analysis evidencing close familiarity with their target markets. Such communities also are encouraged to designate in their proposals a portion of their requested funds for the development and implementation of a marketing plan in support of the service sought.

A consortium is more than a collection of communities. The statute permits individual communities and consortia of communities to apply for grant awards under this program. In some instances in the past, several communities in a State have filed a single application as a "consortium," but in effect the application was a collection of individual community requests involving different projects. We do not view this as a consortium. Rather, an application representing a consortium would be one that facilitates efforts of communities working together toward a joint grant project. For example, several communities surrounding an airport may apply together to improve air services at that airport, or surrounding airports may work together to provide regional air service.

Multiple applications by a community will not be considered. The Department requests that communities file only one application for a grant. In the past, some communities have filed both individual applications and applications as part of a consortium. In many cases these applications have involved the same project at the same or different funding levels. We will not consider the stand-alone application if a community is also submitting a largely identical request as part of a consortium. To the extent that a community files separately and as part of a consortium for complementary projects—for example, one for a revenue guarantee and one for marketing—we will consider such proposals. However, communities should be aware that they can receive only one grant, either the stand-alone grant or as a member of a consortium, because no community can have concurrent grants.

Cost Sharing and Local Contributions Are Important Factors

The statute does not require communities to contribute toward a grant project, but those communities that contribute from local sources other than airport revenues are accorded priority consideration. One core objective of the Small Community Program is to promote community involvement in addressing air service/air fare issues through public/private partnerships. As a financial stakeholder in the process, the community gains greater control over the type, quality, and success of the air service initiatives that will best meet its needs, and demonstrates a greater commitment towards achieving the stated goals. The Department has historically received many more applications than can be accommodated and nearly all of those applications have proposed a community financial contribution to the project. Thus, proposals that propose a community financial contribution will be given priority consideration.

Types of contributions. Contributions should represent a *new* financial commitment or *new* financial resources devoted to attracting new or improved service, or addressing specific high-fare or other service issues, such as improving patronage of existing service at the airport. Contributions from already-existing programs or projects (*e.g.,* designating a portion of an airport's existing annual marketing budget to the project) are considered less favorably than contributions for new and innovative programs or projects. For those communities that propose to contribute to the grant project, that contribution can be in the following forms:

Cash from non-airport revenues. A cash contribution can include funds from the State, the County or the local government, and/or from local businesses, or other private organizations in the community. Contributions that are comprised of intangible non-cash items, such as the "value" of donated advertising, are considered "in-kind" contributions (*see* further discussion below).

Cash from airport revenues. This includes contributions from funds generated by airport operations. Airport revenues may not be used for revenue guarantees to airlines.[6] Community proposals that include local contributions based on airport revenues do not receive priority consideration for selection.

In-kind contributions from the airport. This can include such items as waivers of landing fees, terminal rents, fuel fees, and/or vehicle parking fees.

In-kind contributions from the community. This can include such items as donated advertising from media outlets, catering services for inaugural events, or in-kind trading, such as advertising in exchange for free air travel. Travel banks and travel commitments/pledges are considered to be in-kind contributions,[7] as are reduced fares offered by airlines.

Cash vs. in-kind contributions. Only local contributions made in cash are given priority consideration for selection. Contributions made in-kind or through other services may be valuable in helping to promote the objectives of the application, they are not afforded priority in the selection process.

Financial commitments must be fulfilled. Applicant communities should note that, as part of the grant agreement between the Department and the community, the community has legally committed itself to fulfilling its

[6] 49 U.S.C. 47107, 47133.

[7] A travel "bank" involves the actual deposit of funds from participating parties (*e.g.,* businesses, individuals) into a designated bank account for the purpose of purchasing air travel on the selected airline, with defined procedures for the subsequent use or withdrawal of those funds under an agreement with the airline. Often, however, what communities refer to as a travel "bank" in reality involves travel "pledges" from businesses in the community without any collection of funds or formal procedures for use of the funds. As with other types of in-kind contributions, the Department views travel banks and pledges included in grant proposals as an indicator of local community support.

proposed financial contribution to the project and that its failure to meet this commitment could lead the Department to terminate the grant. Community participation in all aspects of the proposal, including the financial aspects, is critical to the success of the authorized project initiative. As with the grant awards in past years, receipt of the full federal contribution awarded will thus be linked to the community's fulfillment of its financial contribution. Furthermore, communities cannot propose a certain level of cash contribution from non-airport sources, and subsequent to being awarded a grant, seek to substitute or replace that contribution with either "in-kind" contributions or contributions from airport revenues, or both. Given the statute's priority for contributions from *non-airport* sources and the competitive nature of the selection process, a community's grant award could be reduced or terminated altogether if it is unable to replace the committed funds from non-airport revenue sources.

Reimbursements for Advance Payments: The Small Community Program is a reimbursable program therefore communities are required to make advance payments for funds expended in association with the project implementation under the program and then seek reimbursement. Reimbursement rates are calculated as a percentage of the total Federal funds requested divided by the Federal fund plus the local cash contribution (which is not refundable). Advance payments in forms other than cash (*e.g.* in-kind) are not reimbursable. If there is any question about whether a proposed payment would be considered as "in-kind" or cash, the applicant should contact the Department before submitting its proposal.

Application and Submission Information

Filing Deadline and Procedures

Grant applications are due by 5 p.m. EDT on August 27, 2010. As part of the submission process, an applicant must register as a grant applicant at *http://www.grants.gov* and complete the Application for Federal Domestic Assistance form SF424. An applicant must also include its grant proposal, including a completed "Summary Information" schedule (*see* Appendix B), as an attachment to its SF424. In addition, the cover page of each application should contain the information specified under "Cover page contents," below. Questions regarding the program should be directed to the Office of Aviation Analysis on (202) 366–2347 or *aloha.ley@dot.gov.*

SF424. Communities not previously registered are encouraged to register with Grants.gov early during the application period because the registration and SF424 application process required by *http://www.grants.gov* can take up to three weeks to complete. A community may file its proposal anytime after the initial registration process has been completed on *http://www.grants.gov* as long as the entire application is filed by August 27, 2010. Communities are encouraged to contact the Grants.gov help desk for any technical assistance in filing their applications.

The Grants.gov "Applicant Resources" page (*http://www07.grants.gov/applicants/app_help_reso.jsp*) provides instructions and guidance on completing the registration and application processes. Further, grant proposals must be submitted as an attachment to the SF424. An application will *NOT* be deemed complete and will be ineligible for a grant award unless the SF424 *and* the attached proposal (including the completed "Summary Information" schedule) have been submitted through Grants.gov by the 5 PM EDT, August 27, 2010, deadline.

Cover page contents. The cover page for all applications should bear the title "Proposal Under the Small Community Air Service Development Program, Docket DOT–OST–2010–0124" and should include:

(1) The name of the community or consortium of communities applying for the grant;

(2) The legal sponsor and its Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number, including + 4; and

(3) The 2-digit Congressional district code applicable to the sponsoring organization and, if a consortium, to each participating community.

Confidential treatment of information. Applicants will be able to provide certain information relevant to their proposals on a confidential basis. Under the Department's Freedom of Information Act regulations (49 CFR 7.17), such information is limited to commercial or financial information that, if disclosed, would either likely cause substantial harm to the competitive position of a business or enterprise or make it more difficult for the Federal Government to obtain similar information in the future.

Applicants seeking confidential treatment of a portion of their applications must segregate the confidential material in a sealed envelope marked "Confidential Submission of X (the applicant) in Docket DOT–OST–2010–0124," and include with that material a request in the form of a motion seeking confidential treatment of the material under 14 § CFR 302.12 (Rule 12) of the Department's regulations. The applicant should submit an original and two copies of its motion and an original and two copies of the confidential material in the sealed envelope. The confidential material should *not* be included with the original of the applicant's proposal that is submitted via *http://www.grants.gov.* The applicant's original submission, however, should indicate clearly where the confidential material would have been inserted. If an applicant invokes Rule 12, the confidential portion of its filing will be treated as confidential pending a final determination. All confidential material must be received by August 27, 2010, and delivered to the Office of Aviation Analysis, 8th Floor, Room W86–310, 1200 New Jersey Ave., SE., Washington, DC 20590.

Types of Projects and Application Content

The statute is very general about the types of projects that can be authorized so that communities are provided flexibility in addressing their particular air service and airfare issues. Because circumstances may differ among communities, applicants have some latitude in identifying their own objectives and developing strategies for accomplishing them.

One objective of the Small Community Program is to help communities secure enhancements that will be responsive to their air transportation/air fare needs on a long-term basis after the financial support of the grant has ended. There are many ways that a community might enhance its current air service or attract new service, such as:

- Promoting awareness among residents of locally available service;
- Attracting a new carrier through revenue guarantees or operating cost offsets;
- Attracting new forms of service, such as on-demand air taxi service;
- Offering an incumbent carrier financial or other incentives to lower its fares, increase its frequencies, add new routes, or deploy more suitable aircraft, including upgrading its equipment from turboprops to regional jets;
- Combining traffic support from surrounding communities with regionalized service through one airport; or
- Providing local ground transportation service to improve access

to air service to the community and the surrounding area.[8]

Communities are encouraged to be innovative and to consider a wide range of initiatives and air transportation services in developing their proposals, such as intermodal or regional solutions. At the same time, proposals must *not* be general, vague, or unsupported. The more highly defined and focused the proposal, the more competitive it will be, particularly in light of the priority consideration afforded by the statute to those applicants that can use the funds in a timely manner. 49 U.S.C. 41743(c)(5)(E).

There is no set format that must be used in submitting grant proposals. At a minimum, however, a proposal must provide the following information:

• *A description of the community's existing air service,* including the carrier(s) providing service, service frequency, nonstop destinations offered, fares, and equipment types.

• *A synopsis of the community's historical service,* including destinations, traffic levels, service providers, and any extenuating factors that might have affected traffic in the past or that can be expected to influence service needs in the near to intermediate term.

• *A description of the community's air service development efforts over the past five years and the results of those efforts.* Many communities have been active on an on-going basis for many years in air service development efforts, while others are just beginning. To the extent that a community has previously engaged in other air service initiatives, including through public/private partnerships, it should describe those efforts and their results in its grant proposal. The description should include marketing and promotional efforts of airport services as well as efforts to recruit additional or improved air service and airfare initiatives.

• *A description of the community's air service needs or deficiencies.* A community should submit any information about (1) major origin/destination markets that are not now served or are not served adequately, and (2) fare levels that the community deems relevant to consideration of its grant request, including market analyses or studies demonstrating an understanding of local air service needs.

• *A strategic plan for meeting those needs under the Small Community Program,* including the community's specific project goal(s) and detailed plan for attaining such goal(s). Plans should:

✓ Clearly identify the target audience of each component of the proposed transportation initiative, including all advertising and promotional efforts.

✓ Set forth a realistic timetable for implementation of the grant project including a timeline chart. Because the statute includes timely use of the grant funds as a priority consideration, a community must have a well-developed project plan and a detailed timetable for implementing that plan. In establishing the timetable, however, the community should be realistic about its ability to meet its project deadlines.[9]

✓ For proposals involving new or improved service, explain how the service will become self-sufficient. Under the statute, a community *cannot* seek grant funding in subsequent years in support of the same project. Moreover, in developing a proposal, it is important that a community seriously consider the scale of its proposed project and the timetable for achieving the stated goals. To the extent that a proposed project is dependent upon or relevant to the completion of other federally funded capital improvement projects, the community should provide a description of, and the construction time-line for, those projects, keeping in mind the statutory requirement to use Small Community Program funding in a timely manner.

✓ Fully and clearly outline the goals and objectives sought to be achieved; *e.g.,* "to broaden the awareness by residents in the Tri-County area of the various services provided by passenger carriers at the Tri-County airport," or "to obtain new and affordable service to a hub airport in a direction where there is no such service." When an application is selected, these goals and objectives will be incorporated into the grant agreement and define its basic project scope. Once an agreement is signed, if circumstances change and an amendment is sought to allow for different activities or a different approach, the Department will look to whether the change being sought is consistent with those fundamental project goals and objectives. Proposed changes that would alter those fundamental goals and objectives cannot be authorized, because doing so would undermine the competitive nature of the selection process. Applicants are also encouraged to include in their proposals alternative or back-up strategies for achieving their desired goals and objectives. By incorporating such information into the grant agreement, desired changes may be accommodated.

✓ If the applicant received a Small Community Program grant in the past, explain how its proposed project differs from its earlier one by comparing and contrasting project goals, objectives and methods of achieving them.

• *A description of any public-private partnership that will participate in the project.* Full community involvement is a key aspect of the Small Community Program. The statute gives a priority to those communities that already have established, or will establish, a public-private partnership to facilitate air service to the public. The proposal should fully describe the public-private partnership that will participate in the community's proposal and how the partnership will *actively* participate in the implementation of the proposed project. In addition, applicants should identify each member of the partnership, the role that each will play, and the specific responsibilities of each member in project implementation. If the application does not include specific information on the partnership participation in the project, the Department will not be able to evaluate how well a community has met this consideration, and the applicant will *not* be deemed to have met this priority consideration in the Department's evaluation of the community's proposal.

• *A detailed description of the funding necessary for implementation of the community's project, including the federal and non-federal contributions.* Proposals should clearly identify the level of federal funding sought. They should also clearly identify the community's cash contributions to the proposed project, "in-kind" contributions from the airport, and "in-kind" contributions from the community. Cash contributions from

[8] These examples are illustrative only and are not meant as a list of projects favored by the Department. Interested communities can view actual proposals submitted in prior years. Go to *http://www.regulations.gov* and, under "Search," enter one of the following depending on the desired filing year: DOT–OST–2002–11590, DOT–OST–2003–15065, DOT–OST–2004–17343, DOT–OST–2005–20127, DOT–OST–2006–23671; DOT–OST–2007–27370 and DOT–OST–2008–0100, DOT–OST–2009–0149 for proposals filed in 2002, 2003, 2004, 2005, 2006, 2007, 2008 and 2009, respectively.

[9] The projected timetable will be an integral part of the grant agreements between the selected communities and the Department. Therefore, there is *no* advantage to a community in proposing an aggressive timetable that cannot be met, and there may be disadvantages if the community finds that it cannot meet its timetable or if its timeline is deemed unrealistic. Communities should carefully consider all factors affecting implementation of their projects and develop realistic timeframes for achieving those objectives.

airport revenues should be identified separately from cash contributions from other community sources. Similarly, cash contributions from the State and/or local government should be separately identified and described.

Applicant communities should be aware that, if awarded a grant, the Department will not reimburse the community for pre-award expenses such as the cost of preparing the grant application or for any expenses incurred prior to the community executing a grant agreement with the Department. In addition, ten percent of the grant funds will be withheld until the Department receives the final report of the grant project. See "Award Administration Information," below.

• *An explanation of how the community will ensure that its own funding contribution is spent in the manner proposed.*

• *Descriptions of how the community will monitor the progress of the grant project* and the identity of critical milestones to be met during the life of the grant, including the need to modify or discontinue funding if identified milestones cannot be achieved. This is an important component of the community's proposal and serves to demonstrate the thoroughness of the community's planning of the proposed grant project.

• *A description of how the community plans to continue with the project if it is not self-sustaining after the grant award expires.* A particular goal of the Small Community Program is to provide long-term, self-sustaining improvements to air service at small communities. A community cannot seek further grant funding in support of the same project. 49 U.S.C. 41743(c)(4). It is possible that new or improved service at a community will be well on its way to becoming self-sustaining, but not have reached that goal before the grant expires. Similarly, it is possible that extensive marketing and promotional efforts may be in process, but not have been completed at the end of the grant period and will require continued support.[10] Therefore, in developing its proposal, the community should carefully consider and describe in detail its plans for providing continued financial support for the project after the grant funding is no longer available. This aspect of the application reflects on the community's commitment to the grant project and is an important component to the Department's consideration of the community's proposal for selection for a grant award.

• *Designation of a legal sponsor responsible for administering the program.* The legal sponsor of the grant project *must* be a government entity. If the applicant is a public-private partnership, a public government member of the organization must be identified as the community's sponsor to receive program reimbursements. In this regard, communities can designate only a single government entity as the legal sponsor, even if applying as a consortium that consists of two or more local government entities. Private organizations cannot be designated as the legal sponsor of a grant under the Small Community Program.[11]

Air Service Development Zone Designation

The statute authorizing the Small Community program also provides that the Department will designate one of the grant recipients in the program as an Air Service Development Zone (ASDZ). A current grant recipient—with its grant award period extending into FY2011—remains active as the ASDZ designee. As a result, at this time the Department is not soliciting applications for selection as an ASDZ designee.

Application Review Information

The Department will carefully review each proposal, and the staff may contact applicants if clarification is needed. The grant awards will be made as quickly as possible so that communities awarded grants can complete the grant agreement process and proceed to implement their plans. Pending unforeseen circumstances, the grant selection process should be completed by December 2010. Given the competitive nature of the grant process, the Department will not meet with grant applicants with respect to their grant proposals. The Department's selection of communities for grant awards will be based on the communities' written submissions.

Priority factors considered. The law directs the Department to give priority consideration to those communities or consortia where:[12]

• Air fares are higher than the national average air fares for all communities;

• The community or consortium will provide a portion of the cost of the activity from local sources other than airport revenue sources;

• The community or consortium has established or will establish a public-private partnership to facilitate air carrier service to the public;

• The assistance will provide material benefits to a broad segment of the traveling public, including business, educational institutions, and other enterprises, whose access to the national air transportation system is limited; and

• The assistance will be used in a timely manner.

Additional factors considered. Applications will be evaluated against the priority considerations listed above. Our experience has been that more applications are received than can be funded under the Small Community Program. Consequently, consistent with the criteria stated above, the selection process will take into consideration such additional factors as:

• The geographic location of each applicant, including the community's proximity to larger centers of air service and low-fare service alternatives;

• The proposed federal grant amount requested compared with the local share offered;

• Whether the applicant community has previously received a grant award under this program and, if so, whether its application includes an explanation of how the community's proposed project differs from its previously funded project;

• The community's demonstrated commitment to and participation in the proposed grant project;

• The relative size of each applicant community;

• The community's existing level of air service and whether that service has been increasing or decreasing;

• Whether the community's proposal, if successfully implemented, could serve as a working model for other communities;

• Current demographic indicators for the community, such as population, income and business activity;

• The grant amount requested compared with total funds available for all communities;

• Whether the community has a realistic plan to use the funds in a timely manner;

• The uniqueness of an applicant's claimed problems and whether the proposed project addresses those problems;

• The extent to which the applicant's proposed solution(s) to solving the problem(s) is new or innovative; and

• Whether the community's proximity to an existing grant recipient could impact its proposal.

Full community participation is a key goal of this program as demonstrated by

[10] Project implementation costs are reimbursable from grant funds only for services or property delivered during the grant term.

[11] The community has the responsibility to ensure that the recipient of any funding has the legal authority under State and local laws to carry out all aspects of the grant.

[12] 49 U.S.C. 41743(c)(5).

the statute's focus on local contributions and active participation in the project. Therefore, applications that demonstrate broad community support will be more attractive. For example, communities providing proportionately higher levels of cash contributions from other than airport revenues will have more attractive proposals. Communities that provide multiple levels of contributions (state, local, airport, cash and in-kind contributions) also will have more attractive proposals. Similarly, communities that demonstrate participation in the development and execution of the proposed air service project will enhance the attractiveness of their proposals. In this regard, the Department welcomes letters of intent from airlines on behalf of community proposals that are specifically intended to enlist new or expanded air carrier presence. Such letters will be accorded greater weight when authorized by airline planning departments.

Proposals that offer innovative solutions to the transportation issues facing the community will be more attractive. Small communities have faced many problems retaining and improving their air services and in coping with air fares that are higher than typical for larger communities. Therefore, proposals that offer new, creative approaches to addressing these problems, to the extent that they are reasonable, will have their attractiveness enhanced. Proposals that provide a well-defined plan, a reasonable timetable for use of the grant funds, and a plan for continuation and/or monitoring of the project after the grant expires also will have greater attractiveness.

Award Administration Information

The Department will announce its grant selections in a selection order, which will be served on each grant recipient, all other applicants, and all parties served with this solicitation order. The selection order will also be posted in the Docket at *http://www.regulations.gov* and on the Department's webpage.

Grant agreement. Communities awarded grants are required to execute a grant agreement with the Department *before* they begin to spend funds under the grant award. Grant funds will be provided on a *reimbursable basis* only, with reimbursements made only for expenses incurred and billed during the period that the grant agreement is in effect and at the appropriate percentage rate, which is determined by: (SCASDP Grant Amount) ÷ (SCASDP Grant Amount + Local Cash Contribution + State Cash Contribution, if applicable). Applicants should not assume they have received a grant, nor should they obligate or spend local funds prior to receiving and fully executing a grant agreement with the Department. Expenditures made prior to the execution of a grant agreement, including costs associated with preparation of the grant application, will *not* be reimbursed. Moreover, there are numerous assurances that grant recipients must sign and honor when federal funds are awarded. All communities receiving a grant under the Small Community Program will be required to accept the responsibilities of these assurances and to execute the assurances when they execute their grant agreements. Copies of the applicable assurances are available for review on the Department's webpage at *http://ostpxweb.dot.gov/aviation/X-50%20Role_files/smallcommunity.htm* (click on "SCASDP Grant Assurances").

Grantee reports. The grant agreement between the Department and each selected community will require the submission of quarterly reports on the progress the community has made during the previous quarter in implementing its grant project. In addition, the grant agreement will require the submission, on a quarterly or other time-specific basis, of other materials relevant to the grant project, such as copies of advertising and promotional material and copies of contracts with consultants and service providers. In addition, each community will be required to submit a final report on its project to the Department, and 10 percent of the grant funds will not be reimbursed to the community until such final report is received.

Cost reimbursement. Communities will be permitted to seek reimbursement of project implementation costs on a regular basis. The frequency of such requests will be at the community's discretion. In this regard, the Department will provide the grant recipient communities with details and procedures for securing reimbursements electronically.

Grant amendments. A grantee may wish to amend its agreement with the Department in the event of a change in circumstances after the date the agreement is executed. Typically, amendments involve an extension to the time period for completing the grant or a change in the types of activities authorized for reimbursement under the goals and objectives ("project scope") of the grant agreement. Grantees are cautioned, however, that the Department cannot authorize amendments that are incompatible with the scope of the agreement. For example, a grant awarded solely for the purpose of developing an airport marketing plan cannot be amended to permit subsidization of an air carrier's startup costs, or a grant awarded solely for the purpose of attracting low-fare service cannot be amended to permit it to attract service from a legacy carrier, since the latter, in each example, was never contemplated by the original agreement.

Grantees are also advised that the Department will not extend the expiration date of an agreement simply to allow more time for a community to solicit air carriers for new air service. Many grants have been awarded for the purpose of subsidizing new or additional air service for a small community, with the goal of that service becoming self-sustaining by the end of the subsidy period. In virtually all cases, the community seeking the grant funds received expressions of interest from one or more air carriers. In some instances, these expressions of interest failed to materialize and the community was left without any immediate prospects, at which time it asked for a grant extension to allow more time to pursue other carriers. Because the Department is charged by law to consider timely use of funds when selecting grant recipients, the Department will grant an extension only when the community can provide strong evidence of a firm commitment on the part of an air carrier to deliver the desired service.

To avoid misunderstandings, grantees contemplating amendments to their agreements are urged to discuss their situations with the Small Community Program staff before requesting a formal amendment.

This order is issued under authority delegated in 49 CFR 1.56a(f).

Accordingly,

1. Community proposals for funding under the Small Community Air Service Development Program should be submitted via *http://www.grants.gov* as an attachment to the SF424 no later than August 27, 2010; and

2. This order will be published in the **Federal Register** and also will be served on the Conference of Mayors, the National League of Cities, the National Governors Association, the National Association of State Aviation Officials (NASAO), County Executives of America, the American Association of Airport Executives (AAAE), and the Airports Council International-North

America (ACI), and posted on *http://www.grants.gov.*

Susan L. Kurland,

Assistant Secretary for Aviation and International Affairs.

An electronic version of this document is available on the World Wide Web at http://www.regulations.gov.

Appendix A—Small Community Air Service Development Program

United States Code Annotated

Title 49. Transportation

Subtitle VII. Aviation Programs

Part A. Air Commerce and Safety

Subpart II. Economic Regulation

Chapter 417. Operations of Carriers

Subchapter II. Small Community Air Service

➠§ 41743. Airports not receiving sufficient service

(a) Small community air service development program.—The Secretary of Transportation shall establish a program that meets the requirements of this section for improving air carrier service to airports not receiving sufficient air carrier service.

(b) Application required.—In order to participate in the program established under subsection (a), a community or consortium of communities shall submit an application to the Secretary in such form, at such time, and containing such information as the Secretary may require, including—

(1) An assessment of the need of the community or consortium for access, or improved access, to the national air transportation system; and

(2) an analysis of the application of the criteria in subsection (c) to that community or consortium.

(c) Criteria for participation.—In selecting communities, or consortia of communities, for participation in the program established under subsection (a), the Secretary shall apply the following criteria:

(1) Size.—For calendar year 1997, the airport serving the community or consortium was not larger than a small hub airport, and—

(A) had insufficient air carrier service; or

(B) had unreasonably high air fares.

(2) Characteristics.—The airport presents characteristics, such as geographic diversity or unique circumstances, that will demonstrate the need for, and feasibility of, the program established under subsection (a).

(3) State limit.—Not more than 4 communities or consortia of communities, or a combination thereof, from the same State may be selected to participate in the program in any fiscal year.

(4) Overall limit.—No more than 40 communities or consortia of communities, or a combination thereof, may be selected to participate in the program in each year for which funds are appropriated for the program.

No community, consortia of communities, nor combination thereof may participate in the program in support of the same project more than once, but any community, consortia of communities, or combination thereof may apply, subsequent to such participation, to participate in the program in support of a different project.

(5) Priorities.—The Secretary shall give priority to communities or consortia of communities where—

(A) Air fares are higher than the average air fares for all communities;

(B) the community or consortium will provide a portion of the cost of the activity to be assisted under the program from local sources other than airport revenues;

(C) the community or consortium has established, or will establish, a public-private partnership to facilitate air carrier service to the public;

(D) the assistance will provide material benefits to a broad segment of the traveling public, including business, educational institutions, and other enterprises, whose access to the national air transportation system is limited; and

(E) the assistance will be used in a timely fashion.

(d) Types of assistance.—The Secretary may use amounts made available under this section—

(1) To provide assistance to an air carrier to subsidize service to and from an underserved airport for a period not to exceed 3 years;

(2) To provide assistance to an underserved airport to obtain service to and from the underserved airport; and

(3) To provide assistance to an underserved airport to implement such other measures as the Secretary, in consultation with such airport, considers appropriate to improve air service both in terms of the cost of such service to consumers and the availability of such service, including improving air service through marketing and promotion of air service and enhanced utilization of airport facilities.

(e) Authority to make agreements.—

(1) In general.—The Secretary may make agreements to provide assistance under this section.

(2) Authorization of appropriations.—There is authorized to be appropriated to the Secretary $20,000,000 for fiscal year 2001, $27,500,000 for each of fiscal years 2002 and 2003, and $35,000,000 for each of fiscal years 2004 through 2008 to carry out this section. Such sums shall remain available until expended.

(f) Additional action.—Under the program established under subsection (a), the Secretary shall work with air carriers providing service to participating communities and major air carriers (as defined in section 41716(a)(2)) serving large hub airports to facilitate joint-fare arrangements consistent with normal industry practice.

(g) Designation of responsible official.—The Secretary shall designate an employee of the Department of Transportation—

(1) To function as a facilitator between small communities and air carriers;

(2) To carry out this section;

(3) To ensure that the Bureau of Transportation Statistics collects data on passenger information to assess the service needs of small communities;

(4) To work with and coordinate efforts with other Federal, State, and local agencies to increase the viability of service to small communities and the creation of aviation development zones; and

(5) To provide policy recommendations to the Secretary and Congress that will ensure that small communities have access to quality, affordable air transportation services.

(h) Air Service Development Zone.—The Secretary shall designate an airport in the program as an Air Service Development Zone and work with the community or consortium on means to attract business to the area surrounding the airport, to develop land use options for the area, and provide data, working with the Department of Commerce and other agencies.

Appendix B—Small Community Air Service Development Program

Docket DOT–OST–2010–0124

Summary Information

All applicants *must* submit this information with their proposal, along with a completed form SF424 on *http://www.grants.gov.*

A. Applicant Information: (Check All That Apply)

☐ Not a Consortium ☐ Interstate Consortium ☐ Intrastate Consortium

☐ Community now receives EAS subsidy

☐ Community (or Consortium member) previously received a Small Community Grant

If previous recipient: Date of grant: _____

Expiration date of grant: _____

B. Public/Private Partnerships: (List Organization names)

Public	Private
1.	1.
2.	2.
3.	3.
4.	4.
5.	5.

C. Project Proposal: (check all that apply)

☐ Marketing
☐ Personnel
☐ Travel Bank
☐ Surface Transportation
☐ Revenue Guarantee
☐ Start Up Cost Offset
☐ Study
☐ Upgrade Aircraft
☐ Increase Frequency
☐ Service Restoration
☐ Regional Service
☐ Launch New Carrier
☐ First Service
☐ Secure Additional Carrier
☐ New Route
☐ Low Fare Service
☐ Subsidy
☐ Other (specify)
☐ _____
☐ _____
☐ _____

D. Existing Landing Aids at Local Airport:

☐ Full ILS
☐ Localizer
☐ Outer/Middle Marker
☐ Other (specify)
☐ Published Instrument Approach

E. Project Cost:

1. Federal amount requested: _____
2. State *cash* financial contribution: _____
3. Local *cash* financial contribution.
   3a. Airport *cash* funds: _____
   3b. Non-airport *cash* funds: _____
   3c. Total local *cash* funds (3a. + 3b.): _____
4. TOTAL CASH FUNDING (1. + 2. + 3c.): _____
5. Local funds contributed from *already-existing* programs or projects included in line 3c. amount: _____
6. Local funds contributed from *new* commitments or *new* resources included in line 3c. amount: _____
7. Airport *In-Kind* contribution: (amount & description) _____
8. Other *In-Kind* contribution: (amount & description) _____
9. TOTAL IN-KIND CONTRIBUTION (7. + 8.): _____
10. TOTAL PROJECT COST (4. + 9.): _____

F. Enplanements:

2000 _____ 2004 _____ 2008 _____
2001 _____ 2005 _____ 2009 _____
2002 _____ 2006 _____
2003 _____ 2007 _____

G. Is This Application Subject To Review by State Under Executive Order 12372 Process?

☐ a. This application was made available to the State under the Executive Order 12372 Process for review on (date) _____
☐ b. Program is subject to E.O. 12372, but has not been selected by the State for review.
☐ c. Program is not covered by E.O. 12372.

H. Is the Applicant Delinquent on Any Federal Debt? (If "Yes", Provide Explanation)

☐ No ☐ Yes (explain) _____

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BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection(s): Verification of Authenticity of Foreign License, Rating and Medical Certification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information being collected is used to properly identify airmen to allow the agency to verify their foreign license being used to qualify for a U.S. certificate. The respondents are holders of foreign licenses wishing to obtain a U.S. certificate.

DATES: Written comments should be submitted by September 28, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 267–9895, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0724.

Title: Verification of Authenticity of Foreign License, Rating and Medical Certification.

Form Numbers: FAA form 8060–71.

Type of Review: Renewal of a currently-approved information collection.

Background: The information collected is used to properly identify airmen to allow the agency to verify their foreign license being used to qualify for a U.S. certificate. The respondents are holders of foreign licenses wishing to obtain a U.S. certificate. Per the General Aviation Operations Inspector's Handbook, Order 8700.1, a person who is applying for a U.S. pilot certificate/rating on the basis of a foreign-pilot license must apply for verification of that pilot license at least 90 days before arriving at the designated FAA FSDO where the applicant intends to receive the U.S. pilot certificate.

Affected Public: An estimated 5,400 respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 10 minutes per response.

Estimated Total Annual Burden: An estimated 900 hours annually.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Scott, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

PUBLIC COMMENTS INVITED: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on July 26, 2010.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–18783 Filed 7–29–10; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection(s): Flight Standards Customer Satisfaction Survey

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 11, 2010, vol. 75, no. 90, page 26318. The FAA has initiated customer service surveys throughout the agency, requiring that every element have contact with their customers to assure that their needs are being met and that service is improved.

DATES: Written comments should be submitted by August 30, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 267–9895, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 2120–0568.

Title: Flight Standards Customer Satisfaction Survey.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of a currently-approved information collection.

Background: The FAA has initiated customer service surveys throughout the agency, requiring that every element have contact with their customers to assure that their needs are being met and that service is improved. Survey data collected from Flight Standards customers are analyzed by Flight Standards Service, Organizational Resources and Program Management Division, and the General Aviation, Commercial and Maintenance Divisions.

Affected Public: An estimated 5,000 respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 10 minutes per response.

Estimated Total Annual Burden: An estimated 542 hours annually.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on July 26, 2010.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–18758 Filed 7–29–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35392]

Gregory B. Cundiff, Connie Cundiff, CGX, Inc. and Ironhorse Resources, Inc.—Continuance in Control Exemption—Gardendale Railroad, Inc.

Gregory B. Cundiff (Mr. Cundiff), Connie Cundiff (Mrs. Cundiff), CGX, Inc. (CGX), and Ironhorse Resources, Inc. (Ironhorse) (collectively, applicants), all noncarriers, jointly have filed a verified notice of exemption to continue in control of Gardendale Railroad, Inc. (GRI), upon GRI becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption in Docket No. FD 35391, *Gardendale Railroad—Operation Exemption–Rail Line of Border Transload & Transfer, Inc. at Gardendale, LaSalle County, Tex.* In that proceeding, GRI. seeks an exemption under 49 CFR 1150.31 to operate 1.86 miles of rail line owned by Crystal City Railroad, Inc., extending between specified points in Texas.

The applicants intend to consummate the transaction no sooner than August 13, 2010, the effective date of the exemption (30 days after the exemption was filed).

GRI is owned by Ironhorse, a noncarrier holding company. Ironhorse is owned by CGX, a noncarrier holding company. CGX is owned by Mr. and Mrs. Cundiff, individuals who are noncarriers. CGX owns the following rail carriers: Crystal City Railroad, Inc., Lone Star Railroad, Inc., Rio Valley Railroad, Inc., and Mississippi Tennessee Holdings, LLC. Ironhorse owns the following carriers: Railroad Switching Service of Missouri, Texas Railroad Switching, Inc, Rio Valley Switching Company, Southern Switching Company, Mississippi Tennessee Railroad, LLC, and GRI.

Applicants certify that: (1) The rail line to be operated by GRI does not connect with any other railroads in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect this rail line with any other railroad in their corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all of the carriers are Class III carriers.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than August 6, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35392, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, Ill. 60604.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: July 23, 2010.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–18592 Filed 7–29–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Intent To Prepare an Environmental Impact Statement for a Proposed Light Rail Transit Line in Detroit, MI

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA), as the federal lead agency, and the City of Detroit (the City) intend to prepare an Environmental Impact Statement (EIS) for the proposed Woodward Avenue Light Rail Transit (LRT) project in Detroit, Michigan. The proposed project, described more completely within, is an LRT line that would begin in downtown Detroit near the Detroit River and extend northwest along Woodward Avenue (M–1), terminating near Eight-Mile Road (M–102) in Detroit, Wayne County, Michigan. The purpose of this notice is to alert interested parties regarding the intent to prepare the EIS, to provide information on the nature of the proposed project and possible alternatives, and to invite public participation in the EIS process.

DATES: Written comments on the scope of the EIS, including the project's purpose and need, the alternatives to be considered, the impacts to be evaluated, and the methodologies to be used in the evaluations should be sent to the Headquarters office of FTA on or before September 13, 2010. *See* **ADDRESSES** below for the address to which written comments may be sent. A public scoping meeting, at which questions about the project will be addressed and written comments will be accepted, will be held on the following date:

- Saturday, August 14, 2010; 11 a.m. to 1 p.m.; at the Considine Little Rock Family Life Center (Auditorium), 8904 Woodward Avenue, Detroit, MI 48202. Telephone (313) 876–0131
- Saturday, August 14, 2010; 5 p.m. to 7 p.m.; at the Considine Little Rock Family Life Center (Auditorium), 8904 Woodward Avenue, Detroit, MI 48202. Telephone (313) 876–0131

The building used for the scoping meetings is accessible to persons with disabilities. Any individual who requires special assistance, such as a sign language interpreter, to participate in the scoping meeting should contact Linnette Phillips, Public Involvement Coordinator, at Pierce, Monroe & Associates, LLC at (313)–961–1940 or *lphillips@pierce-monroe.com,* five days prior to the meeting.

Information describing the project purpose and need and the alternatives proposed for analysis will be available at the meetings and on the project Web site at *http://www.woodwardlightrail.com.* Paper copies of the information materials may also be obtained from Mr. Tim Roseboom, Manager, Strategic Planning & Scheduling Division, City of Detroit Department of Transportation at (313)–833–1196 or *timros@detroitmi.gov.* Representatives of Native American tribal governments and of all federal, state, regional and local agencies that may have an interest in any aspect of the project will be invited to be participating or cooperating agencies, as appropriate.

ADDRESSES: Written comments will be accepted at the public scoping meetings or they may be sent to: Ms. Tricia Harr, AICP, Federal Transit Administration Headquarters, 1200 New Jersey Avenue, SE., Washington, DC 20590, e-mail *tricia.harr@dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Tricia Harr, AICP, Federal Transit Administration, 1200 New Jersey Avenue, SE., E43–105, Washington, DC 20590, phone 202–366–0486, e-mail *tricia.harr@dot.gov.*

SUPPLEMENTARY INFORMATION:

Scoping

FTA and the City of Detroit invite all interested individuals and organizations, public agencies, and Native American Tribes to comment on the scope of the EIS for the proposed LRT line, including the project's purpose and need, the alternatives to be studied, the impacts to be evaluated, and the evaluation methods to be used. Comments should address (1) feasible alternatives that may better achieve the project's purpose and need with fewer adverse impacts, and (2) any significant environmental impacts relating to the alternatives.

"Scoping" as described in the regulations implementing the National Environmental Policy Act (NEPA) (Title 40 of the Code of Federal Regulations (CFR) 1501.7) has specific and fairly limited objectives, one of which is to identify the significant issues associated with alternatives that will be examined in detail in the document, while simultaneously limiting consideration and development of issues that are not truly significant. It is in the NEPA scoping process that potentially significant environmental impacts—those that give rise to the need to prepare an environmental impact statement—should be identified; impacts that are deemed not to be significant need not be developed extensively in the context of the impact statement, thereby keeping the statement focused on impacts of consequence consistent with the ultimate objectives of the NEPA implementing regulations—"to make the environmental impact statement process more useful to decision makers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives * * * [by requiring] impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses" (Executive Order 11991, of May 24, 1977). Transit projects may also generate environmental benefits; these should be highlighted as well—the impact statement process should draw attention to positive impacts, not just negative impacts.

Once the scope of the environmental study, including significant environmental issues to be addressed, is settled, an annotated outline of the document will be prepared and shared with participating agencies and posted on the project Web site. The outline serves at least three worthy purposes, including (1) documenting the results of the scoping process; (2) contributing to the transparency of the process; and (3) providing a clear roadmap for concise development of the environmental document.

Purpose and Need for the Project

The purpose of the LRT project is to improve public transit service and provide greater mobility options for the Woodward Avenue Corridor; improve transportation equity among all travelers; improve transit capacity along the Corridor; improve linkages to major activity centers along the Corridor; and support the City's economic development goals and encourage reinvestment in Detroit's urban core.

The need for the project is based on the following considerations: Strong existing bus ridership and large potential ridership due to major activity centers along the Corridor; a heavily transit-dependent population along the Corridor; overcrowding, reliability issues, and lack of rapid transit alternatives with the current bus system; air quality issues due to the region's nonattainment status; and focus of local policy on transit improvements rather than roadway improvements as part of a more balanced and sustainable approach to future growth.

The proposed LRT system represents a major step to promote regional and local rapid transit improvements in Southeast Michigan.

Project Location and Environmental Setting

The proposed project area lies along Woodward Avenue in central Detroit. The limits of the project area are the Detroit River in the south and Eight Mile Road (M–102) in the north. The project area is highly developed, with significant industrial and commercial (retail and office) and residential (single- and multi-family) developments. The project area includes the City of Highland Park within the City of Detroit.

As the LRT extends northwest, it would cross I–75, Warren Avenue, I–94, Grand Boulevard, West Chicago Boulevard/Arden Park Boulevard, East Davison Road (M–8), and enter Highland Park. It would continue to extend northwest, passing the former Ford Motor Company Model T site on the east, cross McNicholas Road, run adjacent to the eastern boundary of Palmer Park, cross Seven Mile Road, run adjacent to the eastern boundary of Woodlawn Cemetery, run adjacent to the western boundary of the State Fair grounds, and terminate near Eight Mile Road. The extension would include 9.3 new route miles of rapid transit with new transit stations, parking facilities, and a vehicle storage and maintenance facility.

Possible Alternatives

The Detroit Department of Transportation (DDOT) completed the Detroit Transit Options for Growth Study (DTOGS) Alternative Analysis (AA) in 2008, which evaluated potential corridors, technology, and alignment alternatives. This AA Study is posted on the project Web site. The City selected Woodward Avenue as the Locally Preferred Alternative (LPA) with Light Rail Transit as the preferred modal option in April 2008. The LPA was amended into the Southeast Michigan Council of Government's (SEMCOG's) long-range transportation plan, *Direction2035: The Regional Transportation Plan for Southeast Michigan (Direction2035),* in June 2008, and the current fiscally constrained FY 2008–2011 Transportation Improvement Program (TIP). Accordingly, the following alternatives are proposed to be evaluated in the DEIS:

No Build Alternative: The No Build Alternative is defined as the existing transportation system, plus any committed transportation improvements. Committed transportation improvements include the highway and transit projects in SEMCOG's current fiscally constrained long-range transportation plan, *Direction2035,* as amended, except for the proposed Woodward Avenue LRT. The No Build Alternative serves as the NEPA baseline against which the environmental effects of other alternatives, including the proposed project, are measured. Under the No Build Alternative, the transit network within the project area is projected to be substantially the same as it is now, with bus service adjusted to meet anticipated demand. All elements of the No Build Alternative are included in each of the other alternatives.

LRT Alternatives: The LRT Alternatives would utilize LRT technology and operate along the

Woodward Avenue alignment as described above. LRT is an electric railway that may use shared (street) or exclusive rights-of-way with multi-car trains or single cars powered electrically by overhead wire, boarding passengers at track level or car floor level.

Other refinements to the LRT alternatives will be considered as part of the Draft EIS alternatives' evaluation process, which includes refinement of the proposed alignment, project termini, operating plans, station locations, and/or design alternatives, such as median-running vs. curb-running location within the preferred alignment. While the environmental process will examine the entire 9.3 mile project, the first 3.4 miles of the project (from the Detroit River to Grand Boulevard) may be constructed and operated as an initial phase, with the remainder being constructed as a second phase.

In addition to the alternatives described above, other transit alternatives identified through the public and agency scoping process will be evaluated for potential inclusion in the EIS.

Possible Effects

The purpose of this EIS process is to study, in a public setting, the potentially significant effects of the proposed project and its alternatives on the quality of the human environment, as well as the natural environment. The AA Study and recent reviews of the study area suggest that the impact areas of investigation for this proposed transit project include, but are not limited to: Traffic and parking; historic and cultural resources; noise and vibration; community impacts; and business impacts. Investigation will reveal if and to what degree the proposed project would affect those areas. Measures to avoid, minimize, or mitigate any adverse impacts will be identified and presented.

FTA Procedures

The regulations implementing NEPA, as well as provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), call for public involvement in the EIS process. Section 6002 of SAFETEA–LU (23 U.S.C. 139) requires that FTA and the City do the following: (1) Extend an invitation to other Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project to become "participating agencies;" (2) provide an opportunity for involvement by participating agencies and the public to help define the purpose and need for a proposed project, as well as the range of alternatives for consideration in the EIS; and (3) establish a plan for coordinating public and agency participation in, and comment on, the environmental review process. Any Federal or non-Federal agency or Native American tribe interested in the proposed project that does not receive an invitation to become a participating agency should notify at the earliest opportunity the Project Manager identified above under **ADDRESSES**.

A comprehensive public involvement program and a Coordination Plan for public and interagency involvement will be developed for the project and posted on the project's Web site at *http://www.woodwardlightrail.com.* The public involvement program includes a full range of activities including maintaining the project Web site and outreach to local officials, community and civic groups, and the public. Specific activities or events for involvement will be detailed in the project's public participation plan.

Paperwork Reduction

The Paperwork Reduction Act seeks, in part, to minimize the cost to the taxpayer of the creation, collection, maintenance, use, dissemination, and disposition of information. Consistent with this goal and with principles of economy and efficiency in government, it is FTA policy to limit insofar as possible distribution of complete printed sets of environmental documents. Accordingly, unless a specific written request for a complete printed set of environmental documents is received by the close of the scoping process by the Project Manager identified under **ADDRESSES**, FTA and its grantees will distribute only the executive summary and a Compact Disc (CD) of the complete environmental document. A complete printed set of the environmental document will be available for review at the project sponsor's offices and elsewhere; an electronic copy of the complete environmental document will also be available on the project Web site.

Other

The City is expecting to seek New Starts funding for the proposed project under 49 United States Code 5309 and will, therefore, be subject to New Starts regulations (49 Code of Federal Regulations (CFR) Part 611). The New Starts regulations also require the submission of certain project-justification and local financial commitment information to support a request to FTA for approval into the Preliminary Engineering phase of the New Starts review process. Pertinent New Starts evaluation criteria will be included in the EIS.

The EIS will be prepared in accordance with NEPA and its implementing regulations issued by the Council on Environmental Quality (40 CFR Parts 1500–1508) and with the FTA/Federal Highway Administration regulations "Environmental Impact and Related Procedures" (23 CFR Part 771). Related environmental procedures to be addressed during the NEPA process include, but are not limited to, Executive Order 12898 on Environmental Justice; Section 106 of the National Historic Preservation Act; and Section 4(f) of the DOT Act (49 U.S.C. 303).

Issued on: July 23, 2010.

Marisol Simon,

Regional Administrator, Federal Transit Administration Region V, Chicago, Illinois.

[FR Doc. 2010–18703 Filed 7–29–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35389]

LRY, LLC D.B.A. Lake Railway—Lease and Operation Exemption—Union Pacific Railroad Company

LRY, LLC D.B.A. Lake Railway (LRY), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Union Pacific Railroad Company (UP), and to operate 1.9 miles of UP's Modoc Subdivision, between milepost 506.1 and a future interchange point with UP at milepost 508.0, near Perez, Cal.

This transaction is related to Docket No. FD 35250, *LRY, LLC D.B.A. Lake Railway—Lease and Operation Exemption—Union Pacific Railroad Company,* wherein LRY filed a verified notice of exemption to lease and operate, as pertinent, a portion of UP's Modoc Subdivision, extending from milepost 445.6, near MacArthur, Cal., to milepost 506.1, near Perez. This notice was served and published in the **Federal Register** on December 18, 2009 (74 FR 67,304–05) and became effective on January 1, 2010. LRY explains that the lease agreement between LRY and UP has been modified to include the additional 1.9 miles involved in this proceeding in order to allow for additional interchange headroom at Perez.[1] The portions of the Modoc

[1] LRY originally filed a letter with the Board on February 4, 2010, stating that the milepost designation of 506.1 near Perez was incorrect. LRY sought to substitute milepost 508.0 as the correct

Subdivision involved in this proceeding and in Docket No. FD 35250 had been previously leased to Modoc Railway and Land Company, LLC (MR&L), and operated by Modoc Northern Railroad Co. (MNRR). According to LRY, UP has terminated the lease with MR&L and MNRR and under terms of that lease plans to seek discontinuance authority for MNRR from the Board in the name of both MR&L and MNRR.

The transaction cannot be consummated until August 14, 2010, the effective date of the exemption (30 days after the exemption was filed).[2]

LRY certifies that, as a result of this transaction, its projected revenues will not exceed those that would qualify it as a Class III carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed by no later than August 6, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35389, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy must be served on James H. M. Savage, Of Counsel, John D. Heffner, PLLC, 1750 K Street, NW., Suite 200, Washington, DC 20006.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: July 27, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. 2010–18725 Filed 7–29–10; 8:45 am]

BILLING CODE 4915–01–P

designation. However, the letter was not sufficient to amend LRY's notice of exemption.

[2] LRY's notice of exemption stated August 7, 2010, as the date of consummation. LRY's counsel was notified that August 14, 2010, is the effective date of the exemption and consummation cannot occur before that date.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35391]

Gardendale Railroad, Inc.—Operation Exemption—Rail Line of Border Transload & Transfer, Inc. at Gardendale, LaSalle County, TX

Gardendale Railroad, Inc. (GRI), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate a 1.86-mile line of railroad extending between milepost 107.0 and milepost 105.14 at or near Gardendale in LaSalle County, Tex. The line is owned by Crystal City Railroad, Inc. (CCR) and is currently being operated by Border Transload & Transfer, Inc. (BTT) (formerly known as Texas Railroad Switching, Inc. (TRS)).[1]

This transaction is related to a concurrently filed verified notice of exemption in Docket No. FD 35392, *Gregory B. Cundiff, Connie Cundiff, CGX, Inc. and Ironhorse Resources, Inc.—Continuance in Control Exemption—Gardendale Railroad, Inc.* In that proceeding, Gregory B. Cundiff, Connie Cundiff, CGX, Inc., and Ironhorse Resources, Inc., jointly have filed a verified notice of exemption to continue in control of GRI upon its becoming a Class III rail carrier.

The transaction will be consummated no sooner than August 13, 2010, the effective date of the exemption (30 days after the exemption was filed).

GRI certifies that its projected annual revenues as a result of the transaction will not exceed those that would qualify it as a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by August 6, 2010 (at least 7 days before the exemption becomes effective).

[1] In 1990, CCR received an exemption to acquire a 53.41-mile line of railroad and TRS received an exemption to lease and operate the line. *See Crystal City R.R.—Acquisition and Operation Exemption—R.R. Switching Service of Missouri, Texas R.R. Switching—Lease and Operation Exemption—Crystal City R.R.,* FD 31757 (served Nov. 15, 1990). In 1995, CCR was authorized to abandon, and TSR was authorized to discontinue service over, the line with the exception of a 1.86-mile portion. *See Crystal City R.R.—Aban. Exemption—in LaSalle, Zavala, and Dimmit Counties, Tex.,* AB 427X (served June 9, 1995), *Texas R.R. Switching, Inc.—Discontinuance of Service Exemption—in LaSalle, Zavala, and Dimmit Counties, Tex.,* Docket No. AB 428X (served June 9, 1995).

An original and 10 copies of all pleadings, referring to Docket No. FD 35391, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, Ill. 60604.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: July 23, 2010.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. 2010–18621 Filed 7–29–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

MainStreet Savings Bank, FSB, Hastings, MI; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Federal Deposit Insurance Corporation as sole Receiver for MainStreet Savings Bank, Hastings, Michigan, (OTS No. 00966) on July 16, 2010.

Dated: July 23, 2010.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. 2010–18612 Filed 7–29–10; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Olde Cypress Community Bank, Clewiston, FL; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Federal Deposit Insurance Corporation as sole Receiver for Olde Cypress Community Bank, Clewiston, Florida (OTS No. 02517), on July 16, 2010.

Dated: July 23, 2010.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. 2010–18613 Filed 7–29–10; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Turnberry Bank, Aventura, FL; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Federal Deposit Insurance Corporation as sole Receiver for Turnberry Bank, Aventura, Florida (OTS No. 08087), on July 16, 2010.

Dated: July 23, 2010.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. 2010–18614 Filed 7–29–10; 8:45 am]

BILLING CODE 6720–01–M

Federal Register

Friday,
July 30, 2010

Part II

Department of Health and Human Services

45 CFR Part 152
Pre-Existing Condition Insurance Plan Program; Interim Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 152

[OCIIO–9995–IFC]

RIN 0991–AB71

Pre-Existing Condition Insurance Plan Program

AGENCY: Office of Consumer Information and Insurance Oversight, OCIIO, Department of Health and Human Services, HHS.

ACTION: Interim final rule with comment period.

SUMMARY: Section 1101 of Title I of the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act) requires that the Secretary establish, either directly or through contracts with States or nonprofit private entities, a temporary high risk health insurance pool program to provide affordable health insurance coverage to uninsured individuals with pre-existing conditions. This program will continue until January 1, 2014, when Exchanges established under sections 1311 and 1321 of the Affordable Care Act will be available for individuals to obtain health insurance coverage. This interim final rule implements requirements in section 1101 of the Affordable Care Act. Key issues addressed in this interim final rule include administration of the program, eligibility and enrollment, benefits, premiums, funding, and appeals and oversight rules.

DATES: *Effective date:* This regulation is effective on July 30, 2010.

Comment date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on September 28, 2010.

ADDRESSES: In commenting, please refer to file code OCIIO–9995–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed)

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the "More Search Options" tab.

2. *By regular mail.* You may mail written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–OCIIO–IFC, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: OCIIO–9995–IFC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—
Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—
Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the "Collection of Information Requirements" section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Ariel Novick, (301) 492–4290.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will be also available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

A. General

Historically, public policy has addressed the challenges of people with pre-existing conditions through either high risk pools or insurance reform. In general, high risk pools provide coverage of last resort for people who, because of their health, are denied coverage by private insurers or are unable to purchase coverage in the individual market except at substantially surcharged premiums due to their health status, and are ineligible for public coverage (such as Medicare or Medicaid). Most States that permit insurers to decline coverage for health reasons have established high risk pools as an alternative coverage option in their individual market. These current pools provide safety net coverage for people who have difficulty obtaining individual health insurance because of their pre-existing conditions. First established in 1976, 35 State high risk pools currently provide coverage to approximately 200,000 individuals, or about one percent of the individual market nationwide, and vary in terms of the populations they cover and the benefits they provide.

States and the Congress through the Affordable Care Act have also elected to use insurance reforms to address the accessibility and availability of health insurance coverage for high risk populations. Seven States have adopted guaranteed issue to ensure access to coverage, and two States prohibit health status from being a factor in setting premiums.[1] The Patient Protection and Affordable Care Act of 2010, (the Affordable Care Act or "the Act"), Public Law 111–148 applies a ban on pre-existing condition exclusions and "rate-ups" based on health status starting in

[1] Kaiser Family Foundation. *State Health Facts. http://www.statehealthfacts.org/.*

2014 and prohibits the use of pre-existing condition exclusions for children starting in plan or policy years that begin on or after September 23, 2010.[2] This temporary Federal program provides coverage to uninsured Americans with pre-existing conditions until the Affordable Care Act is fully implemented in 2014.

B. Overview: Section 1101 of the Patient Protection and Affordable Care Act

The Affordable Care Act, was enacted on March 23, 2010. The Health Care and Education Reconciliation Act (the Reconciliation Act), Public Law 111–152, was enacted on March 30, 2010. Section 1101 of the Affordable Care Act requires that the Secretary of the Department of Health and Human Services (HHS) establish, either directly or through contracts with States or nonprofit private entities, a temporary high risk health insurance program to provide access to coverage for uninsured Americans with pre-existing conditions. (Hereafter, we generally refer to this program as the Pre-Existing Condition Insurance Plan program, or PCIP program, to avoid confusion with the existing State high risk pool programs, which will continue to operate separately.)

The PCIP program is intended to remain in place from the time of its establishment until the Exchanges established under sections 1311 or 1321 of the Act go into effect on January 1, 2014. This interim final regulation sets policy only for this unique, temporary Federal program with fixed Federal funding. Presented below is a general overview of the statutory requirements for the new program. More detailed descriptions of the specific requirements are included below as part of the discussion of the associated regulatory provisions set forth in this interim final rule.

II. Provisions of the Interim Final Rule

A. General Provisions (Subpart A, § 152.1 Through § 152.2)

Section 152.1 of this interim final rule specifies the general statutory authority for the ensuing regulations and the scope of the program, consistent with section 1101 of the Act. Section 152.2 provides definitions for terms that appear throughout these regulations. Generally, the definitions are self-explanatory or taken directly from section 1101 of the statute. The definitions set forth in subpart A apply to all of part 152 unless otherwise indicated and are applicable only for purposes of part 152.

The definition of "pre-existing condition exclusion" warrants a brief discussion. First, it is important to note that this definition applies only for purposes of the prohibition in section 1101(c)(2)(A) on a PCIP "impos[ing] any preexisting condition exclusion" under the coverage provided (an important protection for a program designed to offer coverage to those with a pre-existing condition), and is separate from the "guidelines" that determine pre-existing condition status under section 1101(d)(2)(3) for purposes of eligibility for enrollment in a PCIP. These latter eligibility provisions are set forth in subpart C of this rule, under section 152.14.

State laws vary with regard to the definition of a pre-existing condition exclusion. For purposes of defining a pre-existing condition exclusion, we adopted the definition of pre-existing condition currently used in the group market under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). We also took into account section 1201 of the Affordable Care Act, which prohibits denials of coverage because of a pre-existing condition. Thus, we specify that pre-existing condition exclusion has the same meaning as under 45 CFR 144.103. That is, the term refers to a denial of coverage, or limitation or exclusion of benefits, based on the fact that the individual denied coverage or benefits had a health condition that was present before the date of enrollment for the coverage (or a denial of enrollment), whether or not any medical advice, diagnosis, care, or treatment was recommended or received before that date. This would include exclusions stemming from a condition identified via a pre-enrollment questionnaire or physical examination, or the review of medical records during the pre-enrollment period.

B. PCIP Program Administration (Subpart B, § 152.6 and § 152.7)

As noted above, section 1101(b) of the Affordable Care Act provides that HHS may "carry out" the temporary high risk health insurance pool program either directly or through contracts with eligible entities, which are States and non-profit entities. Eligible entities must submit a proposal to carry out a PCIP in a time and manner, and containing such information, that the Secretary requires. Section 152.6 establishes the general rules for administration through either a State or by HHS through a non-profit private entity. Section 152.7 then describes the proposal process and specifies that in order to contract with HHS, the eligible entity's proposal must demonstrate capability to perform all functions necessary for the design and operation of a PCIP, and that its proposed PCIP is in full compliance with all of the requirements of this part.

These standards establish minimum requirements for PCIPs, and are supplemented by other requirements detailed in solicitation documents (such as the descriptions of the outreach plan and consumer information resources that each PCIP will establish) and incorporated into the final contracts with HHS.

B. Eligibility and Enrollment (Subpart C, § 152.14 Through § 152.15)

Section 1101(d) of the Affordable Care Act provides the basic eligibility criteria for the PCIP program, which are set forth under § 152.14. In addition, consistent with the Secretary's general authority under section 1101(c)(2)(D) of the Act to establish requirements for a PCIP, we set forth enrollment and disenrollment requirements in § 152.15.

Eligibility for the PCIP Program (§ 152.14)

Under section 1101(d) of the Affordable Care Act and subparagraphs (1), (2) and (3) of § 152.14(a) of this interim final rule, an individual is eligible to enroll in a PCIP if he or she: (1) Is a citizen or national of the United States or is lawfully present in the United States as determined in accordance with section 1411 of the Affordable Care Act; (2) has not been covered under creditable coverage, as defined in section 2701(c)(1) of the Public Health Service Act as of the date of enactment, during the 6-month period prior to the date on which he or she is applying for coverage through the PCIP; and (3) has a pre-existing condition, as determined in a manner consistent with guidance issued by the Secretary. We further provide in § 152.14(a)(4) that an individual must be a resident of a State that falls within the service area of a PCIP.

Eligibility Conditioned on Citizenship and Immigration Status

Eligibility for the PCIP program is limited to citizens or nationals of the United States and individuals who are lawfully present in the United States. For the purpose of this regulation, lawfully present has the meaning presently used under the Children's Health Insurance Program, provided in the State Health Official letter issued by

[2] These provisions do not apply to "grandfathered" plans. For a description of these provisions, see the interim final regulations implementing 2719A (regarding patient protections), published in the **Federal Register** on June 28, 2010 (75 FR 37188).

the Centers for Medicare and Medicaid Services (CMS) on July 1, 2010. Section 1101(d)(1) directs the Secretary to make a determination of citizenship and immigration status in accordance with section 1411 of the Act, which describes procedures to be employed for determining eligibility for the Exchanges and provides for these procedures also to be used in determining eligibility for the PCIP program. This section sets forth detailed requirements governing the type of information that applicants must provide and specific verification procedures that the Secretary of Health and Human Services, Commissioner of Social Security, and Secretary of Homeland Security would be required to follow to establish eligibility. Section 1411(c)(4) of the Affordable Care Act further provides that the Secretary shall conduct verifications and determinations "through the use of an on-line system or otherwise for the electronic submission of, and response to, the information submitted * * * with respect to an applicant," or by "such other method as is approved by the Secretary" that determines "the consistency of the information submitted with the information maintained in the records of the Secretary of the Treasury, the Secretary of Homeland Security, and the Commissioner of Social Security".

Under this authority, § 152.15(a)(3) specifies that a PCIP must verify that an individual is a United States citizen or national, or lawfully present in the United States. A PCIP can verify an individual's citizenship or immigration status through the Social Security Administration or, if applicable, the Department of Homeland Security. In many cases, States may be able to automate verification of citizenship and immigration status by leveraging existing data exchanges that are currently in place for other programs, such as Medicaid and the Children's Health Insurance Program. The Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) Systematic Alien Verification for Entitlements (SAVE) program provides online system to verify an individual's immigration status. States can access this system after entering into the necessary Memorandum of Understanding with USCIS. An automated verification process will be used in all States where HHS is administering the PCIP program.

Some States are not able to have an automated "on-line system" or "electronic" process in place when they start accepting enrollments into their PCIPs. Therefore, these regulations provide, as an "alternative method" approved by the Secretary, that a PCIP program may instead require the individual to provide documentation that establishes citizenship or immigration status. Subject to HHS approval, States using documentation procedures may switch to an automated system in the future. If a PCIP shares such information with the Social Security Administration or the Department of Homeland Security, consistent with the Privacy Act, the regulation specifies that a PCIP must include a disclosure that the information provided on the enrollment request may be shared with other government agencies for purposes of establishing eligibility. The type(s) of documentation PCIPs may use is subject to approval by HHS under the terms of the contract.

Eligibility Based on a 6-Month Period Without Insurance Coverage

Eligibility for the PCIP program is limited to individuals with no creditable coverage during the 6-month period prior to the date on which they apply for coverage through the PCIP. Section 2701(c)(1) of the Public Health Service Act on the date of enactment and 45 CFR § 146.113(a)(1) define creditable coverage as coverage of an individual under a group health plan, health insurance coverage as defined at 45 CFR 144.103, Medicare Part A or Part B, Medicaid, the Children's Health Insurance Program, the TRICARE program, a medical care program of the Indian Health Service or of a tribal organization, a State health benefits risk pool (that is, existing State high risk pool), the Federal Employee Health Benefits program, a public health plan (for example, coverage through the Veterans Administration), or a health benefit plan offered under section 5(e) of the Peace Corps Act. Such creditable coverage includes health coverage provided to certain former employees, retirees, spouses, former spouses, and dependent children who are entitled to temporary continuation of health coverage at group rates under the Consolidated Omnibus Reconciliation Act of 1985 (COBRA). We specify under § 152.14(b)(3) that if an individual has already satisfied the requirement for a 6-month period without creditable coverage in connection with qualifying for a given PCIP under section 1101 of the Act, the individual will be considered to have satisfied this eligibility requirement for purposes of a PCIP in another State, if such individual moves to a different State and wishes to enroll in that State's PCIP.

In light of the unique circumstances presented by infants who are less than six months old, the Department will issue guidance on how the requirement that the individual not have had creditable coverage during the six-month period prior to the application for the PCIP program applies to and can be satisfied by such infants. Factors to be considered in this guidance include whether coverage in the hospital under the mother's plan at birth counts, current practices regarding insurers' coverage of newborns, and the anti-dumping rules that direct the Secretary to prevent disenrollment of individuals from existing insurance due to their health status.

Eligibility Based on Having a Pre-Existing Condition

Under section 1101(d)(3), eligibility for the PCIP program is conditioned on individuals having a pre-existing condition, as "determined in a manner consistent with guidance issued by the Secretary." We specify at § 152.14(c)(1) that a PCIP in a State, or the PCIP run by a non-profit in States that are not carrying out the PCIP program, may determine that an individual has a pre-existing condition, for purposes of PCIP eligibility, based on satisfying any one or more of the following criteria, subject to HHS approval: (1) The individual provides documented evidence that an insurer has refused, or has provided clear indication that it would refuse, to issue individual coverage on grounds related to the individual's health; (2) the individual provides documented evidence that he or she has been offered individual coverage but only with a rider that excludes coverage of benefits associated with a pre-existing condition; (3) the individual provides documented evidence that he or she has a medical or health condition specified by the State and approved by the Secretary; or (4) other criteria as defined by the PCIP and approved by HHS.

We believe that these criteria are fully consistent with the intent of section 1101(d)(3) of the Act and address the problems that individuals with pre-existing conditions face when applying for insurance coverage in the individual market. That is, individuals with pre-existing conditions are often unable to obtain coverage for reasons that include an outright denial and an exclusion of coverage for the pre-existing condition. This includes instances when an individual applies for coverage and is informed by the carrier's representative or Web site that they would be denied for coverage by the carrier due to the pre-existing condition. Providing States and non-profit entities operating a PCIP

the option of using these manifestations of having a pre-existing condition, rather than relying on a list of medical conditions, is consistent with the PCIP program goal of covering people who both have a pre-existing condition and otherwise cannot access insurance. We note that in some cases, individuals with pre-existing conditions are unable to obtain outright written coverage denials, but instead are told that carriers will not accept their applications. These regulations will permit PCIPs to exercise flexibility in determining exactly what type of communication constitutes a refusal to issue coverage.

Under § 152.14(c)(3), we specify that a PCIP may determine that an individual has a pre-existing condition based on evidence of the existence or history of certain medical or health conditions, as approved by the Secretary. This provision comports with our intention to permit the continuing use of eligibility standards that States use in their existing high risk pools, and permits a State that has guaranteed issue and community rated premiums to use an alternative test to showing a denial of coverage.

Finally, we provide at § 152.14(c)(4) that HHS may approve other criteria for meeting the definition of pre-existing condition under a given PCIP.

We anticipate that the first two criteria will be used in all States where individuals may be denied coverage or offered coverage with exclusionary riders. In the PCIP program serving States that have elected not to play a role in operating a PCIP program, only the first two criteria will be used, except with respect to individuals who are guaranteed to be issued a policy. PCIPs administered by States or non-profit entities may choose to utilize the additional criteria with HHS approval.

Eligibility for a PCIP Conditioned on Residing in the Plan's Service Area

Eligibility for a PCIP is limited to individuals who reside in the service area of the PCIP. At § 152.14(a)(4), we provide that an individual must be a resident of one of the 50 States or the District of Columbia which constitutes or is within the service area of the PCIP.

The statute explicitly acknowledges the role of a State (defined in section 1304(d) of the Act as the 50 States and the District of Columbia) with respect to the administration of PCIP, with no reference to "Territories" (see 1101(b)(2) and (3), 1101(e)(3), 1101(g)(3)(A) and (5)). Unlike section 1204(a) of the Health Care and Education Reconciliation Act of 2010, (which amended the Affordable Care Act and clearly specified a role for territories in the operation of Exchanges), the Congress made no similar reference to Territories in connection with the PCIP program.

Enrollment and Disenrollment Process (§ 152.15)

Under our authority in section 1101(c)(2)(D) of the Act to impose "appropriate" requirements that PCIPs would be required to meet, § 152.15(a) and (b) require PCIPs to establish a process for enrolling and disenrolling individuals that is approved by HHS. Our intent is to permit the use of established enrollment policies and procedures in place under existing State high risk pools, to the extent that they are consistent with the statute.

Section 152.15(a)(2) of this interim final rule specifies that a PCIP must allow an individual to remain enrolled unless the individual is disenrolled under specified circumstances (for example, the individual moves out of the service area or obtains other creditable coverage) or the PCIP program is terminated. Our intent is to promote continuity of coverage for individuals who enroll in a PCIP until they are able to obtain coverage through the Exchange, under which participating insurers cannot exclude individuals with pre-existing conditions. We understand, however, that to the extent individuals can obtain other coverage, for example, by becoming entitled to Medicare or enrolling in employer-based health insurance, such coverage would obviate the need for coverage provided by the PCIP. Leveraging the availability of such coverage, by exiting the PCIP, enables other qualified individuals to enroll.

A PCIP is required to establish, consistent with § 152.15(b) of this interim final rule, a disenrollment process that is approved by HHS. As noted above, we seek to support States' ability to participate in this program by allowing them to adopt policies and procedures in use under existing high risk pool programs. We understand that current practice in State high risk pools is that an individual who does not pay his or her premiums on a timely basis may be disenrolled. We provide in § 152.15(b)(2) that, under these circumstances, the enrollee will receive sufficient notice and reasonable grace period for payment prior to any disenrollment taking effect not to exceed 61 days (the longest period currently provided for by States). The consequence of failing to pay premiums and any subsequent disenrollment is that an individual loses access to coverage and may not be able to re-enroll for 6 months. Thus, we believe that it is the PCIP's responsibility to inform its enrollees prior to making a disenrollment effective. There are other circumstances in which involuntary disenrollment is appropriate and thus we establish at § 152.15(b)(3) that a PCIP must disenroll an individual in cases of death, where an individual obtains creditable coverage or no longer resides in the PCIP's service area, and other exceptional circumstances as established by HHS. We envision that such circumstances would include cases of fraud or intentional misrepresentation of material fact, and it is our intent to work with PCIPs to develop policies in these areas via sub-regulatory guidance. As we explain under our discussion of eligibility, an individual who is disenrolled because he or she no longer resides in the service area of a PCIP does not have to satisfy another 6-month continuous period without creditable coverage before applying to enroll in a PCIP in the new State of residence.

Section 152.15(c) requires that a PCIP establish rules governing effective dates of enrollments and disenrollments. In particular, a PCIP program must specify the deadline for receiving an enrollment application that would take effect on the first of the following month. In general, an individual who submits a complete enrollment request by an eligible individual by the 15th day of a month could access coverage by the 1st day of the following month. Exceptions to this policy will be subject to approval by HHS.

Finally, given the capped appropriation for this program, we recognize that PCIPs need sufficient programmatic flexibility to manage their costs and enrollment, to help ensure that the PCIP program's funding allocation is sufficient to cover claims and other program costs for the entire duration of the program. Thus, we establish authority under § 152.15(d) for a PCIP program to employ strategies to manage enrollment over the course of the program that may include enrollment capacity limits, phased-in (delayed) enrollment, premium and benefit adjustments that indirectly affect enrollment, and other measures, as defined by the PCIP and approved by HHS.

Benefits—(Subpart D, Sections 152.19 Through 152.22)

Covered Benefits (§ 152.19)

Required Benefits (§ 152.19(a))

The required benefit list in § 152.19(a) builds off of the essential health benefits under the new section 2707 of the Public Health Service Act, as enacted in the Affordable Care Act, for which

guidance has yet to be issued. The list is consistent with the most commonly covered services offered in existing State high risk pools, according to a survey conducted by the National Association of State Comprehensive Health Insurance Plans (NASCHIP) in 2009. Its benefits are also parallel to the benefits offered by the Federal Employees Health Benefits Plan (FEHBP).

Excluded Services (§ 152.19(b))

Section 152.19(b) sets forth a list of services that shall not be covered by any PCIP. While the specific benefits to be included and excluded by any PCIP are generally subject to HHS approval and review through the PCIP contracting process, this excluded services list addresses several areas where providing coverage is unequivocally prohibited. This list of excluded services parallels that of FEHBP.

The subject of Federal funding of abortion services with respect to the Affordable Care Act was addressed in the Executive Order issued by the President on March 24, 2010: The enactment of the Affordable Care Act left in place current restrictions that prohibit the use of Federal funds for abortion services, except in cases of rape or incest, or where the life of the woman would be endangered. Exec. Order No. 13,535, 75 FR 15,599 (Mar. 24, 2010). These restrictions currently apply to certain Federal programs that are similar to the PCIP program. The PCIP program is Federally-created, funded, and administered (whether directly or through contract); it is a temporary Federal insurance program in which the risk is borne by the Federal government up to a fixed appropriation. As such, the services covered by the PCIP program shall not include abortion services except in the case of rape or incest, or where the life of the woman would be endangered.

Pre-Existing Conditions Exclusions (§ 152.20)

Section 1101(c)(2)(A) of the Act requires that a PCIP established under this section not impose any pre-existing condition exclusions with respect to covered services. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) includes limitations for pre-existing conditions in the group market. This protection was expanded under section 1201 of the Affordable Care Act, which prohibits any pre-existing condition exclusions from being imposed by group health plans or group and individual health insurance coverage beginning January 1, 2014. The interim final rules issued pursuant to section 2704 of the Public Health Service Act (as amended by the Affordable Care Act) under § 147 adopt, with minor modifications, the definition of pre-existing condition currently used under HIPAA.

Similarly, our rule prohibits PCIPs from applying any pre-existing condition exclusion to covered services, and consistent with the regulations implementing section 1201 of the Act, defines a pre-existing condition exclusion as a limitation or exclusion of benefits based on the fact that the condition was present before the date of enrollment in coverage (or a denial of enrollment), whether or not any medical advice, diagnosis, care, or treatment was recommended or received before that date.

Pursuant to the authority provided to the Secretary under section 1101(c)(2)(D), this interim final rule also prohibits PCIPs from imposing any type of coverage waiting period upon eligible individuals. For purposes of this rule, a waiting period is defined as the period immediately following the effective date of enrollment in which some or all benefits in the coverage are not provided. Accordingly, once an individual is enrolled in a PCIP consistent with the rules set forth in subpart C, full coverage must be provided to the individual starting with the effective date of enrollment.

Premiums and Cost-Sharing (§ 152.21)

Standard Rate

Section 1101(c)(2)(C)(iii) of the Act requires that premium rates charged for coverage under the high risk pool program be established at "a standard rate for a standard population". The National Association of Insurance Commissioners (NAIC) Model Health Plan for Uninsurable Individuals Act suggests that high risk pool plans "determine a standard risk rate by considering the premium rates charged by other insurers offering health insurance coverage to individuals." Furthermore, section 2245(g)(2) of the Public Health Service Act (PHSA), which governs the existing Federal high risk pool grant program, defines the "standard risk rate" for the high risk pools to mean a rate that: (1) Is determined under the State high risk pool by considering the premium rates charged by other health insurers offering health insurance coverage to individuals in the insurance market served; (2) is established using reasonable actuarial techniques; and (3) reflects anticipated claims experience and expenses for the coverage involved.

In keeping with the methodology suggested by the NAIC Model Act and the Federal grant program, § 152.21 of this interim final rule generally interprets the phrase "standard rate for a standard population" to refer to the premium rates offered in the individual market in a given State. While existing State high risk pools' premiums vary between 105–250 percent of the standard rate of the individual market, the Act requires that premiums in the PCIP program be at the standard rate, rather than a higher proportion of that rate. Therefore, this rule provides that a PCIP established under this section must not offer enrollees premiums at a rate that exceeds 100 percent of the standard individual market rate in the PCIP service area.

This interim final rule does not mandate a specific formula for calculating the standard rate. Instead, we specify that a PCIP may calculate the standard rate using reasonable actuarial techniques, as approved by the Secretary, that reflect anticipated experience and expenses. This requirement should accommodate reasonable variations in the methods that PCIPs may use to calculate a standard risk rate.

We also recognize that individual market rates in each State can vary as a consequence of individual State insurance laws. For example, some States require that insurers issue all applicants a policy or offer coverage at a community rate. In such situations, the standard individual rate may be considerably higher than in a State that permits insurers to reject applicants or set premiums on the basis of health status or other factors. To account for these variations, § 152.21(a) of these rules provides that, subject to approval by HHS, a PCIP may use other methods of determining the standard rate in the State. The exact methodology must be submitted and approved through the proposal process as specified in § 152.8 of this part.

Premium Variation

Section 1101(c)(2)(C)(ii) of the Act specifies that premium rates in a PCIP can vary on the basis of age by a factor not greater than 4 to 1. Section 2701(a)(3) of the PHSA as amended by the Affordable Care Act requires HHS, in consultation with NAIC, to define permissible age bands for rating purposes in the individual and group markets. However, the rating bands established under section 2701 will not be effective until January 1, 2014, and no such requirement exists for the PCIP program. Given these factors, this rule does not establish standard age bands

for the PCIP program beyond the statutory requirements. Thus, § 152.21(a)(2) of this rule simply follows the statutory requirement of section 1101(c)(2)(C)(ii) of the Act and provides that premiums charged in the PCIP can vary by age on a factor of not greater than 4 to 1. Specific age band rating will be established through the PCIP contracting process.

Section 1101(c)(2)(C)(i) of the Act requires that premiums in the PCIP program may vary only as provided under section 2701 of the PHSA, other than what is allowed in section 1101. Section 2701 permits premiums rates to vary in the individual and group markets by a finite number of factors. Gender rating, for example, is prohibited in the PCIP program.

Limits on Enrollee Costs

Section 1101(c)(2)(B) of the Act sets limits on enrollee costs in the PCIP program. Specifically, the issuer's share of the total allowed costs of benefits provided under such coverage cannot be less than 65 percent of such costs, subject to actuarial review and approval by the Secretary. Section 152.21(b)(1) of this rule provides that coverage under a plan offered by a PCIP must at a minimum meet this 65 percent threshold.

Section 1101(c)(2)(B)(ii) of the Act requires that coverage provided by PCIPs not have an out-of-pocket limit greater than the applicable amount described in section 223(c)(2) of the Internal Revenue Code, which sets the out-of-pocket limit for high deductible health plans associated with a tax favored health savings accounts. (This amount is $5,950 for 2010.) Under § 152.2, we define out-of-pocket costs as the sum of the annual deductible and the other annual out-of-pocket expenses, other than for premiums, required to be paid under the plan. Section 152.21(b)(2) also notes that, consistent with IRS rules, the out-of-pocket limit may be applied only for in-network providers, consistent with the terms of PCIP plan benefit package.

Access to Services (§ 152.22)

As noted above, section 1101(c)(2)(D) of the Act provides that coverage offered via a PCIP must meet any other requirements determined appropriate by the Secretary of HHS. Section 152.22 provides that the PCIP may specify the network of providers from whom enrollees may obtain services, provided that the PCIP demonstrates to HHS that it has a sufficient number and range of providers to ensure that all covered services are reasonably available and accessible under such coverage. Section 152.22(b) makes clear that, in the case of emergency room services, such services must be covered out of network and out of area if (1) the enrollee had a reasonable concern that failure to obtain immediate treatment could present a serious risk to his or her life or health; and (2) the services were required to assess whether a condition requiring immediate treatment exists, or to provide such immediate treatment where warranted. We believe these requirements are in keeping with generally accepted standards with respect to the provision of emergency services in plans with network limits, such as those in place in the Medicare Advantage program under title XVIII of the Social Security Act and the commercial health insurance market.

E. Oversight (Subpart E, Sections 152.26 Through 152.28)

Appeals Procedures (§ 152.26)

Section 1101(f)(1) of the Act requires the establishment of an appeals process to enable individuals to appeal determinations under the PCIP program. We are interpreting this provision to apply both to determinations with respect to benefit coverage determinations and determinations with respect to an individual's eligibility for the program, including whether an individual is a citizen or national of the United States, or lawfully present in the United States.

Rather than establishing detailed, proscriptive requirements with respect to appeals procedures, § 152.26 of this interim final rule establishes minimum requirements that all PCIPS must meet. Section 152.26(b) specifies that a PCIP must provide for a timely redetermination of an eligibility or coverage determination; coverage determinations include both whether an item or service is covered and the amount paid by the PCIP. For coverage determinations, § 152.26(b)(3) further specifies that an enrollee has the right to a timely second-level appeal, or "reconsideration," by an independent entity.

The requirement for independent review of a plan's coverage redetermination ensures that the entity providing the reconsideration would have no stake of any kind in the outcome, and was not involved in the initial or reconsidered determination being reviewed. This requirement could be satisfied under a variety of arrangements, including (1) An existing appeal mechanism provided for under State law; (2) in the case of a State-administered PCIP, a review process created by the State; or (3) an independent contractor, such as the independent review entities with which HHS contracts to review coverage determinations under the Medicare program.

These requirements are intended to permit States to use existing appeals or review mechanisms provided for under State law, and to permit other non-profit entities to utilize their existing internal appeals mechanisms. The actual appeals mechanisms will be subject to the Secretary's approval as part of the contracting process. Given both the temporary nature of the program and the statutory implementation timeframe for the new program, we believe that using these existing mechanisms is necessary and appropriate.

Fraud, Waste, and Abuse (§ 152.27)

Section 1101(f)(2) of the Affordable Care Act requires the Secretary to establish procedures to protect against fraud, waste, and abuse. To that end, § 152.27(a) of this interim final rule requires the PCIP to develop, implement, and execute operating procedures to prevent, detect, recover payments (when applicable or allowable), and promptly report to HHS incidences of waste, fraud, and abuse. These procedures are required to include identifying situations in which enrollees, potential enrollees, or their family members had access to employer-based coverage, and may have been discouraged from enrolling in that coverage. Should HHS become aware of instances involving fraud, waste, or abuse within the PCIP's operation, HHS will take appropriate action within the terms of the contract, or as otherwise provided by law. As stated in § 152.27(b), the PCIP shall cooperate with Federal law enforcement and oversight authorities in cases involving waste, fraud and abuse, and shall report cases in which an individual may have been discouraged from enrolling in other coverage to appropriate authorities. For example, if the coverage was an employer group health plan subject to ERISA, which prohibits discrimination based on health status, the matter should be reported to the Department of Labor for investigation and possible enforcement action.

Preventing Insurer Dumping (§ 152.28)

There is an incentive for employers and issuers to single out high risk and thus high-cost individuals and offer incentives for them to disenroll from their coverage and obtain coverage in PCIPs which offer such individuals guaranteed access to coverage without pre-existing condition exclusion at a standard premium, if they are uninsured

for at least six months. Congress recognized this potential issue and directed the Secretary under section 1101(e)(2) of the Act to establish criteria for determining whether health insurance issuers and employment-based health plans have discouraged individuals from remaining enrolled in prior coverage based on the health status of those individuals, and specifies certain criteria that shall be included in those established by the Secretary. Section 152.28 of this interim final rule thus sets forth these criteria, and requires that PCIPs establish procedures to identify and report to HHS instances where health insurance issuers or group health plans are discouraging high-risk individuals from remaining enrolled in their current coverage, in instances where such individuals subsequently are eligible to enroll in the PCIP.

Consistent with section 1101(e)(2) of the Affordable Care Act, section 152.28(c) of the interim final rule provides that if, in applying the criteria in section 152.28(b), it is determined that a dumping under section 152.28(a) has occurred, the Secretary may bill the issuer or group health plan for any medical expenses incurred by the PCIP for such enrollees. In these situations, the interim final rule also makes clear that the issuer or group health plan will be referred to appropriate Federal and State authorities for other enforcement action that may be warranted depending on the facts and circumstances. Finally, section 152.28(d) specifies that nothing in the subsection may be construed as constituting exclusive remedies for violations of the section or preventing States from applying or enforcing this section or other provisions of law with respect to health insurance issuers, consistent with section 1101(c)(3) of the Affordable Care Act. Additional guidance will be issued to prevent "dumping" from public programs like Medicaid and the Children's Health Insurance Program.

F. Funding (Subpart F, Sections 152.32 Through 152.35)

Use of Funds (§ 152.32)

Section 1101(g) of the Affordable Care Act appropriates $5,000,000,000 to pay the claims and administrative costs of the PCIP program established under this section that are in excess of the amount of premiums collected from enrollees. Traditionally, in State high risk pools, as well as other insurance programs, the funds collected from enrollees as premiums and other funding streams are expended across two chief areas. The majority of funds collected as premiums are expended to pay the health expenses for covered services incurred by enrollees. Administrative expenses, the costs of operating the program, make up the second major expense category. Section 152.32(a) of this interim final rule thus provides that all funds awarded under this program must be used exclusively to pay the allowable claims and administrative costs of a PCIP established under this section. Such costs include those incurred in the development and operation of the PCIP program, to the extent that those costs are in excess of the amounts or premiums collected from individuals enrolled in the program. PCIP program funds are not available for any other uses, such as to pay expenses or defray premiums of existing State high risk pools.

Although the Act does not specify the amount that a PCIP can spend on administrative expenses, § 152.32(b) of this rule permits PCIPs to spend no more than 10 percent of its total allotted funds towards administrative expenses. The 10 percent limitation is similar to what is imposed under the Children's Health Insurance Program (CHIP). Typical examples of the types of administrative costs and expenses that we expect to be incurred by PCIPs include: Start-up and program implementation activities, the production and distribution of information and outreach materials, eligibility determination and enrollment processing, claims processing, costs associated with prevention and detection of fraud, waste and abuse, and other ancillary services such as operation of a customer service call center, account maintenance, and appeals. We note that, given the start-up costs for the new PCIPs established under this program, and the need for expeditious implementation, this 10 percent cap applies to the total allotment for the duration of the program, as opposed to spending in a given year.

Initial Allocation of Funds (§ 152.33)

Section 1101(g) of the Act does not specify exactly how HHS should allocate funds for the purpose of this program. At the outset of the program, as specified under section 152.33, the Secretary has established initial allotment ceilings for PCIPs in each State using a methodology consistent with the funding allocation methodology used in CHIP, as set forth under 42 CFR Part 457, subpart F, Payment to States. (Note that, subject to these allocation ceilings, the estimated funding amounts available under the PCIP program contracts are established through the contracting process based on the projected number of PCIP enrollees and their projected claims costs. Actual payments to PCIPs will be based on their reported cost statements during the life of the contract.)

Thus, the initial ceilings on PCIP funding allocations are based on a blended formula based on the State population, number of uninsured individuals under 65, and geographic health care costs. Under this formula, one half of the available funds are allocated based on the number of the nonelderly population in each State, compared to the total U.S. nonelderly population. This gives more populous States more funding and does not penalize those States that employ mechanisms to reduce the number of uninsured persons in their States.

The health care cost index that HHS will use to adjust the funding allocations will be based on the wages of employees in the health services industry, and is consistent with what we have used under the Children's Health Insurance Program. These wage data were developed by the Bureau of Labor Statistics of the Department of Labor through its Quarterly Census of Employment and Wages. This will include a weighted average of the wages in the health services industry represented by ambulatory health care services, hospitals, and nursing and residential care facilities. As in the CHIP formula, 15 percent of the cost factor is held constant, while 85 percent reflects how each State's average wage compares to the U.S. average. In order to insure that the geographic variation and cost adjustments accurately reflect statistics on population and the number of uninsured, the same year of data will be used to calculate population, number of uninsured, geographic health care costs, and cost adjustments.

Reallocation of Funds (§ 152.34)

As noted above, over time, spending under the PCIP program will be determined based on the actual enrollment and cost experience of the PCIPs across the country. Thus, we recognize that there may be a need to reallocate funds if actual experience indicates that, in a given State, not all of funds available under the allocation formula will be used. Section 152.34 accounts for this possibility by giving HHS explicit authority to reallocate funds among States if HHS determines that the PCIP in a given State will not make use of the total estimated funding originally allotted to that State. HHS will be receiving monthly reports on the program costs of each PCIP and will consult closely with PCIPs in evaluating these reports and making any decisions

with respect to the need for reallocations.

Insufficient Funds (§ 152.35)

Section 1101(g)(2) of the Affordable Care Act states that if HHS estimates for any fiscal year that the aggregate amounts available for the payment of the expenses of the high risk pool will be less than the actual amount of such expenses, HHS shall make such adjustments as are necessary to eliminate this deficit. Further, section 1101(g)(4) of this Act states that HHS has the authority to stop taking applications for participation in the program to comply with the funding limitations. Accordingly, § 152.35(c) of this rule provides that the PCIP, subject to HHS approval, may adjust premiums, alter required benefits, limit PCIP applications or take other measures to eliminate a projected deficit. Particularly in view of the capped appropriation for the PCIP program, HHS is committed to working very closely with the PCIPs to monitor PCIP enrollment and claims experience. To that end, the PCIP contracts include detailed reporting responsibilities with respect to PCIP enrollment and spending, as well as spelling out PCIP responsibilities for the development of mitigation strategies and recommended adjustments should the amounts available under a contract be less than the projected expenses. Lastly, § 152.35(d) ensures that, if the Secretary estimates that aggregate amounts available for PCIP expenses will be less than the actual amount of expenses, HHS reserves the right to make such adjustments as are necessary to eliminate such deficit, consistent with the terms of the PCIP contract.

G. Relationship to Existing Laws and Programs (Subpart G, § 152.39 Through § 152.40)

Relationship to Other Federal Health Insurance Regulation

We note that subtitles A and C of Title I of the Affordable Care Act contain new requirements that apply to group health plans and issuers of health insurance in the individual health insurance market which are governed by title XXVII of the PHSA. Some of these provisions address the same areas as the above provisions in section 1101 governing the PCIP program (*e.g.,* premium amounts, beneficiary out-of-pocket expenses, and pre-existing conditions). These insurance reforms do not apply to the PCIP established under section 1101 of the Affordable Care Act and implemented in this interim final rule since the high risk pools do not meet the definition of a group health plan or a health insurance issuer pursuant to sections 2791(a)(1) and 2791(b)(2) of the PHS Act.

Maintenance of Effort (§ 152.39)

Section 1101(b)(3) of the new law imposes a maintenance of effort requirement, which specifies that in order for a State to enter into a contract to administer a PCIP, a State must agree not to reduce the annual amount it expended on the operation of an existing State high risk pool in the year preceding the year in which a PCIP contract begins. We believe that the clear intent of this provision is to prohibit the shifting of costs of existing State high risk pools to the Federal government. The maintenance of effort requirement both ensures that the fixed $5 billion in funding is used to meet the PCIP program goals and also reinforces the limitation of eligibility to individuals who are uninsured, as opposed to those already insured through a State high risk pool. At the same time, we recognize that States now use different sources of funds to support the operation of existing high risk pools. For example, many States rely upon assessments on the health insurance industry or health insurance providers to support their high risk pools, and States also commonly allow insurers to reduce premium tax payments by all or a percentage of such assessment.

Given the various funding models that are now in place in different States, we believe it is appropriate to permit States some latitude in terms of ways in which they can satisfy this requirement subject to Secretarial approval. Accordingly, section 152.39(a) specifies that in order for a State to enter into a contract with the Secretary it must comply with the maintenance of effort requirement set forth in section 1101(b)(3) of the Affordable Care Act in a manner approved by the Secretary. We anticipate that permissible methods of meeting this requirement would include, but are not limited to, maintaining either the total amount or the total per capita amount of State funding for the operation of an existing high risk pool (given that a State would be maintaining its effort per enrollee, and cannot control disenrollment), maintaining the same formula for providing funding for a State high risk pool, or establishing an altered formula that the Secretary determines will not reduce the total funds expended on the existing high risk pool. (Note that options such as the per capita approach would need to be evaluated in terms of other policies in effect in a State that could negatively influence enrollment in an existing State high risk pool.) Again, all such approaches are subject to the approval of the Secretary.

Section 152.39(b) specifies that in situations where a State enters into a contract with HHS under this part, HHS shall take appropriate action, such as terminating the PCIP contract, against any State that fails to maintain funding levels for existing State high risk pools.

Relation to State Laws (§ 152.40)

Section 152.40 of this interim final rule reflects the provision in section 1101(g)(5) that specifies State standards that might otherwise apply to the coverage offered under a PCIP program are pre-empted, with the exception of laws relating to licensing or solvency. This language tracks similar language that applies to State regulation of health plans offering Medicare Advantage plans under Medicare Part C or drug coverage under Medicare Part D under title XVIII of the Social Security Act, and we would expect to interpret the language for purposes of the PCIP program in a manner similar to the way HHS has applied it under those programs.

H. Transition to Exchanges (Subpart H, § 152.44 Through § 152.45)

End of PCIP Coverage (§ 152.44)

Section of 152.44 of this interim final rule specifies that, consistent with section 1101(g)(3)(A) of the Affordable Care Act, enrollee coverage under the PCIP program will end effective January 1, 2014, because affordable coverage will be available under the Exchanges and insurance plans will no longer be permitted to exclude coverage for pre-existing conditions. Note that PCIP program contracts will remain in effect to provide for appropriate contractual close out periods, but coverage of claims under the PCIP program will extend only to the costs of covered services provided up through December 31, 2013.

Transition to the Exchanges (§ 145.45)

As provided by section 1101(g)(3)(B) of the Affordable Care Act, HHS will develop procedures to transition PCIP enrollees to the Exchanges (exchanges) that are established under sections 1311 or 1321 of the Act, in order to ensure there are no lapses in coverage for individuals enrolled in the PCIP program. Since these exchanges are still in the developmental stages, we believe it would be premature to specify transition procedures in this interim final rule. Thus, section 152.45 simply establishes that HHS will develop such transition procedures, and we encourage

comments on the best ways to carry out the transition.

III. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking (NPRM) in the **Federal Register** and invite public comment on the proposed rule before publishing a final rule that responds to comments and sets forth final regulations that generally take effect sixty days later. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

The Affordable Care Act was enacted on March 23, 2010, and requires that a temporary high risk pool program be in place "not later than 90 days" after enactment. The publication of proposed regulations in an NPRM could not govern implementation of the high risk pool program, as they would constitute mere proposals with no force of law. The normal sixty-day public comment period provided for in the case of regulations proposed in an NPRM would by itself consume two-thirds of the time the statute provides for implementation. Under these circumstances, it would be impracticable and contrary to the public interest to delay putting regulations into effect that are necessary to implement the program until the rules have been subjected to prior notice and comment procedures.

Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis. We are providing a 60-day public comment period. Also, because these regulations need to be in effect in order to undertake full implementation of the program, we also find good cause for waiving the normal delay in effective date that would apply, and these regulations are effective on July 30, 2010.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

A. ICRs Regarding Proposal Process (§ 152.7)

Section 152.7 states that a proposal from a State or from a nonprofit private entity shall demonstrate that the eligible entity has the capacity and technical capability to perform all functions necessary for the design and operation of a Pre-Existing Condition Insurance Plan (PCIP), and that its proposed PCIP is in full compliance with all of the requirements of this part. Specifically, the proposal shall demonstrate that the proposed PCIP satisfies at least the conditions listed at § 152.7(a)(1) through (9).

If there are States that do not submit acceptable proposals as described in § 152.7, HHS will solicit proposals from nonprofit entities to contract with HHS to operate a PCIP in those States. Nonprofits may submit proposals to contract directly with HHS to operate a PCIP program.

The burden associated with this requirement is the time and effort necessary for a State or nonprofit entity to develop and submit a proposal to operate a PCIP, which is a one-time information collection burden. We estimate that it would take a State or nonprofit entity 684 hours to compile the necessary information to comply with this requirement. While this one-time requirement is subject to the PRA, the associated burden is approved under OMB control number 0938–1085.

B. ICRs Regarding Eligibility (§ 152.14)

Section 152.14 discusses eligibility to enroll in a PCIP program. An individual who enrolls in a PCIP must meet both the requirements listed at § 152.14(a)(1), demonstrating they are a citizen or national of the United States or lawfully present in the United States and § 152.14(a)(3), providing evidence that they have a pre-existing condition as established under paragraph (c) of this section. The burden associated with this requirement includes the process of obtaining such information and forwarding the information to the appropriate party at the PCIP. We estimate this information could be submitted either electronically or hard copy in accordance with directions furnished by the PCIP and approved by HHS. We estimate that it will take approximately 30 minutes per applicant to obtain, review and submit the above proof(s) of eligibility. Although the Department has not estimated program participation, for the purpose of this calculation, we assume that within the first six months of the program approximately 100,000 potential enrollees will submit eligibility information to the PCIP program. The estimated one-time burden associated with this requirement is 50,000 hours. As the program progresses beyond 2010, we assume that we will receive fewer inquiries based on the experience with existing State high risk pool programs. In 2011 and beyond, we assume that approximately 50,000 potential enrollees will submit eligibility information to the PCIP program. The estimated annual burden associated with this requirement is 25,000 hours.

C. ICRs Regarding Enrollment and Disenrollment Process (§ 152.15)

Section 152.15(a) and (b) require a PCIP to develop and implement enrollment and disenrollment processes, respectively. The burden associated with these requirements is the time and effort necessary for a PCIP program to establish enrollment and disenrollment procedures. The burden associated with the establishment of enrollment and disenrollment procedures is a one-time burden that was included in the 684 burden hour estimate in our earlier discussion of § 152.7. While these requirements are subject to the PRA, the associated burden is approved under OMB control number 0938–1085.

In regards to ongoing reporting under the PCIP contract, any State or entity selected to administer the PCIP program may later decide it is in the best interest of their State to propose amendments to

the previously agreed upon contract. We estimate that, while uncommon, such instances may occur and permissible proposed changes would be allowed. When considering all aspects of the contract, which would include the enrollment and disenrollment process, access to services, and the appeals process, we estimate that it will take approximately 24 hours per contractor to submit a revised proposal and implement any approved amendments. The estimated annual burden associated with this requirement is 1,224 hours at a cost of $28,152.

D. ICRs Regarding Access to Services (§ 152.22)

Section § 152.22(a) states that a PCIP may specify the networks of providers from whom enrollees may obtain plan services. The PCIP must demonstrate to HHS that it has a sufficient number and range of providers to ensure that all covered services are reasonably available and accessible to its enrollees. The burden associated with this requirement is the time and effort necessary for a PCIP to demonstrate to HHS that it has a sufficient number and range of providers to ensure that all covered services are reasonably available and accessible to its enrollees. The burden associated with these requirements is included in the 684 burden hour estimate for compiling the necessary information to comply with this requirement as stated in our earlier discussion of § 152.7.

In regards to ongoing reporting under the PCIP contract, any State or entity selected to administer the PCIP program may later decide it is in the best interest of their state to propose amendments to the previously agreed upon contract. We estimate that while uncommon, such instances may occur, and permissible proposed changes would be allowed. When considering all aspects of the contract, which would include access to covered services, we estimate that it will take approximately 24 hours per contractor to submit a revised proposal and implement any approved amendments. The estimated annual burden associated with this requirement is 1,224 hours at a cost of $28,152.

E. ICRs Regarding Appeals Procedures (§ 152.26)

Section 152.26(a) requires a PCIP to establish and maintain procedures for individuals to appeal eligibility and coverage determinations. Section 152.26(b) lists the minimum requirements for appeals procedures. The burden associated with this requirement is the time and effort necessary for a PCIP to develop and maintain appeals procedures. The burden associated with these requirements is included in the 684 burden hour estimate for compiling the necessary information to comply with this requirement as stated in our earlier discussion of § 152.7. The aforementioned information collection requirements and associated burden are currently approved under OMB control number 0938–1085.

In regards to ongoing reporting under the PCIP contract, any state or entity selected to administer the PCIP program may later decide it is in the best interest of their state to propose amendments to the previously agreed upon contract. We estimate that while uncommon, such instances may occur, and permissible proposed changes would be allowed. When considering all aspects of the contract, which would include the appeals process, we estimate that it will take approximately 24 hours per contractor to submit a revised proposal and implement any approved amendments. The estimated annual burden associated with this requirement is 1,224 hours at a cost of $28,152.

F. ICRs Regarding Fraud, Waste, and Abuse (§ 152.27)

As stated in § 152.27(a), a PCIP shall develop, implement, and execute operating procedures to prevent, detect, recover (when applicable or allowable), and promptly report to HHS incidences of waste, fraud and abuse. Additionally, § 152.27(b) states that a PCIP program shall cooperate with Federal law enforcement authorities in cases involving waste, fraud, and abuse. The burden associated with the requirement contained in § 152.27 is the time and effort necessary to submit the required information on an ongoing basis. We estimate that it will take PCIPs 4 hours each month, per State, to report all required information to HHS and/or Federal law enforcement authorities which would include any identified instances of waste, fraud, and abuse. The estimated annual burden associated with this requirement is 2,448 hours at a cost of $56,304.

G. ICRs Regarding Preventing Insurer Dumping (§ 152.28)

Section 152.28(b) requires a PCIP to establish procedures to identify and report to HHS instances in which health insurance issuers or group health plans are discouraging high-risk individuals from remaining enrolled in their current coverage and in instances in which such individuals subsequently are eligible to enroll in the qualified high risk pool. The required procedures shall include methods to identify circumstances described in § 152.28(b)(1) through (4). The burden associated with this requirement is the time and effort necessary for a PCIP to establish procedures for identifying insurer dumping and for reporting dumping practices to HHS. We estimate that it will take PCIPs 8 hours each month, per State, to develop and report information to HHS of any health insurance issuer or group health plan they have identified as discouraging an individual from remaining enrolled in coverage offered by such issuer or health plan based on the individual's health status. The estimated annual burden associated with this requirement is 4,896 hours at a cost of $110,160.

H. ICRs Regarding Use of Funds (§ 152.32)

Section 152.32 states that all funds awarded through the contracts established under this program must be used exclusively to pay allowable claims and administrative costs incurred in the development and operation of the PCIP that are in excess of the amounts of premiums collected from individuals enrolled in the program. The burden associated with this requirement is the time and effort necessary for a State to collect allowable cost information, review and submit such information to HHS for payment. We estimate that it will take each PCIPs 16 hours each month, per State to comply with this requirement. The estimated annual burden associated with this requirement is 9,792 hours at a cost of $323,136.

I. ICRs Regarding Maintenance of Effort (§ 152.39)

Section 152.39(a) requires a State that enters into a contract with HHS under this part to demonstrate, subject to approval by HHS, that it will continue to provide funding of any existing high risk pools in the State at a level that is not reduced from the amount provided for in the year prior to the year in which the contract is entered. The burden associated with this requirement is the time and effort necessary for a State to demonstrate maintenance of effort to HHS. The burden associated with this one-time requirement is included in the 684 burden hour estimate for compiling the necessary information to comply with the proposal requirement as stated in our earlier discussion of § 152.7. While this requirement is subject to the PRA, the associated burden is approved under OMB control number 0938–1085.

TABLE 1—ANNUAL REPORTING AND RECORDKEEPING BURDEN

Regulation Section(s)	OMB Control No.	Respondents	Responses	Burden per response (hours)	Total annual burden (hours)	Hourly labor cost of reporting ($)	Total labor cost of reporting ($)	Total capital/ maintenance costs ($)	Total cost ($)
§ 152.7, § 152.15, § 152.22, § 152.26, § 152.39	0938–1085	51	51	684	34,884	**	1,421,268	0	1,421,268
§ 152.15, § 152.22, § 152.26	0938–1100	51	51	24	1,224	**	28,152	0	28,152
§ 152.14	0938–1095	100,000	100,000	.5	50,000	**	N/A	0	N/A
§ 152.27	0938–1100	51	612	4	2,448	**	56,304	0	56,304
§ 152.28	0938–1100	51	612	8	4,896	**	110,160	0	110,160
§ 152.32	0938–1100	51	612	16	9,792	**	323,136	0	323,136
Total	.....	100,051	101,887	.....	103,244	.....	.....	.....	1,939,020

**Wage rates vary by level of staff involved in complying with information collection request (ICR). Wage rates are detailed in the Supporting Statement Part A for this (ICR). Wage rates vary from $12 to $60 hourly salary. Supporting Statement Part A for this (ICR).

We will accept comments for both the new information collection requirements contained in this interim final rule and the requirements previously approved under 0938–1085 and 0938–1095, respectively, for 60 days from the date of display for this interim final rule. At the conclusion of the 60-day comment period, we will publish an additional notice announcing the submission of the information collection request associated with this final rule for OMB approval. At that time, the public will have an additional 30 days to submit public comments to OMB for consideration.

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget,

Attention: CMS Desk Officer, [OCIIO–9995–IFC]

Fax: (202) 395–6974; or

E-mail: *OIRA_submission@omb.eop.gov.*

VI. Regulatory Impact Analysis

A. Summary and Need for Regulatory Action

Section 1101 of Title I of the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act), Public Law 111–148, requires that the Secretary establish, either directly or through contracts with States or nonprofit private entities, a temporary high risk health insurance pool program to provide affordable health insurance coverage to uninsured individuals with pre-existing conditions. (We generally refer to this program as the Pre-Existing Condition Insurance Plan program, or PCIP program, to avoid confusion with the existing State high risk pool programs, which will continue to operate separately.) This program will continue until January 1, 2014, when Exchanges established under sections 1311 and 1321 of the Affordable Care Act will be available for individuals to obtain health insurance coverage without regard to their pre-existing condition. This interim final rule sets forth the initial regulations with respect to this new program, and is needed for its implementation. The rule addresses key issues regarding administration of the program, eligibility and enrollment, benefits, premiums, funding, appeals rules, and enforcement provisions related to anti-dumping and fraud waste and abuse.

Executive Order 12866 explicitly requires agencies to take account of "distributive impacts" and "equity." Offering health coverage to uninsured Americans with pre-existing conditions at an affordable premium is needed to provide the opportunity for coverage to individuals that cannot otherwise obtain insurance in the market. It is a temporary program to provide a transition to the Affordable Care Act policies that take effect in 2014 that ban the use of pre-existing conditions in determining access, benefit and premiums. The $5 billion in Federal funding appropriated for this program will yield a meaningful increase in equity, and is a benefit of this interim final regulation.

B. Executive Order 12866

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 in any one year, 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 a 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. OMB has determined that this regulation is economically significant within the meaning of section 3(f)(1) of the Executive Order, because it is likely to have an annual effect on the economy of $100 million in any one year. Accordingly, OMB has reviewed this rule pursuant to the Executive Order.

The Department provides an assessment of the potential costs, benefits, and transfers associated with these interim final regulations, summarized in the following table.

TABLE 1.1—ACCOUNTING TABLE

Benefits	
Qualitative: The Pre-existing Condition Insurance Plan will provide uninsured Americans with preexisting conditions that have been denied coverage or otherwise excluded from purchasing insurance coverage with an opportunity to obtain coverage. Providing this insurance option will increase access to health care and reduce financial strain for participants. It is also likely to improve health outcomes and worker productivity. Individuals who are especially vulnerable as a result of existing health problems and financial status may receive the greatest benefit from this program.	
Costs	$1,939,020 annually for reporting and recordkeeping.
Qualitative: To the extent PCIP increases access to health care services, increased health care utilization and costs will result due to increased uptake. Administrative costs include: the cost of contractors to apply, the time cost for individuals to apply, and the contractors' costs of complying with program rules (*e.g.,* conducting appeals, preventing fraud).	
Transfers	$5,000,000,000 for the period from July 1, 2010 to December 31, 2013.
Qualitative: The $5 billion in Federal funds is a transfer from the Secretary to contractors to aid in administering the program.	

a. Estimated Number of Affected Entities

This rule provides guidance for the States and nonprofit private entities that contract with HHS to establish PCIPs to provide affordable health insurance coverage to uninsured individuals with pre-existing conditions within each State. The States or nonprofit private entities that voluntarily participate in the PCIP program will be directly affected by this regulation as well as the terms of their contracts.

There are 35 State-based high risk pool programs today.[3] First created in the 1970s, States adopted these programs to address insurance market failures for people with pre-existing conditions. The number of such existing State programs grew with the enactment of a Federal law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), that requires States to provide either guaranteed issue policies in the individual market to a certain set of people who have been continuously covered or access to an acceptable alternative mechanism, such as a high risk pool. In addition, beginning in 2002, Federal grants provided seed money and a limited amount of loss subsidies for such programs. Ongoing financial support for State-based high risk pools varies, but is generally provided through assessments on issuers, enrollee premiums, State general revenue, and, recently, Federal grants. Each program also has different eligibility rules, benefits, premiums, and/or cost controls (*e.g.,* pre-existing condition waiting lists, disease management). As of the end of 2008, there were approximately 200,000 enrollees in the 35 State high risk pools. The Government Accountability Office (GAO) estimated that there were approximately 4 million uninsured people with health problems in States with high risk pools.[4]

The Affordable Care Act establishes a program that is similar in some respects to these programs, but has notable differences in terms of eligibility criteria, benefits, and premiums. These differences make it difficult to extrapolate potential enrollment in the PCIP program from the experience of existing State high risk pools.

First, none of the existing pools limit eligibility to people who have been uninsured for a minimum of six months whereas this is a pre-requisite for enrollment in the PCIP program. In general, the uninsured have different health problems, economic statuses, and demands for health care and health insurance than the insured population.[5]

Second, while the State programs and Federal program cover roughly the same benefit categories, the PCIP program bars both benefit carve-outs and waiting periods for pre-existing conditions, which 30 State programs employ.[6] In addition, PCIP limits annual out-of-pocket spending to $5,950 nationwide, whereas two State programs have no specified annual limits and six States have limits that exceed $5,950 within each State's most popular high risk pool plan.[7] These distinctions in benefits affect both the cost of health insurance per capita as well as the mix of enrollees. For example, a person with cancer may decide it is not worth the premiums to sign up for a State high risk pool that will not cover her chemotherapy in the first year of enrollment due to a waiting period. Immediate coverage of pre-existing conditions should increase demand in the new program relative to the existing pools, and may also lead to a somewhat less favorable mix of health risks, because people with problems requiring substantial medical care will receive more benefit from the new program than the existing pools.

Third, all State high risk pools set their premiums at a higher percent of the standard rate in the individual market than the PCIP program. In the existing pools, premiums average 140 percent of standard rate, and range from 105 percent to 250 percent of the standard rate or higher.[8] The PCIP program's premiums are set at 100 percent of standard rate. PCIP's lower premium is expected to increase the number of people who will want to purchase coverage. One study estimated that lowering all State high risk pool premiums to 125 percent of the standard rate would increase enrollment by one-third.[9] The lower premium may lead to a more favorable health mix of enrollees, because the higher premiums in existing pools make the pools less

[3] U.S. Government Accountability Office, *Health Insurance: Enrollment, Benefits, Funding, and Other Characteristics of State High Risk Health Insurance Pools* (2009), *http://www.gao.gov/new.items/d09730r.pdf.*

[4] U.S. Government Accountability Office, *Health Insurance: Enrollment, Benefits, Funding, and Other Characteristics of State High Risk Health Insurance Pools* (2009), *http://www.gao.gov/new.items/d09730r.pdf.* This estimate was based on the number of individuals with at least one chronic condition, from the 2006 Medical Expenditure Panel Survey (MEPS), applied to the Current Population Survey estimates of the population in States with high risk pools.

[5] "The Uninsured: A Primer," *Kaiser Commission on Medicaid and the Uninsured* (2006), *http://www.kff.org/uninsured/upload/7451.pdf.*

[6] Tanya Schwartz, "State High Risk Pools: An Overview," *Kaiser Commission on Medicaid and the Uninsured.* (2010), *http://www.kff.org/uninsured/8041.cfm.*

[7] U.S. Government Accountability Office, *Health Insurance: Enrollment, Benefits, Funding, and Other Characteristics of State High Risk Health Insurance Pools* (2009), *http://www.gao.gov/new.items/d09730r.pdf.*

[8] National Association of State Comprehensive Health Insurance Plans. *Comprehensive Health Insurance for High-Risk Individuals: A State-by-State Analysis, 2009/2010.*

[9] Austin Frakt, Steve Pizer, and Martin Wrobel, "Insuring the Uninsurable: The Growth in High-Risk Pools," *Abt Associates, HSRE Working Paper* (2002), *http://www.abtassociates.com/reports/HSRE-W12-highrisk.pdf.*

attractive to individuals with fewer health problems. Lower premiums may also attract individuals who are in poor health, but are unable to afford the premiums in the existing pools.

Fourth, fifteen States and the District of Columbia lack a high risk pool program today. These States do not have a high risk pool for a variety of reasons. Some States, such as New York, Massachusetts, and Vermont, have enacted insurance reforms that require plans to accept people with pre-existing conditions into the individual insurance market (through guaranteed issue and rating rules) instead of segregating them into high risk pools. Others, like Arizona and Nevada, do not have extensive insurance reforms. There is no common profile to States that lack high risk pools today.

Lastly, there is no clear correlation between high risk pool enrollment and need. One measure of need is the number and rate of uninsured residents. A State that provides protections for its residents with high risk or low income should have a relatively low number and rate of uninsured residents, and vice versa. As such, among States that offer such pools, there should be a relatively constant relationship between a State's number of uninsured and its enrollees in high risk pools. However, experience suggests otherwise. The difference between the highest and lowest ratio of a State's uninsured population to its high risk pool enrollees is 27 to one. This is substantially larger than the disparity in the ratio of uninsured to Medicaid enrollees in a State, which is six to one.[10] A report that examined current State high risk pools, estimated a participation rate of 0.05 to 0.33 percent of the State population in those programs.[11] For these reasons, the Department concludes that the experience in existing high risk pools is not a good basis for estimating PCIP enrollment.

Several reports have estimated the likely number of enrollees in the PCIP program by using survey data and applying a participation rate to the approximate number of people eligible for the PCIP program. One analysis was conducted by the Center for Studying Health System Change.[12] Using the Medical Expenditure Panel Survey (MEPS), the analysis identified individuals who were uninsured and had at least one chronic condition deemed "high cost," meaning spending exceeds 1.5 times of the average cost of the condition. This methodology generated 5.6 to 7 million people who could potentially qualify for the program. Assuming that the annual Federal cost per person is $6,000 to $7,000 and the $5 billion in Federal funding is capped in each year over the three and a half year period (roughly $1.3 to $1.4 billion per year), the analysis estimated that 200,000 people per year through 2013 could be covered.

Second, the Centers for Medicare and Medicaid Services' Office of the Actuary (OAct) estimated participation based on demand, without assuming that Federal funding would be limited to $1.3 to $1.4 billion in each year. It estimated that participation in the program in 2010 would be 375,000, assuming the program would be fully implemented within the year. Given this enrollment rate, it projected that the $5 billion in Federal funding would not last through 2013.

Third, the Congressional Budget Office (CBO) conducted two analyses. In a December 2008 report, CBO estimated the cost and coverage of a national high risk pool program. This program would require that all States establish high risk pool programs, with full Federal subsidies for enrollees. Its premiums would be higher than PCIP—150 versus 100 percent of the standard rate—but its enrollment would be broader—significantly, it would not require that applicants have been uninsured for the previous six months. CBO estimated that 175,000 uninsured would gain coverage in this program, and the Federal cost would be $5.4 billion over five years (with offsetting receipts from changes in employer coverage).[13]

In addition, in June, 2010, CBO provided information on PCIP in response to a request from Congress.[14] Its methodology was not explained in its letter, but it calculated that 200,000 people could be enrolled in the program for the 2010–2013 period given the fixed $5 billion appropriation. If the Federal funding cap were lifted, CBO estimated that enrollment would be 400,000 in 2011 rising to about 600,000 or 700,000 in 2013. CBO underscored the uncertainty of the estimates due to the potential variation in eligibility rules, benefits, and premiums. Since this interim final rule preserves variation and flexibility in program parameters across States, CBO's observations continue to be relevant and there may be a wide range of potential enrollees. CBO would probably continue to estimate a wide range of potential enrollees taking this interim final rule into account.

For purpose of this analysis, the Department has not produced its own estimates of the number of individuals likely to enroll in the PCIP program but believes that it will fall in the range of the other estimates, from 200,000 to 400,000. The lower bound of this range is consistent with the numbers estimated by the Center for Studying Health System Change and by CBO in June 2010. The upper bound of this range is approximately the enrollment estimate from the Office of the Actuary and CBO when they assume that PCIPs do not immediately impose enrollment constraints to extend the limited Federal funding. We expect that efficient program implementation, effective cost control, targeted benefit design, and enrollment patterns that are different than projected will mitigate the need for enrollment constraints, and Federal funding will be sufficient to meet program demand. Even assuming the lower estimate of enrollment of 200,000, the PCIP program could double the number of Americans with pre-existing conditions insured through high risk pool programs.

c. Benefits

A key premise for the establishment of the Pre-Existing Condition Insurance Plan is that those who are unable to purchase health insurance in the private sector due to medical underwriting and are not eligible for public insurance programs are potentially disadvantaged through both poor health and loss of income. We expect that the PCIP program will help such individuals by providing access to affordable health insurance coverage.

This interim final regulation could generate significant benefits to consumers. These benefits could take the form of reductions in mortality and morbidity, reductions in medical expenditure risk, increases in worker productivity, and decreases in the cross-subsidy in premiums to offset uncompensated care, sometimes referred to as the "hidden tax." Each of these effects is described below.

A first type of benefit is reductions in mortality and morbidity. While the empirical literature leaves many questions unresolved, a growing body of evidence convincingly demonstrates that health can be improved by

[10] Data from State Health Facts.org, Kaiser Family Foundation.

[11] "State High Risk Pools: An Overview." *State Health Access Data Assistance Center* (2008).

[12] Mark Merlis, "Health Coverage for the High-Risk Uninsured: Policy Options for Design of the Temporary High-Risk Pool," *National Institute for Health Care Reform, Center for Studying Health System Change* (2010).

[13] Congressional Budget Office. *Health Care Budget Options Volume I.* December 2008.

[14] Congressional Budget Office Director Douglas W. Elmendorf, letter to Senator Michael B. Enzi, June 21, 2010.

spending more on at-risk individuals and by expanding health insurance coverage. For example, Almond *et al.*[15] find that newborns classified just below a medical threshold for "very low birthweight" have *lower* mortality rates than newborns classified as just above the threshold, despite an association between low birth weight and higher mortality in general, because they tend to receive timely and appropriate medical care. In a study of severe automobile accidents, Doyle [16] found that uninsured individuals receive less care and have a substantially higher mortality rate. Currie and Gruber [17] found that increased eligibility for Medicaid coverage expanded utilization of care for otherwise uninsured children, leading to a sizeable and significant reduction in child mortality. A study of Medicare by Card *et al.*[18] found that individuals just old enough to qualify for coverage have lower mortality rates—despite similar illness severity—than do those just too young for eligibility. Finally, a report by the Institute of Medicine (IOM) [19] found mortality risks for uninsured individuals that were 25 percent higher than those of observably similar insured individuals. In addition to the prospect that expanded insurance coverage will result in reductions in mortality, it will almost certainly significantly reduce morbidity, as demonstrated in extensive reviews of the literature by Hadley and the IOM.[20]

This interim final regulation will expand access to currently uninsured individuals with pre-existing conditions. These newly insured populations will likely achieve both mortality and morbidity reductions from the regulation greater than those found in the studies, since these populations are, on average, in worse health than the population at large and thus likely to benefit even more from insurance coverage than uninsured individuals in general.

A second type of benefit from the cumulative effects of this interim final regulation is a reduction in financial burden faced by the uninsured on account of onerous medical costs. Various studies have documented two related phenomena: (1) Averted healthcare utilization among the uninsured due to cost and (2) financial strain due to medical expenditures among the uninsured. Recent data show that 24 percent of the uninsured went without needed health care due to cost compared to 4 percent of those with private or employer-based insurance.[21] Given the population targeted by the PCIP program—uninsured people with pre-existing conditions—individuals currently without insurance may not be able to simply forgo needed care, leading to substantial financial strain. Approximately half of the more than 500,000 personal bankruptcies in the U.S. in 2007 were in part due to very high medical expenses.[22] In a Commonwealth Fund report [23] on medical debt, 60 percent of those having no insurance reported having difficulties paying medical care costs. In the past 12 months, they had incurred medical bills they either could not pay, were forced to make significant changes in their life styles in order to meet their obligations, had been contacted by a bill collection agency, or were forced to pay medical bills over an extended period. Exclusions from health insurance coverage based on preexisting conditions expose the uninsured to the aforementioned financial risks.

The Pre-Existing Condition Insurance Plan is designed to reduce the uncertainty and hardship associated with these financial risks by limiting the extent to which individuals must bear the entire cost of medical care by themselves. One study found that people who are uninsured for a full year pay for over a third of their care (35 percent) out-of-pocket, while individuals who are insured for a full or partial year paid just under 20 percent of their care out-of-pocket.[24] Moreover, because the PCIP program is targeted to individuals who are likely to have extensive medical needs, it is likely to have especially large economic benefits in terms of reducing financial risk. For example, uninsured individuals with two chronic conditions spent $908 out of pocket annually compared to $304 annually among the uninsured with no chronic conditions and $259 annually among the privately insured with no chronic conditions.[25] This program and the interim final regulation that implements it will help insurance companies more effectively protect patients from the financial hardship of illness, including bankruptcy and reduced funds for non-medical purposes.

A third type of benefit from the PCIP program and this interim final regulation is improved workplace productivity. This interim final regulation will benefit employers and workers by increasing workplace productivity and reducing absenteeism, low productivity at work due to preventable illness, and "job-lock." A June 2009 report by the Council of Economic Advisers found that increased access to health insurance coverage improves labor market outcomes by improving worker health.[26] The health benefits of offering health insurance to uninsured people with pre-existing conditions will help to reduce disability, low productivity at work due to preventable illness, and absenteeism in the work place, thereby increasing workplace productivity and labor supply. Economic theory suggests that these benefits would likely be shared by workers, employers, and consumers.

Fourth, the PCIP will reduce cost shifting of uncompensated care to the privately insured, which contributes to higher premiums. The program will help expand the number of individuals who are insured and reduce the likelihood that individuals who have insurance do not bankrupt themselves by paying medical bills. Both effects will help reduce the amount of uncompensated care that imposes a "hidden tax" on consumers of health care since the costs of this care are

[15] Douglas Almond *et al.,* "Estimating Marginal Returns to Medical Care: Evidence from At-Risk Newborns," *The Quarterly Journal of Economics* 125, No. 2 (2010): 591–634, *http://www.mit.edu/~jjdoyle/vlbw.pdf.*

[16] Joseph J. Doyle, "Health Insurance, Treatment and Outcomes: Using Auto Accidents as Health Shocks." *The Review of Economics and Statistics* 87, No. 2 (2005): 256–270, *http://www.mitpressjournals.org/doi/abs/10.1162/0034653053970348.*

[17] Janet Currie and J. Gruber, "Health Insurance Eligibility, Utilization of Medical Care, and Child Health," *The Quarterly Journal of Economics* 111, No. 2 (1996): 431–466, *http://www.jstor.org/stable/2946684?cookieSet=1.*

[18] David Card, C. Dobkin, and N. Maestas, "Does Medicare Save Lives?" *The Quarterly Journal of Economics* 124, No. 2 (2009): 597–636, *http://www.mitpressjournals.org/doi/abs/10.1162/qjec.2009.124.2.597.*

[19] Institute of Medicine, "Care Without Coverage: Too Little, Too Late," (2002), *http://books.nap.edu/openbook.php?record_id=10367&page=R1.*

[20] Institute of Medicine, op. cit. J. Hadley, "Sicker and Poorer: The Consequences of Being Uninsured," *Medical Care Research and Review* 60 (No. 2): 3S–75S, (2003).

[21] Kaiser Family Foundation, "The Uninsured A Primer," (2009), *http://www.kff.org/uninsured/upload/7451-05.pdf.*

[22] David Himmelstein *et al.,* "Medical Bankruptcy in the United States, 2007: Results of a National Study," *The American Journal of Medicine* (2009), *http://www.pnhp.org/new_bankruptcy_study/Bankruptcy-2009.pdf.*

[23] Collins *et al.,* "The Affordability Crisis In U.S. Health Care: Findings From The Commonwealth Fund Biennial Health Insurance Survey," *(2004): 17.*

[24] Jack Hadley and John Holohan, "The Cost of Care for the Uninsured," *The Kaiser Commission on Medicaid and the Uninsured* (2004), *http://www.kff.org/uninsured/upload/The-Cost-of-Care-for-the-Uninsured-What-Do-We-Spend-Who-Pays-and-What-Would-Full-Coverage-Add-to-Medical-Spending.pdf.*

[25] Hwang et al, "Out of Pocket Medical Spending for Care of Chronic Conditions," *Health Affairs* (2001), *http://www.partnershipforsolutions.org/DMS/files/Out-of-pocket2002.pdf.*

[26] Council of Economic Advisers. "The Economic Case for Health Reform." (2009).

shifted to those who are able to pay for services in the form of higher prices.

In their analysis of the interim final regulations implementing patient protections, the Departments of Labor, the Treasury, and Health and Human Services estimated an order of magnitude for the compensatory reduction in cost-shifting of uncompensated care associated with the expansion of coverage of those interim final regulations.[27] The analysis assumed that induced utilization due to expanded coverage would be relatively low since the uninsured populations affected by these interim final regulations tend to have worse health, greater needs for health care, and less ability to reduce utilization when they are uninsured. Second, on the basis of the economics literature on the subject,[28] the Departments estimated that two-thirds of the previously uncovered costs would have been uncompensated care, 25 percent of which would have been paid for by private sources. Assuming that reductions in privately-financed uncompensated care lower insurance premiums charged to consumers, the Departments estimated the patient protections' regulations' increased insurance coverage could result in reductions in insurance premiums of up to $1 billion in 2013.[29]

Assuming an enrollment range of 200,000 to 400,000 in the PCIP program, the effect on uncompensated care could be over twice to four times as high as prior estimates associated with the patient protections. This increased impact is due to the fact that the primary effect on coverage of the patient protections interim final regulations was the ban on pre-existing condition exclusions for children. Those rules estimated that 90,000 children would gain coverage. Given the differing scopes of these two interim final regulations, it is likely that more uninsured will be helped by PCIP than the patient protections policies and interim final regulations. Moreover, savings per person will likely be higher for the PCIP population compared to children with pre-existing conditions. This is because most enrollees in PCIP are likely to be adults, whose average cost of health care is higher than that of children.

In addition, we believe that PCIP will help local and State governments. Since much of the uncompensated health care is provided through State and locally funded public health facilities, by enabling a portion of those who would seek care at a public facility to enroll in the high risk pool, the program could help reduce the drain on scarce State and local resources. We welcome public comment on this analysis.

d. Costs and Transfers

Under section 1101 of the Affordable Care Act, HHS is authorized to disperse $5 billion for the purpose of funding the PCIP program, including administrative costs and contracts with States and non-profit third party administrators. This Federal funding is used to offset the cost of providing health care to enrollees that exceeds the premium revenue. According to independent studies, the Federal share of total costs could be roughly 35 to 40 percent of total spending.[30]

There will also be administrative costs associated with the PCIP program. This takes the form of the cost to contractors to apply, the time cost for individuals to apply, and the contractors' costs of complying with program rules (for example, conducting appeals, preventing fraud). The Department estimates that the annual administrative cost would be $1.9 million. Note that any State administrative costs incurred that are allowable under this program may be paid for by Federal and premium funds.

e. Conclusion

Under section 1101 of the Affordable Care Act, the Department is authorized to spend $5 billion via States and third party administrators for the purpose of funding the PCIP program. The transfer of this amount of funds will have a significant, positive financial impact on individuals who enroll in the program, States, and health care providers. We anticipate that individuals who are currently uninsured will benefit from having lower out-of-pocket costs for health care, less financial strain, and improved access to health services. We also anticipate that insured individuals will benefit indirectly through paying lower premiums because of a reduced burden on the plans to subsidize uncompensated care. In addition, we believe that establishing the PCIP program will reduce the burden on local and State governments to pay health care providers for uncompensated care.

The direct costs of this regulation is a transfer of $5 billion from the Federal government to the PCIPs that will be established in each State. Administrative costs are expected to be $1.9 million per year. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

VII. Other Sections

Regulatory Alternatives

Under the Executive Order, we must consider alternatives to issuing regulations and alternative regulatory approaches. Section 1101 establishes broad requirements regarding contracting, eligibility, benefits, payments, insurer dumping, and the control of fraud, waste, and abuse.

We considered implementing the PCIP through some form of guidance to States and other interested parties. However, we believe that it is in the best interest of States, contractors, enrollees, and other interested parties to establish this program through the rulemaking process. As discussed in detail above, there are several areas where the statute clearly anticipates that the Secretary will exercise discretion in implementing the program, most notably the definition of a pre-existing condition for purpose of establishing eligibility. We also need to issue regulations to establish the legal framework for the contracting mechanism that sets the specific terms for the State-administered pools and for the organizations that will operate the pools in the States that do not contract with HHS. Establishing these rules through rulemaking ensures that the public has ample opportunity to understand and comment on these rules and establishes clear authority to enforce them.

The Department considered regulatory alternatives for program design, and often referred to the design features in existing State high risk pool and the Children's Health Insurance Program (CHIP) given their similarities to the PCIP goals and features. We

[27] **Federal Register** June 28, 2010: *http://frwebgate1.access.gpo.gov/cgi-bin/TEXTgate.cgi?WAISdocID=3HyQcj/5/1/0&WAISaction=retrieve.*

[28] Jack Hadley *et al,* "Covering the Uninsured in 2008: Current Costs, Sources of Payment, and Incremental Costs," Health Affairs 27, No. 5 (2008): 399–415.

[29] The Departments first estimated the proportion of the population in group and individual markets using the Medical Expenditure Panel Survey (2008). Next, information from 75 FR 34538 (June 17, 2010) was used to estimate the proportion of employer and individual plans that maintain or lose grandfather status by 2013. Projections of national health expenditures from the National Health Expenditure Accounts to 2013 were distributed among these groups, and premium impacts as discussed in this regulatory impact analysis were applied. Potential premium reductions secondary to reductions in the cost-shifting of uncompensated care were then calculated using the information from the economic literature as presented in this discussion. The Departments note that to the extent that not all of the reductions in uncompensated care costs are passed onto insured populations, these estimates may be an overestimate.

[30] Mark Merlis, "Health Coverage for the High-Risk Uninsured: Policy Options for Design of the Temporary High-Risk Pool," *National Institute for Health Care Reform, Center for Studying Health System Change* (2010).

explored setting uniform rules for eligibility for all PCIPs but rejected this approach since it did not take into account the existing markets and programs in each State.

Given the fixed Federal funding for the PCIP program, these regulatory alternatives will not affect Federal outlays. They are also unlikely to have measurable national health spending implications since the Federal funding constraint is accompanied by a fixed standard for private premiums—100 percent of a standard rate for benefits that cover at least 65 percent of the cost of coverage.

Regulatory Flexibility Act

The RFA requires agencies that issue a regulation to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. The Act generally defines a "small entity" as (1) A proprietary firm meeting the size standards of the Small Business Administration (SBA), (2) a nonprofit organization that is not dominant in its field, or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of "small entity." These regulations apply to the States, both those that contract with HHS to establish PCIPs and those States in which HHS contracts with another entity to establish the program, no small entities will be affected. Therefore, the Secretary certifies that the regulations will not have significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates would require spending in any one year $100 million in 1995 dollars, updated annually for inflation. In 2010, that threshold is approximately $135 million.

UMRA does not address the total cost of a rule. Rather, it focuses on certain categories of cost, mainly those "Federal mandate" costs resulting from: (1) Imposing enforceable duties on State, local, or tribal governments, or on the private sector; or (2) increasing the stringency of conditions in, or decreasing the funding of, State, local, or tribal governments under entitlement programs.

Under the Affordable Care Act, States may choose to participate in the PCIPs and receive Federal funding for administering and paying benefits. If they do not choose to participate, the Federal government will establish a PCIPs in the State. Thus, the law and these regulations do not impose an unfunded mandate on States.

Individuals will have to pay a premium and incur out-of-pocket expenses to join the PCIPs that either a State or the Federal government establishes. However, individuals are free to join based on their evaluation of the costs and benefits of belonging to the program. There is no automatic enrollment and no requirement to join a PCIP. Thus, the law, and these regulations do not impose an unfunded mandate on the private sector.

Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

This rule does not impose any direct costs on State or local governments. Consistent with section 1101(g)(5) of the Act, § 152.40 of this interim final rule specifies that State standards that might otherwise apply to the coverage offered under a PCIP are preempted, with the exception of laws relating to licensing or solvency. This language tracks similar language that applies to State regulation of health plans offering Medicare Advantage plans under Medicare Part C or drug coverage under Medicare Part D under title XVIII of the Social Security Act, and we would expect to interpret the language for purposes of the high risk pool program in a manner similar to the way HHS has applied it under those programs. We do not anticipate that this regulation will have significant implications, particularly since only individuals who are not now insured, and thus not directly subject to existing State insurance laws, may enroll in the program.

List of Subjects in 45 CFR Part 152

Administrative practice and procedure, Health care, Health insurance, Penalties, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Department of Health and Human Services amends 45 CFR subtitle A, subchapter B, by adding a new part 152 to read as follows:

PART 152—PRE-EXISTING CONDITION INSURANCE PLAN PROGRAM

Subpart A—General Provisions

Sec.
152.1 Statutory basis.
152.2 Definitions.

Subpart B—PCIP Program Administration

152.6 Program administration.
152.7 PCIP proposal process.

Subpart C—Eligibility and Enrollment

152.14 Eligibility.
152.15 Enrollment and disenrollment process.

Subpart D—Benefits

152.19 Covered benefits.
152.20 Prohibitions on pre-existing condition exclusions and waiting periods.
152.21 Premiums and cost-sharing.
152.22 Access to services.

Subpart E—Oversight

152.26 Appeals procedures.
152.27 Fraud, waste, and abuse.
152.28 Preventing insurer dumping.

Subpart F—Funding

152.32 Use of funds.
152.33 Initial allocation of funds.
152.34 Reallocation of funds.
152.35 Insufficient funds.

Subpart G—Relationship to Existing Laws and Programs

152.39 Maintenance of effort.
152.40 Relation to State laws.

Subpart H—Transition to Exchanges

152.44 End of PCIP program coverage.
152.45 Transition to the exchanges.

Authority: Sec. 1101 of the Patient Protection and Affordable Care Act (Pub. L. 111–148).

Subpart A—General Provisions

§ 152.1 Statutory basis.

(a) *Basis.* This part establishes provisions needed to implement section 1101 of the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act), which requires the Secretary of the Department of Health and Human Services to establish a temporary high risk health insurance pool program to provide health insurance coverage for individuals described in § 152.14 of this part.

(b) *Scope.* This part establishes standards and sets forth the requirements, limitations, and procedures for the temporary high risk health insurance pool program, hereafter referred to as the "Pre-Existing Condition Insurance Plan" (PCIP) program.

§ 152.2 Definitions.

For purposes of this part the following definitions apply:

Creditable coverage means coverage of an individual as defined in section 2701(c)(1) of the Public Health Service Act as of March 23, 2010 and 45 CFR 146.113(a)(1).

Enrollee means an individual receiving coverage from a PCIP established under this section.

Lawfully present means

(1) A qualified alien as defined in section 431 of the Personal Responsibility and Work Opportunity Act (PRWORA) (8 U.S.C. 1641);

(2) An alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission;

(3) An alien who has been paroled into the United States pursuant to section 212(d)(5) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(d)(5)) for less than 1 year, except for an alien paroled for prosecution, for deferred inspection or pending removal proceedings;

(4) An alien who belongs to one of the following classes:

(i) Aliens currently in temporary resident status pursuant to section 210 or 245A of the INA (8 U.S.C. 1160 or 1255a, respectively);

(ii) Aliens currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 U.S.C. 1254a), and pending applicants for TPS who have been granted employment authorization;

(iii) Aliens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);

(iv) Family Unity beneficiaries pursuant to section 301 of Public Law 101–649 as amended;

(v) Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;

(vi) Aliens currently in deferred action status;

(vii) Aliens whose visa petitions have been approved and who have a pending application for adjustment of status;

(5) A pending applicant for asylum under section 208(a) of the INA (8 U.S.C. 1158) or for withholding of removal under section 241(b)(3) of the INA (8 U.S.C. 1231) or under the Convention Against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days;

(6) An alien who has been granted withholding of removal under the Convention Against Torture; or

(7) A child who has a pending application for Special Immigrant Juvenile status as described in section 101(a)(27)(J) of the INA (8 U.S.C. 1101(a)(27)(J)).

Out-of-pocket costs means the sum of the annual deductible and the other annual out-of-pocket expenses, other than for premiums, required to be paid under the program.

Pre-Existing condition exclusion has the meaning given such term in 45 CFR 144.103.

Pre-Existing Condition Insurance Plan (PCIP) means the temporary high risk health insurance pool plan (sometimes referred to as a "qualified high risk pool") that provides coverage in a State, or combination of States, in accordance with the requirements of section 1101 of the Affordable Care Act and this part. The term "PCIP program" is generally used to describe the national program the Secretary is charged with carrying out, under which States or non-profit entities operate individual PCIPs.

Resident means an individual who has been legally domiciled in a State.

Service Area refers to the geographic area encompassing an entire State or States in which PCIP furnishes benefits.

State refers each of the 50 States and the District of Columbia.

Subpart B—PCIP Program Administration

§ 152.6 Program administration.

(a) *General rule.* Section 1101(b)(1) of the Affordable Care Act requires that HHS carry out the Pre-Existing Condition Insurance Plan program directly or through contracts with eligible entities, which are States or nonprofit private entities.

(b) *Administration by State.* A State (or its designated non-profit private entity) may submit a proposal to enter into a contract with HHS to establish and administer a PCIP in accordance with section 1101 of the Affordable Care Act and this part.

(1) At the Secretary's discretion, a State may designate a nonprofit entity or entities to contract with HHS to administer a PCIP.

(2) As part of its administrative approach, a State or designated entity may subcontract with either a for-profit or nonprofit entity.

(c) *Administration by HHS.* If a State or its designated entity notifies HHS that it will not establish or continue to administer a PCIP, or does not submit an acceptable or timely proposal to do so, HHS will contract with a nonprofit private entity or entities to administer a PCIP in that State.

(d) *Transition in administration.* The Secretary may consider a request from a State to transition from administration by HHS to administration by a State or from administration by a State to administration by HHS. Such transitions shall be approved only if the Secretary determines that the transition is in the best interests of the PCIP enrollees and potential PCIP enrollees in that state, consistent with § 152.7(b) of this part.

§ 152.7 PCIP proposal process.

(a) *General.* A proposal from a State or nonprofit private entity to contract with HHS shall demonstrate that the eligible entity has the capacity and technical capability to perform all functions necessary for the design and operation of a PCIP, and that its proposed PCIP is in full compliance with all of the requirements of this part.

(b) *Special rules for transitions in administration.* (1) Transitions from HHS administration of a PCIP to State administration must take effect on January 1 of a given year.

(2) A State's proposal to administer a PCIP must meet all the requirements of this section.

(3) Transitions from State administration to HHS administration must comply with the termination procedures of the PCIP contract in effect with the State or its designated entity.

(4) The Secretary may establish other requirements needed to ensure a seamless transition of coverage for all existing enrollees.

Subpart C—Eligibility and Enrollment

§ 152.14 Eligibility.

(a) *General rule.* An individual is eligible to enroll in a PCIP if he or she:

(1) Is a citizen or national of the United States or lawfully present in the United States;

(2) Subject to paragraph (b) of this section, has not been covered under creditable coverage for a continuous 6-month period of time prior to the date on which such individual is applying for PCIP;

(3) Has a pre-existing condition as established under paragraph (c) of this section; and

(4) Is a resident of one of the 50 States or the District of Columbia which constitutes or is within the service area of the PCIP. A PCIP may not establish any standards with regard to the duration of residency in the PCIP service area.

(b) *Satisfaction of 6-month creditable coverage requirement when an enrollee leaves the PCIP service area.* An individual who becomes ineligible for a PCIP on the basis of no longer residing in the PCIP's service area as described in paragraph (a)(4) of this section is deemed to have satisfied the requirement in paragraph (a)(2) of this section for purposes of applying to enroll in a PCIP in the new service area.

(c) *Pre-existing condition requirement.* For purposes of establishing a process for determining eligibility, and subject

to HHS approval, a PCIP may elect to apply any one or more of the following criteria in determining whether an individual has a pre-existing condition for purposes of this section:

(1) *Refusal of coverage.* Documented evidence that an insurer has refused, or a clear indication that the insurer would refuse, to issue coverage to an individual on grounds related to the individual's health.

(2) *Exclusion of coverage.* Documented evidence that such individual has been offered coverage but only with a rider that excludes coverage of benefits associated with an individuals' identified pre-existing condition.

(3) *Medical or health condition.* Documented evidence of the existence or history of certain medical or health condition, as approved or specified by the Secretary.

(4) Other. Other criteria, as defined by a PCIP and approved by HHS.

§ 152.15 Enrollment and disenrollment process.

(a) *Enrollment process.* (1) A PCIP must establish a process for verifying eligibility and enrolling an individual that is approved by HHS.

(2) A PCIP must allow an individual to remain enrolled in the PCIP unless:

(i) The individual is disenrolled under paragraph (b) of this section;

(ii) The individual obtains other creditable coverage;

(iii) The PCIP program terminates, or is terminated; or

(iv) As specified by the PCIP program and approved by HHS.

(3) A PCIP must verify that an individual is a United States citizen or national or lawfully present in the United States by:

(i) Verifying the individual's citizenship, nationality, or lawful presence with the Commissioner of Security or Secretary of Homeland Security as applicable; or

(ii) By requiring the individual to provide documentation which establishes the individual's citizenship, nationality, or lawful presence.

(iii) The PCIP must provide an individual who is applying to enroll in the PCIP with a disclosure specifying if the information will be shared with the Department of Health and Human Services, Social Security Administration, and if necessary, Department of Homeland Security for purposes of establishing eligibility.

(b) *Disenrollment process.* (1) A PCIP must establish a disenrollment process that is approved by HHS.

(2) A PCIP may disenroll an individual if the monthly premium is not paid on a timely basis, following notice and a reasonable grace period, not to exceed 61 days from when payment is due, as defined by the PCIP and approved by HHS.

(3) A PCIP must disenroll an individual in any of the following circumstances:

(i) The individual no longer resides in the PCIP service area.

(ii) The individual obtains other creditable coverage.

(iii) Death of the individual.

(iv) Other exceptional circumstances established by HHS.

(c) *Effective dates.* A PCIP must establish rules governing the effective date of enrollment and disenrollment that are approved by HHS. A complete enrollment request submitted by an eligible individual by the 15th day of a month, where the individual is determined to be eligible for enrollment, must take effect by the 1st day of the following month, except in exceptional circumstances that are subject to HHS approval.

(d) *Funding limitation.* A PCIP may stop taking applications for enrollment to comply with funding limitations established by the HHS under section 1101(g) of Public Law 111–148 and § 152.35 of this part. Accordingly, a PCIP may employ strategies to manage enrollment over the course of the program that may include enrollment capacity limits, phased-in (delayed) enrollment, and other measures, as defined by the PCIP and approved by HHS, including measures specified under § 152.35(b).

Subpart D—Benefits

§ 152.19 Covered benefits.

(a) *Required benefits.* Each benefit plan offered by a PCIP shall cover at least the following categories and the items and services:

(1) Hospital inpatient services

(2) Hospital outpatient services

(3) Mental health and substance abuse services

(4) Professional services for the diagnosis or treatment of injury, illness, or condition

(5) Non-custodial skilled nursing services

(6) Home health services

(7) Durable medical equipment and supplies

(8) Diagnostic x-rays and laboratory tests

(9) Physical therapy services (occupational therapy, physical therapy, speech therapy)

(10) Hospice

(11) Emergency services, consistent with § 152.22(b), and ambulance services

(12) Prescription drugs

(13) Preventive care

(14) Maternity care

(b) *Excluded services.* Benefit plans offered by a PCIP shall not cover the following services:

(1) Cosmetic surgery or other treatment for cosmetic purposes except to restore bodily function or correct deformity resulting from disease.

(2) Custodial care except for hospice care associated with the palliation of terminal illness.

(3) In vitro fertilization, artificial insemination or any other artificial means used to cause pregnancy.

(4) Abortion services except when the life of the woman would be endangered or when the pregnancy is the result of an act of rape or incest.

(5) Experimental care except as part of an FDA-approved clinical trial.

§ 152.20 Prohibitions on pre-existing condition exclusions and waiting periods.

(a) *Pre-existing condition exclusions.* A PCIP must provide all enrollees with health coverage that does not impose any pre-existing condition exclusions (as defined in § 152.2) with respect to such coverage.

(b) *Waiting periods.* A PCIP may not impose a waiting period with respect to the coverage of services after the effective date of enrollment.

§ 152.21 Premiums and cost-sharing.

(a) *Limitation on enrollee premiums.* (1) The premiums charged under the PCIP may not exceed 100 percent of the premium for the applicable standard risk rate that would apply to the coverage offered in the State or States. The PCIP shall determine a standard risk rate by considering the premium rates charged for similar benefits and cost-sharing by other insurers offering health insurance coverage to individuals in the applicable State or States. The standard risk rate shall be established using reasonable actuarial techniques, that are approved by the Secretary, and that reflect anticipated experience and expenses. A PCIP may not use other methods of determining the standard rate, except with the approval of the Secretary.

(2) Premiums charged to enrollees in the PCIP may vary on the basis of age by a factor not greater than 4 to 1.

(b) *Limitation on enrollee costs.* (1) The PCIP's average share of the total allowed costs of the PCIP benefits must be at least 65 percent of such costs.

(2) The out-of-pocket limit of coverage for cost-sharing for covered services under the PCIP may not be greater than the applicable amount described in section 223(c)(2) of the Internal Revenue

code of 1986 for the year involved. If the plan uses a network of providers, this limit may be applied only for in-network providers, consistent with the terms of PCIP benefit package.

§ 152.22 Access to services.

(a) *General rule.* A PCIP may specify the networks of providers from whom enrollees may obtain plan services. The PCIP must demonstrate to HHS that it has a sufficient number and range of providers to ensure that all covered services are reasonably available and accessible to its enrollees.

(b) *Emergency services.* In the case of emergency services, such services must be covered out of network if:

(1) The enrollee had a reasonable concern that failure to obtain immediate treatment could present a serious risk to his or her life or health; and

(2) The services were required to assess whether a condition requiring immediate treatment exists, or to provide such immediate treatment where warranted.

Subpart E—Oversight

§ 152.26 Appeals procedures.

(a) *General.* A PCIP shall establish and maintain procedures for individuals to appeal eligibility and coverage determinations.

(b) *Minimum requirements.* The appeals procedure must, at a minimum, provide:

(1) A potential enrollee with the right to a timely redetermination by the PCIP or its designee of a determination regarding PCIP eligibility, including a determination of whether the individual is a citizen or national of the United States, or is lawfully present in the United States.

(2) An enrollee with the right to a timely redetermination by the PCIP or its designee of a determination regarding the coverage of a service or the amount paid by the PCIP for a service.

(3) An enrollee with the right to a timely reconsideration of a redetermination made under paragraph (b)(2) of this section by an entity independent of the PCIP.

§ 152.27 Fraud, waste, and abuse.

(a) *Procedures.* The PCIP shall develop, implement, and execute operating procedures to prevent, detect, recover (when applicable or allowable), and promptly report to HHS incidences of waste, fraud, and abuse, and to appropriate law enforcement authorities instances of fraud. Such procedures shall include identifying situations in which enrollees or potential enrollees (or their family members) are employed, and may have, or have had, access to other coverage such as group health coverage, but were discouraged from enrolling.

(b) *Cooperation.* The PCIP shall cooperate with Federal law enforcement and oversight authorities in cases involving waste, fraud and abuse, and shall report to appropriate authorities situations in which enrollment in other coverage may have been discouraged.

§ 152.28 Preventing insurer dumping.

(a) *General rule.* If it is determined based on the procedures and criteria set forth in paragraph (b) of this section that a health insurance issuer or group health plan has discouraged an individual from remaining enrolled in coverage offered by such issuer or health plan based on the individual's health status, if the individual subsequently enrolls in a PCIP under this part, the issuer or health plan will be responsible for any medical expenses incurred by the PCIP with respect to the individual.

(b) *Procedures and criteria for a determination of dumping.* A PCIP shall establish procedures to identify and report to HHS instances in which health insurance issuers or employer-based group health plans are discouraging high-risk individuals from remaining enrolled in their current coverage in instances in which such individuals subsequently are eligible to enroll in the qualified high risk pool. Such procedures shall include methods to identify the following circumstances, either through the PCIP enrollment application form or other vehicles:

(1) Situations where an enrollee or potential enrollee had prior coverage obtained through a group health plan or issuer, and the individual was provided financial consideration or other rewards for disenrolling from their coverage, or disincentives for remaining enrolled.

(2) Situations where enrollees or potential enrollees had prior coverage obtained directly from an issuer or a group health plan and either of the following occurred:

(i) The premium for the prior coverage was increased to an amount that exceeded the premium required by the PCIP (adjusted based on the age factors applied to the prior coverage), and this increase was not otherwise explained;

(ii) The health plan, issuer or employer otherwise provided money or other financial consideration to disenroll from coverage, or disincentive to remain enrolled in such coverage. Such considerations include payment of the PCIP premium for an enrollee or potential enrollee.

(c) *Remedies.* If the Secretary determines, based on the criteria in paragraph (b) of this section, that the rule in paragraph (a) of this section applies, an issuer or a group health plan will be billed for the medical expenses incurred by the PCIP. The issuer or group health plan also will be referred to appropriate Federal and State authorities for other enforcement actions that may be warranted based on the behavior at issue.

(d) *Other.* Nothing in this section may be construed as constituting exclusive remedies for violations of this section or as preventing States from applying or enforcing this section or other provisions of law with respect to health insurance issuers.

Subpart F—Funding

§ 152.32 Use of funds.

(a) *Limitation on use of funding.* All funds awarded through the contracts established under this program must be used exclusively to pay allowable claims and administrative costs incurred in the development and operation of the PCIP that are in excess of the amounts of premiums collected from individuals enrolled in the program.

(b) *Limitation on administrative expenses.* No more than 10 percent of available funds shall be used for administrative expenses over the life of the contract with the PCIP, absent approval from HHS.

§ 152.33 Initial allocation of funds.

HHS will establish an initial ceiling for the amount of the $5 billion in Federal funds allocated for PCIPs in each State using a methodology consistent with that used to established allocations under the Children's Health Insurance Program, as set forth under 42 CFR Part 457, Subpart F, Payment to States.

§ 152.34 Reallocation of funds.

If HHS determines, based on actual and projected enrollment and claims experience, that the PCIP in a given State will not make use of the total estimated funding allocated to that State, HHS may reallocate unused funds to other States, as needed.

§ 152.35 Insufficient funds.

(a) *Adjustments by a PCIP to eliminate a deficit.* In the event that a PCIP determines, based on actual and projected enrollment and claims data, that its allocated funds are insufficient to cover projected PCIP expenses, the PCIP shall report such insufficiency to HHS, and identify and implement

necessary adjustments to eliminate such deficit, subject to HHS approval.

(b) *Adjustment by the Secretary.* If the Secretary estimates that aggregate amounts available for PCIP expenses will be less than the actual amount of expenses, HHS reserves the right to make such adjustments as are necessary to eliminate such deficit.

Subpart G—Relationship to Existing Laws and Programs

§ 152.39 Maintenance of effort.

(a) *General.* A State that enters into a contract with HHS under this part must demonstrate, subject to approval by HHS, that it will continue to provide funding of any existing high risk pool in the State at a level that is not reduced from the amount provided for in the year prior to the year in which the contract is entered.

(b) *Failure to maintain efforts.* In situations where a State enters into a contract with HHS under this part, HHS shall take appropriate action, such as terminating the PCIP contract, against any State that fails to maintain funding levels for existing State high risk pools as required, and approved by HHS, under paragraph (a) of this section.

§ 152.40 Relation to State laws.

The standards established under this section shall supersede any State law or regulation, other than State licensing laws or State laws relating to plan solvency, with respect to PCIPs which are established in accordance with this section.

Subpart H—Transition to Exchanges

§ 152.44 End of PCIP program coverage.

Effective January 1, 2014, coverage under the PCIP program (45 CFR part 152) will end.

§ 152.45 Transition to the exchanges.

Prior to termination of the PCIP program, HHS will develop procedures to transition PCIP enrollees to the Exchanges, established under sections 1311 or 1321 of the Affordable Care Act, to ensure that there are no lapses in health coverage for those individuals.

Dated: July 26, 2010.

Jay Angoff,

Director, Office of Consumer Information and Insurance Oversight.

Dated: July 26, 2010.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2010–18691 Filed 7–29–10; 8:45 am]

BILLING CODE 4150–03–P

Federal Register

Friday,
July 30, 2010

Part III

The President

Proclamation 8543—National Korean War Veterans Armistice Day, 2010

Executive Order 13548—Increasing Federal Employment of Individuals With Disabilities

Federal Register
Vol. 75, No. 146
Friday, July 30, 2010

Presidential Documents

Title 3—

The President

Proclamation 8543 of July 26, 2010

National Korean War Veterans Armistice Day, 2010

By the President of the United States of America

A Proclamation

Today we celebrate the signing of the Military Armistice Agreement at Panmunjom and we honor our servicemembers who fought and died for freedom and democracy in the Korean War. This year marks the 60th anniversary of the start of the Korean War and the birth of an enduring friendship between the United States and the Republic of Korea that is stronger today than ever before. Our alliance is rooted in shared sacrifice, common values, mutual interest, and respect, and this partnership is vital to peace and stability in Asia and the world.

Since our Nation's founding, the United States has relied on our Armed Forces to ensure our safety and security at home, and to protect lives and liberties around the globe. When Communist armies poured across the 38th parallel, threatening the very survival of South Korea, American troops braved unforgiving conditions and rallied to the young republic's defense. Tens of thousands of our Nation's servicemembers lost their lives, and many more were wounded, declared missing in action, or taken as prisoners of war. The courageous service and ultimate sacrifices of these patriots and our allied combatants safeguarded a free government and vibrant economy in South Korea, forging a bond between our people that stands strong today.

As we commemorate the 60th anniversary of the outbreak of the Korean War and the eventual conclusion of hostilities at Panmunjom, let us raise our flags high to honor the service and valor of our veterans, to reflect on the principles for which they fought, and to reaffirm the unshakeable bond between South Korea and our Nation.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim July 27, 2010, as National Korean War Veterans Armistice Day. I call upon all Americans to observe this day with appropriate ceremonies and activities that honor our distinguished Korean War veterans.

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

[FR Doc. 2010–18987
Filed 7–29–10; 11:15 am]
Billing code 3195–W0–P

Presidential Documents

Executive Order 13548 of July 26, 2010

Increasing Federal Employment of Individuals With Disabilities

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish the Federal Government as a model employer of individuals with disabilities, it is hereby ordered as follows:

Section 1. *Policy.* Approximately 54 million Americans are living with a disability. The Federal Government has an important interest in reducing discrimination against Americans living with a disability, in eliminating the stigma associated with disability, and in encouraging Americans with disabilities to seek employment in the Federal workforce. Yet Americans with disabilities have an employment rate far lower than that of Americans without disabilities, and they are underrepresented in the Federal workforce. Individuals with disabilities currently represent just over 5 percent of the nearly 2.5 million people in the Federal workforce, and individuals with targeted disabilities (as defined below) currently represent less than 1 percent of that workforce.

On July 26, 2000, in the final year of his administration, President Clinton signed Executive Order 13163, calling for an additional 100,000 individuals with disabilities to be employed by the Federal Government over 5 years. Yet few steps were taken to implement that Executive Order in subsequent years.

As the Nation's largest employer, the Federal Government must become a model for the employment of individuals with disabilities. Executive departments and agencies (agencies) must improve their efforts to employ workers with disabilities through increased recruitment, hiring, and retention of these individuals. My Administration is committed to increasing the number of individuals with disabilities in the Federal workforce through compliance with Executive Order 13163 and achievement of the goals set forth therein over 5 years, including specific goals for hiring individuals with targeted disabilities.

Sec. 2. *Recruitment and Hiring of Individuals with Disabilities.* (a) Within 60 days of the date of this order, the Director of the Office of Personnel Management, in consultation with the Secretary of Labor, the Chair of the Equal Employment Opportunity Commission, and the Director of the Office of Management and Budget, shall design model recruitment and hiring strategies for agencies seeking to increase their employment of people with disabilities and develop mandatory training programs for both human resources personnel and hiring managers on the employment of individuals with disabilities.

(b) Within 120 days of the date the Office of Personnel Management sets forth strategies and programs required under subsection (a), each agency shall develop an agency-specific plan for promoting employment opportunities for individuals with disabilities. The plan shall be developed in consultation with and, as appropriate, subject to approval by the Director of the Office of Personnel Management and the Director of the Office of Management and Budget, and shall, consistent with law, include performance targets and numerical goals for employment of individuals with disabilities and sub-goals for employment of individuals with targeted disabilities.

(c) Each agency shall designate a senior-level agency official to be accountable for enhancing employment opportunities for individuals with disabilities and individuals with targeted disabilities within the agency, consistent with law, and for meeting the goals of this order. This official, among other things, shall be accountable for developing and implementing the agency's plan under subsection (b), creating recruitment and training programs for employment of individuals with disabilities and targeted disabilities, and coordinating employment counseling to help match the career aspirations of individuals with disabilities to the needs of the agency.

(d) In implementing their plans, agencies, to the extent permitted by law, shall increase utilization of the Federal Government's Schedule A excepted service hiring authority for persons with disabilities and increase participation of individuals with disabilities in internships, fellowships, and training and mentoring programs.

(e) The Office of Personnel Management shall assist agencies with the implementation of their plans. The Director of the Office of Personnel Management, in consultation with the Director of the Office of Management and Budget, shall implement a system for reporting regularly to the President, the heads of agencies, and the public on agencies' progress in implementing their plans and the objectives of this order. The Office of Personnel Management, to the extent permitted by law, shall compile and post on its website Government-wide statistics on the hiring of individuals with disabilities.

Sec. 3. *Increasing Agencies' Retention and Return to Work of Individuals with Disabilities.* (a) The Director of the Office of Personnel Management, in consultation with the Secretary of Labor and the Chair of the Equal Employment Opportunity Commission, shall identify and assist agencies in implementing strategies for retaining Federal workers with disabilities in Federal employment including, but not limited to, training, the use of centralized funds to provide reasonable accommodations, increasing access to appropriate accessible technologies, and ensuring the accessibility of physical and virtual workspaces.

(b) Agencies shall make special efforts, to the extent permitted by law, to ensure the retention of those who are injured on the job. Agencies shall work to improve, expand, and increase successful return-to-work outcomes for those of their employees who sustain work-related injuries and illnesses, as defined under the Federal Employees' Compensation Act (FECA), by increasing the availability of job accommodations and light or limited duty jobs, removing disincentives for FECA claimants to return to work, and taking other appropriate measures. The Secretary of Labor, in consultation with the Director of the Office of Personnel Management, shall pursue innovative re-employment strategies and develop policies, procedures, and structures that foster improved return-to-work outcomes, including by pursuing overall reform of the FECA system. The Secretary of Labor shall also propose specific outcome measures and targets by which each agency's progress in carrying out return-to-work and FECA claims processing efforts can be assessed.

Sec. 4. *Definitions.* (a) "Disability" shall be defined as set forth in the ADA Amendments Act of 2008.

(b) "Targeted disability" shall be defined as set forth on the form for self-identification of disability, Standard Form 256 (SF 256), issued by the Office of Personnel Management, or any replacements, updates, or revisions thereto.

(c) Not less than 1 year after the date of this order and in consultation with the Equal Employment Opportunity Commission, the Department of Labor, and the Office of Management and Budget, the Office of Personnel Management shall review the effectiveness of the definition of targeted disability set forth in SF 256 and replace, update, or revise it as appropriate.

Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or 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.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations, and shall not be construed to require any Federal employee to disclose disability status involuntarily.

(c) This order 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.

THE WHITE HOUSE,
July 26, 2010.

[FR Doc. 2010–18988
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Billing code 3195–W0–P

Federal Register

Friday,
July 30, 2010

Part IV

The President

Notice of July 29, 2010—Continuation of the National Emergency With Respect to the Actions of Certain Persons to Undermine the Sovereignty of Lebanon or Its Democratic Processes and Institutions

Federal Register
Vol. 75, No. 146
Friday, July 30, 2010

Presidential Documents

Title 3—

The President

Notice of July 29, 2010

Continuation of the National Emergency With Respect to the Actions of Certain Persons to Undermine the Sovereignty of Lebanon or Its Democratic Processes and Institutions

On August 1, 2007, by Executive Order 13441, the President declared a national emergency and ordered related measures blocking the property of certain persons undermining the sovereignty of Lebanon or its democratic processes or institutions and certain other persons, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). The President determined that the actions of certain persons to undermine Lebanon's legitimate and democratically elected government or democratic institutions; to contribute to the deliberate breakdown in the rule of law in Lebanon, including through politically motivated violence and intimidation; to reassert Syrian control or contribute to Syrian interference in Lebanon; or to infringe upon or undermine Lebanese sovereignty contribute to political and economic instability in that country and the region and constitute an unusual and extraordinary threat to the national security and foreign policy of the United States.

While there have been some recent positive developments in the Syrian-Lebanese relationship, continuing arms transfers to Hizballah that include increasingly sophisticated weapons systems serve to undermine Lebanese sovereignty, contribute to political and economic instability in Lebanon, and continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. Therefore, the national emergency declared on August 1, 2007, and the measures adopted on that date to deal with that emergency, must continue in effect beyond August 1, 2010. In accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13441.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
July 29, 2010.

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Federal Register

Vol. 75, No. 146

Friday, July 30, 2010

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FEDERAL REGISTER PAGES AND DATE, JULY

37975–38390 1
38391–38692 2
38693–38914 6
38915–39132 7
39133–39442 8
39443–39628 9
39629–39786 12
39787–40718 13
40719–41072 14
41073–41364 15
41365–41690 16
41691–41962 19
41963–42278 20
42279–42570 21
42571–43030 22
43031–43394 23
43395–43798 26
43799–44062 27
44063–44708 28
44709–44880 29
44881–45046 30

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

902 39443
3186 39133
Ch. 58 41691

3 CFR

Proclamations:
8539 38905
8540 38911
8541 42279
8542 44879
8543 45037
Executive Orders:
13546 39439
13548 45039
13366 (revoked by 13547) 43023
13547 43023
Administrative Orders:
Memorandums:
Memorandum of June 28, 2010 38387
Memorandum of June 30, 2010 38913
Memorandum of July 13, 2010 41687
Memorandum of July 19, 2010 43029
Memorandum of July 21, 2010 43793
Memorandum of July 21, 2010 43795
Memorandum of July 21, 2010 43797
Memorandum of July 22, 2010 44063
Notices:
Notice of June 19, 2010 42281
Notice of July 29, 2010 45045

5 CFR

1600 43799
1604 44065
1651 44065
2425 42283
2429 42283
4401 42270
Proposed Rules:
532 39460

6 CFR

Proposed Rules:
5 39144

7 CFR

2 43366
63 43031
205 38693
301 ..... 41073, 44881
457 44709
760 41365
800 41693
916 38696
917 38696
920 43038
924 43039
946 43042
948 38698
983 43045
1410 44067
1413 41963
1430 41365
1455 39135
1720 42571
4280 41695
Proposed Rules:
1 44928
331 44724
701 41389
1221 41392
1429 41397
1755 38042

8 CFR

274a 42575

9 CFR

102 40719
103 40719
104 40719
108 40719
112 40719
113 40719
114 40719
116 40719
124 40719
Proposed Rules:
121 44724
201 44163

10 CFR

9 41368
72 ..... 41369, 42292
110 44072
430 42579
431 37975
607 39443
1703 39629
Proposed Rules:
30 ..... 43425, 43865
36 43865
37 40756
39 43865
40 ..... 43425, 43865
51 43865
70 ..... 43425, 43865
72 ..... 41404, 42339
73 42000
150 43865
170 43425
171 43425
217 41405
430 ..... 41102, 42611, 42612

431.....41102, 41103
707.....44929
1023.....38042

11 CFR

9004.....43395

12 CFR

34.....44656
208.....44656
211.....44656
226.....44093
365.....44656
563.....44656
610.....44656
741.....44656
761.....44656

Proposed Rules:

615.....39392
1237.....39462
1777.....39462

14 CFR

13.....41968
23.....44881
25.....38391
39 .....37990, 37991, 37994, 37997, 38001, 38007, 38009, 38011, 38014, 38017, 38019, 38394, 38397, 38404, 39143, 39787, 39790, 39795, 39798, 39801, 39803, 39804, 39811, 39814, 39818, 42585, 42589, 42592, 43049, 43395, 43397, 43801, 43803, 43807, 43809
47.....41968
71 .....38406, 39145, 39146, 39147, 39148, 39149, 40719, 41074, 41075, 41076, 41077, 41983, 41984, 41985, 43813, 43814, 43815, 43816, 43817, 43818, 44884
73 .....42598, 43398, 43399, 44719
77.....42296
91.....41968, 41986
97 .....39150, 39152, 42308, 42310
121.....39629
217.....41580
234.....41580, 42599
241.....41580
248.....41580
250.....41580
291.....41580
298.....41580
382.....44885
385.....41580

Proposed Rules:

39 .....38052, 38056, 38058, 38061, 38064, 38066, 38941, 38943, 38945, 38947, 38950, 38953, 38956, 39185, 39189, 39192, 39472, 39863, 39869, 40757, 41104, 42340, 43092, 43095, 43097, 43099, 43101, 43103, 43105, 43876, 43878, 43882, 44724
71 .....38753, 41772, 41773, 41774, 42012, 42014, 42630, 42631, 43884, 43885, 43886, 43887, 44725, 44727
91.....39196, 42015

15 CFR

732.....44887
736.....44887
740.....43819, 44887
742.....41078, 43819
748.....44887
774.....41078

Proposed Rules:

922.....40759

16 CFR

305.....41696
1611.....42311
1630.....42315
1631.....42315

Proposed Rules:

1218.....42017
1219.....43308
1220.....43308
1500.....43308
1508.....43107
1509.....43107

17 CFR

190.....44890
200.....42270, 42599
275.....41018

Proposed Rules:

16.....41775
38.....42633
39.....42633
40.....42633
240.....42984
242.....39626
270.....42984
274.....42984
275.....42984

18 CFR

2.....43400
3b.....43400
4.....43400
5.....43400
8.....43400
9.....43400
11.....43400, 44094
16.....43400
24.....43400
32.....43400
33.....43400
34.....43400
35.....43400
38.....43059
39.....43400
40.....43059
45.....43400
46.....43400
152.....43400
153.....43400
156.....43400
157.....43400
284.....44893
385.....43400
388.....43400

Proposed Rules:

410.....41106

19 CFR

Proposed Rules:

351.....44163

20 CFR

404.....39154
408.....44137
416.....39154
418.....41084
618.....44720

Proposed Rules:

404.....42639
416.....42639

21 CFR

522.....38699
573.....41725
814.....41986
1310.....38915

Proposed Rules:

882.....44172
890.....44172

23 CFR

669.....43405
772.....39820

Proposed Rules:

650.....42643

24 CFR

5.....41087
84.....41087
85.....41087

Proposed Rules:

3280.....39871

26 CFR

1 .....38700, 44138, 44901
53.....38700
54 .....38700, 41726, 43330
301.....38700
602 .....38700, 43330, 44901

Proposed Rules:

54.....41787, 43109
300.....43110

27 CFR

9.....42601
40.....42605
41.....42605
44.....42605
46.....42605
71.....42605

Proposed Rules:

9.....43446
40.....42659
41.....42659
44.....42659
45.....42659
46.....42659
646.....44173

28 CFR

Proposed Rules:

35 .....43446, 43452, 43460
36 .....43452, 43460, 43467

29 CFR

2201.....41370
2550.....41600
2590.....41726, 43330
4022.....41091

Proposed Rules:

1910.....38646
1915.....38646
1917.....38646
1918.....38646
1926.....38646
1928.....38646
4003.....42662
4903.....42662

30 CFR

3020.....44138

Proposed Rules:

926.....43476

31 CFR

Ch. V.....38212
549.....44907

Proposed Rules:

103.....41788

33 CFR

100 .....38408, 38710, 39161, 39445, 39448, 41373, 41987
117 .....38411, 38412, 38712, 44916
165 .....38019, 38021, 38412, 38415, 38714, 38716, 38718, 38721, 38723, 38923, 38926, 39163, 39166, 39632, 39839, 40726, 41376, 41762, 41764, 41987, 42608, 43821, 43823, 44140, 44141, 44720

Proposed Rules:

100.....41119, 41789
165 .....38754, 39197, 44728

34 CFR

Proposed Rules:

600.....42190
668.....42190, 43616
682.....42190

36 CFR

7.....39168

Proposed Rules:

1192.....43748

37 CFR

201.....43825

Proposed Rules:

386.....39891

38 CFR

3.....39843, 41092

39 CFR

111.....41989
3050.....38725
3020.....44138
3055.....38725

Proposed Rules:

20.....39475
111.....39477, 41790
3050.....39200
3055.....38757

40 CFR

52 .....38023, 38745, 39366, 39633, 39635, 40726, 41312, 43062, 43066, 44141
63.....41991
81 .....39635, 41379, 43069, 44142
98.....39736
180 .....38417, 39450, 39455, 40729, 40736, 40741, 40745, 40751, 42318, 42324, 43072, 43076, 44917
271.....43409, 44144
300.....43082, 44920
355.....39852
370.....39852
721.....42330

Proposed Rules:

2.....39094, 43889
52 .....38757, 40760, 40762, 42018, 42342, 42346, 42672, 43114, 43892, 44179, 44731, 44734

60 42676
63 ....42030, 42676
80 42238
81 ....41421, 42018, 43114, 44734
122 38068
123 38068
131 44930
141 40926
142 40926
152 38958
180 ....44181, 44184
191 41421
194 41421
257 41121
261 41121
264 41121
265 41121
268 41121
271 ....41121, 43478
300 ....42361, 43115, 44932
302 41121
403 38068
501 38068
503 38068
721 44198
745 38959

41 CFR

102-5 41994

Proposed Rules:

60-741 43116
102-38 40763

42 CFR

412 44314
413 44314
422 44314
423 38026
447 38748
457 38748
495 44314

Proposed Rules:

50 42362
73 42363
405 40040
409 ....40040, 43236
410 40040
411 40040
413 40040
414 40040
415 40040
418 43236
424 ....40040, 43236
484 43236
488 39641
489 43236

44 CFR

64 ....38749, 44152
67 ....43418, 44155

Proposed Rules:

67 43479

45 CFR

147 ....41726, 43330
152 45014
170 44589
301 38612
302 38612
303 38612
305 38612
308 38612
614 40754
1186 39133

Proposed Rules:

94 42362
160 40868
164 40868

47 CFR

1 41932
24 43088
27 43088
64 39859
73 ....41092, 41093, 41932
90 41381
95 43423
101 41932

Proposed Rules:

1 ....38959, 41338
22 38959
24 38959
27 38959
73 ....41123, 43897
76 44198
90 38959
101 38959

48 CFR

Ch. I 38674, 38691, 39414, 39420
2 ....38675, 38683
4 ....38675, 38683, 38684, 39414
7 38683
10 38683
12 39414
13 38683
15 38675
18 38683
19 38687
22 38689
25 38689
26 38683
31 38675
32 38675
42 ....38675, 39414
45 38675
52 ....38675, 38683, 38684, 38689, 39414, 43090
205 40714
210 40714
212 40712
216 40716
232 40712
252 ....40712, 40717
516 41093
552 41093
3002 41097
3007 41097
3009 41097
3016 41097
3034 41097
3035 41097
3052 41097

Proposed Rules:

901 38042
902 38042
903 38042
904 38042
906 38042
907 38042
908 38042
909 38042
911 38042
914 38042
915 38042
916 38042
917 38042
952 38042

49 CFR

39 38878
40 38422
209 43840
213 41282
237 41282
387 38423
1002 44158

Proposed Rules:

105 43898
107 43898
171 ....42364, 43898, 43906
173 42364
177 43906
231 38432
395 40765
611 39492

50 CFR

17 ....42490, 43844, 43853
622 39638
635 41995
648 ....38935, 39170, 41996, 43090, 44924
660 ....38030, 39178, 41383, 42610, 44925
679 ....38430, 38936, 38937, 38938, 38939, 38940, 39183, 39638, 39639, 39861, 41999, 42336, 42337, 42338, 43090, 44927

Proposed Rules:

16 38069
17 ....38441, 42033, 42040, 42054, 42059
20 44856
216 38070
300 38758
600 44209
622 ....44209, 44753
679 ....38452, 38454, 39892, 41123, 41424, 43118
680 39892

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 4173/P.L. 111–203

Dodd-Frank Wall Street Reform and Consumer Protection Act (July 21, 2010; 124 Stat. 1376)

S. 1508/P.L. 111–204
Improper Payments Elimination and Recovery Act of 2010 (July 22, 2010; 124 Stat. 2224)

H.R. 4213/P.L. 111–205
Unemployment Compensation Extension Act of 2010 (July 22, 2010; 124 Stat. 2236)

Last List July 16, 2010

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