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WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, September 15, 2009
9:00 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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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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Thursday, July 23, 2009

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9454]

RIN 1545–BG37

Notification Requirement for Tax-Exempt Entities Not Currently Required To File

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations as required by section 6033(i)(1) describing the time and manner in which certain tax-exempt organizations not currently required to file an annual information return under section 6033(a)(1) are required to submit an annual electronic notice including certain information required by section 6033(i)(1)(A) through (F). These regulations affect tax-exempt organizations whose annual gross receipts are not normally in excess of $25,000.

DATES: *Effective Date:* These regulations are effective on July 23, 2009.

Applicability Date: These regulations are applicable to annual periods beginning after 2006.

FOR FURTHER INFORMATION CONTACT: Monice Rosenbaum at (202) 622–6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 6033(i)(1) relating to the notification requirement for entities not currently required to file an annual information return under section 6033(a)(1). Section 6033(i)(1) was added by section 1223(a) of the Pension Protection Act of 2006, Public Law 109–208, 120 Stat. 1090 (2006) (PPA 2006), effective for annual periods beginning after 2006. Section 6033(i)(1) requires the Treasury Secretary to promulgate regulations that describe the time and manner in which certain tax-exempt organizations not currently required to file an annual information return are to submit an annual electronic notification including information set forth in section 6033(i)(1)(A) through (F).

On November 15, 2007, temporary regulations (TD 9366, 2007–52 IRB 1232) were published in the **Federal Register** (72 FR 64147) satisfying the requirement that the Treasury Secretary promulgate regulations as described in the preceding paragraph. Those temporary regulations were corrected on November 23, 2007 (72 FR 65667) and December 14, 2007 (72 FR 71060). A notice of proposed rulemaking (REG–104942–07, 2007–52 IRB 1264) cross-referencing the temporary regulations was published in the **Federal Register** (72 FR 64174) on November 15, 2007.

The IRS and the Treasury Department received four written comments from the public in response to the proposed and temporary regulations. No hearing was requested or held. After consideration of the comments received, it was determined that the proposed regulations would be finalized without change. Accordingly, the proposed regulations are adopted as amended by this Treasury decision and the corresponding temporary regulations are removed. The final regulations retain the provisions of the proposed and temporary regulations and make minor typographical changes.

Explanation of Revisions and Summary of Comments

One comment pointed out that there is no de minimis rule regarding the amount of income an organization receives during the year which would exempt it from having to submit an electronic notification. Section 6033(i) does not provide a *de minimis* rule, nor does it provide discretionary authority for the IRS and the Treasury Department to establish a *de minimis* exception for reporting under section 6033(i)(1).

Another comment objected to the requirement that the notification be submitted electronically. The IRS and the Treasury Department note that the statute requires that information be submitted electronically, and makes no provision for paper notification. However, as stated in the preamble to the temporary regulations, if an organization that is required to submit an annual electronic notification files a complete Form 990, ''Return of Organization Exempt from Income Tax,'' or Form 990–EZ, ''Short Form Return of Organization Exempt from Income Tax,'' the annual notification required under section 6033(i) shall be deemed satisfied. The annual notification requirement is not satisfied if the Form 990 or Form 990–EZ contains only those items of information that would have been required by submitting the notification in electronic form.

One comment asked about the intent of the regulations and the application of the requirement to submit electronic notification to organizations that are local chapters or clubs of larger organizations. The intent of the regulations, which were required by statute, is to provide the public with the most accurate information about tax-exempt organizations. With respect to organizations that are local chapters or clubs of larger organizations, if the organization is a subordinate of a parent organization and the subordinate is included on the parent's group return, the subordinate need not submit the electronic notification. However, if an organization is not part of a group return and is a separate legal entity that meets the criteria for submitting the electronic notification, it must submit Form 990–N, ''Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required To File Form 990 or 990–EZ.''

Finally, another comment asked about the applicability of the electronic notification requirement to Qualified State and Local Political Organizations (QSLPOs). QSLPOs are not organizations described in section 501(c) that are required to file a return under section 6033(a); therefore, the provisions of these final regulations do not apply to them. However, QSLPOs may have other reporting requirements under section 6033(g).

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 also has been determined that section 553(b) of the Administrative Procedure

Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that the collection of information in § 1.6033–6 will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601) is not required. The effect of these regulations on small entities flows directly from the statute these regulations implement. Section 6033(i)(1) requires that certain entities submit annual notification, in electronic form, setting forth: The legal name of the organization; any name under which such organization operates or does business; the organization's mailing address and Internet Web site address (if any); the organization's taxpayer identification number; the name and address of a principal officer; and evidence of the continuing basis for the organization's exemption from the filing requirements under section 6033(a)(1).

Pursuant to section 7805(f) of the Internal Revenue Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Monice Rosenbaum of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.6033–6 also issued under 26 U.S.C. 6033(i)(1). * * *

■ **Par. 2**. Section 1.6033–6 is added to read as follows:

§ 1.6033–6 Notification requirement for entities not required to file an annual information return under section 6033(a)(1) (taxable years beginning after December 31, 2006).

(a) *In general.* Except as otherwise provided in this paragraph, every organization exempt from taxation under section 501(a) that is not required to file a return described in § 1.6033–2(a)(2), other than an organization described in section 401(a) or 501(d), shall submit annually, in electronic form, a notification setting forth the items described in paragraph (c) of this section and such other information as may be prescribed in the instructions and publications issued with respect to the notification.

(b) *Organizations not required to submit annual electronic notification.* (1) An organization exempt from taxation under section 501(a) that is required to file or files an annual information return under section 6033(a)(1) shall not submit an annual electronic notification under section 6033(i). This includes the following types of organizations:

(i) Any organization included in a group return for that year under § 1.6033–2(d).

(ii) All private foundations required to file under § 1.6033–2(a)(2)(i) Form 990–PF, ''Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation.''

(iii) Section 509(a)(3) supporting organizations required to file under § 1.6033–2(a)(2)(i) Form 990, ''Return of Organization Exempt From Income Tax,'' or Form 990–EZ, ''Short Form Return of Organization Exempt From Income Tax.''

(iv) A section 501(c)(21) black lung trust required to file under § 1.6033–2(a)(2)(i) Form 990–BL, ''Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons.''

(v) Any organization that is required to file or files an annual information return under section 6033(a)(1) on any other form prescribed by the Internal Revenue Service for that purpose.

(2) An organization exempt from taxation under section 501(a) that is not required to file a return under section 6033(a)(1) is also not required to submit an annual electronic notification under section 6033(i). This includes the following types of organizations:

(i) A church, an interchurch organization of local units of a church, a convention or association of churches, or an integrated auxiliary of a church (as defined in § 1.6033–2(h)).

(ii) An exclusively religious activity of any religious order.

(iii) A mission society sponsored by or affiliated with one or more churches or church denominations, more than one-half of the activities of which society are conducted in, or directed at persons in, foreign countries.

(iv) An educational organization (below college level) described in section 170(b)(1)(A)(ii), that has a program of a general academic nature, and that is affiliated (within the meaning of § 1.6033–2(h)(2)) with a church or operated by a religious order.

(v) A State institution, the income of which is excluded from gross income under section 115(a).

(vi) An organization described in section 501(c)(1).

(vii) An organization that is a governmental unit or an affiliate of a governmental unit exempt from Federal income tax under section 501(a).

(3) If an organization exempt from taxation under section 501(a) is not described in paragraph (b)(1) or (2) of this section, the organization must submit an annual electronic notification. Thus, a black lung trust that normally has gross receipts of $25,000 or less is not required to file Form 990–BL but is required to submit an annual electronic notification. A section 509(a)(3) supporting organization of a religious organization that normally has gross receipts of $5,000 or less is not required to file Form 990 or Form 990–EZ but is required to submit an annual electronic notification.

(c) *Additional notification requirements*—(1) *In general.* Any organization described in paragraph (a) of this section shall submit an annual electronic notification described in section 6033(i)(1). The annual electronic notification shall—

(i) Be in electronic form; and

(ii) Set forth—

(A) The legal name of the organization;

(B) Any name under which the organization operates or does business;

(C) The organization's mailing address and Internet Web site address (if any);

(D) The organization's taxpayer identification number;

(E) The name and address of a principal officer;

(F) Evidence of the continuing basis for the organization's exemption from the filing requirements under section 6033(a)(1); and

(G) Additional information necessary to process the notification.

(2) The mailing address required by section 6033(i)(1)(C) and submitted in the annual electronic notification shall be the organization's last known address as provided by § 301.6212–2(a) of this chapter. This last known address may be updated as provided under § 301.6212–2 of this chapter, or by clear and concise notification. The Internal Revenue Service will use this last known address as the organization's

address of record and will direct all mailings to this address.

(3) By submitting the annual electronic notification described in paragraph (c)(1) of this section, an organization acknowledges that it is not required to file a return under section 6033(a) because its annual gross receipts are not normally in excess of $25,000. In order to make this determination, the organization must keep records that enable it to calculate its gross receipts. All organizations are required to maintain records under section 6001. These records will provide evidence of the continuing basis for the organization's exemption from the filing requirements under section 6033(a)(1).

(4) If an organization that is required to submit an annual electronic notification files a complete Form 990 or Form 990–EZ, the annual electronic notification requirement shall be deemed satisfied. The annual electronic notification requirement is not satisfied if the Form 990 or Form 990–EZ contains only those items of information that would have been required by submitting the notification in electronic form. Also, the filing of a complete Form 990 or Form 990–EZ, rather than the submission of an annual electronic notification, is the filing of a return that starts the period of limitations for assessment under section 6501(g)(2).

(d) *No effect on other filing requirements.* An organization that is relieved from filing an information return under section 6033(a) is still subject to the requirements of §§ 1.6033–2(i) and (j), concerning: notice regarding changes in character, operations, or purpose; provision of additional information; duty to file other returns of information; and duty to file unrelated business tax returns. If an organization is required to file an unrelated business tax return, Form 990–T, ''Exempt Organization Business Income Tax Return,'' the filing of that return does not relieve the organization from the requirement of submitting an annual electronic notification under section 6033(i).

(e) *Accounting period for submitting annual electronic notification.* An annual electronic notification required by this section shall be on the basis of the established annual accounting period of the organization. If the organization has no established accounting period, the annual electronic notification shall be on the basis of the calendar year.

(f) *Time and place for submitting annual electronic notification.* The annual electronic notification required by this section shall be submitted on or before the 15th day of the fifth calendar month following the close of the period for which the notification is required to be submitted. Thus, an organization with an accounting period ending December 31, 2007, is required to submit an annual electronic notification by May 15, 2008. The notification shall be submitted in accordance with instructions and publications, including those provided at the Internal Revenue Service Web site for exempt organizations.

(g) *Effective/applicability date.* These regulations are applicable to annual periods beginning after 2006.

§ 1.6033–6T [Removed]

■ **Par. 3**. Section 1.6033–6T is removed.

Approved: July 15, 2009.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Michael Mundaca,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E9–17478 Filed 7–22–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 560

Iranian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury (''OFAC'') is amending the Iranian Transactions Regulations to revise the definition of the term *Iranian accounts* and make conforming changes to other sections of the regulations.

DATES: *Effective Date:* July 23, 2009.

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, Washington, DC 20220 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning the Office of Foreign Assets Control are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: 202/622–0077.

Background

The Iranian Transactions Regulations, 31 CFR part 560 (the ''ITR''), implement a series of Executive Orders that began with Executive Order 12613 of October 29, 1987, issued pursuant to authorities including the International Security and Development Cooperation Act of 1985 (22 U.S.C. 2349aa–9). In that original order, after finding, *inter alia,* that the Government of Iran was actively supporting terrorism as an instrument of state policy, the President prohibited the importation of Iranian-origin goods and services. Subsequently, in Executive Order 12957, issued on March 15, 1995, under the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), the President declared a national emergency with respect to the actions and policies of the Government of Iran, including its support for international terrorism, its efforts to undermine the Middle East peace process, and its efforts to acquire weapons of mass destruction and the means to deliver them. To deal with that threat, Executive Order 12957 imposed prohibitions on certain transactions with respect to the development of Iranian petroleum resources. On May 6, 1995, to further respond to this threat, the President issued Executive Order 12959, which imposed comprehensive trade and financial sanctions on Iran. Finally, on August 19, 1997, the President issued Executive Order 13059 consolidating and clarifying the previous orders.

Existing § 560.320 of the ITR defines the term *Iranian accounts* to mean accounts of persons located in Iran or of the Government of Iran maintained on the books of either a United States depository institution or a United States registered broker or dealer in securities. OFAC is revising § 560.320 to clarify the definition by substituting the new phrase ''persons who are ordinarily resident in Iran, except when such persons are not located in Iran'' for the phrase ''persons located in Iran.'' This change will improve OFAC's overall administration of the ITR and facilitate compliance by U.S. financial institutions. As revised, § 560.320 defines *Iranian accounts* to mean accounts of persons who are ordinarily resident in Iran, except when such persons are not located in Iran, or of the Government of Iran maintained on the books of either a United States depository institution or a United States registered broker or dealer in securities.

In addition to revising the definition in § 560.320, OFAC is making certain conforming changes to § 560.517 and §§ 560.532–560.535. These sections use language from the unamended definition of the term *Iranian accounts* in describing certain transactions that are authorized or prohibited with respect to such accounts. Therefore, OFAC is revising these sections by deleting that language and instead relying on a reference to the definition in § 560.320. Lastly, OFAC also is making a technical correction to the heading of § 560.532.

Public Participation

Because the amendments of the ITR involve a foreign affairs function, Executive Order 12866 and the provisions of 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 ITR 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 560

Administrative practice and procedure, Banks, Banking, Brokers, Foreign trade, Investments, Loans, Securities, Iran.

■ For the reasons set forth in the preamble, the Office of Foreign Assets Control amends 31 CFR part 560 as follows:

PART 560—IRANIAN TRANSACTIONS REGULATIONS

■ 1. The authority citation for part 560 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa–9; 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. 106–387, 114 Stat. 1549; Pub. L. 110–96, 121 Stat. 1011; E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217.

Subpart C—General Definitions

■ 2. Revise § 560.320 to read as follows:

§ 560.320 Iranian accounts.

The term *Iranian accounts* means accounts of persons who are ordinarily resident in Iran, except when such persons are not located in Iran, or of the Government of Iran maintained on the books of either a United States depository institution or a United States registered broker or dealer in securities.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

■ 3. In § 560.517, revise the introductory text of paragraphs (a) and (b) to read as follows:

§ 560.517 Exportation of services: Iranian accounts at United States depository institutions or United States registered brokers or dealers in securities.

(a) United States depository institutions are prohibited from performing services with respect to Iranian accounts, as defined in § 560.320, except that United States depository institutions are authorized to provide and be compensated for services and incidental transactions with respect to:

* * * * *

(b) United States registered brokers or dealers in securities are prohibited from performing services with respect to Iranian accounts, as defined in § 560.320, except that United States registered brokers or dealers in securities are authorized to provide and be compensated for services and incidental transactions with respect to:

* * * * *

■ 4. In § 560.532, revise the heading and paragraph (c) to read as follows:

§ 560.532 Payment for and financing of exports and reexports of agricultural commodities, medicine, and medical devices.

* * * * *

(c) *No debits or credits to Iranian accounts on the books of U.S. depository institutions.* Nothing in this section authorizes payment terms or trade financing involving debits or credits to Iranian accounts, as defined in § 560.320.

* * * * *

■ 5. In § 560.533, revise paragraph (c) to read as follows:

§ 560.533 Brokering sales of agricultural commodities, medicine and medical devices.

* * * * *

(c) *No debits or credits to Iranian accounts on the books of U.S. depository institutions.* Payment for any brokerage fee earned pursuant to this section may not involve debits or credits to Iranian accounts, as defined in § 560.320.

* * * * *

■ 6. In § 560.534, revise paragraphs (d) and (e)(2) to read as follows:

§ 560.534 Importation into the United States of, and dealings in, certain foodstuffs and carpets authorized.

* * * * *

(d) *Iranian accounts.* Nothing in this section authorizes debits or credits to Iranian accounts, as defined in § 560.320.

(e) * * *

(2) A United States person may process a documentary collection relating to the importation into the United States of Iranian-origin pistachios, but payment under the documentary collection may not involve the crediting of an Iranian account, as defined in § 560.320.

■ 7. In § 560.535, revise paragraph (d) to read as follows:

§ 560.535 Letters of credit and brokering services relating to certain foodstuffs and carpets.

* * * * *

(d) *Iranian accounts.* Nothing in this section authorizes debits or credits to Iranian accounts, as defined in § 560.320.

* * * * *

Dated: July 17, 2009.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E9–17558 Filed 7–22–09; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–1262]

RIN 1625–AA00

Safety Zone; AVI September Fireworks Display, Colorado River, Laughlin, NV

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of the Lower Colorado River, Laughlin, NV, in support of a fireworks display near the AVI Resort

and Casino. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 1 p.m. to 11 p.m. on September 6, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–1262 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–USCG–2008–1262 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Petty Officer Shane Jackson, Waterways Management, U.S. Coast Guard Sector San Diego; telephone 619–278–7262, e-mail *Shane.E.Jackson@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 10, 2009 we published a notice of proposed rulemaking (NPRM) entitled Safety Zone: AVI September Fireworks Display; Laughlin, NV in the **Federal Register** (74 FR 27481). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The Coast Guard is establishing a temporary safety zone upon the navigable waters of the Lower Colorado River, Laughlin, NV in support of a fireworks show. The fireworks are being sponsored by the AVI Resort and Casino. The safety zone is set at a 1000 foot radius around the firing barge, which will be anchored in the navigational channel. This temporary safety zone is necessary to provide for the safety of the show's crew, spectators, participants of the event, participating vessels, and other vessels and users of the waterway.

Discussion of Comments and Changes

There are no changes from the preceding NPRM since no comments were submitted to the docket.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The effect of this regulation will not be significant because the safety zone will encompass only a small portion of the waterway and will be enforced for a very short period. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing. For these reasons, the Coast Guard expects the economic impact of this rule to be minimal.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the region of the Lower Colorado River from 8 p.m. to 9:45 p.m. on September 6, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities because the safety zone will encompass only a small portion of the waterway and will be enforced for a very short period. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM).

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary safety zone § 165.T11–166 to read as follows:

§ 165.T11–166 Safety Zone; AVI September Fireworks Display, Colorado River, Laughlin, NV.

(a) *Location.* The following area is a safety zone: All navigable waters of the Lower Colorado River, from surface to bottom, within 1000 feet of the fireworks firing location, adjacent to the AVI Resort and Casino, and centered in the channel between Laughlin Bridge and the northwest point of AVI Resort and Casino Cove, at approximate position 35°00′45″ N, 114°38′16″ W.

(b) *Enforcement Period.* This section will be enforced from 8 p.m. to 9:45 p.m. on September 6, 2009. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

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

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16.

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

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

(5) The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: July 6, 2009.

T.H. Farris,

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

[FR Doc. E9–17556 Filed 7–22–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Restricted Areas at Cape Canaveral Air Force Station, Patrick AFB, FL

AGENCY: United States Army Corps of Engineers, Department of Defense.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is amending its restricted area regulations to enlarge an existing restricted area in the Banana River and to establish a new restricted area in the Atlantic Ocean for the Cape Canaveral Air Force Station (CCAFS), located on Patrick Air Force Base (AFB), Florida. We are also removing an existing restricted area in the Banana River at CCAFS. CCAFS Command,

located at Patrick AFB, Florida, is responding to Department of Defense (DoD) security assessments which have identified a need for CCAFS to have the capability to secure their shoreline. The enhancement of these capabilities is necessary to counter postulated threats to CCAFS.

DATES: *Effective Date:* August 24, 2009.

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW–CO (David B. Olson), 441 G Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or Mr. Jon M. Griffin, U.S. Army Corps of Engineers, Jacksonville District, Regulatory Division, at 904–232–1680.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps is amending the regulations in 33 CFR part 334 by revising § 334.540, removing § 334.550, and adding § 334.595. The modifications to the regulations are described below.

The proposed rule was published in the March 18, 2009, issue of the **Federal Register** (74 FR 11507), and its regulations.gov docket number is COE–2009–0001. No comments were received in response to the proposed rule.

The amendment to this regulation will allow the Commanding Officer, CCAFS to restrict passage of persons, watercraft, and vessels in waters contiguous to this Command, thereby ensuring that DoD identified security enhancements can be met.

Procedural Requirements

a. *Review Under Executive Order 12866.* This rule is issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12866 do not apply.

b. *Review Under the Regulatory Flexibility Act.* The rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.,* small businesses and small governments). The Corps determined that this rule would have practically no economic impact on the public, or result in no anticipated navigational hazard or interference with existing waterway traffic. This rule will have no significant economic impact on small entities.

c. *Review Under the National Environmental Policy Act.* This regulation will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment has been prepared. It may be reviewed at the district office listed at the end of **FOR FURTHER INFORMATION CONTACT,** above.

d. *Unfunded Mandates Act.* This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104–4, 109 Stat. 48, 2 U.S.C. 1501 *et seq.*). We have also found under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rule.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

■ For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Revise § 334.540 to read as follows:

§ 334.540 Banana River at the Eastern Range, 45th Space Wing, Cape Canaveral Air Force Station, FL; Restricted Area.

(a) *The area.* The restricted area shall encompass all navigable waters of the United States, as defined at 33 CFR part 329, within the Banana River contiguous to the area offshore of Cape Canaveral Air Force Station, Florida. The area is bounded by a line connecting the following coordinates: Commencing from the shoreline at the southeast portion of the area, at approximately latitude 28°25.17′ N, longitude 80°36.24′ W, thence directly to latitude 28°25.18′ N, longitude 80°36.65′ W, thence directly to latitude 28°25.25′ N, longitude 80°36.66′ W, thence directly to latitude 28°25.22′ N, longitude 80°38.36′ W, thence directly to latitude 28°26.23′ N, longitude 80°38.25′ W, thence directly to latitude 28°26.23′ N, longitude 80°38.47′ W, thence to reach the south side of the Kennedy Space Center NASA Causeway East Roadway at approximately latitude 28°30.74′ N, longitude 80°36.63′ W.

(b) *The regulation.* (1) The area described in paragraph (a) of this section will be closed when it is deemed necessary by the Commander, 45th Space Wing or his/her designee to address any perceived threat to the local area. With the exception of local, State, and Federal law enforcement entities, all persons, vessels, and other craft are prohibited from entering, transiting, anchoring, or drifting within the restricted area when it is closed without the permission of the Commander, 45th Space Wing or his/her designee.

(2) Due to the nature of this restricted area, closures may occur with very little advance notice. Closure of the area shall be noticed by the display of a red beacon located at the southern entrance to Cape Canaveral Air Force Station. Information will be provided via marine radio broadcast during the duration of the area closure.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commander, 45th Space Wing, Patrick Air Force Base, Florida and/or such persons or agencies as he/she may designate.

§ 334.550 [Removed]

■ 3. Remove § 334.550.

■ 4. Add § 334.595 to read as follows:

§ 334.595 Atlantic Ocean off Cape Canaveral; 45th Space Wing, Cape Canaveral Air Force Station, FL; Restricted Area.

(a) *The area.* The restricted area shall encompass all navigable waters of the United States, as defined at 33 CFR part 329, contiguous to the area offshore of Cape Canaveral Air Force Station, Florida. The area is bounded by a line connecting the following coordinates: Commencing from the shoreline at the northwest portion of the area, at latitude 28°35.008′ N, longitude 80°34.448′ W, thence directly to latitude 28°35.617′ N, longitude 80°33.140′ W, thence following the mean high water line southerly at a distance of 1.5 miles to a point at latitude 28°24.253′ N longitude 80°33.658′ W, thence proceeding westerly to terminate at a point on the shoreline at latitude 28°24.69′ N, longitude 80°35.05′ W.

(b) *The regulation.* (1) The area described in paragraph (a) of this section will be closed when it is deemed necessary by the Commander, 45th Space Wing or his/her designee to address any perceived threat to the local area. With the exception of local, State, and Federal law enforcement entities, all persons, vessels, and other craft are prohibited from entering, transiting, anchoring, or drifting within the restricted area when it is closed without the permission of the Commander, 45th Space Wing or his/her designee.

(2) Due to the nature of this restricted area, closures may occur with very little advance notice. Closure of the area shall be noticed by the display of a red ball and red beacon from a 90-foot pole near the shoreline at approximately latitude 28°35.0′ N, longitude 80°34.8′ W and from a 90-foot pole near the shoreline at approximately latitude 28°25.3′ N, longitude 80°35.0′ W. Information will be provided via marine radio broadcast and a warning statement displayed on an electronic marquee sign located on the north side of the Port Canaveral ship channel between the Trident and Poseidon Wharf during the duration of the area closure.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commander, 45th Space Wing, Patrick Air Force Base, Florida and/or such persons or agencies as he/she may designate.

Dated: July 19, 2009.

Michael G. Ensch,

Chief, Operations, Directorate of Civil Works.

[FR Doc. E9–17551 Filed 7–22–09; 8:45 am]

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Proposed Rules

Federal Register

Vol. 74, No. 140

Thursday, July 23, 2009

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2006–0011]

RIN 0579–AC03

Importation of Plants for Planting; Establishing a Category of Plants for Planting Not Authorized for Importation Pending Pest Risk Analysis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to establish a new category of regulated articles in the regulations governing the importation of nursery stock, also known as plants for planting. This category would list taxa of plants for planting whose importation is not authorized pending pest risk analysis. If scientific evidence indicated that the taxon of plants for planting is a potential quarantine pest or a potential host of a quarantine pest, we would publish a notice that would announce our determination that the taxon is a potential quarantine pest or a potential host of a quarantine pest, cite the scientific evidence we considered in making this determination, and give the public an opportunity to comment on our determination. If we received no comments that changed our determination, the taxon would subsequently be added to the new category. We would allow any person to petition for a pest risk analysis to be conducted for a taxon that has been added to the new category. After the pest risk analysis was completed, we would remove the taxon from the category and allow its importation subject to general requirements, allow its importation subject to specific restrictions, or prohibit its importation. We would consider applications for permits to import small quantities of germplasm from taxa whose importation is not authorized pending pest risk analysis, for experimental or scientific purposes under controlled conditions. This new category would allow us to take prompt action on evidence that the importation of a taxon of plants for planting may pose a risk while continuing to allow for public participation in the process.

DATES: We will consider all comments that we receive on or before October 21, 2009.

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-2006-0011* to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS–2006–0011, 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–2006–0011.

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: Dr. Arnold Tschanz, Senior Plant Pathologist, Risk Management and Plants for Planting Policy, RPM, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–0627.

SUPPLEMENTARY INFORMATION:

Background

Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to take such actions as may be necessary to prevent the introduction and spread of plant pests and noxious weeds within the United States. The Secretary has delegated this responsibility to the Administrator of the Animal and Plant Health Inspection Service (APHIS).

The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of plant pests that are not already established in the United States or plant pests that may be established but are under official control to eradicate or contain them within the United States.[1] The regulations in ''Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products,'' §§ 319.37 through 319.37–14 (referred to below as the regulations, and often referred to colloquially as the ''Quarantine 37'' regulations), restrict, among other things, the importation of living plants, plant parts, seeds, and plant cuttings for planting or propagation. The regulations in 7 CFR part 360, ''Noxious Weed Regulations,'' contain restrictions on the movement of noxious weeds or plant products listed in that part into or through the United States and interstate; the importation of some plants is subject to both the nursery stock regulations and the noxious weed regulations.

To refer to the articles subject to the nursery stock regulations collectively in this document, we will use the term ''plants for planting,'' which the International Plant Protection Convention (IPPC) defines as: ''Plants intended to remain planted, to be planted or replanted.'' Planting is defined by the IPPC as: ''Any operation for the placing of plants in a growing medium, or by grafting or similar operations, to ensure their subsequent growth, reproduction or propagation.''[2] In a final rule published in the **Federal Register** on August 6, 2007, and effective September 5, 2007 (72 FR 43503–43524, Docket No. 03–002–3), we added a definition of *plant* to the regulations that is drawn from the Plant Protection Act and includes any plant (including any plant part) for or capable

[1] The term ''official control'' is further defined later in this proposal.

[2] See the Glossary of Phytosanitary Terms (2007), which is International Standard for Phytosanitary Measures (ISPM) Number 5. To view this and other ISPMs on the Internet, go to *http://www.ippc.int/IPP/En/default.jsp* and click on the ''Adopted ISPMs'' link under the ''Standards (ISPMs)'' heading.

of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed. We consider the term ''plants for planting'' to include all the articles subject to the nursery stock regulations, and thus to be equivalent to the term ''nursery stock'' as it is used in the current regulations.

Plants for planting that cannot be feasibly inspected, treated, or handled to prevent quarantine pests that may accompany them from being introduced into the United States are listed in § 319.37–2(a) or (b) of the regulations as prohibited articles. Prohibited articles may not be imported into the United States, unless imported by the U.S. Department of Agriculture (USDA) for experimental or scientific purposes under safeguards specified in the permit issued for the importation of the articles.

Plants for planting that can be inspected, treated, or handled to mitigate the risk of introduction of quarantine pests associated with the importation of the plants into the United States are referred to in the regulations as restricted articles. Restricted articles may be imported into the United States if they are imported in compliance with conditions that may include permit and phytosanitary certificate requirements, inspection, treatment, postentry quarantine, or combinations of these safeguards. Except for certain bulbs from the Netherlands, Canadian greenhouse-grown plants, small lots of seed, and certain seeds from Canada (as described in § 319.37–4(a)(4), (c), (d), and (e), respectively), the regulations require that a phytosanitary certificate issued by the exporting country's national plant protection organization (NPPO) accompany all restricted articles imported into the United States.

All plants for planting imported into the United States must be presented for inspection. Plants for planting that are required to be imported under a written permit under § 319.37–3(a)(1) through (a)(6) and that are not from Canada must be imported or offered for importation at a USDA plant inspection station. Such stations are listed in § 319.37–14. Plants for planting that are offered for inspection at a USDA plant inspection station are inspected by Plant Protection and Quarantine (PPQ) inspectors. Plants for planting that are not required to be inspected at a USDA plant inspection station may be presented for inspection either at one of the ports listed in § 319.37–14 or at a Customs designated port of entry indicated in 19 CFR 101.3(b)(1). Such plants are inspected by the Department of Homeland Security's Bureau of Customs and Border Protection.

After inspection, the plants may be allowed entry into the United States (with treatment, if necessary), destroyed, or reexported, depending on the results of the inspection. Because lots of 13 or more articles (other than seeds, bulbs, or sterile cultures of orchid plants) from any country or locality except Canada are required to be imported under a permit, most shipments of plants for planting are inspected at USDA plant inspection stations.

Summary of New Category of Plants for Planting

Currently, the regulations categorize imported plants for planting as either prohibited articles or restricted articles. We are proposing to create a new category of plants for planting whose importation is not authorized pending the completion of a pest risk analysis. We will refer to the category in this document as the ''not authorized pending pest risk analysis'' (NAPPRA) category. The NAPPRA category would include two lists: A list of taxa that we have judged, on the basis of scientific evidence, to be potential quarantine pest plants, and therefore potential noxious weeds; and a list of taxa that we have judged, on the basis of scientific evidence, to be potential hosts of quarantine pests.[3]

We typically provide notice of our intent to designate plants for planting as prohibited articles, or place additional restrictions on their importation, through proposed rules, and we often complete a pest risk analysis (PRA) to support such a designation. By contrast, taxa of plants for planting would be added to the NAPPRA category based on scientific evidence that indicates that they pose a risk of introducing a quarantine pest into the United States, rather than on a comprehensive PRA. Additionally, we would establish the NAPPRA lists on a PPQ Web site and notify the public of our determination that taxa of plants for planting are potential quarantine pests or potential hosts of quarantine pests, and thus should be added to the NAPPRA lists, by publishing notices in the **Federal Register.** Thus, the NAPPRA category would allow us to take more timely action when evidence indicates that the importation of a taxon of plants for planting may pose a risk of introducing a quarantine pest into the United States.

Any person would be able to request that APHIS conduct a PRA on any plant taxon listed in the NAPPRA category. After completing the PRA, we would initiate rulemaking either to allow the importation of the taxon subject to the restrictions described in the risk management section of the PRA or, if the risk associated with the importation of the taxon cannot be feasibly mitigated, to prohibit its importation.

The December 2004 Advance Notice of Proposed Rulemaking and the Current State of the Nursery Stock Regulations

We first notified the public that we were considering establishing a new category of imported plants for planting in an advance notice of proposed rulemaking (ANPR) that we published in the **Federal Register** on December 10, 2004 (69 FR 71736–71744, Docket No. 03–069–1).[4] This ANPR presented several possible changes that we were considering to revise the plants for planting regulations, one of which was implementing the NAPPRA category. (In the December 2004 ANPR, the NAPPRA category described above was called ''Option 2'' for establishing a category of plants excluded from importation pending risk evaluation and approval; we have changed the terminology we are using in this proposal in an effort to improve clarity. Option 1 in the December 2004 ANPR was to exclude from importation into the United States all taxa that were not currently being imported in significant amounts; we are not proposing to implement Option 1 or requesting comment on it in this document.)

As we discussed in the December 2004 ANPR, the only pest risk mitigation measures required for the importation of most taxa of plants for planting are that they be accompanied by a phytosanitary certificate and that they enter the United States through a USDA plant inspection station, at which the plants for planting are sampled and visually inspected. The Plant Protection Act provides APHIS with the authority to require individual shipments of plants for planting to be treated, destroyed, or reexported if inspectors find quarantine pests in the shipments. However, this inspection may not always provide an adequate level of

[3] We use the term ''taxon'' (plural: taxa) in this document to refer to any grouping within botanical nomenclature, such as family, genus, species, or cultivar. We are proposing to add this term to the regulations as well; see the section headed ''Definitions'' later in this document.

[4] The ANPR, as well as the comments we received on the ANPR, can be viewed on Regulations.gov at *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2004-0024.* The ANPR contains a detailed discussion of the history of the nursery stock regulations that is helpful for understanding their original intent and current state.

protection against quarantine pests, particularly if a pest is rare, small in size, borne within the plant, or an asymptomatic plant pathogen.

We take action to generally prohibit or restrict the importation of an entire taxon of plants for planting beyond the general permit, phytosanitary certificate, and inspection requirements only if there is specific evidence that importation of that taxon could introduce a quarantine pest into the United States. If we have reason to believe that a currently admissible taxon of plants for planting may be a quarantine pest itself or may be a host of a quarantine pest, we typically complete a comprehensive PRA to examine the available evidence on the subject. The PRA considers all the scientific resources available to the agency and makes determinations on the following issues:

- Whether importation of the taxon poses a risk;
- If importation of the taxon poses a risk, what level of risk it poses;
- If the importation poses a risk that warrants mitigation, whether that risk can be mitigated; and
- If the risk can be mitigated, what risk management strategies can accomplish the mitigation.

Many scientific resources exist that provide evidence regarding the potential of taxa of plants for planting to be quarantine pests themselves or to serve as hosts for quarantine pests. PPQ regularly reviews these resources to keep up to date with emerging pest risks. Information gathered from these scientific resources can serve as a trigger to begin the PRA process. In situations that we judge to pose an emergency, we can take action immediately to stop the importation of a taxon into the United States. In other situations, we strive to complete a PRA promptly, so that we can address any pest risks discovered in the PRA through regulatory action.

However, as both the volume and number of plants for planting that are imported has increased dramatically over the last decade, it has been a challenge for us to follow up on the available scientific evidence by initiating PRAs, and, when necessary, amending the regulations to address risks presented by the importation of plants for planting. We estimate that species of plants for planting from more than 2,000 genera are being imported or have been imported in the past; most taxa of plants for planting that are imported into the United States for the first time enter without a PRA having been conducted prior to their importation. In the meantime, taxa of plants for planting that scientific evidence indicates are potential quarantine pests or potential hosts of a quarantine pest may continue to be imported with no restrictions other than the requirements for a phytosanitary certificate, a port-of-entry phytosanitary inspection, and, for certain articles, a written permit. During the time a PRA is being completed to evaluate the potential pest risk associated with a taxon, U.S. agricultural and environmental resources may be at risk due to the importation of the taxon.

Appropriately mitigating the risks of quarantine pest introduction associated with the importation of plants for planting is especially important because quarantine pests introduced via imported plants for planting are generally much more likely to become established than quarantine pests introduced via other imported articles that are not intended for planting or propagation. Imported plants for planting themselves may serve as hosts for quarantine pests for months or years. In addition, the destinations of imported plants for planting, such as plant nurseries, farms, greenhouses, orchards, and gardens, are likely to be favorable environments for plant growth and pest development in general, which could present problems in the event that a taxon of imported plants for planting turns out to be a carrier of a quarantine pest or is itself a quarantine pest plant. Under these circumstances, the introduction of even a few individuals of a quarantine pest species via imported plants for planting may lead to the establishment of that pest in the United States.

The National Plant Board's 1999 ''Safeguarding American Plant Resources'' report [5] contrasted the approach of the regulations governing the importation of plants for planting with the approach of the regulations governing the importation of fruits and vegetables, which are found in ''Subpart—Fruits and Vegetables'' (§§ 319.56–1 through 319.56–49) within 7 CFR part 319.

Although quarantine pests that enter the United States via imported plants for planting are more likely to become established than quarantine pests that enter the United States via imported fruits and vegetables, the nursery stock regulations do not require a PRA to be completed prior to the importation of a new taxon of plants for planting or prior to the taxon's importation from a new area.

By contrast, the importation of fruits and vegetables is generally prohibited under the regulations in ''Subpart—Fruits and Vegetables,'' and the completion of a PRA is generally required before a commodity can enter from a new area. The process of allowing the importation of a fruit or vegetable from a particular area or country begins when APHIS receives an import request from an exporting country or when there is a request to reconsider the entry status of a commodity previously denied entry. The request must be accompanied by information about the commodity proposed for importation into the United States, shipping information, a description of pests and diseases associated with the commodity, and current strategies for risk mitigation or management, as described in § 319.5.

If the request is for a fruit or vegetable for which no previous entry decision has been made, or if new evidence indicates that the previous entry decision may no longer be applicable, then a PRA is completed to determine the sources of pest risk associated with the requested importation. The fruit or vegetable is only allowed to be imported if the PRA indicates that the risk can be effectively mitigated and if we receive no public comments on the analysis that lead us to change the conclusions of the PRA. In other words, the importation of all commodities whose importation is governed by ''Subpart—Fruits and Vegetables'' is not authorized pending pest risk analysis and approval.

This difference between the regulatory approaches for plants for planting and for fruits and vegetables means that APHIS typically has less information about the risks associated with the importation of particular taxa of plants for planting than we have about the risks associated with the importation of taxa of fruits and vegetables. While our records of importation indicate that some taxa of plants for planting have been safely imported for years, the data on other taxa is less conclusive and sometimes indicates that importation of the taxa may pose a pest risk. Given the relative lack of information available about the risks posed by the importation of plants for planting, it can be assumed that some taxa of plants for planting that are presently being imported pose risks of introducing quarantine pests that have not been assessed through the PRA process.

The North American Plant Protection Organization (NAPPO), a regional plant protection organization recognized by the IPPC, coordinates efforts among the NPPOs of Canada, the United States, and Mexico to protect their plant resources from the entry, establishment

[5] The Safeguarding Report can be viewed on the Internet at *http://www.safeguarding.org.*

and spread of regulated plant pests, while facilitating intra- and interregional trade. In its Regional Standard for Phytosanitary Measures No. 24, NAPPO examined the regulatory issues associated with international trade in plants for planting. The standard ultimately concluded that ''current regulatory measures are insufficient to ensure adequate protection for NAPPO countries in today's trading environment.'' [6] The standard called for regulatory officials, the horticulture industry, and the environmental community from Canada, the United States, and Mexico to adopt more effective regulations to mitigate the risk of pest introductions on plants for planting.

Establishing the NAPPRA Category To Provide an Appropriate Level of Phytosanitary Protection

We are proposing to establish the NAPPRA category in order to provide a more appropriate level of phytosanitary protection against the introduction of quarantine pests through the importation of plants for planting.

Based on the increased diversity and volume of plants currently being imported, we have determined that the current regulations need to be enhanced to provide a level of phytosanitary protection commensurate with the risks posed by the importation of plants for planting. For this proposal, APHIS has prepared a risk document, ''Foundation Document Demonstrating the Risk Basis for Establishing the Regulatory Category 'Not Authorized Pending Pest Risk Analysis' (NAPPRA) Associated with the Importation of Plants for Planting,'' which analyzes current trends in the importation of plants for planting and the general risks associated with plants for planting.[7] It concludes, ''The risk associated with imported plants is considered, by APHIS, to be higher than other pathways, *e.g.,* imported fruits and vegetables. Because they are normally placed in conditions that encourage growth, plants serve as long-term hosts to the pests that they carry and therefore increase the probability that these pests will establish, and spread. In addition, the importation of plants that develop invasive or other harmful characteristics is particularly dangerous because the original intent of importation was to introduce and spread the plant. * * * Evidence indicates that while the original assumptions and designs for Quarantine 37 and the noxious weed regulations may have been valid when the challenges to the system were less intense, the contemporary situation is orders of magnitude more challenging.''

The foundation document identifies the following factors supporting our determination that the current regulatory approach to the importation of plants for planting needs to be enhanced to adequately address this risk:

- The volume of imported seed has increased 2,000 percent in the last decade;
- 1,000 more genera were imported through the Miami plant inspection station (the primary plant inspection station for such importation) in 2006 than in 2004;
- The number of shipments through the Miami plant inspection station nearly doubled (from 29,251 to 52,540) in the same period;
- Plants are imported from all regions of the world, including areas where available pest information is limited;
- The number of pests that escape detection in the inspection process increases with the volume of plant importation;
- Inspection is approaching, or may have reached, the limits of its operational efficacy due to the increased volume and diversity of importations; and
- Hundreds of pest plants have been introduced into the United States as imports.

We have therefore determined that the foundation document indicates a need to revise the regulations to provide a more appropriate level of protection against the risks associated with the importation of plants for planting. The NAPPRA category described in this proposal is the first step we are proposing to take to accomplish this goal.

Comments Received on This Subject in Response to the December 2004 ANPR and the May 2005 Public Meeting

We solicited comments concerning the December 2004 ANPR for 90 days, ending March 10, 2005. In a notice published in the **Federal Register** on March 10, 2005 (70 FR 11886, Docket No. 03–069–2), we extended the comment period for the ANPR for an additional 30 days ending April 11, 2005, to allow interested persons additional time to prepare and submit comments.

In a document published in the **Federal Register** on May 2, 2005 (70 FR 22612–22613, Docket No. 03–069–3), we announced the availability of a draft set of criteria that could be used to determine which taxa might be included in the NAPPRA category, should we decide to establish such a category. In order to provide a forum for discussing those draft criteria and associated issues, such as how such a category might be defined and implemented were it to be adopted, we held a public meeting on May 25, 2005, in Riverdale, MD. As part of that document, we also reopened the comment period for our December 2004 ANPR until June 3, 2005.

We received a total of 275 comments on the ANPR. (Not all of these comments addressed the NAPPRA category.) In addition, we recorded extensive notes of the discussions at the public meeting of May 25, 2005. We have carefully considered the comments we received on the ANPR and the views expressed at the public meeting in developing this proposal.

Some commenters, particularly Federal, State, and local government agencies, environmental advocacy groups, and industry groups, supported adding the category so that APHIS could promptly prevent the importation of taxa of plants for planting that posed a potential risk of introducing a quarantine pest. Some of these commenters also favored changing the approach of the plants for planting regulations by adding all plants for planting to the NAPPRA category, unless a PRA showed that the risk associated with the importation of a specific taxon could be appropriately mitigated, similar to the fruits and vegetables regulations. A few commenters proposed alternatives to the regulatory approach we had outlined in the ANPR.

A larger group of commenters, mostly private citizens and small businesses, opposed establishing the NAPPRA category. They believed that a comprehensive PRA specifically examining the risks associated with the importation of a taxon of plants for planting is the only evidence that should be used to restrict or prohibit the importation of that taxon.

While a comprehensive PRA is necessary to determine all the quarantine pests that may be associated with a taxon and, if appropriate, offer means to mitigate the risk associated with these pests, the scientific evidence we would use to add a taxon to the NAPPRA category would be sufficient to establish that the taxon is a quarantine pest or is a host of a quarantine pest. This proposal would provide the public with the ability to request that a PRA be

[6] The standard (''Integrated Pest Risk Management Measures for the Importation of Plants for Planting into NAPPO Member Countries'') can be viewed on the Internet at *http://www.nappo.org/Standards/NEW/RSPMNo.24-e.pdf.*

[7] The foundation document is available on the Regulations.gov Web site and in our reading room (see **ADDRESSES** above) and may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

conducted for any taxon that we add to the NAPPRA category.

Some commenters from this group stated that any further restrictions on the importation of plants for planting would adversely impact the overall biodiversity of plants in the United States.

The purpose of establishing the NAPPRA category, as with all our restrictions on the importation of plants for planting, is to prevent damage to agricultural and other resources caused by plants that are plant pests or that are hosts of plant pests. Preventing this damage helps to ensure that the current biodiversity of the United States is not adversely affected.

Some of these commenters were concerned that small businesses would be unfairly harmed by the imposition of additional restrictions on the importation of plants for planting, as such businesses often depend on novel plants to sell to consumers.

Although we acknowledge that restricting the importation of risky plant taxa may have impacts on small businesses, we have determined that the NAPPRA category is necessary to allow APHIS to appropriately respond to risks associated with the importation of plants for planting and to provide an appropriate level of protection against such risks. We would decide to restrict the importation of taxa of plants for planting on the basis of scientific evidence indicating that the importation of the taxa poses a risk. Though some taxa of plants for planting would be listed on the NAPPRA lists, most other taxa of plants for planting could continue to be imported subject to general restrictions.

Others who were opposed to the NAPPRA category questioned whether the decision to add a taxon to the new category would be sufficiently grounded in sound science, often stating that plants should be considered not to pose a risk unless specific evidence exists indicating that they do. Commenters also questioned whether the process for adding a taxon would be transparent and allow for adequate public participation.

We took these comments into account as we developed the NAPPRA process, which is detailed in the remainder of this document, Under this proposed rule, taxa would only be added to the NAPPRA category based on scientific evidence, and we would publish notices indicating our intent to add taxa to the NAPPRA category that would describe the scientific evidence and giving the public the opportunity to comment on our decisions. For these reasons, we are confident that the proposed NAPPRA category and process would fulfill our commitments to base our decisions on sound science, to employ transparent processes in reaching and communicating our decisions, and to allow for public participation in the process. We invite any suggestions commenters may have for improving the transparency of any aspect of the process, as outlined in this proposal. We also invite comment on whether the process for adding plants to the NAPPRA category is sufficiently scientifically rigorous.

The December 2004 ANPR also discussed consolidating the regulations governing plants for planting into one subpart. As discussed above, we are proposing to address risks posed by importation of plants for planting that are potential quarantine pests themselves and risks posed by importation of plants for planting that are potential hosts of quarantine pests in the same section of the nursery stock regulations. We plan to pursue consolidating all the regulations governing the importation of plants for planting into a single subpart in a later document.

Detailed Description of NAPPRA Category and Associated Changes

Definitions

The regulations currently do not contain definitions of the terms *noxious weed, official control, planting, plants for planting, quarantine pest,* and *taxon.* (The concept of official control is part of the IPPC definition of *quarantine pest.*) Therefore, we are proposing to add definitions for these terms to the ''Definitions'' section in § 319.37–1.

We would add a definition of *noxious weed* based on the definition of that term in the Plant Protection Act. The definition of ''noxious weed'' in the Plant Protection Act refers to nursery stock rather than plants for planting; the definition we would add in § 319.37–1 would refer to plants for planting, to be consistent with the other changes we are making to the regulations. Thus, the definition of *noxious weed* would read as follows:

Noxious weed. Any plant or plant product that can directly or indirectly injure or cause damage to crops (including plants for planting or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment.

The other definitions we are proposing to add are based on definitions in the IPPC Glossary of Phytosanitary Terms. These definitions would read as follows:

Official control. The active enforcement of mandatory phytosanitary regulations and the application of mandatory phytosanitary procedures with the objective of eradication or containment of quarantine pests.

Planting. Any operation for the placing of plants in a growing medium, or by grafting or similar operations, to ensure their subsequent growth, reproduction, or propagation.

Plants for planting. Plants intended to remain planted, to be planted or replanted.

Quarantine pest. A plant pest or noxious weed of potential economic importance to the United States and not yet present in the United States, or present but not widely distributed and being officially controlled.

Taxon (*taxa*). Any grouping within botanical nomenclature, such as family, genus, species, or cultivar.

The definition of *official control* is based on the definition in the IPPC Glossary of Phytosanitary Terms. However, our proposed definition does not include the provisions of the IPPC definition that address regulated non-quarantine pests, because the plants for planting regulations do not presently include provisions for regulating non-quarantine pests. We believe it would be confusing to include in our definition of *official control* a reference to a type of pest that would not otherwise be referred to in the regulations. If, in the future, we propose to amend the plants for planting regulations to address regulated non-quarantine pests, we would amend this definition to include regulated non-quarantine pests, consistent with the IPPC definition.

We would use ''plants for planting'' in the proposed regulations where we would have formerly used the term ''nursery stock.'' We would remove the definition of *nursery stock* and replace the references to nursery stock in the definitions of *prohibited article* and *restricted article* with references to ''plants for planting.'' We would also revise the title of the subpart that contains the regulations to read ''Subpart—Plants for Planting.''

The definition of *quarantine pest* is based on the definition in the IPPC Glossary of Phytosanitary Terms. The definition we are proposing differs in two ways from the IPPC definition:

• The definition of *quarantine pest* that we are proposing refers to ''a plant pest or noxious weed'' rather than ''a pest.'' Such an approach is consistent with our authority under the Plant Protection Act, which specifically refers to plant pests and noxious weeds. It is also consistent with the IPPC definition, since the IPPC definition of ''pest'' includes plants as well as animals and pathogenic agents. (The Plant Protection Act definition of noxious weeds includes references to the weed's impact on agriculture, natural resources, public health, and the environment, among other things, while the IPPC definition of quarantine pest itself refers only to economic importance. However, Appendix 2 to the Glossary of Phytosanitary Terms explains that the term ''economic importance'' is to be understood as having a broad meaning encompassing potential damage to the natural environment as well.)

- The definition of *quarantine pest* that we are proposing also specifically refers to the United States.

In addition to adding a definition of *quarantine pest* to the regulations, we are proposing to remove the term *plant pest* and add the term *quarantine pest* in its place in the regulations. We would also remove the definition of *plant pest* in § 319.37–1. APHIS takes action on plant pests based on whether they qualify as quarantine pests, in keeping with our commitments under international trade agreements. For example, APHIS typically would not restrict the importation of a taxon of plants for planting because it could introduce a plant pest if that plant pest is already present in the United States and not under official control; such a restriction could be inconsistent with the national treatment principle of the WTO. Therefore, we believe it is appropriate to refer specifically to quarantine pests rather than to plant pests in the plants for planting regulations.

Regulating Noxious Weeds Through the NAPPRA Category

The nursery stock regulations in §§ 319.37 through 319.37–14 currently address only plants for planting that have been determined to be hosts of quarantine pests. Plants for planting that are themselves quarantine pests have been regulated under 7 CFR part 360, ''Noxious Weed Regulations.'' However, the new definition of *quarantine pest* that we are proposing includes a specific reference to noxious weeds, and the definition of *noxious weed* from the Plant Protection Act would be added to the regulations as well, meaning that the definition of *quarantine pest* would allow us to address both plants for planting that are potential hosts of quarantine pests and plants for planting that are potential noxious weeds (*i.e.,* quarantine pest plants).

We are proposing to address the potential risks posed by the importation of taxa of plants for planting that could be quarantine pests themselves and those that could serve as hosts for quarantine pests through the same set of proposed regulations. This decision follows from a potential change to the regulations we discussed in the December 2004 ANPR, in which all the regulations relating to the importation of plants for planting would be consolidated into a single subpart. (Commenters who addressed this issue generally approved of consolidating the plants for planting regulations.) We are not proposing to consolidate the plants for planting regulations in this document, but we do not want to further disperse the regulations governing plants for planting by establishing separate provisions for the NAPPRA category in 7 CFR part 319 (for potential hosts of quarantine pests) and 7 CFR part 360 (for potential pest plants). We welcome public comment on this approach.

Proposed Process for Adding Taxa of Plants for Planting to the NAPPRA Category

We are proposing to add a new § 319.37–2a, ''Taxa whose importation is not authorized pending pest risk analysis,'' to the regulations to describe the process by which taxa of plants for planting would be added to the lists of taxa whose importation is not authorized pending pest risk analysis (the ''NAPPRA lists''), to describe the criteria we would use when determining whether to add a taxon to the NAPPRA lists, and to provide instructions to persons who wish to request that taxa be removed from the NAPPRA lists.

Paragraph (a) of proposed § 319.37–2a would state that we have determined that certain taxa of plants for planting potentially pose a risk of introducing quarantine pests into the United States and that the importation of these taxa is not authorized pending the completion of a pest risk analysis.

There would be two lists of taxa whose importation is not authorized pending pest risk analysis: A list of taxa of plants for planting that are potential quarantine pests, and a list of taxa of plants for planting that are potential hosts of quarantine pests. These lists would be established on the PPQ Web site at *http://www.aphis.usda.gov/import_export/plants/plant_imports/Q37.shtml.*

For taxa that had been determined to be potential quarantine pests, the list would include the names of the taxa. For the list of taxa that had been determined to be potential hosts of quarantine pests, the list would include:

- The names of the taxa;
- The foreign places from which the taxa's importation is not authorized; and
- The quarantine pests of concern.

The list would indicate that the importation of seed from taxa listed as potential hosts of quarantine pests is permitted unless specifically restricted by APHIS based on scientific evidence that the associated pest is seedborne. Even when a taxon is determined to be a potential host of a quarantine pest, its seed can often be imported safely, depending on the biology of the pest.

Proposed paragraph (b) would describe the process by which APHIS would add taxa to the NAPPRA lists.

Under proposed paragraph (b)(1), APHIS would publish in the **Federal Register** a notice announcing our determination that a taxon of plants for planting is either a potential quarantine pest or a potential host of a quarantine pest. This notice would make available a data sheet that would detail the scientific evidence that we evaluated in making our determination, including references for that scientific evidence. In the notice, we would provide for a public comment period of a minimum of 60 days on our proposed addition to the list.

Proposed paragraph (b)(2) would describe how we would respond to comments on the notices. APHIS would issue a notice after the close of the public comment period indicating that the taxon will be added to the list of taxa not authorized for importation pending pest risk analysis if:

- No comments were received on the data sheet;
- The comments on the data sheet revealed that no changes to the data sheet were necessary; or
- Changes to the data sheet were made in response to public comments, but the changes did not affect our determination that the taxon poses a potential risk of introducing a quarantine pest into the United States.

If comments presented information that leads us to determine that that the taxon does not pose a potential risk of introducing a quarantine pest into the United States, APHIS would not add the taxon to the NAPPRA list. We would issue a notice giving public notice of this determination after the close of the comment period.

This proposed process for adding taxa of plants for planting to the NAPPRA lists would streamline the process of taking action based on sound scientific evidence while providing the public with the opportunity to participate. We invite public comment on the process we have described.

The process for removing taxa from the NAPPRA lists is discussed in detail later in this document under the heading ''Process for Removing Taxa of Plants for Planting from the NAPPRA Category.''

Sources of Scientific Evidence for Taxa That Are Potential Quarantine Pests

Paragraphs (c) and (d) of proposed § 319.37–2a would describe the criteria that we would use in determining whether to add a taxon of plants for planting to the NAPPRA category.

For both taxa of plants for planting that are potential quarantine pests and taxa of plants for planting that are potential hosts of quarantine pests, we are basing our steps for making a determination and the sources of scientific evidence we would use to make the determination on ''Criteria for adding plants to a new category of plants for planting, 'Not Authorized Pending Risk Analysis' (NAPRA),'' a document discussed at the May 25, 2005, meeting and revised in October 2005. We have made some modifications to the wording and application of these criteria in this proposed rule. We have also simplified the criteria where possible.

Proposed paragraph (c) would state that a taxon will be added to the list of taxa whose importation is not authorized pending pest risk analysis if scientific evidence causes APHIS to determine that the taxon is a potential quarantine pest, as we are proposing to define that term in § 319.37–1.

There are several sources of scientific evidence that we anticipate using to make the determination that a taxon of plants for planting is a potential quarantine pest that should be added to the NAPPRA list. Those sources include, but are not necessarily limited to, the following:

- National and international pest alerts, reports, and quarantine lists.
- Articles from peer-reviewed scientific journals or other published scientific literature. Examples of journals that we might consult to determine whether a taxon is a potential quarantine pest are *Weed Science* and *Plant Protection Quarterly.*
- Published international weed references. Two examples of international weed references we might use are *Invasive Plant Species of the World: A Reference Guide to Environmental Weeds* (Weber, Ewald. 2003; CABI Publishing, Cambridge, MA) and *Noxious Weeds of Australia* (W.T. Parsons and E.G. Cuthbertson, 1992; Inkata Press, Melbourne and Sydney, Australia).
- Information from international databases, such as the Crop Protection Compendium (CPC). The CPC is an interactive, encyclopedic tool that draws together information on all aspects of crop protection. The CPC is composed of information sourced from experts. It is edited and compiled by an independent scientific organization and draws resources from a diverse international development consortium. It is published on CD–ROM and on the Internet and is updated annually. We would consider using other international databases of similar repute as well.
- Reports from regional plant protection organizations, such as NAPPO and the European and Mediterranean Plant Protection Organization, and from professional societies such as the Weed Science Society of America (WSSA).
- Scientific screening systems and predictive models, such as the WSSA's prioritization model, that seek to identify weeds of global significance that pose a threat to the United States. Most scientific screening systems and predictive models are question-based scoring methods that ask about climatic preferences, biological attributes, and reproductive and dispersal methods. Often a system generates a numerical score, which is used to rank species to determine which species are the highest priorities for official control or to determine whether a taxon can be imported into a country or area. Some systems are used to predict whether a species may be a weed of agriculture or the environment.

APHIS specifically requested that WSSA develop the prioritization model to screen taxa of plants for planting that could be quarantine pests and to rank the taxa based on how much potential risk they pose. WSSA has also provided detailed fact sheets on the taxa deemed to pose the greatest risk. We plan to use the information generated by the WSSA to add taxa to the NAPPRA category.[8]

We would also consider using other work that is being done in this area. Several such systems besides the WSSA prioritization model already exist, including models developed by Australia, Western Australia, and the Hawaiian Ecosystems at Risk project. Several university scientists are also studying invasiveness prediction, and some have published articles on various models.[9]

- Any information available from other APHIS PRAs, including the weediness screening portions of APHIS fruit and vegetable commodity PRAs. As mentioned earlier in this document, APHIS conducts PRAs to determine whether and how fruits or vegetables can be imported into the United States. One of the first steps in a fruit and vegetable PRA is a weediness screening of the commodity itself. A taxon of plants for planting might be identified as a candidate for the NAPPRA category because it was identified as a potential quarantine pest in an assessment that was initiated by a request to import the taxon for human consumption. The PRA will indicate what sources led the risk assessor to make the determination that the taxon, if imported for planting, could be a quarantine pest; we would then consult those sources to determine whether to add it to the NAPPRA category.

It is important to note that APHIS would not automatically determine that a taxon should be added to the NAPPRA category simply because some scientific evidence indicates that the taxon is a potential quarantine pest. An obvious example is that if a foreign country has a taxon of plants for planting on its quarantine list, we would not use that evidence to add the taxon to the NAPPRA category if the taxon is already present and not under official control in the United States. Another example: If a weediness screening model predicted that a certain taxon was a potential quarantine pest, but other evidence indicated that the taxon was not likely to be a quarantine pest, we might not add that taxon to the NAPPRA category. The sources of scientific evidence described here would serve as a basis for judgment; the existence of evidence from these sources would not replace the judgment of PPQ technical experts.

For those sources of scientific evidence for which we have provided examples, it is important to note that the examples are not intended to be exhaustive. For example, we would consider evidence from all peer-reviewed scientific journals in determining whether to add a taxon of plants for planting to the NAPPRA category, not just those we have listed for the purposes of illustration. Similarly, we would consider information from scientific screening systems other than the WSSA's system, provided that we judged those screening

[8] Parker, C., B.P. Caton and L. Fowler. 2007. ''Ranking non-indigenous weed species by their potential to invade the United States: 'The Parker model.' '' *Weed Science* 55:386–397.

[9] See, for example, ''Predicting Invasions of Woody Plants in North America'' (Reichard and Hamilton, 1997).

systems to be as rigorous and useful as the WSSA's system.

Sources of Scientific Evidence for Taxa That Are Potential Hosts of Quarantine Pests

Proposed paragraph (d) would describe the criteria that APHIS would use in making the determination that a taxon of plants for planting is a potential host of a quarantine pest that should be added to the NAPPRA category. The following criteria would have to be fulfilled in order to make this determination:

1. The plant pest in question would have to be determined to be a quarantine pest, according to the definition of *quarantine pest* that we are proposing to add to the regulations; and

2. The taxon of plants for planting would have to be determined to be a potential host of that quarantine pest. However, reports of the host status of a taxon of plants for planting that are based on the taxon's role as a laboratory or experimental host may be discounted if we determine that they are not relevant to the actual conditions under which the taxon would be grown and imported.

There are several sources of scientific evidence that we anticipate using to make the determination that a taxon of plants for planting is a potential host of a quarantine pest, and thus that the taxon should be added to the NAPPRA category. The sources of evidence might include, but would not necessarily be limited to, the following:

- National and international pest alerts, reports, and quarantine lists.
- Reports and quarantine lists from State and local governments.
- The Plant Protection and Quarantine plant pest interception database. PPQ maintains a centralized database system that is designed to help manage the APHIS–PPQ port interception information more effectively. The system is designed to record and track all quarantine significant pests found (intercepted) during inspection.
- Articles from peer-reviewed scientific journals. Examples of journals that we might consult are *Phytopathology, Plant Disease, Mycologia, Plant Pathology, Journal of Economic Entomology,* and *Annals of Applied Biology.*
- Other scientific publications used as references, on topics like entomology, plant pathology, nematology, agronomy, and horticulture. Examples of references we might consult are the Commonwealth Agriculture Bureau International's Abstracts on the above topics and the American Phytopathological Society's Compendium of Crop Diseases.
- Information from international databases, such as the CPC.
- Reports from regional plant protection organizations, such as NAPPO and the European and Mediterranean Plant Protection Organization, and from professional societies, such as the American Phytopathological Society and the Entomological Society of America.
- Any information available from other APHIS PRAs, particularly PRAs prepared to allow the importation of plants in growing media under § 319.37–8(e) and APHIS fruit and vegetable commodity PRAs. Besides containing a weediness screening component, as discussed earlier, APHIS fruit and vegetable commodity PRAs typically examine the scientific evidence and establishes a list of quarantine pests associated with all parts of the taxon of plants in question, even if not all of the plant would be imported for consumption. For example, while a pest associated with the stem of a plant may not affect importation of the fruit of that plant, it would be useful information in determining how to regulate that plant when it is imported for planting.

As with taxa of plants for planting that are potential quarantine pests, we would not automatically consider a taxon of plants for planting a potential host of a quarantine pest based on the existence of scientific evidence from any of these sources. Similarly, the examples listed here are also not intended to be exhaustive; for example, we would consider reports from all professional societies whose activities involve plants for planting, not just those that we have listed as examples. We invite public comment on the process of determining whether a taxon is a potential quarantine pest or a potential host of a quarantine pest.

Proposed Process for Removing a Taxon From the NAPPRA Lists

Paragraph (e) of proposed § 319.37–2a would state that any person may request that APHIS remove a taxon from the list of taxa whose importation is not authorized pending pest risk analysis. We would encourage persons who submit such a request to provide as much information as possible regarding the taxon and, if the taxon is a potential host of a quarantine pest, any quarantine pests that may be associated with it. It is likely that providing such information would allow us to complete a PRA more promptly than we would otherwise be able to.

Once a request has been submitted to remove a taxon of plants for planting from one of the NAPPRA lists, PPQ would conduct a PRA to determine the risk associated with the importation of that taxon. Upon completion of the PRA, PPQ would determine whether the importation of the taxon should be prohibited; allowed subject to special restrictions, such as a systems approach, treatment, or postentry quarantine; or allowed subject to the general requirements of the plants for planting regulations.

If the PRA supported a determination that importation of the taxon should be prohibited or allowed subject to special restrictions, we would then publish a proposed rule that would make the PRA available to the public and propose to take the action recommended by the PRA. We would consider any comments we received on the proposed rule and finalize the action through a final rule. This process would be identical to the process currently used to prohibit or place special restrictions on the importation of a taxon.

If the PRA supported a determination that importation of the taxon should be allowed subject to the general requirements of the plants for planting regulations, we would publish a notice announcing our intent to remove the taxon from the NAPPRA list and making the PRA supporting the taxon's removal available for public review. We would respond to comments in a manner similar to that proposed for responding to comments on notices adding taxa to the NAPPRA lists.

Allowing Importation of Taxa on the NAPPRA List Through Permits

The regulations in § 319.37–2(c) provide that articles listed as prohibited articles in paragraphs (a) and (b) of § 319.37–2 may nevertheless be imported if they are imported under a permit for prohibited articles, referred to in the regulations as a Departmental permit. Such articles must be imported by the USDA for experimental or scientific purposes and imported at the Plant Germplasm Quarantine Center or at a plant inspection station and must be labeled with the permit number. The permit must specify conditions for importation that are adequate to prevent the introduction of plant pests into the United States. These provisions exist because scientific and experimental research must be done on plants for planting in order to understand their biology and develop effective mitigation strategies for any risks their importation may pose.

Similar impetus would exist to import articles of taxa on the NAPPRA lists, and we believe the conditions under which prohibited articles have been allowed to be imported would be effective at mitigating risks associated with importation of taxa on the NAPPRA lists as well. Therefore, we are proposing to amend § 319.37–2(c) to indicate that it would also apply to articles whose importation is not authorized pending pest risk analysis, as listed in accordance with proposed § 319.37–2a.

A similar matter arises in the regulations in § 319.37–12. This section indicates that a restricted article for importation into the United States may not be packed in the same container as a prohibited article. We would amend this requirement to indicate that a restricted article also may not be packed in the same container as an article whose importation is not authorized pending pest risk analysis.

Expanding the Scope of Plants for Planting Regulated in the Nursery Stock Subpart

The definition of *regulated plant* in § 319.37–1 reads: ''Any gymnosperm, angiosperm, fern, or fern ally. Gymnosperms include cycads, conifers, and gingko. Angiosperms include any flowering plant. Fern allies include club mosses, horsetails, whisk ferns, spike mosses, and quillworts.'' We include a definition of *regulated plant* in the regulations because the definition of *plant* is drawn from the Plant Protection Act and does not specify the scope of plants that APHIS regulates in the nursery stock subpart.

The definition of *regulated plant* does not include nonvascular green plants, such as mosses and green algae. However, in recent years mosses and green algae have been imported to be grown as ornamental plants, and commenters at our May 2005 meeting favored changing the regulations to explicitly include nonvascular green plants.

Therefore, we are proposing to revise the definition of *regulated plant* to read: ''A vascular or nonvascular plant. Vascular plants include gymnosperms, angiosperms, ferns, and fern allies. Gymnosperms include cycads, conifers, and gingko. Angiosperms include any flowering plant. Fern allies include club mosses, horsetails, whisk ferns, spike mosses, and quillworts. Nonvascular plants include mosses, liverworts, hornworts, and green algae.'' This proposed change would update the regulations to reflect the full range of plants currently being allowed for importation.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The proposed rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this proposed rule. It provides a cost-benefit analysis as required by Executive Order 12866, as well as an initial regulatory flexibility analysis, which considers the potential economic effects of this proposed rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. The full economic analysis may be viewed on the Regulations.gov Web site (see **ADDRESSES** at the beginning of this document for a link to Regulations.gov). You may request paper copies of the economic analysis by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to Docket No. APHIS–2006–0011 when requesting copies. The economic analysis is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this document).

The proposed rule would amend the regulations by establishing a new category of taxa of plants for planting whose importation is not authorized pending pest risk analysis. The NAPPRA category would include a list of taxa that have the potential to be quarantine pest plants, and therefore could be noxious weeds, and a list of taxa that are potential hosts for quarantine pests. This action is being proposed in order to provide phytosanitary protection commensurate with the risks posed by the importation of plants for planting.

Establishing the NAPPRA category would better protect U.S. agriculture and the environment from the introduction of plant pests and noxious weeds into the United States by allowing APHIS to take timely action to prevent their importation. Strengthening our safeguards against these invasive pests is expected to result in far-reaching economic and environmental benefits. In 1999, the National Plant Board reported that introduced invasive plant pests cost about $41 billion annually in lost production and in prevention and control expenses. One study estimates that in U.S. agriculture, noxious weeds cause an overall reduction in crop yield of 12 percent, which translates into a $23.4 billion loss annually.[10] It is important to note that invasive plant pests cause significant control expenses in addition to lost production. As a result of nonindigenous weeds, approximately $3 billion is spent each year on herbicides that are applied to U.S. crops. Pimentel *et al.* (2000) further estimate that nonindigenous plant pathogens cause $21 billion in U.S. crop losses each year, and that growers spend approximately $500 million annually on fungicides to combat these pathogens. Crop losses to invasive pests and weeds and related control costs contribute to lower levels of domestic production and, in general, higher prices for consumers. Given the current rate of inflation, it is estimated that the introduction of invasive plant pests could cost between $26.0 and 52.5 billion annually in lost production, prevention, and control costs depending on the value of the host crop. Furthermore, reduced crop yields could result in $29 billion in damages annually.[11]

Recent introductions of pests of plants demonstrate the need for proactively addressing the risks of invasive pests and the possible impacts we would avoid or lessen as a result of this proposed rule. For instance, in 2001 a plant pest called the citrus longhorned beetle (CLHB) was imported in a shipment of bonsai maple trees and detected in a Washington State nursery. The resulting response involved quarantining an area having a 1/2-mile radius around the infestation site, destroying about 1,000 trees, injecting surrounding trees with an insecticide to prevent the infestation's spread, and surveying of more than 20,000 trees in the quarantined area. As a result of these efforts, no new CLHB cases have been reported.[12]

Washington State officials responded aggressively to the CLHB introduction in light of the devastation caused on the East Coast by a similar introduced pest, the Asian longhorned beetle (ALB), which is believed to have been introduced via the importation of untreated wood packaging material. The fight to eradicate ALB has persisted for more than 11 years, and has involved the destruction of thousands of beetle-infested trees, and over 230 square miles

[10] Pimentel, D., L. Lach, R. Zuniga, and D. Morrison. ''Environmental and Economic Costs of Nonindigenous Species in the United States.'' *BioScience* 50.1 (2000): 53–65.

[11] A Consumer Price Index (CPI) price as estimated and reported by the Bureau of Labor Statistics is used to measure the current rate of inflation based on 1999 and 2000 dollars.

[12] ''Citrus Longhorned Beetle Eradication Project.'' Washington State Department of Agriculture (*http://www.agr.wa.gov*).

have been quarantined, at a total cost of more than $350 million in public funds including APHIS and State obligations. APHIS obligations from 1997 to 2008 total $282 million, including more than $113 million in Commodity Credit Corporation transfers. State obligations for New York, New Jersey, and Illinois during the same time period amounted to nearly $68 million, and an additional $11.6 million was made available for the 2009 fiscal year. APHIS has treated approximately 72,000 trees susceptible to ALB with an insecticide in New York and New Jersey in 2009.

As another example of a pest introduced via the importation of plants for planting, in February 2003 the plant pathogen *Ralstonia solanacearum* race 3 biovar 2 was detected in geraniums in four greenhouses in Illinois, Indiana, Michigan, and Wisconsin. This plant pathogen was traced back to infected geraniums imported from Kenya. The resulting response cost growers and regulators an estimated $7 million and involved the destruction of over 2 million plants.[13] These are just two examples of the costs incurred due to the introduction of invasive pests that this proposed rule would help to prevent.

Another benefit of the proposed NAPPRA process involves streamlining the APHIS–PPQ process for addressing the risk associated with the importation of potential plant pests and noxious weeds prior to their introduction into the United States. Under the current regulations, we typically provide notice of our intent to designate plants for planting as prohibited articles, or place additional restrictions on their importation, through proposed rules, and we often complete a pest risk analysis (PRA) to support such a designation. However, under the new NAPPRA program, we would prohibit the importation of a plant taxon that has been scientifically shown to be a potential quarantine pest or a potential host of a quarantine pest prior to its importation. As such, our protection against potential pests would be increased, thus providing sufficient protection to the environment and to U.S. agricultural products that are vulnerable to these pests.

The NAPPRA regulations would initially list taxa of plants for planting that, to our knowledge, have not yet been imported into the United States but present a potential risk. As the taxa included in the NAPPRA lists would not be plants for planting currently imported into the United States, we presume they would not be economically important to any U.S. entities. While entities and individuals wanting to import these plants for planting in the future may be affected, this proposed rule establishing the NAPPRA category would not pose direct impacts on domestic entities, including producers.

Entities and individuals that potentially would be interested in importing these plants for planting in the future could be affected through the addition of taxa to the NAPPRA lists through the notice process. Such entities would comprise farm supplies merchant wholesalers (North American Industry Classification System [NAICS] code 424910); flower, nursery stock, and florists' supplies merchant wholesalers (NAICS code 424930); and nursery and garden centers (NAICS code 444220). Comparing statistics from the 2002 Economic Census with the Small Business Administration's size standards, we have determined that the majority of these entities would be considered small by SBA standards. However, it is important to note that there would be no immediate impact on these small entities as a result of this proposed rule, which would simply establish the NAPPRA regulations.

The proposed NAPPRA program, with its accompanying restrictions on the importation of plants, may also have an economic effect on plant societies. Membership fees associated with these societies allow members to engage in the exchange of seed or plant material. We are unable to classify the extent of potential economic effects on such entities at this time; however, we welcome public comment that would clarify our understanding on this matter.

The proposed rule could affect the workload of other Federal agencies. Plant inspection activity at ports of entry conducted by the Bureau of Customs and Border Protection and by PPQ may become more stringent to ensure that plant taxa on the NAPPRA list are not allowed entry. Accordingly, PPQ staff would develop identification aids to assist port inspectors in targeting taxa on the NAPPRA list. Importers, including those Federal agencies that do research on NAPPRA taxa, would have to obtain a special permit prior to importing plants for planting that are listed under NAPPRA. As a result, depending on the number of species that are of interest for research purposes and the taxa included on one of the NAPPRA lists, PPQ's workload for processing permit applications could increase. Additionally, in the future, as PPQ receives requests to remove taxa from the NAPPRA list, the workload for processing PRAs could increase.

Under the proposed rule, APHIS would be able to more efficiently respond to immediate risks associated with the importation of plants for planting. This proposed rule would establish a framework for restricting the importation of specific taxa of plants for planting in the future.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) No retroactive effect will be given to this rule, and (2) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

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

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

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

Subpart—Plants for Planting

2. The heading of the subpart consisting of §§ 319.37 through 319.37–14 is revised to read as set forth above.

§ 319.37 [Amended]

3. In § 319.37, paragraph (b) is amended by removing the words ''plant pests'' and adding the words ''quarantine pests'' in their place; and by removing the words ''plant pest'' and adding the words ''quarantine pest'' in their place.

4. Section 319.37–1 is amended as follows:

a. By adding, in alphabetical order, new definitions of *noxious weed, official control, planting, plants for planting, quarantine pest,* and *taxon* (*taxa*).

b. By removing the definitions of *nursery stock* and *plant pest.*

[13] ''Biology and Pathogenesis of *Ralstonia Solanacearum* Race 3 on Geraniums,'' 2004 Annual Report. Beltsville, MD: Agricultural Research Service.

c. In the definition of *clean well water,* by removing the words ''plant pathogens or other plant pests'' and adding the words ''quarantine pests'' in their place.

d. In the definition of *phytosanitary certificate of inspection,* by removing the words ''injurious plant diseases, injurious insect pests, and other plant pests'' and adding the words ''quarantine pests'' in their place.

e. In the definition of *prohibited article,* by removing the words ''nursery stock, plant, root, bulb, seed, or other plant product'' and adding the words ''plant for planting'' in their place.

f. By revising the definitions of *regulated plant* and *restricted article* to read as set forth below.

§ 319.37–1 Definitions.

* * * * *

Noxious weed. Any plant or plant product that can directly or indirectly injure or cause damage to crops (including plants for planting or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment.

* * * * *

Official control. The active enforcement of mandatory phytosanitary regulations and the application of mandatory phytosanitary procedures with the objective of eradication or containment of quarantine pests.

* * * * *

Planting. Any operation for the placing of plants in a growing medium, or by grafting or similar operations, to ensure their subsequent growth, reproduction, or propagation.

* * * * *

Plants for planting. Plants intended to remain planted, to be planted or replanted.

* * * * *

Quarantine pest. A plant pest or noxious weed that is of potential economic importance to the United States and not yet present in the United States, or present but not widely distributed and being officially controlled.

Regulated plant. A vascular or nonvascular plant. Vascular plants include gymnosperms, angiosperms, ferns, and fern allies. Gymnosperms include cycads, conifers, and gingko. Angiosperms include any flowering plant. Fern allies include club mosses, horsetails, whisk ferns, spike mosses, and quillworts. Nonvascular plants include mosses, liverworts, hornworts, and green algae.

Restricted article. Any plant for planting, excluding any prohibited articles listed in § 319.37–2(a) or (b) of this subpart, any articles whose importation is not authorized pending pest risk analysis under § 319.37–2a of this subpart, and excluding any articles regulated in §§ 319.8 through 319.24 or 319.41 through 319.74–4 and any articles regulated in part 360 of this chapter.

* * * * *

Taxon (taxa). Any grouping within botanical nomenclature, such as family, genus, species, or cultivar.

* * * * *

§ 319.37–2 [Amended]

5. Section 319.37–2 is amended as follows:

a. In paragraph (a), in the third column heading of the table, by removing the words ''Plant pests'' and adding the words ''Quarantine pests'' in their place.

b. In paragraph (c) introductory text, by adding the words '', and any article listed in accordance with § 319.37–2a of this subpart as an article whose importation is not authorized pending pest risk analysis,'' after the word ''section''.

6. A new § 319.37–2a is added to read as follows:

§ 319.37–2a Taxa of regulated plants for planting whose importation is not authorized pending pest risk analysis.

(a) *Determination by the Administrator.* The importation of certain taxa of plants for planting potentially poses a risk of introducing quarantine pests into the United States. Therefore, the importation of these taxa is not authorized pending the completion of a pest risk analysis. Lists of these taxa may be found on the Internet at *http://www.aphis.usda.gov/import_export/plants/plant_imports/Q37.shtml.* There are two lists of taxa whose importation is not authorized pending pest risk analysis: A list of taxa of plants for planting that are potential quarantine pests, and a list of taxa of plants for planting that are potential hosts of quarantine pests. For taxa of plants for planting that have been determined to be potential quarantine pests, the list includes the names of the taxa. For taxa of plants for planting that are potential hosts of quarantine pests, the list includes the names of the taxa, the foreign places from which the taxa's importation is not authorized, and the quarantine pests of concern.

(b) *Addition of taxa.* A taxon of plants for planting may be added to one of the lists of taxa not authorized for importation pending pest risk analysis under this section as follows:

(1) *Data sheet.* APHIS will publish in the **Federal Register** a notice that announces our determination that a taxon of plants for planting is either a potential quarantine pest or a potential host of a quarantine pest. This notice will make available a data sheet that details the scientific evidence APHIS evaluated in making the determination that the taxon is a potential quarantine pest or a potential host of a quarantine pest. The data sheet will include references to the scientific evidence that APHIS used in making the determination. In our notice, we will provide for a public comment period of a minimum of 60 days on our addition to the list and specify a proposed effective date for the addition of the taxon to the list of taxa of plants for planting whose importation is not authorized pending pest risk analysis.

(2) *Response to comments.* (i) APHIS will issue a notice after the close of the public comment period indicating that the taxon will be added to the list of taxa not authorized for importation pending pest risk analysis if:

(A) No comments were received on the data sheet;

(B) The comments on the data sheet revealed that no changes to the data sheet were necessary; or

(C) Changes to the data sheet were made in response to public comments, but the changes did not affect APHIS' determination that the taxon poses a potential risk of introducing a quarantine pest into the United States.

(ii) If comments present information that leads us to determine that the taxon does not pose a potential risk of introducing a quarantine pest into the United States, APHIS will not add the taxon from the list of plants for planting whose importation is not authorized pending pest risk analysis. APHIS will issue a notice giving public notice of this determination after the close of the comment period.

(c) *Criterion for listing a taxon of plants for planting as a potential quarantine pest.* A taxon will be added to the list of taxa whose importation is not authorized pending pest risk analysis if scientific evidence causes APHIS to determine that the taxon is a potential quarantine pest.

(d) *Criteria for listing a taxon of plants for planting as a potential host of a quarantine pest.* A taxon will be added to the list of taxa whose importation is not authorized pending pest risk analysis if scientific evidence causes APHIS to determine that the taxon is a potential host of a quarantine pest. The following criteria must be fulfilled in order to make this determination:

(1) The plant pest in question must be determined to be a quarantine pest; and

(2) The taxon of plants for planting must be determined to be a potential host of that quarantine pest.

(e) *Removing a taxon from the list of taxa not authorized pending pest risk analysis.* Any person may request that APHIS remove a taxon from the list of taxa whose importation is not authorized pending pest risk analysis. Persons who submit such a request are encouraged to provide as much information as possible regarding the taxon and any quarantine pests that may be associated with it. APHIS will conduct a pest risk analysis in response to such a request. The pest risk analysis will examine the risk associated with the importation of that taxon.

(1) If the pest risk analysis supports a determination that importation of the taxon be prohibited or allowed subject to special restrictions, such as a systems approach, treatment, or postentry quarantine, APHIS will publish a proposed rule making the pest risk analysis available to the public and proposing to take the action recommended by the pest risk analysis.

(2) If the pest risk analysis supports a determination that importation of the taxon be allowed subject to the general restrictions of this subpart, APHIS will publish a notice announcing our intent to remove the taxon from the NAPPRA list and making the pest risk analysis supporting the taxon's removal available for public review.

(i) APHIS will issue a notice after the close of the public comment period indicating that the importation of the taxon will be subject only to the general restrictions of this subpart if:

(A) No comments were received on the pest risk analysis;

(B) The comments on the pest risk analysis revealed that no changes to the pest risk analysis were necessary; or

(C) Changes to the pest risk analysis were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination that the taxon poses a potential risk of introducing a quarantine pest into the United States.

(ii) If information presented by commenters indicates that the pest risk analysis needs to be revised, APHIS will issue a notice after the close of the public comment period indicating that the importation of the taxon will continue to be listed as not authorized pending pest risk analysis while the information presented by commenters is analyzed and incorporated into the pest risk analysis. APHIS will subsequently publish a new notice announcing the availability of the revised pest risk analysis.

§ 319.37–5 [Amended]

7. In § 319.37–5, paragraph (i) introductory text is amended by removing the words ''plant diseases'' and adding the words ''quarantine pests'' in their place.

§ 319.37–7 [Amended]

8. Section 319.37–7 is amended as follows:

a. In paragraph (c)(2)(iii), by removing the words ''exotic pests'' and adding the words ''quarantine pests'' in their place.

b. In paragraph (c)(2)(iv), by removing the words ''plant pests that are not known to exist in the United States'' and adding the words ''quarantine pests'' in their place.

c. In paragraph (d)(5), by removing the words ''injurious plant disease, injurious insect pest, or other plant pest'' and adding the words ''quarantine pest'' in their place.

d. In paragraphs (f)(1) and (f)(2), by removing the words ''plant pests'' each time they occur and adding the words ''quarantine pests'' in their place.

e. In paragraphs (f)(1) and (f)(2), by removing the words ''plant pest(s)'' each time they occur and adding the words ''quarantine pest(s)'' in their place.

§ 319.37–8 [Amended]

9. Section 319.37–8 is amended as follows:

a. In paragraph (e)(2) introductory text, by removing the words ''disease and pests'' and adding the words ''quarantine pests'' in their place.

b. In paragraph (e)(2)(ii), by removing the words ''plant pests and diseases'' and adding the words ''quarantine pests'' in their place; and by removing the words ''injurious plant diseases, injurious insect pests, and other plant pests'' and adding the words ''quarantine pests'' in their place.

c. In paragraph (e)(2)(iv)(B), by adding the word ''quarantine'' before the word ''pests.''

d. In paragraph (e)(2)(vii), by removing the words ''plant pests'' and adding the words ''quarantine pests'' in their place.

e. In paragraph (e)(2)(viii), by removing the words ''plant pests and diseases'' and adding the words ''quarantine pests'' in their place.

f. In paragraph (e)(2)(xi)(B) introductory text, by removing the words ''plant pests'' and adding the words ''quarantine pests'' in their place.

g. In paragraphs (f)(3)(i), (f)(3)(vii), (f)(3)(viii), and (f)(4), by removing the words ''injurious plant diseases, injurious insect pests, and other plant pests'' and adding the words ''quarantine pests'' in their place.

10. Section 319.37–12 is revised to read as follows:

§ 319.37–12 Prohibited articles and articles whose importation is not authorized pending pest risk analysis accompanying restricted articles.

A restricted article for importation into the United States may not be packed in the same container as an article whose importation into the United States is prohibited by this subpart or in the same container as an article whose importation is not authorized pending pest risk analysis under § 319.37–2a of this subpart.

§ 319.37–13 [Amended]

11. Section 319.37–13 is amended as follows:

a. In paragraph (b), by removing the words ''injurious plant disease, injurious insect pest, or other plant pest, new to or not theretofore known to be widely prevalent or distributed within and throughout the United States'' and adding the words ''quarantine pests'' in their place; and by removing the words ''injurious plant diseases, injurious insect pests, or other plant pests'' and adding the words ''quarantine pests'' in their place.

b. In paragraph (c), by removing the words ''pests and Federal noxious weeds'' and adding the words ''quarantine pests'' in their place.

Done in Washington, DC, this 17th day of July 2009.

Cindy Smith,

Acting Deputy Under Secretary for Marketing and Regulatory Programs.

[FR Doc. E9–17535 Filed 7–22–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 119, 121, 125, 135, 141, 142, and 145

[Docket No. FAA–2009–0671; Notice No. 09–06]

RIN 2120–AJ15

Safety Management System

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM), request for comments.

SUMMARY: This ANPRM solicits public comments on a potential rulemaking

requiring certain 14 CFR part 21, 119, 121, 125, 135, 141, 142, and 145 certificate holders, product manufacturers, applicants, and employers (hereafter ''product/service providers'') to develop a Safety Management System (SMS). SMS is a comprehensive, process-oriented approach to managing safety throughout an organization. An SMS includes an organization-wide safety policy, formal methods of identifying hazards, mitigating and continually assessing risk, and promotion of a safety culture. SMS stresses not only compliance with technical standards but increased emphasis on the organizational aspects and processes that ensure risk management and safety assurance.

DATES: Send your comments on or before October 21, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0671 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.
- *Hand Delivery:* Bring comments to Docket Operations in Room W12–140 of the West Building (Ground Floor) at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Scott Van Buren, SMS Chief System Engineer, Office of Aviation Safety Analytical Services (ASA), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 494–8417; facsimile: (202) 267–3992; e-mail: *scott.vanburen@faa.gov.* For legal questions, contact Anne Bechdolt, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7230; facsimile: (202) 267–7971; e-mail: *anne.bechdolt@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this request for comments by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result if an SMS rule is established. The most helpful comments will reference a specific question in the notice, and provide detailed explanations of any recommendations, including supporting data when applicable. We ask that you send us only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this notice.

Proprietary or Confidential Business Information

Do not submit information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

When we are aware of proprietary information submitted with a comment, we will not place it in the docket. *See* 14 CFR 11.35(b). We will keep proprietary information in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act. *See* 5 U.S.C. 552. We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy of the rulemaking documents using the Internet by:

(1) Searching the Federal eRulemaking Portal at *http://www.regulations.gov;*

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Purpose

This ANPRM requests written comments in response to the questions presented. We also welcome any additional information that may be helpful in considering an SMS regulatory framework for providers of aviation products/services under 14 CFR parts 21, 119, 121, 125, 135, 141, 142, and 145. The FAA is not proposing any specific regulatory changes in this ANPRM. The FAA intends to establish an Aviation Rulemaking Committee (ARC) to assess comments resulting from this ANPRM and to provide recommendations for any SMS rulemaking effort. After review of all of the comments submitted in response to this ANPRM, and review of the ARC recommendations, the FAA may issue a notice of proposed rulemaking (NPRM) proposing specific regulations or regulatory amendments to create an SMS rule. Interested persons will have the opportunity to comment on proposed changes prior to the adoption of any final rule regarding SMS.

What Is a Safety Management System?

A Safety Management System (SMS) is a structured, risk-based approach to managing safety. The International Civil Aviation Organization (ICAO) has defined SMS as a ''systematic approach to managing safety, including the necessary organizational structures, accountabilities, policies, and procedures.'' *See* ICAO, *Safety Management Manual,* at 1.4.2, ICAO Doc. 9859–AN/460 (1st ed. 2006). An SMS provides a set of decision-making processes and procedures that a product/service provider would use to plan, organize, direct, and control its business activities in a manner that enhances safety and ensures compliance with regulatory standards. An SMS incorporates these procedures into normal, day-to-day business processes. SMS requires a proactive approach to discovering and correcting problems before there are safety consequences. An SMS also includes processes that seek to identify potential organizational breakdowns and necessary process improvements allowing management to address a safety issue before a noncompliant or unsafe condition results. However, using an SMS is not a substitute for compliance with FAA regulations or FAA oversight activities. Rather, an SMS would ensure compliance with safety-related statutory and regulatory requirements.

The FAA, in continuing to develop a comprehensive and integrated framework for safety management, is considering an SMS rule to provide product/service providers with a standardized set of requirements for an SMS. The FAA Aviation Safety Organization (AVS) describes an SMS as containing four key components: Safety Policy, Safety Risk Management (SRM), Safety Assurance (SA), and Safety Promotion.

Safety Policy. Safety policy outlines the methods and processes the organization's SMS will use to achieve the desired safety outcomes. The policy establishes senior management's commitment on behalf of the organization to incorporate and continually improve safety in all aspects of its business. Senior management would develop measurable and attainable company-wide safety objectives, procedures, and processes. The safety policy establishes and promotes safety culture throughout all levels of an organization.

Safety Risk Management (SRM). SRM processes are used to assess system design and verify that the system adequately controls risk. A formal SRM process describes a system, identifies hazards, analyzes those hazards to identify risk, and establishes controls to manage those risks.

Safety Assurance (SA). SA processes are used to ensure risk controls developed under SRM achieve their intended objectives throughout the life cycle of a system. The SA process may reveal hazards not previously identified during the SRM process. The SA process may also allow the product/service provider to identify or assess the need for new risk controls, as well as the need to eliminate or modify existing controls. These SA monitoring activities apply to an SMS whether the operations are accomplished internally or outsourced. The SA processes include: information acquisition, analysis, system assessment, and development of preventive/corrective action for nonconformance.

Safety Promotion. Safety promotion requires creating an environment where safety objectives can be achieved. Safety promotion encourages a positive safety culture. A positive safety culture is characterized by an adequate knowledge base, competency, implementation tools, effective communications, ongoing training, and information sharing. Senior management must provide the leadership to promote and ensure a positive safety culture throughout an organization. A positive safety culture is the product of individual and group values, attitudes, and behavior, all committed to the organization's safety programs.

In addition to the four components described above, another important element of a product/service provider's SMS is the ability of the SMS to interface with other product/service providers, as well as the regulator. Such interfacing allows product/service providers to address issues of mutual concern and allows the regulator to evaluate the performance of the product/service provider's SMS.

International Civil Aviation Organization (ICAO) and Safety Management Systems

In March 2006, ICAO amended Annex 6—which addresses requirements for the operation of aircraft, commercial air transport operators, and helicopter operators—requiring member states to mandate that their Annex 6 operators establish an SMS. The March 2006 amendments require member states to initiate compliance by January 1, 2009.

On December 7, 2007, ICAO proposed incorporating Annex 6 SMS requirements into Annex 1 (medical licensing) and Annex 8, (airworthiness of aircraft), specifically aircraft and aircraft component manufacturers, as well as maintenance facilities. These proposals, if adopted, would extend the compliance date for Annex 6 amendments that were adopted in March 2006 to November 19, 2009, and require all member states to initiate compliance with the Annex 1 and Annex 8 amendments by November 18, 2010. Additional information regarding these amendments, as well as ICAO's guidance on establishing an SMS framework, may be found at *http://www.icao.int/anb/safetymanagement/.*

The United States has endorsed the December 7, 2007, ICAO proposal to require product/service providers under Annex 1, 6, and 8 to develop an SMS. Such a requirement would be consistent with recent National Transportation Safety Board (NTSB) recommendations that the FAA requires all part 121 operators to establish SMS programs. *See* NTSB Recommendation A–07–10 (January 23, 2007).

FAA Policy and Guidance Materials

In an effort to develop SMS policy and guidance material, the FAA reviewed ICAO requirements and surveyed SMS programs and development efforts around the world. The FAA followed SMS developments in Canada, New Zealand, Australia, and Britain for program details, best practices, and lessons learned. We also examined third-party systems developed by user organizations including the International Air Transport Association (IATA), the Medallion Foundation, and the International Business Aviation Council (IBAC).

As a result, the FAA has developed policy and guidance material for establishing an SMS framework within the FAA, as well as recommendations for industry product/service providers in developing their own SMSs. Advisory Circular (AC) 120–92, Introduction to Safety Management Systems for Air Operators, issued June 22, 2006, provides a voluntary framework by which air operators may establish an SMS. Some 14 CFR part 91, 121, and 135 operators and some part 145 maintenance organizations have used this AC for voluntary SMS development.

The AC provides background and introductory material on SMS processes and interfaces with the certificate holder's SMS and the FAA oversight system. Compliance with the AC is voluntary because there are not, at present, any SMS regulatory requirements in the United States. In addition, in May 2008, the FAA's Aviation Safety organization issued Order VS 8000.367, Aviation Safety (AVS) Safety Management System Requirements, prescribing what criteria AVS services and offices must follow in implementing an SMS within AVS. Appendix B of this order provides specific guidance for product/service provider SMS development. The FAA encourages the public to read these documents to help build an understanding of SMS principles before responding to the questions below. Copies of these documents have been placed in the docket for this notice.

Request for Information

The FAA seeks input from the public on the following questions. In your comments please refer to the number of the specific question(s) you are responding to. Please do not hesitate to provide additional information regarding SMS not addressed by these questions if you believe it would be helpful in understanding the implications of imposing an SMS regulatory requirement. We do not expect that every commenter will be able to answer every question. Please respond to those questions you feel able to answer, or that address your particular issue.

1. Please tell us about your organization, including what products/services are provided, what FAA certificates you hold, approximate number of employees, and your approximate annual gross revenue.

2. Has your organization implemented an SMS or components of an SMS based on any of the guidance materials below? Please describe your implementation experience.

a. FAA Order VS8000.367, *AVSSMS Requirements,* Appendix B.

b. AC–120–92, *Introduction to Safety Management Systems for Air Operators.*

c. FAA-sponsored regulatory or voluntary programs (*e.g.,* Continuing Analysis and Surveillance Systems (CASS), Internal Evaluation Programs (IEP), Aviation Safety Action Programs (ASAP), *etc.*).

d. Foreign civil aviation authorities' SMS development material (*e.g.,* Transport Canada, Civil Aviation Authority of Singapore (CAAS), Australia Civil Aviation Safety Authority (CASA), U.K. Civil Aviation Authority (CAA)—please specify).

3. Please comment on the sufficiency of the following SMS guidance material, and what, if any, additional information you would need to implement an SMS.

a. FAA Order 8000.367, *AVSSMS Requirements,* Appendix B.

b. AC–120–92, *Introduction to Safety Management Systems for Air Operators.*

c. Foreign civil aviation authorities' SMS development material.

d. Third party material (*e.g.,* IATA Operational Safety Audit (IOSA), International Standard for Business Aircraft Operations (IS–BAO), Regional Air Cargo Carriers Association (RACCA), Air Cargo Safety Foundation (ACSF)).

e. Other (please specify).

4. Do you currently have a quality management system (QMS) that meets some accepted standard (*e.g.,* ISO–9000, Six-Sigma, Baldridge)? How would you envision your existing system operating in an SMS framework?

5. If you have voluntarily developed, or are in the process of developing an SMS, what impact has SMS had on your organization in terms of enhanced safety and compliance with existing CFRs?

6. Which types of product/service providers should be required to have an SMS and which, if any, should not? Please explain the reasoning for your opinion.

7. If you have implemented an SMS and conducted cost and benefits analyses, please describe your findings.

8. What are your main concerns and recommendations in making the transition to an SMS regarding the following?

a. Documentation requirements (*e.g.,* developing or updating manuals, policies, procedures, standard operating procedures).

b. Recordkeeping requirements (*e.g.,* hazard identification data, risk assessment data, corrective actions).

c. Collection, sharing, and management of safety information (*e.g.,* protection of and access to personally identifiable information, proprietary information).

9. What are the initial and recurrent costs of establishing and maintaining SMS processes (*e.g.,* internal auditing and evaluation, data collection, employee training, computer software, personnel hiring and training)?

10. What impact has SMS had on your organization in terms of the resources necessary to implement and maintain the system?

11. What new knowledge, skills, and abilities would your organization need, if any, to operate successfully within an SMS?

12. Please give us your thoughts about the current processes for procuring and using voluntarily submitted safety data through FAA programs such as Aviation Safety Action Program (ASAP) and how these programs would fit within an SMS framework.

13. What areas of the current regulations do you believe already incorporate SMS principles (*e.g.,* continuing analysis and surveillance system (CASS) under 14 CFR 121.373; quality or inspection system requirements under 14 CFR 21.143 and 21.303)? How would you suggest the FAA avoid any duplicative requirements in any SMS rulemaking effort?

14. What concerns and recommendations do you have about setting objective standards for the evaluation of SMS processes (*e.g.,* evaluating SMS effectiveness, defining scope of hazards, establishing acceptable levels of risk)?

15. What are practical ways a small business could apply the elements of an SMS?

16. What are your concerns and recommendations regarding the FAA making the transition to requiring SMS of product/service providers (*e.g.,* schedule for implementation, FAA acceptance and approval procedures, oversight)?

17. Please provide any additional information you think is pertinent.

Issued in Washington, DC, on July 20, 2009.

John Hickey,

Deputy Associate Administrator for Aviation Safety.

[FR Doc. E9–17553 Filed 7–22–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0655; Directorate Identifier 2008–NM–192–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200F, 747–200C, 747–400, 747–400D, and 747–400F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Boeing Model 747–200F, 747–200C, 747–400, 747–400D, and 747–400F series airplanes. The existing AD currently requires repetitive inspections for cracking of certain fuselage internal structure (*i.e.,* Sections 42 and 46 fuselage frames, upper deck floor beams, electronic bay access door cutout, nose wheel well, and main entry doors and door cutouts), and repair if necessary. This proposed AD would require additional repetitive inspections for cracking of certain fuselage structure (*i.e.,* Section 41 fuselage frames where they connect to upper deck floor beams, and section 41 fuselage frames between stringer (S–8 and S–12), and related investigative/corrective actions if necessary. This proposed AD would

also reduce the inspection threshold and repetitive inspection intervals for certain airplanes. This proposed AD results from fatigue tests and analysis by Boeing that identified additional areas of the fuselage where fatigue cracks can occur. We are proposing this AD to prevent the loss of structural integrity of the fuselage, which could result in rapid depressurization of the airplane.

DATES: We must receive comments on this proposed AD by September 8, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, 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 service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0655; Directorate Identifier 2008–NM–192–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On February 16, 2006, we issued AD 2006–05–02, amendment 39–14499 (71 FR 10605, March 2, 2006), for all Boeing Model 747–200F, 747–200C, 747–400, 747–400D, and 747–400F series airplanes. That AD requires repetitive inspections for cracking of certain fuselage internal structure, and repair if necessary. That AD resulted from fatigue tests and analysis that identified areas of the fuselage where fatigue cracks can occur. We issued that AD to prevent the loss of the structural integrity of the fuselage, which could result in rapid depressurization of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2006–05–02, Boeing has conducted an additional analysis that shows that Section 41 fuselage frames in the areas attached to the upper deck floor beams are also prone to fatigue cracking. Cracking of the frames was found on the fatigue test airplane at about 40,000 total pressure cycles. As a result of the cracking, we have determined that additional inspections are necessary, as specified in the service information described below. In addition, for certain airplanes, we have determined that it is necessary to reduce the compliance time for certain inspections.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–53A2500, Revision 1, dated September 25, 2008 (''Revision 1 of the service bulletin''). We referred to Boeing Alert Service Bulletin 747–53A2500, dated December 21, 2004, in AD 2006–05–02 as the appropriate source of service information for doing the actions required by that AD. Revision 1 of the service bulletin retains the procedures from the original issue, and adds the repetitive inspections for cracking in the additional areas listed in the table titled ''New Service Bulletin Procedures.''

NEW SERVICE BULLETIN PROCEDURES

Revision 1 of the service bulletin adds procedures for repetitive detailed inspections for cracking of—	For airplanes identified as these groups in Revision 1 of the service bulletin—
Area 1 (upper deck floor beams)—Inspections are added for the fuselage frames at body station (BS) 260 to 520 in areas where the upper deck floor beams are attached.	1 through 7 inclusive, and 9 through 10 inclusive.
Area 6 (main entry door cutouts)—Inspections are added for the fuselage frames at BS 400 to 500 in areas above the main entry door 1 cutouts from the upper chord of the upper deck floor beams to stringer 8.	1 through 7 inclusive.

The compliance times for airplane groups 1 through 7 and 9 through 10 remain the same as in AD 2006–05–02 for all inspections: 22,000 or 25,000 total flight cycles (depending on the inspection area and airplane configuration), with a repetitive interval of 3,000 flight cycles. For the inspection of additional areas, the service bulletin specifies a compliance time of 22,000 total flight cycles or 1,000 flight cycles after the date of Revision 1 of the service bulletin.

No new inspections are added for Group 8 airplanes specified in Revision 1 of the service bulletin, although certain inspections required by AD

2006–05–02 continue at a reduced threshold. (These airplanes were identified as Group 1 in Boeing Alert Service Bulletin 747–53A2500, dated December 21, 2004.) Furthermore, for Group 8 airplanes, the service bulletin removed the inspection requirements for Areas 2 and 5.

For Group 8 airplanes, the service bulletin specifies a reduced compliance time and reduced repetitive interval for continuing certain existing inspections. The compliance time for the initial inspection ranges from 15,000 total flight cycles to 22,000 total flight cycles (depending on the inspection area), or 1,000 flight cycles after the date of Revision 1 of the service bulletin, whichever occurs later. The repetitive interval ranges from intervals not to exceed 1,500 flight cycles to intervals not to exceed 3,000 flight cycles (depending on the inspection area).

The service bulletin specifies repairing any crack before further flight per the service bulletin or per repair data obtained by contacting Boeing.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2006–05–02 and would retain the requirements of the existing AD. This proposed AD would also require additional inspections for certain airplanes, a revised inspection for certain airplanes, and a reduced compliance time for certain other airplanes.

Costs of Compliance

There are about 640 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The average labor rate is $80 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspections (required by AD 2006-05-02).	260	None required	$20,800 per inspection cycle	71	$1,476,800 per inspection cycle.
Inspections of additional areas (new proposed action).	7	None required	$560 per inspection cycle	71	$39,760 per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–14499 (71 FR 10605, March 2, 2006) and adding the following new AD:

Boeing: Docket No. FAA–2009–0655; Directorate Identifier 2008–NM–192–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by September 8, 2009.

Affected ADs

(b) This AD supersedes AD 2006–05–02.

Applicability

(c) This AD applies to all Boeing Model 747–200F, 747–200C, 747–400, 747–400D, and 747–400F series airplanes; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Unsafe Condition

(e) This AD results from fatigue tests and analysis that identified additional areas of the fuselage where fatigue cracks can occur. We are issuing this AD to prevent loss of the structural integrity of the fuselage, which could result in rapid depressurization of the airplane.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2006–05–02 With Reduced Compliance Times for Group 8 Airplanes

Inspections

(g) Do initial and repetitive inspections for fuselage cracks using applicable internal and external detailed inspection methods, and repair all cracks, by doing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2500, dated December 21, 2004; or Revision 1, dated September 25, 2008; except as required by paragraph (h) or provided by paragraph (l) of this AD. After the effective date of this AD, Boeing Alert Service Bulletin 747–53A2500, Revision 1, dated September 25, 2008, must be used. Do the initial and repetitive inspections at the applicable times specified in paragraph (g)(1) or (g)(2) of this AD, except as required by paragraph (j) of this AD. Repair any crack before further flight after detection.

(1) For Groups 1 through 7, 9, and 10 identified in Boeing Alert Service Bulletin 747–53A2500, Revision 1, dated September 25, 2008: Do the initial and repetitive inspections at the times specified in paragraph 1.E. of Boeing Alert Service Bulletin 747–53A2500, dated December 21, 2004, except as required by paragraph (i) of this AD.

(2) For Group 8 airplanes identified in Boeing Alert Service Bulletin 747–53A2500, Revision 1, dated September 25, 2008: Do the initial and repetitive inspections at the applicable time specified in paragraph 1.E. of Boeing Alert Service Bulletin 747–53A2500, Revision 1, dated September 25, 2008, except as required by paragraph (k) of this AD.

Exceptions to Service Bulletin Procedures

(h) If any crack is found during any inspection required by this AD, and Boeing Alert Service Bulletin 747–53A2500, dated December 21, 2004, or Revision 1, dated September 25, 2008, specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(i) Where Boeing Alert Service Bulletin 747–53A2500, dated December 21, 2004, or Revision 1, dated September 25, 2008, specifies a compliance time after the date on the original issue of the service bulletin, this AD requires compliance within the specified compliance time after April 6, 2006 (the effective date of AD 2006–05–02).

New Requirements of This AD

Actions for Additional Areas

(j) For the additional inspection areas of Groups 1 through 7, 9, and 10 airplanes, identified in Boeing Alert Service Bulletin 747–53A2500, Revision 1, dated September 25, 2008: Do initial and repetitive inspections for cracking of the inspection areas, and, as applicable, repair cracking, by doing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2500, Revision 1, dated September 25, 2008; except as required by paragraph (h) of this AD. Do the initial and repetitive inspections at the times specified in paragraph 1.E. of Boeing Alert Service Bulletin 747–53A2500, Revision 1, dated September 25, 2008, except as required by paragraph (k) of this AD. Repair all cracking before further flight.

(k) Where Boeing Alert Service Bulletin 747–53A2500, Revision 1, dated September 25, 2008, specifies a compliance time after the date on Revision 1 of the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(l) For Group 8 airplanes, inspection of Areas 2 and 5 identified in Boeing Alert Service Bulletin 747–53A2500, dated December 21, 2004 as required by paragraph (g) of this AD is no longer required.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) AMOCS approved previously in accordance with AD 2006–05–02, are approved as alternative methods of compliance with the corresponding requirements of this AD.

(4) Accomplishment of the inspections specified in this AD is considered an AMOC for the applicable requirements of paragraphs (c) and (d) of AD 2004–07–22 R1, amendment 39–15326, under the conditions specified in paragraphs (m)(4)(i) and (m)(4)(ii) of this AD.

(i) The inspections specified in this AD must be done within the compliance times specified in AD 2004–07–22 R1. The initial inspection specified in this AD must be done at the times specified in paragraph (d) of AD 2004–07–22 R1, and the inspections specified in this AD must be repeated within the intervals specified in paragraph (g) of this AD.

(ii) The AMOC applies only to the areas of Supplemental Structural Inspection Document for Model 747 Airplanes, Document D6–35022, Revision G, dated December 2000, that are specified in Boeing Alert Service Bulletin 747–53A2500, dated December 21, 2004.

(5) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on July 15, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–17448 Filed 7–22–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0606; Directorate Identifier 2009–NE–11–AD]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A Model CFM56–3B1 and –3B2 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain CFM International Model CFM56–3B1 and -3B2 turbofan engines. This proposed AD would require initial and repetitive inspections for damage to the fan blades. This proposed AD results from a report of a failed fan blade with severe out-of-limit wear on the underside of the blade platform where it contacts the damper. We are proposing this AD to prevent failure of multiple fan blades, which could result in an uncontained failure of the engine and damage to the airplane.

DATES: We must receive any comments on this proposed AD by September 21, 2009.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

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

Contact CFM International, S. A., Technical Publication Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2800; fax (513) 552–2816, for a copy of the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Stephen K. Sheely, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *stephen.k.sheely@faa.gov;* telephone (781) 238–7750; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2009–0606; Directorate Identifier 2009–NE–11–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the AD Docket

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

Discussion

On February 13, 2006, we received a report of a failed fan blade with a 25 degrees midspan shroud. The underside of the blade platform had severe out-of-limit wear at a contact point with the damper. We couldn't determine the exact root cause for the wear. However, poor damping of the 25 degrees midspan shroud blade set due to severe wear on several dampers and the undersides of the fan blade platforms contributed to high dynamic stress levels seen on this set of blades. This condition, if not corrected, could result in failure of multiple fan blades, which could result in an uncontained failure of the engine and damage to the airplane.

Relevant Service Information

We have reviewed and approved the technical contents of CFM International Service Bulletin (SB) CFM56–3/3B/3C S/B 72–1067, dated February 15, 2007, that describes procedures for performing on-wing and in-shop inspections for wear.

Differences Between the Proposed AD and the Manufacturer's Service Information

CFM International SB CFM56–3/3B/3C S/B 72–1067, dated February 15, 2007, requires an initial inspection within 6 months. This proposed AD would require the initial inspection within 3,000 cycles-in-service (CIS) after the effective date of the proposed AD. CFM International SB CFM56–3/3B/3C S/B 72–1067, dated February 15, 2007, also requires a repetitive inspection within 1,500 to 3,000 cycles-since-last inspection (CSLI). This proposed AD would require the repetitive inspection within 3,000 CSLI.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require performing initial and repetitive inspections of the fan blade for wear. The proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

We estimate that this proposed AD would affect 50 engines installed on airplanes of U.S. registry. We also estimate that it would take about 8 work-hours per engine to perform the proposed actions, and that the average labor rate is $80 per work-hour. Required parts would cost about $38,000 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $1,932,000.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

CFM International S.A.: Docket No. FAA–2009–0606; Directorate Identifier 2009–NE–11–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by September 21, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to CFM International S.A. model CFM56–3B1 and -3B2 turbofan engines with 25 degrees midspan shroud fan blades, part numbers (P/Ns) 9527M99P08, 9527M99P09, 9527M99P10, 9527M99P11, 1285M39P01, or fan blade pairs, P/Ns 335–088–901–0, 335–088–902–0, 335–088–903–0, and 335–088–904–0 installed. These engines are installed on, but not limited to, Boeing 737 series airplanes.

Unsafe Condition

(d) This AD results from a report of a failed fan blade with severe out-of-limit wear on the underside of the blade platform where it contacts the damper. We are issuing this AD to prevent failure of multiple fan blades, which could result in an uncontained failure of the engine and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Inspection for Wear

(f) Within 3,000 cycles-in-service after the effective date of this AD, perform an on-wing or in-shop inspection of the fan blade and damper for wear. Use paragraph 3. Accomplishment Instructions of CFM International Service Bulletin (SB) CFM56–3/3B/3C S/B 72–1067, dated February 15, 2007.

(g) If you find wear, perform additional inspections as specified in paragraph 3. Accomplishment Instructions of CFM International SB CFM56–3/3B/3C S/B 72–1067, dated February 15, 2007.

(h) Thereafter, within intervals not to exceed 3,000 cycles-since-last inspection, perform an on-wing or in-shop inspection for wear. Use paragraph 3. Accomplishment Instructions of CFM International SB CFM56–3/3B/3C S/B 72–1067, dated February 15, 2007.

(i) If you find wear, perform additional inspections as specified in paragraph 3. Accomplishment Instructions of CFM International SB CFM56–3/3B/3C S/B 72–1067, dated February 15, 2007.

Installation Prohibition

(j) After the effective date of this AD, don't install any 25 degrees midspan shroud fan blades, P/Ns 9527M99P08, 9527M99P09, 9527M99P10, 9527M99P11, 1285M39P01, or fan blade pairs, P/Ns 335–088–901–0, 335–088–902–0, 335–088–903–0, and 335–088–904–0, unless they have passed an inspection specified in paragraph 3. Accomplishment Instructions of CFM International SB CFM56–3/3B/3C S/B 72–1067, dated February 15, 2007.

Optional Terminating Action

(k) Replacing the 25 degrees midspan shroud fan blade set with a 37 degrees midspan shroud fan blade set terminates the repetitive inspection requirements specified in paragraph (h) of this AD.

Alternative Methods of Compliance

(l) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(m) Contact Stephen K. Sheely, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *stephen.k.sheely@faa.gov;* telephone (781) 238–7750; fax (781) 238–7199, for more information about this AD.

(n) CFM International SB CFM56–3/3B/3C S/B 72–1067, dated February 15, 2007, pertains to the subject of this AD. Contact CFM International, S. A., Technical Publication Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2800; fax (513) 552–2816, for a copy of this service information.

(o) EASA airworthiness directive 2009–0036, dated February 20, 2009, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on July 16, 2009.

Peter A. White,

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

[FR Doc. E9–17473 Filed 7–22–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0674; Directorate Identifier 2009–NE–25–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Trent 800 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: Under certain ambient conditions, ice can accumulate on the walls of the fuel pipes within the aircraft fuel system, which can then be released downstream when fuel flow demand is increased. This released ice can then collect on the fuel-to-oil heat exchanger (FOHE) front face and limit fuel flow through the FOHE.

We are proposing this AD to prevent ice from blocking the FOHE, which could result in an unacceptable engine power loss, and loss of control of the airplane.

DATES: We must receive comments on this proposed AD by August 24, 2009.

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

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

Contact Rolls-Royce plc, P.O. Box 31, DERBY, DE24 8BJ, UK; telephone 44 (0) 1332 242424; fax 44 (0) 1332 249936, for the service information identified in this proposed AD.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: james.lawrence@faa.gov*; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0674; Directorate Identifier 2009–NE–25–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0142, dated July 13, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

This Airworthiness Directive has been raised following an incident involving dual loss of engine response in the final stages of approach leading to touchdown short of the runway. The phenomenon involved in the loss of engine response has also been seen in flight affecting just one engine.

Post incident analysis and investigation has established that, under certain ambient conditions, ice can accumulate on the walls of the fuel pipes within the aircraft fuel system, which can then be released downstream when fuel flow demand is increased. This released ice can then collect on the FOHE front face and limit fuel flow through the FOHE. This type of icing event was previously unknown and creates ice concentrations in the fuel system beyond those specified in the certification requirements.

To mitigate the risk of engine FOHE blockage, this AD would require replacing the FOHE, part number (P/N) 55003001–1 or 55003001–11, with a FOHE that has a P/N, or equivalent, not listed in this proposed AD.

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

Relevant Service Information

Rolls-Royce plc has issued Alert Service Bulletin RB.211–79–AG257, dated June 24, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of the United Kingdom, and is approved for operation in the United States. Pursuant to our bilateral agreement with the United Kingdom, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information provided by EASA, and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

The EASA AD 2009–01421, dated July 13, 2009, requires replacing the FOHE within 6,000 flight hours from July 10, 2009 or before January 1, 2011, whichever occurs first. This proposed AD would require replacing the FOHE within 6,000 flight hours after the effective date of the proposed AD, but no later than January 1, 2011.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 138 products of U.S. registry. We also estimate that it would take about 8.5 work-hours per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $11,260 per product. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,647,720. Our cost estimate is exclusive of possible warranty coverage.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce plc: Docket No. FAA–2009–0674; Directorate Identifier 2009–NE–25–AD.

Comments Due Date

(a) We must receive comments by August 24, 2009.

Affected Airworthiness Directives (ADs)

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc models RB211 Trent 875–17, –877–17, –884–17, –884B–17, –892–17, –892B–17, and –895–17 turbofan engines with fuel-to-oil heat exchangers, part numbers 55003001–1 and 55003001–11, installed. These engines are installed on, but not limited to, Boeing 777 series airplanes.

Reason

(d) This AD results from the risk of engine fuel-to-oil heat exchanger (FOHE) blockage. We are issuing this AD to prevent ice from blocking the FOHE, which could result in an unacceptable engine power loss, and loss of control of the airplane.

Actions and Compliance

(e) Unless already done, within 6,000 flight hours after the effective date of this AD, but no later than January 1, 2011, replace the FOHE, P/N 55003001–1 or 55003001–11, with an FOHE that does not have a P/N or equivalent listed in this AD.

FAA AD Differences

(f) This AD differs from the Mandatory Continuing Airworthiness Information (MCAI) by requiring replacing the FOHE within 6,000 flight hours after the effective date of this AD, but no later than January 1, 2011.

Other FAA AD Provisions

(g) *Alternative Methods of Compliance (AMOCs):* The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Refer to MCAI Airworthiness Directive 2009–0142, dated July 13, 2009, and Rolls-Royce plc Alert Service Bulletin RB.211–79–AG257, dated June 24, 2009, for related information. Contact Rolls-Royce plc, P.O. Box 31, DERBY, DE24 8BJ, UK; telephone 44 (0) 1332 242424; fax 44 (0) 1332 249936, for a copy of this service information.

(i) Contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: james.lawrence@faa.gov*; telephone (781) 238–7176; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on July 17, 2009.

Peter A. White,

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

[FR Doc. E9–17470 Filed 7–22–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–327]

Schedules of Controlled Substances: Placement of Fospropofol Into Schedule IV

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule is issued by the Deputy Administrator of the Drug Enforcement Administration (DEA) to place the substance fospropofol, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, into schedule IV of the Controlled Substances Act (CSA). This proposed action is based on a recommendation from the Acting Assistant Secretary for Health of the Department of Health and Human Services (DHHS) and on an evaluation of the relevant data by DEA. If finalized, this action would impose the regulatory controls and criminal sanctions of schedule IV on those who handle fospropofol and products containing fospropofol.

DATES: Written comments must be postmarked on or before August 24, 2009, and electronic comments must be sent on or before midnight Eastern time August 24, 2009.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–327'' on all written and electronic correspondence. Written comments sent via regular or express mail should be sent to the Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, Virginia 22152. Comments may be sent to DEA by sending an electronic message to *dea.diversion.policy@usdoj.gov.* Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept electronic comments containing Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file format other than those specifically listed here.

Please note that DEA is requesting that electronic comments be submitted before midnight Eastern Time on the day the comment period closes because *http://www.regulations.gov* terminates the public's ability to submit comments at midnight Eastern time on the day the comment period closes. Commenters in time zones other than Eastern time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION:

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

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

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the DEA's public docket file. Please note that the Freedom of

Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the ''For Further Information'' paragraph.

Background

On December 12, 2008, the Food and Drug Administration (FDA) approved fospropofol for marketing under the trade name Lusedra® in the United States as a drug product indicated for monitored anesthesia care (MAC) sedation in adult patients undergoing diagnostic or therapeutic procedures. Lusedra® will be available as 35 milligrams/ml of fospropofol disodium solution for intravenous (i.v.) use. Fospropofol acts as a central nervous system (CNS) depressant and is classified as a sedative-hypnotic.

Fospropofol, 2,6-diisopropopylphenoxymethyl phosphate disodium, is a water soluble, phosphono-O-methyl prodrug of propofol. It is metabolized in the body to propofol, the active metabolite. Propofol has been available for medical use in the United States since 1989 and is not currently a controlled substance.

The pharmacological effects of fospropofol are attributed to the pharmacological actions of propofol. Fospropofol elicits behavioral effects similar to methohexital and midazolam, schedule IV sedative-hypnotics.

The receptor binding profile of fospropofol has been shown to be similar to that of propofol (DHHS evaluation, 2008). Propofol binds to γ-aminobutyric acid ($GABA_A$) receptor and acts as a modulator by potentiating the activity of GABA at this receptor. Other psychoactive drugs, *e.g.,* barbiturates, benzodiazepines, and volatile anesthetics, potentiate activity of GABA at the $GABA_A$ receptor. Propofol also inhibits the activity of the N-methyl-D-asparate (NMDA) receptor; as does ketamine, another anesthetic with significant abuse potential.

Since propofol is the active metabolite of fospropofol, the abuse potential of fospropofol is comparable to that of propofol. Animal self-administration studies demonstrated that the reinforcing effects of propofol are relatively low and comparable to midazolam and other schedule IV benzodiazepines. Both drug-naïve and methohexital-trained (schedule IV barbiturate) rats self-administer propofol under a fixed ratio schedule. In baboons after substituting for cocaine, subanesthetic doses of propofol maintained low-to-high levels of self-administration.

Schedule IV sedative-hypnotics like methohexital and midazolam are known to produce euphoric moods as adverse events and have histories of abuse in the U.S. and elsewhere. The adverse events associated with fospropofol are similar to those experienced with schedule IV sedative-hypnotics. In humans, the most commonly reported adverse events were paresthesia (abnormal skin sensations, *e.g.,* burning, itching), pruritus (itching), headache, and dizziness. In nine clinical studies in healthy humans (n = 273), subjects were administered intravenous (i.v.) fospropofol. Within that population, 0.7 percent reported euphoria and disorientation adverse events (DHHS evaluation, 2008).

The current abuse profiles of propofol, the active metabolite of fospropofol, indicate that propofol is abused by medical professionals since they have access to the drug in medical facilities which perform anesthesia, according to the Adverse Event Reporting System (AERS) DataMart database (DHHS evaluation, 2008). Although the fospropofol product Lusedra® will be marketed as an i.v. dosage form, in the New Drug Application (NDA) submitted to the DHHS, it has been demonstrated that after oral administration fospropofol is active in the body. The oral activity of fospropofol increases the likelihood of its abuse by other routes of administration and its use to commit other crimes (*e.g.,* date-rape).

Withdrawal symptoms observed upon ceasing long-term administration of a substance are indicative of a substance's ability to produce physical dependence. The effects of long-term administration of fospropofol were not studied in the clinical trials so the dependence potential of fospropofol is best demonstrated by the withdrawal syndrome associated with long-term use of propofol. There have been published reports of withdrawal symptoms upon abrupt cessation of administration of propofol after several days of treatment. The symptoms included agitation, tremors, tachycardia, tachypnea, hyperpyrexia, confusion, and hallucinations. These symptoms are similar to the symptoms observed upon withdrawal from benzodiazepines. Withdrawal symptoms improve once administration of propofol is reinitiated. A delusional state lasting up to seven days may occur before full mental functioning returns.

References to the above studies may be found in the Health and Human Services scheduling recommendation and DEA's independent analysis, both of which are available on the electronic docket associated with this rule making.

Since fospropofol is a new molecular entity, there has been no evidence of diversion, abuse, or law enforcement encounters involving the drug. On February 27, 2009, the Acting Assistant Secretary for Health, Department of Health and Human Services (DHHS), sent the Deputy Administrator of DEA a scientific and medical evaluation and a letter recommending that fospropofol be placed into schedule IV of the CSA. Enclosed with the February 27, 2009, letter was a document prepared by the FDA entitled, ''Basis for the Recommendation for Control of Fospropofol and Its Salts in Schedule IV of the CSA.'' The document contained a review of the factors which the CSA requires the Secretary to consider (21 U.S.C. 811(b)).

The factors considered by the Assistant Secretary of Health and DEA with respect to fospropofol were:

1. Its actual or relative potential for abuse;
2. Scientific evidence of its pharmacological effects;
3. The state of current scientific knowledge regarding the drug;
4. Its history and current pattern of abuse;
5. The scope, duration, and significance of abuse;
6. What, if any, risk there is to the public health;
7. Its psychic or physiological dependence liability; and
8. Whether the substance is an immediate precursor of a substance already controlled under this subchapter. (21 U.S.C. 811(c))

Based on the recommendation of the Assistant Secretary for Health, received in accordance with section 201(b) of the Act (21 U.S.C. 811(b)), and the independent review of the available data by DEA, the Deputy Administrator of DEA, pursuant to sections 201(a) and 201(b) of the Act (21 U.S.C. 811(a) and 811(b)), finds that:

1. Fospropofol has a low potential for abuse relative to the drugs or substances in schedule III. Although there is no direct comparison to a schedule III substance, this finding is based on the demonstration of the abuse potential of propofol, the active metabolite, relative to the schedule IV substances, methohexital and midazolam;
2. Fospropofol has a currently accepted medical use in treatment in the U.S.; Fospropofol under the trade name Lusedra® was approved for marketing as a product indicated for monitored anesthesia care by FDA on December 12, 2008; and
3. Abuse of fospropofol may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III. This finding is based on

the symptoms exhibited upon withdrawal from propofol.

Based on these findings, the Deputy Administrator of DEA concludes that fospropofol, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible warrants control in schedule IV of the CSA. (21 U.S.C. 812(b)(4))

Comments and Requests for Hearing

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (5 U.S.C. 556 and 557). All persons are invited to submit their comments or objections with regard to this proposal. Requests for a hearing may be submitted by interested persons and must conform to the requirements of 21 CFR 1308.44 and 1316.47. The request should state, with particularity, the issues concerning which the person desires to be heard and the requestor's interest in the proceeding. Only interested persons, defined in the regulations as those ''adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811),'' may request a hearing. 21 CFR 1308.42. Please note that DEA may grant a hearing only ''for the purpose of receiving factual evidence and expert opinion regarding the issues involved in the issuance, amendment or repeal of a rule issuable'' pursuant to 21 U.S.C. 811(a). All correspondence regarding this matter including comments, objections, and requests for hearing should be submitted to DEA using the address information provided above.

Requirements for Handling Fospropofol

If this rule is finalized as proposed, fospropofol would be subject to CSA regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, dispensing, importing and exporting of a schedule IV controlled substance, including the following:

Registration. Any person who manufactures, distributes, dispenses, imports, exports, engages in research or conducts instructional activities with fospropofol, or who desires to manufacture, distribute, dispense, import, export, engage in instructional activities or conduct research with fospropofol, would need to be registered to conduct such activities in accordance with 21 CFR part 1301.

Security. Fospropofol would be subject to Schedules III–V security requirements and would need to be manufactured, distributed, and stored in accordance with 21 CFR 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c), 1301.76, and 1301.77.

Labeling and Packaging. All labels and labeling for commercial containers of fospropofol which are distributed on or after finalization of this rule would need to comply with requirements of 21 CFR 1302.03–1302.07.

Inventory. Every registrant required to keep records and who possesses any quantity of fospropofol would be required to keep an inventory of all stocks of fospropofol on hand pursuant to 21 CFR 1304.03, 1304.04 and 1304. Every registrant who desires registration in schedule IV for fospropofol would be required to conduct an inventory of all stocks of the substance on hand at the time of registration.

Records. All registrants would be required to keep records pursuant to 21 CFR 1304.03, 1304.04, 1304.21, 1304.22, and 1304.23.

Prescriptions. All prescriptions for fospropofol or prescriptions for products containing fospropofol would be required to be issued pursuant to 21 CFR 1306.03–1306.06 and 1306.21, 1306.22–1306.27.

Importation and Exportation. All importation and exportation of fospropofol would need to be in compliance with 21 CFR part 1312.

Criminal Liability. Any activity with fospropofol not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act occurring on or after finalization of this proposed rule would be unlawful.

Regulatory Certifications

Executive Order 12866

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order 12866, section 3(d)(1).

Regulatory Flexibility Act

The Deputy Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. Fospropofol products will be used for monitored anesthesia care (MAC) sedation in adult patients undergoing diagnostic or therapeutic procedures. Handlers of fospropofol will also handle other controlled substances used for sedation which are already subject to the regulatory requirements of the CSA.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices: or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby proposes that 21 CFR part 1308 be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.14 is amended in paragraph (c), by redesignating paragraphs (c)(23) through (c)(51) as paragraphs (c)(24) through (c)(52) and adding a new paragraph (c)(23) as follows:

§ 1308.14 Schedule IV.

* * * * *

(c) * * *

(23) Fospropofol 2138

* * * * *

Dated: July 16, 2009.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–17538 Filed 7–22–09; 8:45 am]

BILLING CODE 4410–09–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2003–0062: FRL–8934–3]

RIN 2060–AP65

Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$); Proposal To Extend Administrative Stay

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to extend for an additional nine months the existing administrative stay of the ‘‘grandfathering’’ provision for particulate matter less than 2.5 micrometers ($PM_{2.5}$) requirements in the Federal Prevention of Significant Deterioration (PSD) program published in the **Federal Register** on May 16, 2008 as part of the final rule entitled, ‘‘Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$).’’ The grandfathering provision under the Federal PSD program allows the permitting authority to review PSD permit applications received before July 15, 2008 according to EPA's 1997 policy of satisfying the requirements for particulate matter less than 10 micrometers (PM_{10}) as a surrogate for meeting the new requirements for $PM_{2.5}$.

The existing administrative stay is in effect for three months; that is, from June 1, 2009 until September 1, 2009. This action proposes to extend the existing administrative stay by an additional nine months, which we believe will allow for sufficient time for EPA to propose, take public comment on, and issue a final action concerning the repeal of the grandfathering provision for $PM_{2.5}$ in the Federal PSD program.

DATES: Comments must be received on or before August 24, 2009.

Public Hearing. If anyone contacts EPA requesting the opportunity to speak at a public hearing concerning the proposed regulation by August 3, 2009, we will hold a public hearing on August 7, 2009. If a hearing is held, the record for the hearing will remain open until September 8, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0062, by one of the following methods:

- *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket, Environmental Protection Agency, Mail code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to the applicable docket. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ‘‘anonymous access’’ system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Public Hearing. If a public hearing is held, it will be held at the U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20004.

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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1742, and the telephone number for the Air Docket is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Mr. Dan deRoeck, Air Quality Policy Division, (C504–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number (919) 541–5593; fax number (919) 541–5509; or e-mail address: *deroeck.dan@epa.gov.*

To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–0641; fax number (919) 541–5509; e-mail address: *long.pam@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Entities affected by this proposed action are the owners and operators of proposed new sources and modifications who submitted a complete application for a PSD permit before the July 15, 2008 effective date of the $PM_{2.5}$ NSR Implementation Rule, but have not yet received their permit to construct. EPA estimates that fewer than 20 proposed sources are covered by the grandfathering provision that we are proposing to repeal. At least two of the projects have already received their permit to construct prior to EPA taking action to stay the provision.

Entities also affected by this proposed rule include State and local reviewing authorities and Indian country with new and modified major stationary sources affected by this rule.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit information containing CBI to EPA through *http://www.regulations.gov* or e-mail. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, Attention: Docket ID EPA–HQ–OAR–2003–0062. 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 your comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Where Can I Get a Copy of This Document and Other Related Information?

In addition to being available in the docket, an electronic copy of this proposed rule will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this final rule will be posted in the regulations and standards section of our NSR home page located at *http://www.epa.gov/nsr.*

D. How Can I Find Information About a Possible Public Hearing?

To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–0641; fax number (919) 541–5509; e-mail address: *long.pam@epa.gov.*

E. How Is This Preamble Organized?

II. This Action

On May 16, 2008, the EPA (''we'') issued a final rule amending our PSD and nonattainment NSR regulations to add requirements for the preconstruction review of $PM_{2.5}$. 73 FR 28321. The amendments addressed the major source threshold, significant emissions rate and offset ratios for $PM_{2.5}$; interpollutant trading for offsets; and applicability of NSR to $PM_{2.5}$ precursors. The rule also provided for the transition of the new requirements for $PM_{2.5}$ in the NSR permitting process.

On February 10, 2009, Earthjustice, on behalf of the Natural Resources Defense Council and Sierra Club, submitted a petition for reconsideration of four specific provisions of the May 2008 final rule as provided for in Clean Air Act (CAA) 307(d)(7)(B).[1] The specific provisions challenged by the petitioners include: (1) A transition period for PSD programs in States with approved PSD rules in their approved State Implementation Plans (SIPs) to revise and submit their new $PM_{2.5}$ regulations to EPA within three years of the publication of the final rule. During the transition period, the rule allows States to continue using EPA's 1997 surrogate policy by which an analysis based on PM_{10} can be used to meet the requirements for the otherwise required $PM_{2.5}$; (2) ''grandfathering'' under the Federal PSD program for permit applications submitted before the July 15, 2008 effective date of the new rule, which allows the PM_{10} surrogate policy to continue to be used as the basis for approving such permits for $PM_{2.5}$; (3) a transition period, during which time EPA is re-evaluating its test methods for condensable particulate matter (CPM) emissions, whereby States are not required to account for CPM in the permitting process; and (4) use of recommended interpollutant trading ratios to facilitate the trading of $PM_{2.5}$ precursors emissions reductions for new emissions of $PM_{2.5}$ in areas designated ''nonattainment'' for $PM_{2.5}$.

Under CAA 307(d)(7)(B), the Administrator may commence a reconsideration proceeding if the petitioner raises an objection to a rule that was impracticable to raise during the comment period or if the grounds for the objection arose after the comment period. In either case, the objection must be of central relevance to the outcome of the rule. The

[1] Paul Cort, Earthjustice, on behalf of the Natural Resources Defense Council and Sierra Club, EPA–HQ–OAR–2003–0062–0281.

Administrator may stay the effectiveness of the rule for up to three months during such reconsideration.

On April 24, 2009, we responded to the February 10, 2009 petition by letter indicating that we were convening a reconsideration proceeding for all four issues challenged in the petition and granting a three-month administrative stay of one of the provisions—the grandfathering provision for $PM_{2.5}$ contained in the Federal PSD program at 40 CFR 52.21(i)(1)(xi). The letter also indicated that we would publish a notice of proposed rulemaking ''in the near future'' to propose repealing the grandfathering provision for $PM_{2.5}$ in the Federal PSD program, on the grounds that it was adopted without prior public notice and is no longer substantially justified in light of the resolution of technical issues with respect to $PM_{2.5}$ monitoring, emissions estimation, and air quality modeling that led to the PM_{10} surrogate policy in 1997.

The administrative stay of the grandfathering provision for $PM_{2.5}$ was issued and became effective on June 1, 2009. *See* 74 FR 26098, FR Doc. E9–12575. As noted above, our authority to stay a rule or portion thereof solely under the Administrator's discretion is limited to three months. When we have issued similar administrative stays in the past, it has often been our practice to also propose an extension of the stay through a rulemaking process to ensure that there is no gap between the end of the stay and the completion of the final action. In this case, we believe that an extension of the administrative stay for an additional nine months would provide adequate time for EPA to propose, take comment on, and issue a final action on issues that are associated with the grandfathering provision for $PM_{2.5}$ that we are proposing to repeal. Therefore, we propose to extend the administrative stay of the grandfathering provision for $PM_{2.5}$ contained in the Federal PSD program at 40 CFR 52.21(i)(1)(xi) for an additional nine months, until June 1, 2010. As alternatives, we also solicit comment on different time periods for the extension of the stay: (1) For six months, until March 1, 2010; or (2) for twelve months, until September 1, 2010.

Note that we are not taking comment at this time on any substantive issues concerning the repeal of the grandfathering provision for $PM_{2.5}$ contained in the Federal PSD program, or on any of the other provisions subject to the reconsideration. This notice simply proposes to further extend the administrative stay, so comments should be limited to the issue of whether and how long to extend the existing administrative stay. A separate **Federal Register** notice published in the near future will specifically solicit comment on issues related to the repeal of the grandfathering provision for $PM_{2.5}$ contained in the Federal PSD program. In yet another subsequent notice, we plan to solicit comment on issues related to the remaining three provisions of the May 2008 final rule for which the Administrator granted reconsideration.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it raises novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This action only proposes to extend the existing administrative stay for an additional nine months.

However, the Office of Management and Budget has previously approved the information collection requirements contained in the existing regulations under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0033 [EPA ICR No. 1230.21]. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any new requirements on small entities. We have determined that small businesses will not incur any adverse impacts because EPA is taking this action to propose an extension of the existing administrative stay of one amendment to the regulations at 40 CFR 52.21 concerning the grandfathering provision that affects fewer than 20 major stationary sources. No costs are associated with this amendment.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action does not contain a Federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. This action only proposes to extend the existing administrative stay of one provision of the regulations at 40 CFR 52.21 concerning the grandfathering provision that affects fewer than 20 sources. Thus, this rule is not subject to the requirements of sections 202 or 205.

This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the EO to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. This action only proposes to extend the existing administrative stay of one provision of the regulations at 40 CFR 52.21 concerning the grandfathering provision for $PM_{2.5}$ that affects fewer than 20 sources. Thus, EO 13132 does not apply to this rule.

In the spirit of EO 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

This action does not have Tribal implications, as specified in EO 13175 (65 FR 67249, November 9, 2000.) This action will not impose any new obligations or enforceable duties on Tribal governments. Thus, EO 13175 does not apply to this action.

EPA specifically solicits additional comment on this proposed action from Tribal officials.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because this proposal only proposes to extend the existing administrative stay of one provision of the regulations at 40 CFR 52.21 concerning the grandfathering provision for $PM_{2.5}$ that affects fewer than 20 sources. However, EPA solicits comments on whether the proposal would result in an adverse environmental effect that would have a disproportionate effect on children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This proposal only proposes to extend the existing administrative stay of one provision of the regulations at 40 CFR 52.21 concerning the grandfathering provision for $PM_{2.5}$ that affects fewer than 20 sources.

I. National Technology Transfer and Advancement Act

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

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

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

EPA has determined that this proposed rule will not have a disproportionately high and adverse human health or environmental effect on minority or low-income populations because it only seeks to extend the existing administrative stay on one provision in the regulations at 40 CFR 52.21 concerning the grandfathering provision for $PM_{2.5}$ that affects fewer than 20 sources.

K. Determination Under Section 307(d)

Pursuant to sections 307(d)(1)(J) and 307(d)(1)(V) of the CAA, the Administrator determines that this action is subject to the provisions of section 307(d). Section 307(d)(1)(V) provides that the provisions of section 307(d) apply to ''such other actions as the Administrator may determine.''

IV. Statutory Authority

The statutory authority for this action is provided by section 301(a) of the CAA as amended (42 U.S.C. 7601(a)). This notice is also subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

List of Subjects in 40 CFR Part 52

Administrative practices and procedures, Air pollution control, Environmental protection, Intergovernmental relations.

Dated: July 16, 2009.

Lisa P. Jackson,

Administrator.

[FR Doc. E9–17541 Filed 7–22–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1200

[EPA–HQ–OAR–2008–0201–FRL–8934–4]

RIN 2060—AP14

Waste Energy Recovery Registry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to establish the criteria for including sources or sites in a Registry of Recoverable Waste Energy Sources (Registry), as required under Title IV, Subtitle D of the Energy Independence and Security Act of 2007. The Agency is also proposing the Survey processes by which EPA will collect data and populate the Registry. The rule would apply to major industrial and large commercial sources as defined by EPA in this rulemaking. This proposed rule would not require the installation of new monitoring equipment; rather it would require only that sources above certain threshold levels that wish to be included in the Registry enter specific already-monitored data points into the voluntary Survey, which is a software tool that will calculate the quantity and quality of potentially recoverable waste energy.

DATES: The public may comment on this proposed rule until September 21, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0201, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
• *E-mail: a-and-r-Docket@epa.gov.*
• *Fax:* (202) 566–1741.
• *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 2822T, Attention Docket ID No. EPA–HQ–OAR–2008–0201, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
• *Hand Delivery:* Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Room 3334, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0201. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Site is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Katrina Pielli, Climate Protection Partnerships Division, Office of Atmospheric Programs (MC 6202J), Environmental Protection Agency, 1200 Pennsylvania Ave NW., Washington, DC 20460; telephone number: (202) 343–9610; fax number (202) 343–2204; e-mail address: *pielli.katrina@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this preamble is organized as follows:

I. General Information

A. Does This Action Apply To Me?

This is a proposed regulation. If finalized, these regulations would affect owners and operators of major industrial and large commercial sources (as defined in this regulation). Regulated categories and entities could include the following:

Code	2002 NAICS title
211	Oil and Gas Extraction.
212	Mining (except Oil and Gas).
221320	Sewage Treatment Facilities.
221330	Steam and Air-Conditioning Supply.

Code	2002 NAICS title
31–33	Manufacturing.
311	Food Manufacturing.
312	Beverage and Tobacco Product Manufacturing.
313	Textile Mills.
314	Textile Product Mills.
315	Apparel Manufacturing.
316	Leather and Allied Product Manufacturing.
321	Wood Product Manufacturing.
322	Paper Manufacturing.
323	Printing and Related Support Activities.
32411	Petroleum Refineries.
324191	Petroleum Lubricating Oil and Grease Manufacturing.
325	Chemical Manufacturing.
326	Plastics and Rubber Products Manufacturing.
327	Nonmetallic Mineral Product Manufacturing.
3311	Iron and Steel Mills and Ferroalloy Manufacturing.
3313	Alumina and Aluminum Production and Processing.
3314	Nonferrous Metal (except Aluminum) Production and Processing.
3315	Foundries.
332	Fabricated Metal Product Manufacturing.
333	Machinery Manufacturing.
334	Computer and Electronic Product Manufacturing.
335	Electrical Equipment, Appliance, and Component Manufacturing.
336	Transportation Equipment Manufacturing.
337	Furniture and Related Product Manufacturing.
339	Miscellaneous Manufacturing.
44511	Supermarkets and Other Grocery (except Convenience) Stores.
4862	Pipeline Transportation of Natural Gas.
48811	Airport Operations.
48831	Port and Harbor Operations.
493120	Refrigerated Warehousing and Storage.
518	Internet Service Providers, Web Search Portals, and Data Processing Services.
521	Monetary Authorities—Central Bank.
522	Credit Intermediation and Related Activities.
5221	Depository Credit Intermediation.
5222	Nondepository Credit Intermediation.
6111	Elementary and Secondary Schools.
6112	Junior Colleges.
6113	Colleges, Universities.
622	Hospitals.
623	Nursing and Residential Care Facilities.
71211	Museums.
71213	Zoos and Botanical Gardens.
71311	Amusement and Theme Parks.
71321	Casinos (except Casino Hotels).
72111	Hotels (except Casino Hotels) and Motels.
72112	Casino Hotels.
812331	Linen Supply.
812332	Industrial Launderers.
92214	Correctional Institutions.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding facilities likely to be covered by this action. This table lists the types of facilities that EPA is now aware of that could potentially be affected by this action. Other types of facilities not listed in the table could also be subject to reporting requirements. To determine whether your site is affected by this action, you should carefully examine the applicability criteria found in the regulation text of this rule. If you have questions regarding the applicability of this action to a particular site, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Should I Consider as I Prepare My Comments to EPA?

Do not submit information containing CBI to EPA through *http://www.regulations.gov* or e-mail. Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0201. 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 CBI or other information whose disclosure is restricted by statute.

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.

C. Where Can I Get a Copy of This Document?

All documents in the docket are listed in the *http://www.regulations.gov* index. Publicly available docket materials are also available in hard copy at the Air Docket, EPA/DC, EPA West, Room

B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Site 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.

D. Abbreviations Used in This Document

Combined Heat and Power (CHP)
Commercial Buildings Energy Consumption Survey (CBECS)
Commercial Energy Profile Database (CEPD)
Confidential Business Information (CBI)
Detailed Quantitative Information (DQI)
US EPA's Emission & Generation Resource Integrated Database (eGRID)
Energy Independence and Security Act of 2007 (EISA)
Energy Policy and Conservation Act (EPCA)
Federal Energy Regulatory Commission (FERC)
Freedom of Information Act (FOIA)
Greenhouse Gas (GHG)
Kilowatt (kW)
Megawatt (MW)
Million British Thermal Units (MMBtu)
Million metric tons of carbon dioxide (MMTCO2)
New Source Performance Standards (NSPS)
North American Industry Classification System (NAICS)
National Emissions Inventory (NEI)
Operation and Maintenance (O&M)
Registry of Recoverable Waste Energy Sources (Registry)
Standard Cubic Feet per Minute (scf/min)
U.S. Environmental Protection Agency (EPA)
U.S. Environmental Protection Agency Combined Heat and Power Partnership (EPA CHPP)
Waste Energy Survey Tool (WEST)

II. Background Information

A. What Are the Purpose and Requirements of EISA Title IV, Subtitle D?

On December 19, 2007 the President of the United States signed the Energy Independence and Security Act of 2007 (EISA) which was designed to improve vehicle fuel economy and help reduce US dependence on oil.

Title IV of EISA contains extensive new provisions designed to save energy in buildings and industries. EISA Subtitle D focuses on industrial energy efficiency and contains new provisions designed to improve energy efficiency by promoting combined heat and power (CHP), waste energy recovery, and district energy systems.

This proposed rule addresses the U.S. Environmental Protection Agency's (EPA) obligation under EISA to publish a rule within 270 days of EISA enactment that establishes the criteria by which sources or sites will be listed in a Registry of Recoverable Waste Energy Sources (Registry).

The rule also addresses the related EPA obligation under EISA to develop an ongoing Survey of major domestic industrial and large commercial sources as well as the sites at which the sources are located, and to conduct a review of each source for the quantity and quality of potential waste energy produced. This Survey is a necessary first step to gather the data needed to establish the Registry. EISA also directs EPA to establish the Registry within one year of EISA enactment.

The purposes of the Survey and Registry are to:

1. Provide a list of the economically feasible existing waste energy recovery opportunities in the US based on a Survey of major industrial and large commercial sources;

2. Provide State and national totals of the existing waste energy recovery opportunities, as well as the potential criteria pollutant and greenhouse gas emissions reductions that could be achieved with the capture and use of the waste energy recovery opportunities listed in the Registry;

3. Serve as the basis for potential waste energy recovery projects to qualify for financial and regulatory incentives as described in Energy Policy and Conservation Act (EPCA) Sections 373 ''Waste Energy Recovery Incentive Grant Program'' and 374 ''Additional Incentives for Recovery, Use, and Prevention of Industrial Waste Energy,'' as added by EISA.

B. What Is the Legal Authority for the Proposed Action?

EISA Title IV Subtitle D amends the Energy Policy and Conservation Act (EPCA) by adding a new Part E, titled ''Industrial Energy Efficiency,'' to Title III of EPCA (42 U.S.C. 6291 *et seq*). The new EPCA Section 372 directs EPA to establish a ''recoverable waste energy inventory program,'' which is to include ''an ongoing Survey of all major industrial and large commercial combustion sources in the United States (as defined by the Administrator) and the sites at which the sources are located,'' as well as ''a review of each source for the quantity and quality of waste energy produced at the source.'' Section 372 further provides that EPA is to publish a rule to establish criteria for including sites in a Registry of Recoverable Waste Energy Sources within 270 days of EISA enactment (September 19, 2008) and to establish the Registry not later than one year after enactment (December 19, 2008).

C. What Is the Relationship to Other EPA Waste Energy Recovery and CHP Efforts?

This rulemaking and Registry complement EPA's existing voluntary program, the Combined Heat and Power Partnership (EPA CHPP). EPA established EPA CHPP in October 2001 in response to President George W. Bush's 2001 National Energy Policy Report, which identified CHP as an efficient, clean power generation technology that should be encouraged. The EPA CHPP is a voluntary effort to reduce the environmental impact of power generation by promoting the use of CHP. The EPA CHPP has over 285 Partners, including energy users, project developers, State agencies, and energy service companies. Between 2001 and 2008, the EPA CHPP has assisted its Partners with over 400 projects representing 4,764 megawatts of new, environmentally-beneficial and cost-effective CHP capacity. On an annual basis, these projects will prevent the emission of more than 11.8 MMTCO2.[1] Resources permitting, EPA will leverage the EPA CHPP to provide technical assistance to the owners or operators of sources or sites in the Registry, regarding the optimum means of recovery of value from the waste energy stream, as directed under EPCA Section 372(g) ''Optimum Means of Recovery.''

III. Summary of the Proposed Rule

A. What Is the Overall Approach to the Survey and Registry?

1. What Are the Key Definitions and Interpretation?

As added by EISA, Section 371 of EPCA defines several important terms, including ''combined heat and power,'' ''project,'' ''recoverable waste energy,'' ''useful thermal energy,'' and ''waste energy.'' EPA is proposing to use the same definitions of ''combined heat and power,''[2] ''project'', ''recoverable waste energy'' and ''useful thermal energy'' as stated in EPCA Section 371.

As defined in EPCA Section 371, the term 'waste energy' includes three specified forms of waste energy as well as ''[s]uch other forms of waste energy as the Administrator may determine.'' EPA is providing examples of the three specified forms of waste energy below:

''(A) Exhaust heat or flared gas from any industrial process;''

Examples of part A of the definition of waste energy may include high temperature exhaust streams from glass

[1] EPA Combined Heat and Power Partnership. *http://www.epa.gov/chp/partnership/index.html.* Methodology described at *http://www.epa.gov/appdstar/pdf/2007AnnualReportFinal.pdf.*

[2] Other definitions of ''combined heat and power'' and ''cogeneration'' under the Clean Air Act can be found at: 40 CFR 60.41Da, 40 CFR 60.41b Subpart Db, 40 CFR 60.4420 Subpart KKKK, 40 CFR 97.102 Subpart AA, 40 CFR 97.202 Subpart AAA, 40 CFR 97.302 Subpart AAAA.

melters, cement kilns, and pipeline compressor turbine drives.

''(B) Waste gas or industrial tail gas that would otherwise be flared, incinerated, or vented;''

Examples of part B the definition of may include chemical and/or refinery off gases with combustible content, and combustible off gases from coke ovens.

''(C) A pressure drop in any gas, excluding any pressure drop to a condenser that subsequently vents the resulting heat; and''

Examples of part C of the definition of waste energy may include high pressure steam generated in a boiler that is subsequently reduced in pressure before being used in an industrial process or building heating system.

The definition of waste energy also includes ''(D) Such other forms of waste energy as the Administrator may determine.'' EPA is proposing a determination that waste energy include the potential opportunity for combined heat and power (CHP). In part, this is based on the statutory structure. EPCA Section 372 directs EPA to establish a Recoverable Waste Energy Inventory Program that includes a Survey and a Registry of Recoverable Waste Energy Sources. Section 372 is housed in Part E of EPCA, which is titled Industrial Energy Efficiency. Congress defined CHP for Part E of EPCA but did not include CHP-specific provisions in Part E. This suggests that Congress expected that EPA would consider opportunities for including CHP in the scope of the Survey and Registry. EPA believes it is appropriate to include CHP opportunities because doing so is consistent with the EISA goal of promoting the recovery of waste energy. In addition, CHP is inherently an energy efficiency measure where energy that is usually lost is recovered for useful purposes. This simultaneous generation of electricity and recovery of useful thermal energy from a single fuel source is more efficient than separate generation of power and thermal energy. Including potential CHP opportunities in the Registry will encourage more widespread consideration of this efficiency approach.

EISA Section 372 uses the terms ''facility'' and ''site'' interchangeably; for clarity, the proposed regulation uses ''site'' to refer to ''a building or group of buildings that provides a particular service or is used for a particular industrial application.'' References in this document to a ''facility'' should be understood as referring to the ''site.'' EPA is proposing to define ''source'' as ''any process or activity resulting in the release of waste energy.'' A site may have multiple sources.

Section 372 uses the terms ''major industrial combustion source'' and ''large commercial combustion source'' to refer to the types of sources to be included in the Survey. EPA believes that it has discretion to allow additional, non-combustion sources to participate in the Survey. EPA has not included the word ''combustion'' in the proposed regulatory definitions because not all waste energy as defined in EPCA Section 371 is necessarily generated by a combustion source. Waste heat, waste gas or pressure drop could all be the result of non-combustion operations (*e.g.,* an exothermic chemical reaction generating waste heat). As discussed elsewhere in this notice, EPA is proposing to include Combined Heat and Power (CHP) in the regulatory definition of waste energy. One application of CHP that provides cooling as the thermal output can be implemented at sites that are currently all-electric. EPA believes that it is appropriate to include non-combustion sources of waste energy within the scope of the Survey because doing so will promote recovery of waste energy consistent with the statutory intent. Completion of the Survey is voluntary; non-combustion sources of waste energy would incur no penalty if they elected not to participate. In addition, Section 372(d) of EPCA directs EPA to establish a Registry of Recoverable Waste Energy Sources but does not instruct EPA to limit the Registry to combustion sources. Because Survey data will be used to evaluate sources for inclusion in the Registry, the scope of the Survey must be at least as broad as the scope of the Registry. While combustion does occur at most of the sources within the Survey scope, EPA is proposing that both the Survey and the Registry be open to non-combustion sources, to assess their waste energy recovery opportunities based on the proposed thresholds. Thus, this proposed regulation uses ''major industrial source'' and ''large commercial source.'' This regulation also uses the term ''large commercial source'' to include institutions and multi-family housing.

2. What Are the Survey and Registry Scope?

The scope of the Survey and Registry will be based on the thresholds for major industrial and large commercial sources as proposed in this rule. EPA expects to contact 11,000 facilities within the initial thresholds proposed in this rule. Not all of these facilities will have sources that meet the secondary thresholds. The Survey results will directly affect the Registry scope; EPA will use them to populate the Registry. The Survey EPA is proposing is an Internet-based Survey, the Waste Energy Survey Tool (WEST), which would be downloaded by owners or operators of the sites or sources (the respondents). The respondents would enter data into WEST to be used to determine the potential waste energy recovery opportunity of the source. For more information on the proposed Survey questions, *see* the Technical Support Document—Waste Energy Survey Tool in the docket. Once a respondent has completed the Survey, WEST would generate a final summary report, which the respondent would subsequently submit to EPA via mail or e-mail.

WEST calculates the potential recoverable waste energy from each source using embedded algorithms based on the criteria proposed in this rule, using data provided by the site owner or operator. Sources or sites that meet the criteria included in this proposed rule would be included in the Registry. For more information on how the proposed Survey questions will allow WEST to calculate the payback for a potential waste energy recovery project, *see* the Technical Support Document—Economic Payback Calculation in the docket.

EPA is proposing to include the following information for each site in the Registry:

a. Site name, address, NAICS code;

b. Site contact person name, title, address, phone number, e-mail address;

c. The total waste energy recovery potential at the site; and

d. Date the listing was posted in the Registry.

EPA believes that the Registry, containing this information, will provide the site or source, the Agency, and private project developers of waste energy recovery systems valuable data on potential waste energy recovery opportunities that have been assessed by WEST. The Registry will not include detailed quantitative information as defined in this rule. The information EPA is proposing to include in the Registry is the minimum information needed for site or source operators or owners, and private project developers of waste energy recovery systems, to be aware that a potential waste energy recovery project has met the criteria included in this rule and facilitate conversations between private parties to pursue the capture and use of the potential waste energy.

As directed by EPCA Section 372(d)(2), EPA is also proposing to include in the Registry, nationally and by State, the total quantities of potentially recoverable waste energy from sources at the sites in the Registry, as well as the criteria pollutant (NO_X, SO_X) and greenhouse gas (GHG) emissions savings that might be achieved with recovery of the waste energy from all sources and sites listed in the Registry. Emissions savings of waste energy recovery projects will be estimated by comparing the emissions from the waste energy recovery system to the emissions that would normally occur without the system in place, including the displaced power plant emissions from grid electricity avoided by the output of the waste energy recovery system. Avoided grid emissions will be calculated based on EPA's Emission & Generation Resource Integrated Database (eGRID).[3]

3. What Are the Survey and Registry Schedules?

EPA is proposing that the Survey be completed by owners or operators of affected sources anytime following release of WEST. The Agency expects WEST to be released within 90 days of the final rule being published in the **Federal Register**. Submissions received within 60 days of WEST being released would be included in the initial launch of the Registry. Additional submissions received would be included in the Registry on a rolling basis.

Following the release of WEST, affected sites and sources can submit the Survey reporting information to the Agency at any time. Sites meeting the initial thresholds as defined in this rule for major industrial and large commercial sources and that are in the list of affected NAICS codes, as provided above under **SUPPLEMENTARY INFORMATION**, would receive the request from EPA to download and complete the Survey as described in this rule. Sites or sources that submit Survey reporting information would be included in the Registry if they meet the criteria proposed in this rule, whether or not EPA notified them of the Survey. EPA may contact the respondent to discuss their submission if it appears inaccurate.

EPCA Section 372(e) provides that an owner, operator or third-party developer may self-certify their sites and sources ''[s]ubject to any procedures that are established by the Administrator.'' It further provides that ''a site or source shall be included in the Registry only if the Administrator reviews and approves the self-certification.'' EPA is proposing to allow owners and operators, as well as third-party developers acting jointly with an owner or operator, to complete the Survey and submit the Survey results to EPA at any time. EPA believes this meets the intent of Section 372(e) while avoiding the need for a separate self-certification process. The Survey and Registry approach are constructed such that all Survey responses are generated by the algorithms embedded in the Survey tool (which are developed by EPA), regardless of when they are received by EPA. In addition, the Survey tool will be designed to not generate a final summary report if there are missing or incomplete fields. As such, the Agency is not proposing to create a separate option for self-certification. EPA invites comment on this approach.

EPA is proposing that the Survey and Registry be updated on an as-needed basis. The Agency intends to assess every three years relevant market conditions, technology status and applicable incentives, and make Survey adjustments as appropriate.

EPA invites comment on the proposed schedule.

B. Survey

1. What Is the Rationale Behind the Survey Approach?

In considering the potential approaches, EPA decided that a voluntary Internet-based Survey, such as WEST, would be most effective at providing EPA the site-specific source data necessary to accomplish the review of each source for the quantity and quality of waste energy produced. WEST would also provide owners or operators the ability to retain confidential or sensitive business data that could be exploited for competitive advantage by requiring only the Survey output to be submitted to EPA. In addition, WEST would not allow a respondent to submit an incomplete Survey response (will not calculate the final summary report), thereby reducing burden on EPA and the respondent by avoiding the need for additional interaction on the completeness of the Survey response.

EPA is proposing that WEST be downloaded from the Internet to the respondent's computer. If a respondent is unable to download the Survey tool, the respondent can contact EPA for alternate submission instructions (consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section). All information which EPA reasonably expects might be covered by a claim of confidentiality or otherwise be considered sensitive would remain on the respondent's computer. WEST will generate a final summary report based on that information using embedded algorithms and the respondent will submit the final summary report to EPA, which should not contain any sensitive business information. EPA is proposing WEST over a traditional Survey because the Agency will not need to collect any confidential or sensitive business information to accomplish the requirements of EISA. In addition, EPA believes the necessary information can be collected more efficiently and at a lower cost using WEST.

EPA considered alternatives to the proposed data collection approach. EPA considered utilizing the National Emissions Inventory (NEI) for the source specific information necessary for the Survey and Registry, but determined that NEI did not provide the type of information necessary for four primary reasons: NEI does not include data for waste gas streams or pressure drops so would not provide data for all types of waste energy, as described in Section A(1) of this preamble; NEI does not contain complete data sets; NEI contains data anomalies; and NEI data is not consistent across the States as to what specific information is included. EPA is requesting comment on the proposed data collection approach.

2. What Are the Major Industrial and Large Commercial Thresholds?

EPA is proposing an initial and a secondary threshold for major industrial sources, and an initial and a secondary threshold for large commercial sources. The initial thresholds are used to determine which sites within the list of affected NAICS codes should expect to receive the Survey. The secondary thresholds are used by the sites that receive the Survey to determine if they have sources with characteristics suitable for an economically-feasible waste energy recovery opportunity, as required by EISA, based on commercially-available technology. The proposed thresholds are:

a. Major Industrial Sources

- Initial threshold—site with 100 MMBtu/hour fuel use;
- Secondary threshold—process stacks with temperatures 500 °F or greater, flow rates greater than 7,000 to 50,000 scf/min depending on temperature, and minimum operating hours of 4,500 hrs/yr.

[3] eGRID, developed by EPA's Climate Protection Partnership Division's State and Local Branch, contains data on the environmental attributes of virtually all of the electric power generated in the United States, linking air emissions to electricity generated. The most recent version, the sixth edition of eGRID, *eGRID2007,* includes operational data from 2005. *http://www.epa.gov/cleanenergy/energy-resources/egrid/index.html.*

b. Large Commercial Sources

• Initial threshold—site with 1 MW average electric annual demand or 5 MMBtu/hour fuel input;

• Secondary threshold—minimum thermal or cooling load of 2.5 MMBtu/hour or 150 Tons, and minimum operating hours of 4,500 hrs/yr.

EPA is also proposing definitions of ''major industrial source'' and ''large commercial source'' that utilize these thresholds.

EPA is proposing that sources located at sites that do not meet the initial thresholds can complete the Survey if they meet the appropriate secondary threshold. The initial thresholds are intended to focus the Survey scope on those sites most likely to have sources that meet the criteria; they are not intended to prevent owners or operators of other sites from completing the Survey. If these sources or sites meet the secondary thresholds and all other criteria established in this rule, they would be placed in the Registry.

EPA considered establishing an initial threshold for major industrial sources, an initial threshold for large commercial sources, and sector-specific secondary thresholds based on NAICS codes. EPA believes that sector-specific thresholds are unnecessary since there are general considerations for waste energy opportunities, such as availability, temperature and flow rate, which are applicable across sectors.

In the development of thresholds, EPA considered the EISA obligation to survey all major industrial and commercial sources. EPA reviewed existing thresholds from other EPA regulations, including the New Source Performance Standards (NSPS), which could be used to denote major industrial or large commercial sources. EPA also reviewed relevant databases for other applicable thresholds. The threshold development also included reviewing existing analysis of waste energy projects by the EPA CHPP.

The proposed major industrial initial threshold of 100 MMBtu/hr is the NSPS threshold for industrial boilers. This NSPS, titled ''Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units,'' is available for reference at 40 CFR 60.40b. The proposed large commercial initial threshold of 1 MW average electric annual demand or 5 MMBtu/hour is reflective of the size of facilities associated with existing CHP commercial projects included in existing databases. These databases include the U.S. Department of Energy's Commercial Buildings Energy Consumption Survey (CBECS), CHP Installation database [4] and private databases including the IHS Commercial Energy Profile Database (CEPD).

EPA lacks data to definitively estimate the waste energy potential of major industrial and large commercial sources, the number of facilities or the individual facilities where this potential is located. This is likely a driver behind Congress' intent in obligating EPA to conduct an ongoing survey of all major industrial and large commercial sources for the quantity and quality of waste energy produced at the source. Given the current uncertainty regarding potential waste energy recovery opportunities, EPA is relying on existing databases and analyses for supporting information in establishing the Survey scope.

Based on the existing databases and analyses, there are approximately 8,000–12,000 combined commercial facilities above 1 MW of average electric demand and industrial facilities above 100 MMBTU/hr fuel use. Based on a review of existing CHP projects at industrial facilities, projects of 20 MW or greater represent 95 percent of total installed industrial CHP capacity. The profile of existing industrial CHP also shows that the larger industrial fuel consumers most likely represent a majority of the economically feasible CHP potential in terms of MW capacity. As stated above, there are no corresponding data sets for the other waste energy categories; however EPA believes it is reasonable to assume that the profile of opportunities for these waste energy categories would be similar to the CHP profile. Based on a review of the existing CHP profile for commercial applications, 1 MW and greater is the most economically feasible market with current technology and market conditions. CHP projects of 1 MW or larger represent 97 percent of the existing CHP capacity in the commercial sector. For supporting information on these thresholds, *see* the Technical Support Document—Evaluation of Initial Thresholds for the Registry of Recoverable Waste Energy Sources and for the Survey of Major Industrial and Large Commercial Sources in the docket.

EPA is requesting comment on the major industrial and large commercial thresholds.

3. What Is Detailed Quantitative Information and How Is It Applicable to the Survey and Registry?

Under EPCA Section 372(c)(3)(B) ''the owner or operator of a source at a site may elect to have detailed quantitative information (DQI) concerning the site not made public'' by notifying EPA of the election. This section also states that DQI shall be made available to the applicable State energy office and utility requested to support recovery of waste energy from the source or site pursuant to the incentives provided under EPCA Section 374. Respondents should note that while DQI will not appear in the Registry, there is potential for it to be disclosed through other means pursuant to EPCA Section 372(3)(B)(ii) or EPA's Freedom of Information Act (FOIA) regulations. DQI is a term created by EPCA Section 372(3)(B).

Section 374 allows a project owner or operator that is in the Registry to request that their State regulatory authority or nonregulated electric utility provide public notice, conduct a hearing, and make a determination whether or not it is appropriate to implement the regulatory incentives contained within this Section. These regulatory incentives allow an owner or operator of a waste energy recovery project identified in the Registry that generates net excess power to be eligible to benefit from at least one of the options described in Section 374 subsection (c) for disposal of the net excess power in accordance with the rate conditions and limitations described in Section 374 subsection (d).

As previously described, EPA is proposing to include the following information for each site in the Registry:

a. Site name, address, NAICS code;

b. Site contact person name, title, address, phone number, e-mail address;

c. The total waste energy recovery potential at the site; and

d. Date the listing was posted in the Registry.

EPA does not consider the types of information listed above to be DQI. The proposed Survey would not include an option for respondents to claim the information listed above as confidential business information (CBI) because the public availability of such information is crucial to fulfilling the purpose of the Registry. Since Congress directed that the Registry contain site level information, the above listed information is critical to identifying the site with the waste energy recovery opportunity based on the Survey data. The remaining outputs from the Survey are important for EPA to determine whether the site has met the criteria for inclusion in the Registry; however, their posting in the Registry is not crucial to the Registry's operation. For simplicity, EPA proposes to treat the remaining Survey outputs as DQI. EPA will not post DQI in the Registry.

[4] ICF International, *http://www.eea-inc.com/chpdata/index.html.*

Respondents should be aware that EPCA Section 372 provides for the disclosure of DQI to ''the applicable State energy office'' and ''any utility requested to support recovery of waste energy from the source'' under Section 374. In addition, EPA could receive a request to release DQI under the Freedom of Information Act (FOIA). While the proposed Survey is designed to avoid the transmission to EPA of information for which facilities might be expected to assert a claim of confidentiality, respondents will nonetheless have the option of asserting such a claim for all or part of their DQI. Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in EPA's Confidential Business Information (CBI) regulations at 40 CFR part 2 subpart B.

EPA is proposing to define DQI as the following Survey output with respect to individual sources at a site:

(1) Source description (*e.g.,* glass furnace, process flare);

(2) Quantitative estimates of:

- For each source, the CO_2 emissions reduction potential (tons/year).
- For each source, the criteria pollutant reduction potential (NO_X and SO_X tons/yr).
- For waste heat sources, the waste heat to power recovery potential (MW).
- For waste gas sources, the waste gas to power recovery potential (MW).
- For pressure drop sources, the pressure drop to power recovery potential (MW).
- For CHP potential, the CHP potential (MW) based on sizing to thermal (heating and/or cooling) load.

(3) Yes/no answers to the following questions:

- For each waste heat source, combustible source, pressure drop source, and potential CHP opportunity, does the potential project have a five year payback or less (yes/no).
- For each waste heat source, combustible source, pressure drop source, and potential CHP opportunity, does the potential project meet the primary purpose criteria (yes/no).
- For each new source, does the potential project meet the 60% efficiency test (yes/no).
- For each waste heat source, does the site have a waste heat recovery opportunity that passes all screening criteria (yes/no).
- For each waste gas or industrial tail gas source, does the site have a waste gas or industrial tail gas recovery opportunity that passes all screening criteria (yes/no).
- For each pressure drop source, does the site have a pressure drop recovery opportunity that passes all screening criteria (yes/no).
- For each potential CHP opportunity, does the site have a CHP opportunity that passes all screening criteria (yes/no).

For more information on the proposed Survey questions, *see* the Technical Support Document—Waste Energy Survey Tool in the docket.

A State energy office may request DQI for a specific site in its State by submitting a request to EPA via mail (address at *http://www.epa.gov/wasteenergyregistry*) or e-mail at *wasteenergyregistry@epa.gov.* E-mail requests may include the subject line ''State energy office DQI request.'' All DQI requests shall include: the requesting State energy office name, address, city, State, contact person, and the site or source name, address, and NAICS code as displayed in the Registry.

A utility may request DQI for a specific site in its service territory to support recovery of waste energy from the source pursuant to the incentives provided under EPCA Section 374 by submitting a request to EPA via mail (address at *http://www.epa.gov/wasteenergyregistry*) or e-mail at *wasteenergyregistry@epa.gov.* E-mail requests may include the subject line ''Utility DQI request.'' All DQI requests shall include the utility name, address, city, State, and NAICS code of the site, as displayed in the Registry.

Since Section 372(c)(3)(B) states that utilities may request DQI in the context of supporting recovery of waste energy from the source/s pursuant to the incentives provided under EPCA Section 374, EPA urges utilities making such a request to include supporting information that the project has requested a hearing under Section 374. Supporting information could take the form of notification from the applicable State regulatory authority that the project has requested a hearing or other similar documentation. To minimize the burden, supporting information can include a Web site address where documentation is readily available. EPA may not be able to release DQI without such supporting information.

EPA is requesting comment on the information proposed to be considered DQI .

4. What Is the Approach To Determine if a Potential Waste Energy Recovery Project Has a Five-year Payback or Less?

EPCA Section 372(b)(2)(A) states that EPA's criteria for inclusion in the Registry shall include:

''A requirement that, to be included in the Registry, a project at the site shall be determined to be economically feasible by virtue of offering a payback of invested costs not later than 5 years after the date of first full project operation (including incentives offered under this part);''

EPA is proposing to use WEST to determine if the site has economically feasible potential energy recovery project/s based on the 5 year financial payback requirement described above. WEST will include algorithms for estimating simple paybacks for waste energy recovery projects based on the site and source information requested of each site in the Survey. Simple payback for a waste energy recovery project would be calculated by dividing the total installed cost of the project by the projected annual savings of the project. The annual savings would be estimated by calculating potential savings from reduced purchases of electricity (essentially the electricity generated by the waste energy recovery system times the average purchase price for electricity at the site) less any incremental operating costs required by the project (for example, operating and maintenance [O&M] costs for the energy recovery equipment or incremental fuel use for CHP projects).

Section 372 requires that the payback determination include any financial incentives established in Part E of EPCA. The only financial incentives included in Part E are in Sections 373 and 374.

EPCA Section 373 directs the Department of Energy to establish a waste energy recovery incentive grant program to provide incentive grants to:

''(a)(1) Owners and operators of projects that successfully produce electricity or incremental useful thermal energy from waste energy recovery;

(2) Utilities for purchasing or distributing the electricity; and

(3) States that have achieved 80 percent or more of recoverable waste heat recovery opportunities.''

EPCA Section 374 allows a project owner or operator to request that their State regulatory authority or nonregulated electric utility ''provide public notice and conduct a hearing'' with regard to the standard for sales of excess power described in Section 374(b), and ''on the basis of the hearing, consider and make a determination whether or not it is appropriate to implement'' that standard.

Under Section 374(b), the standard for sales of excess power ''shall provide that an owner or operator of a waste energy recovery project identified in the Registry that generates net excess power shall be eligible to benefit from at least one of the options described in subsection (c) for disposal of the net excess power in accordance with the rate conditions and limitations described in subsection (d).'' The options include: (1) Sale of net excess power to utility; (2) transport by utility for direct sale to third party; (3) transport over private transmission lines.

Because Section 374 does not contain quantified financial incentives, EPA is proposing not to include Section 374 incentives in the payback determination. Section 374(d) describes how the regulatory incentives will be offered under purchase and transport rate conditions that reflect the rate components defined in that section.

The only financial incentives quantified in Section 373 for owners and operators of waste energy recovery projects are those described in Section 373(b). First, Section 373(b)(3)(A) provides for a grant at the rate of $10/MWh of ''documented electricity produced from recoverable waste energy.'' This grant is limited to the first three calendar years of electricity production. Second, Section 373(b)(4) provides for a grant at the rate of $10/3,412,000 Btus of excess thermal energy ''used for a purpose different from that for which the project is principally designed.'' EPA is proposing to add these financial incentives to the projected annual savings of the potential waste energy project. These financial incentives would be paid to the owners or operators of waste energy recovery projects. Inclusion of the Section 373 incentives in the payback calculation does not automatically qualify a site or source included in the Registry listing for such incentives.

The algorithms embedded in WEST will estimate total installed costs, incremental O&M costs, electricity generated, and incremental fuel use and cost for each potential waste energy recovery project at a responding site. Each of these estimates will be based on rules of thumb for sizing, efficiency, and costs that are specific to each of the potential waste energy recovery categories (*e.g.,* waste heat recovery, waste gas recovery, pressure drop recovery, CHP). While the performance and cost estimates will vary by category, the calculation of payback itself will be similar. For more information, *see* the Technical Support Document—Economic Payback Calculation in the docket.

EPA is requesting comment on the approach to including incentives offered in EPCA Section 373.

5. What Is the Approach to Ensure Projects Proposed for Inclusion in the Registry Are Not Developed or Used for the Primary Purpose of Making Sales of Excess Electric Power Under the Regulatory Provisions of Subtitle D Part E?

EPCA Section 372(b)(2)(B) directs EPA to establish criteria for including sites in the Registry and specifically directs EPA to include criteria on ''standards to ensure that projects proposed for inclusion in the Registry are not developed or used for the primary purpose of making sales of excess electric power under the regulatory provisions of this part.'' EPA interprets the ''regulatory provisions of this part'' as a reference to EPCA Part E—Industrial Energy Efficiency, Section 374—Additional Incentives for Recovery, Use and Prevention of Industrial Waste Energy. Section 374 is the only section of Part E that contains regulatory provisions concerning the sale of excess power.

In proposing regulatory language consistent with EPCA Section 372(b)(2)(B) (the ''primary purpose'' criterion), EPA is looking to balance the Congressional directive to conduct a Survey and establish a Registry of recoverable waste energy sources and sites on which the sources are located, with the goal of ensuring that proposed projects have legitimate thermal and electric uses, and are not designed with the purpose of maximizing electric sales to the utility under EPCA Section 374. EPA recognizes that there is an existing body of regulatory decisions by State regulatory authorities and the Federal Electric Regulatory Commission (FERC) related to cogeneration facilities thermal output being used in a productive and beneficial manner, as well as other regulatory decisions on the purchase of excess electricity by utilities. EPA also recognizes that in certain industries and situations (such as chemical and refining), the thermal demand is sufficiently large that thermally-based CHP or waste heat recovery projects would generate more electricity than can be used on-site. In such cases, sale of excess electricity to the utility is a prerequisite to maximize energy and carbon savings, and optimize project economics. EPA also recognizes that 12 States currently recognize waste heat recovery or CHP as an eligible resource in their Renewable Portfolio Standard, Energy Efficiency Portfolio Standard or Alternative Energy Portfolio Standard.[5]

[5] EPA Combined Heat and Power Partnership. Energy Portfolio Standards and the Promotion of Combined Heat and Power. *http://www.epa.gov/chp/documents/eps_and_promotion.pdf.*

To strike the balance described above, EPA is proposing that for a potential waste energy project to be included in the Registry, it must meet one of the following primary purpose criteria:

(i) At least 50 percent of the aggregated annual energy output of the site (as defined in this rule) is to be used for industrial or commercial purposes, and not sold to an electric utility (''the 50 percent threshold''); or

(ii) The site is located in a State where the appropriate regulatory authority has made a State-wide determination under EPCA Section 374 not to implement the regulatory sale of excess power provisions in EPCA Section 374. This waiver of the 50 percent threshold is applicable until the State regulatory authority reverses or removes its decision; or

(iii) The owner or operator of the site submits a joint petition with the local electric utility that serves the site to the Director of the Office of Atmospheric Programs of the EPA, requesting that the 50 percent threshold be waived.

EPA is proposing to define ''aggregated annual energy output of the site'' as the total useful output of the fuel driving the source, including electricity produced by a project and thermal energy recovered in or driving the project. For CHP, the aggregate annual energy output would be the sum of the electricity generated and the useful thermal energy recovered on an annual basis. For other types of waste energy recovery projects, the aggregated annual energy output of the project would be the sum of the thermal energy used by the furnace or chemical process that generated the waste heat and the annual electricity generated by the recovery system. As an example, the thermal energy requirements of a furnace that is generating a hot exhaust stream that could potentially be recovered as electricity would be estimated by the furnace efficiency multiplied by the total fuel input to the furnace. In the case of an exothermic chemical reaction, the thermal energy requirements of the process would be equal to the energy released by the exothermic reaction (estimated by the amount of heat available for recovery). EPA is requesting comment on this proposed definition and on the primary purpose criteria.

''Primary purpose'' criterion (i) is designed to determine whether a majority of the total energy output of the potential waste energy recovery project has the potential to be used at the site. A similar approach has been implemented by FERC in Docket RM05–36–000, Order 671 (February 2, 2006), which is available in the docket for this action. Order 671 establishes a safe harbor for new cogeneration systems seeking Qualifying Facility status (18 CFR 292.205(d)). This safe harbor provision requires a demonstration that at least 50 percent of the aggregated annual energy output of the cogeneration project is to be used for industrial, commercial, residential or institutional purposes (essentially, used on-site), and not sold to an electric utility. Projects that comply with this safe harbor provision are assumed to be intended ''fundamentally'' for on-site purposes. FERC includes both electricity and/or mechanical power produced by a project and thermal energy recovered as part of the aggregated annual energy output. EPA is proposing to do the same.

''Primary purpose'' criterion (ii) is designed to streamline the process for potential waste energy projects located in States that issue a State-wide decision to not implement the Section 374 regulatory incentives. In such States, sources constructed following the decision not to implement Section 374 clearly would not be developed for the primary purpose of making sales of excess electric power under Section 374. Such sources would not be able to take advantage of Section 374. Therefore, there is no need for them to show that they meet the 50 percent threshold. EPA is proposing that this waiver of the 50 percent threshold would apply until the State regulatory authority reverses or removes its decision.

''Primary purpose'' criterion (iii) is designed to give local electric utilities flexibility to encourage the pursuit of waste energy recovery projects by customers in their service territory. EPA interprets the ''primary purpose'' test in Section 372(b) as an effort to ensure that development of waste energy recovery projects does not unduly impact the normal operation of local electric utilities. EPA therefore believes it is appropriate to allow waivers where the utility wishes to encourage such projects. Given that 12 States recognize waste heat recovery or CHP as an eligible resource in their energy portfolio standards, a local electric utility may decide to encourage a customer in their service territory to develop a waste energy or CHP project and sell excess electricity to the utility for purposes of meeting a portfolio standard requirement. In such cases, upon receipt of a joint petition from the utility and the owner or operator of the site, EPA will waive the 50 percent threshold.

6. How Will the Survey Be Distributed?

EPA is proposing to distribute WEST via the Internet for any site owner and operator to download and provide answers to the Survey directly on their computer. EPA plans to coordinate with State environmental and energy offices, industry trade associations, and energy and environmental non-profits, to notify sites on our list of potentially affected NAICS codes about the Survey and the availability of WEST on the Internet at *http://www.epa.gov/wasteenergyregistry.* EPA will also send a letter to the corporate headquarters of entities on the list of potentially affected NAICS codes, where the corporation has three or more affected sites that likely meet the initial major industrial or large commercial threshold as defined in this rule, describing EPA's responsibilities, what the Agency is requesting them to do for each site and source, and instructions on downloading and returning WEST.

7. How Do I Return a Survey?

EPA is proposing that WEST final summary reports, which contain the information necessary to populate the Registry, shall be provided to the EPA via mail (address at *http://www.epa.gov/wasteenergyregistry* and also on the WEST final summary report) or e-mail at *wasteenergyregistry@epa.gov.* E-mail requests may include the subject line ''Survey response.'' Submissions received within 60 days of WEST being released will be included in the initial launch of the Registry. The Registry will be publicly available at *http://www.epa.gov/wasteenergyregistry.*

8. What Is the Schedule for Returning a Survey?

EPA is proposing to include Survey submissions received within the first 60 days of the release of WEST in the initial launch of the Registry, with subsequent submissions added on a rolling basis.

C. Registry

1. How Will EPA Notify Entities of Their Listing and What Is the Method for Any Interested State, Utility or Other Interested Person To Contest a Listing?

EPCA Section 372(d)(3) states that EPA must notify owners or operators of recoverable waste energy sources and sites listed in the Registry prior to publishing the listing. EPA is proposing to provide this notification in advance through the Survey tool. When an owner or operator submits the WEST summary report to EPA, they are acknowledging that if they meet the criteria included in this rule, their source or site will be published in the Registry. No further notification will be provided prior to Registry publication. The Registry will list sites but will not contain a detailed description of each source at a particular site.

EPCA Section 372(d)(1)(C) states that any State, electric utility, or other interested person may contest the listing by submitting a petition to EPA. Petitions must be submitted in writing to the Director of the Office of Atmospheric Programs of the EPA. EPA is proposing that this petition shall be submitted via mail (address at *http://www.epa.gov/wasteenergyregistry*) or e-mail at *wasteenergyregistry@epa.gov.* E-mail petitions may include in the subject line ''Contest of a listing.'' All petitions shall explain the reason[s] the listing (*i.e.*, site[s] or source[s]) is being contested. The following information shall be provided to the Director of the Office of Atmospheric Programs in writing (via e-mail or regular mail) to contest a Registry listing:

- Entity contesting the listing—Name, address, contact person name, title, address, e-mail and phone number;
- Registry listing being contested—Site name, address, and NAICS code as displayed in the Registry;
- Reason the listing is being contested (*i.e.*, why the site or source should be excluded from the Registry).

All Registry listings whose inclusion in the Registry is contested will be notified by EPA in writing (mail or e-mail) and be provided 60 days (from the date of notification) to submit information for consideration by EPA. No later than 180 days following receipt of information submitted by the entity contesting the listing, EPA will decide whether to remove or retain the listing in the Registry.

2. What Are the Standards To Address New Sources or New Energy-Consuming Industrial Facilities Constructed After EISA Enactment?

EISA contains two provisions addressing new sources or facilities: EPCA Section 372(d)(5), which addresses new sources; and EPCA Section 372(f), which addresses ''new energy-consuming industrial facilities.'' EPA is proposing to build on the previously described criteria for these new sources or facilities.

a. New Sources Constructed After EISA Enactment

EPCA Section 372(d)(5) directs EPA not to list in the Registry any source constructed after EISA enactment (December 19, 2007) if the Agency determines that it:

''(A) Was developed for the primary purpose of making sales of excess electric power under the regulatory provisions of this part; or

(B) Does not capture at least 60 percent of the total energy value of the fuels used (on a higher-heating-value basis) in the form of useful thermal energy, electricity, mechanical energy, chemical output, or any combination thereof.''

EPA is proposing to interpret the term ''construct'' as used in EPCA Section 372(d)(5) to mean ''commence construction'' as defined in this rule. For any source that commenced construction after EISA enactment, the financial and regulatory incentives in EISA Subtitle D could have influenced the decision to construct the source.

EPA is proposing to interpret Section 372(d)(5)(A) by utilizing the same ''primary purpose'' definition and interpretation as Section B(5) of this preamble:

(i) At least 50 percent of the aggregated annual energy output of the site (as defined in this rule) is to be used for industrial or commercial purposes, and not sold to an electric utility (''the 50 percent threshold''); or

(ii) The site is located in a State where the appropriate regulatory authority has made a State-wide determination under EISA Section 374 not to implement the regulatory sale of excess power provisions in EISA Section 374. This waiver of the 50 percent threshold is applicable until the State regulatory authority reverses or removes its decision; or

(iii) The owner or operator of the site submits a joint petition with the local electric utility that serves the site to the Director of the Office of Atmospheric Programs of the EPA, requesting that the 50 percent threshold be waived.

EPA considered two primary options for interpreting Section 372(d)(5)(B): A strict interpretation that would require the source itself, prior to project implementation, to capture 60 percent of the total energy value of the fuels used at the source, or a more liberal interpretation which would require that the source and the project combined reach at least 60 percent capture of the total energy value of the fuels used at the source.

EPA is proposing that per Section 372(d)(5)(B), for new sources that commence construction after EISA enactment, the combined potential project and source must capture at least 60 percent of the total energy value of the fuels used at the source (on a higher-heating-value basis as defined in this rule) in the form of useful thermal energy, electricity, mechanical energy, chemical output, or any combination thereof. EPA believes that applying this efficiency requirement to the combination of potential project and source for new sources is in line with the objective of maximizing the efficiency of overall fuel use. EPA believes that the intent of the 60 percent threshold is to ensure that waste energy projects are legitimate and efficient, and to assure that new projects are not developed based on questionable sources (*i.e.*, sources that utilize inefficient equipment with the intent to generate large amounts of waste heat). EPA believes that new sources that commence construction (as defined in this rule) after EISA enactment have a strong financial interest in being very energy efficient and are not likely to utilize inefficient equipment purely for the purpose of being added to the Registry and being eligible for incentives under Sections 373 or 374. Applying this threshold to the combined source and project should accomplish Congress' objective of screening out questionable projects. While some new sources may be able to meet a 60 percent threshold independently, prior to the development of a waste energy recovery project, others may not be able to meet this threshold because of legitimate technology, operational or economic reasons. EPA believes that capturing and efficiently utilizing the waste energy supports the objectives of maximizing overall fuel use as long as the combined efficiency of the source and project are at least equal to the 60 percent total fuel efficiency threshold.

EPA also understands that there are situations where existing technology cannot meet a strict 60 percent capture threshold under either interpretation described above, including but not limited to recovering power from the exhaust heat at pipeline compressor stations. EPA is proposing to waive this criterion in situations where existing technology cannot meet a strict 60 percent threshold yet significant overall efficiency improvements could be achieved through waste energy recovery technologies. Examples include, but are not limited to, heat recovery from pipeline compressor stations. EPA will determine if a source qualifies under this exception on a case by case basis based on internal review of the application and applicable technologies.

b. New Energy Consuming Industrial Sites Constructed After EISA Enactment

EPCA Section 372(f) states that EPA may elect to include in the Registry a new energy-consuming industrial facility (to the extent the site may constitute a site with recoverable waste energy that may qualify for inclusion in the Registry) developed after EISA enactment, at the request of the owner, operator, or developer of the site, on a conditional basis with the site to be removed from the Registry if development ceases or the site fails to qualify for listing under Part E of EPCA.

EPA is proposing to add to the Registry any new energy-consuming industrial sites (as defined in this rule) that contain at least one new source meeting the requirements for new sources described above, as well as the standard criteria for listing. Because the Survey will continue to be available following the Registry's initial launch, EPA does not believe it is necessary to establish a separate process for adding these new sites to the Registry. Upon submission of the Survey results by the site owner or operator, EPA will be able to determine whether the site meets the appropriate criteria. Since EPA will be adding facilities to the Registry on a rolling basis, listing sites on a conditional basis will not be necessary.

In defining ''new energy-consuming industrial sites,'' EPA proposes to interpret the phrase ''developed after'' the date of EISA enactment the same as the phrase ''constructed after'' the date of EISA enactment in Section 372(d)(5)(B). Therefore, a new energy-consuming industrial site developed after the date of EISA enactment is one that commenced construction after December 19, 2007. In addition, EPA proposes to apply the primary purpose criterion and the 60 percent criterion to new sources at these sites.

EPA is also proposing that developers who wish to submit Survey results for a new energy-consuming industrial site must do so jointly with an owner or operator. This is consistent with the proposed role of developers for existing sources.

3. How Are Projects Removed From the Registry?

EPCA Section 372(d)(4)(A) directs that as a project achieves successful recovery of waste energy, EPA shall:

(i) ''Remove the related sites or sources from the Registry, and

(ii) Designate the removed projects as eligible for incentives under Section 374.''

EPCA Section 372(d)(4)(B) states that no project shall be removed from the Registry without consent of the owner or operator of the project if:

(i) ''The owner or operator has submitted a petition under Section 374; and

(ii) The petition has not been acted on or denied.''

Under Section 374(a), an owner, operator, or project sponsor may request that the State regulatory authority or nonregulated electric utility provide public notice, conduct a hearing, and determine whether to adopt a standard for sales of excess power as provided in Section 374(b). Section 374(b) requires that the sales of excess power standard ''provide that an owner or operator of a waste energy recovery project identified on the Registry that generates net excess power shall be eligible to benefit'' from at least one of three options listed under Section 374(c) ''for disposal of the net excess power.'' Those options are (1) the sale of net excess power to the utility; (2) transport by the utility for direct sale to a third party; and (3) transport over private transmission lines without subjecting the project to regulation as a public utility. The third option includes waiver or modification of any laws that would otherwise prohibit the construction and operation of private transmission lines.

The regulatory incentives in EPCA Section 374 have the potential to affect whether an owner or operator pursues a waste energy project and achieves successful recovery of the waste energy, since they relate to the sales of net excess power to a utility. One interpretation of EPCA Section 372(d)(4) would not allow the owner or operator of the source or site to submit a Section 374 petition until the project is commercially operational. However, this interpretation is inconsistent with the notion of an incentive and with the purpose of EISA Subtitle D, as explained below. Therefore, EPA believes that a two-step approach to the Section 374 incentives is what Congress intended. Step one is for an owner or operator of a site or source listed in the Registry to submit a Section 374 petition and for the State regulatory authority or nonregulatory authority to act on that petition. Step two is that once a waste energy project is commercially operational, EPA will remove it from the Registry and it will be eligible to dispose of the net excess power in accordance with the standard adopted under Section 374(a), which would include one or more of the options in Section 374(c). EPA believes that full implementation of the Section 374 incentives as part of Step two is reasonable because a project must be commercially operational for it to be generating net excess power that can be disposed of by selling it to the utility, having the utility transport it for direct sale to a third party, or operating private transmission lines to transport it for sale to a third party [Section 374(c)]. EPA is proposing that under the third option, the source would not have to wait until the project became commercially operational before obtaining the necessary legal waivers or modifications and constructing the private transmission lines. Such actions could proceed during project development. Once the project became commercially operational, EPA would remove the source from the Registry and designate the project as eligible to dispose of the net excess power, which in this instance would occur through operation of the private transmission lines.

EPA understands that the EPCA Section 374 incentives could significantly affect the feasibility of investing in the successful recovery of waste energy at a source. Offering the ability to submit a Section 374 petition only after a waste energy recovery project is commercially operational would prevent the incentives from serving their intended purpose, which is to overcome regulatory or financial obstacles to such recovery. Given an overarching goal of EISA Subtitle D is energy efficiency and the Registry is to facilitate the successful recovery of waste energy, EPA believes Congress intended sites or sources in the Registry to be able to submit a Section 374 petition, even though the Section 374 incentives relating to disposal of the net excess power will not be available for implementation until the waste energy project became commercially operational. When a waste energy project is commercially operational, the owner or operator is not eligible to submit a new Section 374 petition, but can continue to request action on a pending petition. Further, EPA is proposing that no source or site will be removed from the Registry if the owner or operator has submitted a petition under Section 374 based on the site or source in question, and the petition has not been acted on or denied.

EPA is proposing for sites or sources listed in the Registry, that as a waste energy project at the source becomes commercially operational, the site owner or operator shall notify EPA within 90 days. EPA is also proposing that if a site or source on the Registry chooses to no longer be listed in the Registry, the site or source can notify EPA that it requests to be removed from the Registry. EPA will remove the source from the Registry within 30 days from notification, with the exception that no source or site will be removed from the Registry if it has submitted a Section 374 petition and the petition has not been acted on or denied. The site owner or operator shall notify EPA via mail (address at *http://www.epa.gov/wasteenergyregistry*) or e-mail at *wasteenergyregistry@epa.gov*. E-mail submissions may include in the subject line ''Source removal request'' or ''Commercial operation.'' All notifications shall include the site name, address, NAICS code, date project became commercially operational, project electric capacity, and the project thermal capacity. All notifications shall also include a statement whether the owner or operator has submitted a Section 374 petition to the appropriate regulatory authority or nonregulated electric utility and if so, whether that regulatory authority or utility has yet acted on the petition.

EPA is proposing to maintain a publicly-available list of all sources or sites that were listed in the Registry that were removed once waste energy projects were completed. This list will be used demonstrate the success of waste energy capture and be housed on the same Web site as the Registry.

IV. Economic Impacts

In developing this proposal, EPA prepared an economic analysis to estimate the cost of the proposal, how the rule might impact small entities, and the cost-effectiveness of regulatory alternatives.

The cost of the proposed rule reflects both the costs of collecting waste energy information, primarily through a Survey, and the costs of maintaining the information on a publicly available EPA Web site. EPA estimates total 3-year costs to the Agency of approximately $1.4 million. The total cost over the 3-year period, including costs to respondents and non-respondents, is $2.8 million.

The analysis determined that private costs per respondent will not impose a significant cost on large or small businesses. Furthermore, given that the Survey is targeted at the largest 1% of non-manufacturing establishments and the largest 2% of manufacturing establishments, the Survey is unlikely to affect many small entities at all. Respondents that download and submit Survey reporting information without request from EPA are unlikely to be small entities because these respondents are likely to know if they can produce economically-feasible recoverable waste energy.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' as it raises novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in ''Waste Energy Registry: Regulatory/Economic Analysis'' in docket EPA–HQ–OAR–2008–0201. A copy of the analysis is available in the docket for this action and is briefly summarized here.

The proposed rule will not have an annual impact of $100 million or meet the other criteria for ''significant regulatory action'' in the Executive Order. Therefore, EPA does not plan to prepare a regulatory impact statement for this proposed rule. However, EPA invites comments on the economic analysis.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2321.01. The information collected as a result of this proposed rule and Survey will allow EPA to implement the Registry of Recoverable Waste Energy Sources (Registry) mandated by Title IV, Subtitle D, Section 372 of the Energy Independence and Security Act (EISA) of 2007. Those major industrial and large commercial sources that choose to respond to the Survey by filling out the Survey tool will enter data into the tool to be used to determine the potential waste energy recovery opportunity at the source or site. Those sources or sites that satisfy the criteria for inclusion in this proposed rule will be placed by EPA in the Registry.

The major information burden involves enterprises that respond to the Survey. The Survey is a one-time burden given the scope of the ICR is three years.

For the first three years after publication of the final rule in the **Federal Register**, developing the Survey tool, conducting the Survey, and developing and administering the Registry will account for the burden to EPA.

Calculation of the information collection burden and costs associated with this proposal can be found in the *Information Collection Request for the Proposed Rule (40 CFR part 1200) and Survey in Support of the Waste Energy Recovery Registry* (USEPA, 2008), available through *http://www.regulation.gov* under Docket ID EPA–HQ–OAR–2008–0201.

The total burden for respondents and non-respondents associated with the proposed rule over the 3 years following promulgation is 60,645 hours, or an average of 20,215 hours per year. The total cost over this period, including costs to respondents and non-respondents is approximately $2.8 million or an average of $933,000 per year.

The average burden per response, considering only survey respondents, for each activity that requires a collection of information is 7.29 hours; the average cost per response is $336. Average burden and cost to non-respondents is approximately half of the burden and cost to respondents, or 3.6 hours and $166. Time and cost variations may exist depending on the number of components of the Survey addressed by respondents.

The total burden to EPA is approximately 9,831 hours, or 3,277 hours per year. EPA costs are $1,377,000 over three years, or approximately $459,000 per year, including extramural costs. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information request unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this proposed rule under Docket ID number EPA–HQ–OAR–2008–0201. Submit any comments related to the ICR to EPA and OMB. *See* **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 23, 2009, a comment to OMB is best assured of having its full effect if OMB receives it by August 24, 2009. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act (RFA)

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

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities.

Since this proposed rule establishes the criteria by which entities can submit a voluntary survey, no small entity is being regulated. The survey is voluntary, so it will not impose any requirements on small entities. Small entities may choose to participate in the Registry by submitting the Survey, but it is not mandatory.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act (UMRA)

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, or Tribal governments or the private sector. The action imposes no enforceable duty on any State, local or Tribal governments or the private sector. This action is also not subject to the requirements of Section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The proposed rule pertains only to major domestic industrial and large commercial sources that may have potentially recoverable waste energy.

E. Executive Order 13132: Federalism

Executive Order 13132, titled ''Federalism'' (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' ''Policies that have Federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. The Registry of Recoverable Waste Energy Sources and the Survey tool will be administered by EPA and will involve only major domestic industrial and large commercial sources with potentially recoverable waste energy. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It involves only the collection of information from major domestic industrial and large commercial sources with potentially recoverable waste energy and the development and administration by EPA of a Registry of Recoverable Waste Energy Sources. Thus, Executive Order 13175 does not apply to this action. EPA specifically solicits additional comment on this proposed action from Tribal officials.

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

EPA interprets EO 13045 (62 F.R. 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action is focused on identifying the potential for waste energy recovery through a Survey and creating a Registry; it is not focused on other aspects of energy supply or distribution. Further, we have concluded that this rule is not likely to have any adverse energy effects because it will not pursue the installation of the waste energy recovery operations, rather just identify the potential. Since the decision to invest in these potential waste energy recovery projects is made by the facility owner or operator, it is too far removed from this rule and its affects; as such it will not have any adverse energy affects.

I. National Technology Transfer and Advancement Act

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

The proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

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

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The proposed rule involves only the collection of information about potential opportunities for waste energy recovery. Although the Survey and Registry of Recoverable Waste Energy Sources are expected to encourage the development of projects to reduce the amount of lost energy, the siting and development of waste energy recovery projects are not covered by this proposed rule.

List of Subjects in 40 CFR Part 1200

Environmental protection. Energy. Waste energy. Combined heat and power. Industrial energy efficiency.

Dated: July 16, 2009.

Lisa Jackson,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended by adding part 1200 to Subchapter U to read as follows:

PART 1200—WASTE ENERGY RECOVERY REGISTRY

Sec.

Authority: Sec. 451, Pub. L. 110–140, 121 Stat. 1492.

§ 1200.1 Purpose.

This part establishes criteria for the inclusion of sources or sites in the Registry of Potentially Recoverable Waste Energy Sources and establishes the processes for adding sources or sites to the Registry and removing them from the Registry.

§ 1200.2 Definitions.

As used in this part, the term:

Administrator means the Administrator of the Environmental Protection Agency.

Aggregated annual energy output of the site means the total useful output of the fuel driving the source, including electricity generated by a project and thermal energy recovered in or driving the project and/or process.

Combined heat and power means a site that simultaneously and efficiently produces useful thermal energy and electricity; and recovers not less than 60 percent of the energy value in the fuel (on a higher-heating-value basis as defined in this rule) in the form of useful thermal energy and electricity.

Commence construction means that the owner or operator has all necessary preconstruction approvals or permits and either has: begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

Commercially operational means the waste energy recovery project is placed in service. Commercially operational does not include commissioning or other testing prior to operation.

Detailed Quantitative Information (DQI) means the following Survey output with respect to individual sources at a site:

(1) Source description (*e.g.,* glass furnace, process flare);

(2) Quantitative estimates of:

(i) For each source, the CO_2 emissions reduction potential (tons/year);

(ii) For each source, the criteria pollutant reduction potential (NO_x and SO_x tons/yr);

(iii) For waste heat sources, the waste heat to power recovery potential (MW);

(iv) For waste gas sources, the waste gas to power recovery potential (MW);

(v) For pressure drop sources, the pressure drop to power recovery potential (MW);

(vi) For potential CHP opportunities, the CHP potential based on sizing to thermal (heating and/or cooling) load (MW).

(3) Yes/no answers to the following questions:

(i) For each waste heat source, combustible source, pressure drop source, and potential CHP opportunity, does the potential project have a five year payback or less (yes/no);

(ii) For each waste heat source, combustible source, pressure drop source, and potential CHP opportunity, does the potential project meet the primary purpose criteria (yes/no);

(iii) For each new source, does the potential project meet the 60% efficiency test (yes/no);

(iv) For each waste heat source, does the site have a waste heat recovery opportunity that passes all screening criteria (yes/no);

(v) For each waste gas or industrial tail gas source, does the site have a waste gas or industrial tail gas recovery opportunity that passes all screening criteria (yes/no);

(vi) For each pressure drop source, does the site have a pressure drop recovery opportunity that passes all screening criteria (yes/no);

(vii) For each potential CHP opportunity, does the site have a CHP opportunity that passes all screening criteria (yes/no).

Existing source or site means a source or site that commenced construction prior to December 19, 2007.

Heating-value means how much energy is released on combustion of a given quantity of fuel, for example, Btu per gallon, or Btu per cubic foot.

Higher heating-value (HHV) means heating value including the heat of condensation of the water vapor contained in the products of combustion. Fuels are typically priced on an HHV basis. The HHV for natural gas is approximately 10% greater than the LHV.

Large commercial source means a source at a site that meets or exceeds an initial threshold of 1 MW average electric annual demand or 5 MMBtu/hour fuel use and where the source meets or exceeds a secondary threshold of minimum thermal or cooling load of 2.5 MMBtu/hour or 150 Tons, and minimum operating hours of 4,500 hrs/yr.

Lower heating value (LHV) means heating value not including the heat of condensation of the water vapor contained in the products of combustion.

Major industrial source means a source at a site that meets or exceeds an initial threshold of 100 MMBtu/hour fuel use and where the source meets or exceeds a secondary threshold of process stacks with temperatures 500° F or greater, flow rates greater than 7,000 to 50,000 scf/min depending on temperature, and minimum operating hours of 4,500 hrs/yr.

New energy-consuming industrial site means any new major industrial site that has commenced construction on or after December 19, 2007. Sources at a new major industrial site that meet the definition of a major industrial source are to be treated as new major industrial sources.

New source or site means a source or site that commenced construction on or after December 19, 2007.

Project means a recoverable waste energy project or a combined heat and power project. A project is located at a particular source. A site may have multiple projects.

Recoverable waste energy means waste energy from which electricity or useful thermal energy may be recovered through modification of an existing site or addition of a new site.

Registry means the Registry of Recoverable Waste Energy Sources.

Respondent means an owner or operator of a source or site that submits a Survey response to EPA.

Section 374 petition means the submission by an owner or operator of a site or source in the Registry of a request to a State regulatory authority or nonregulated utility on the basis of section 374 of the Energy Policy and Conservation Act.

Site means a building or group of buildings that provides a particular service or is used for a particular industrial application.

Source means any process or activity resulting in the release of waste energy. A site may have multiple sources.

Survey means the EPA document or tool which is designed to gather information from major industrial and large commercial sources about the potential waste energy produced at the source or site. The Survey gathers data necessary to establish the Registry of Recoverable Waste Energy Sources.

Useful thermal energy means energy in the form of direct heat, steam, hot water; or other thermal form that is used in production and beneficial measures for heating, cooling, humidity control, process use, or other valid thermal end-use requirements; and for which fuel or electricity would otherwise be consumed.

Waste energy means exhaust heat or flared gas from any industrial process; waste gas or industrial tail gas that would otherwise be flared, incinerated, or vented; a pressure drop in any gas, excluding any pressure drop to a condenser that subsequently vents the resulting heat; and the opportunity for combined heat and power project/s.

§ 1200.3 Criteria for inclusion in the Registry.

(a) EPA will include in the Registry sources or sites that meet the criteria in paragraphs (b) and (c) of this section:

(b)(1) Existing sources and sites must meet the following initial and secondary threshold criteria except as provided in paragraph (b)(3) of this section:

(i) Major industrial sources.

(A) Initial threshold—site with 100 MMBtu/hour fuel use;

(B) Secondary threshold—process stacks with temperatures 500 °F or greater, flow rates greater than 7,000 to 50,000 scf/min depending on temperature, and minimum operating hours of 4,500 hrs/yr.

(ii) Large commercial sources.

(A) Initial threshold—site with 1 MW average electric annual demand or 5 MMBtu/hour fuel use;

(B) Secondary threshold—minimum thermal or cooling load of 2.5 MMBtu/hour or 150 Tons, and minimum operating hours of 4,500 hrs/yr.

(2) New sources and sites must meet the following initial and secondary threshold criteria except as provided in paragraph (b)(3) of this section and must also meet the criterion in paragraph (b)(2)(iii) of this section:

(i) Major industrial sources.

(A) Initial threshold—site with 100 MMBtu/hour fuel use;

(B) Secondary threshold—process stacks with temperatures 500 °F or greater, flow rates greater than 7,000 to 50,000 scf/min depending on temperature, and minimum operating hours of 4,500 hrs/yr.

(ii) Large commercial sources.

(A) Initial threshold—site with 1 MW average electric annual demand or 5 MMBtu/hour;

(B) Secondary threshold—minimum thermal or cooling load of 2.5 MMBtu/hour or 150 Tons, and minimum operating hours of 4,500 hrs/yr.

(iii) The combined potential project and source must capture at least 60 percent of the total energy value of the fuels used at the source (on a higher-heating-value basis as defined in this rule) in the form of useful thermal energy, electricity, mechanical energy, chemical output, or any combination thereof. Sources for which the Administrator determines that existing technology cannot meet the 60 percent threshold are considered to have met this criterion.

(3) Notwithstanding the initial thresholds in paragraphs (b)(1) and (b)(2) of this section, a source or site will be eligible for inclusion in the Registry if it meets the appropriate secondary threshold criteria and all other applicable criteria in this section. For purposes of §§ 1200.4 through 1200.6, such source will be considered a major industrial or large commercial source.

(c) Both existing and new sources or sites must meet the following criteria for inclusion in the Registry:

(1) A potential waste energy recovery project at a source or site must be economically feasible by virtue of offering a payback of invested costs not later than 5 years after the date of first full project operation.

(2) A potential waste energy recovery project at a source or site must not be developed or used for the primary purpose of making sales of excess electric power under the regulatory provisions of EPCA Part E, Section 374, as demonstrated by meeting one of the following criteria:

(i) At least 50 percent of the aggregated annual energy output of the site (as defined in this rule) will be used for industrial or commercial purposes, and not sold to an electric utility; or

(ii) The site is located in a State where the appropriate regulatory authority has made a State-wide determination under EPCA Section 374 to not implement the regulatory sale of excess power provisions in EPCA Section 374. This waiver of the 50 percent requirement in paragraph (c)(2)(i) of this section is applicable until the State regulatory authority reverses or removes its decision; or

(iii) The owner or operator of the site submits a joint petition with the local electric utility that serves the site to the Director of the Office of Atmospheric Programs of the EPA, requesting that the primary purpose criterion be waived.

§ 1200.4 Process for inclusion in the Registry.

(a) *Response to Survey.* In order for a site or source to be eligible for inclusion in the Registry, owners or operators of major industrial and large commercial sources must submit to the Administrator data generated by the Survey. Third-party developers may make a joint submission with the owner or operator of the site or source.

(b) *Form of Response.* Respondents may submit the data generated by the Survey in either electronic or hardcopy format.

(c) *Timing of Response.* To be eligible for inclusion in the initial launch of the Registry, data submissions for a site or source must be received by EPA within the first 60 days following Survey release. Additional submissions received will be included on a rolling basis. Surveys jointly submitted by a third-party developer and owner or operator of the site or source will be included in the Registry with a notation of ‘‘joint submittal.’’

(d) *Detailed Quantitative Information.* EPA will not include detailed quantitative information (DQI) in the Registry but may make DQI available to the applicable State energy office and utility requested to support recovery of waste energy from the source or site pursuant to the incentives provided under EPCA section 374.

§ 1200.5 Process for removing a listing from the Registry.

(a) *Notice to EPA.* Owners or operators of major industrial and large commercial sources that have a potential waste energy recovery project currently listed in the Registry must notify EPA in writing within 90 days after the project becomes commercially operational that the project is commercially operational. Owners or operators shall provide notice by providing the site name, address, NAICS code, date that the project became commercially operational, project electric capacity, and project thermal capacity. The requesting site owner or operator shall also state whether they have submitted a Section 374 petition to the appropriate regulatory authority or nonregulated electric utility and if so, whether that regulatory authority or utility has acted on the petition.

(b) *Action by EPA.* EPA shall remove the source or site from the Registry within 30 days of receipt of notice, except that EPA shall not remove a source or site from the Registry if the source or site has submitted a petition under section 374 to the appropriate regulatory authority or nonregulated electric utility and the petition has not been acted on. EPA shall maintain a list of all sources or sites that have been removed from the Registry.

§ 1200.6 Process for contesting a Registry listing.

(a) Any State, electric utility, or other interested person may contest a Registry listing by submitting a petition in writing to EPA. All petitions must explain the reason[s] the listing (*i.e.*, site[s] or source[s]) is being contested. To contest a Registry listing, the State, electric utility, or other interested person must provide the following information to the Director of the Office of Atmospheric Programs of the EPA in writing (via e-mail or regular mail):

(1) Entity contesting the listing—Name, address, contact person name, title, address, e-mail and phone number;

(2) Registry listing being contested—Name, address, and NAICS code as displayed in the Registry;

(3) Reason the listing is being contested (*i.e.* why the site or source should be excluded from the Registry).

(b) *Notice of decision.* Within 15 days of receipt of a petition contesting a Registry listing, EPA shall provide written notification to the owner or operator of any source or site whose inclusion in the Registry is contested. EPA shall consider any information regarding the contested listing received from the owner or operator within 60 days from the date of notification.

(c) *Decision on contested listing.* No later than 180 days following receipt of information submitted by an entity contesting the listing, EPA will inform the entity contesting the listing and the owner or operator of the source or site whether it will remove or retain the listing in the Registry.

[FR Doc. E9–17550 Filed 7–22–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[WC Docket No. 07–38; GN Docket Nos. 09–47, 09–41; DA 09–1550]

Comment Sought on Providing Eligible Entities Access to Aggregate Form 477 Data as Required by the Broadband Data Improvement Act

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission Wireline Competition Bureau (Bureau) released a public notice establishing a pleading cycle for comments on how the Federal Communications Commission should interpret and implement sections 106(h)(1) and 106(h)(2) of the Broadband Data Improvement Act of 2008 (BDIA). (Broadband Data Improvement Act of 2008, Public Law 110–385, 122 Stat. 4097 (codified at 47 U.S.C. 1301–04)).

DATES: Comments are due on or before July 30, 2009, and reply comments are due on or before August 4, 2009.

ADDRESSES: You may submit comments, identified by WC Docket No. 07–38; and GN Docket Nos. 09–47 and 09–51, by any of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *E-mail: ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response. Include the docket number(s) in the subject line of the message.
- *Mail:* Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.
- *Hand Delivery/Courier:* 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

All submissions received must include the agency name and docket numbers for this rulemaking, WC Docket No. 07–38; and GN Docket Nos. 09–47 and 09–51. All comments received will be posted without change to *http://www.fcc.gov/cgb/ecfs.* For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jeremy Miller, Industry Analysis and Technology Division, Wireline Competition Bureau at (202) 418–0940.

SUPPLEMENTARY INFORMATION: Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's e-Rulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

By this document, the Bureau seeks comment on how the Federal Communications Commission should interpret and implement sections 106(h)(1) and 106(h)(2) of the Broadband Data Improvement Act of 2008.

Since 2000, the Commission has collected basic service information from broadband service providers using Form 477. In 2008, the Commission adopted revisions to the Form 477, which would result in the collection of more detailed and granular data. At the same time, the Commission issued a further notice of proposed rulemaking, which, among other things, sought comment on the issue of how to provide Form 477 information to other broadband initiatives, including those undertaken by state agencies and public-private partnerships, and on how to preserve confidentiality when sharing the information collected on Form 477. (*See 2008 Broadband Data Gathering Order* *and Further NPRM*, 23 FCC Rcd at 9711–12, para 39; 73 FR 37911, July 2, 2008 (''In this Further Notice, we seek comment on ways in which we can preserve confidentiality when sharing the information collected on Form 477, the voluntary registry, and other sources with agencies such as the Department of Agriculture's Rural Utilities Service and with public-private partnerships such as ConnectKentucky and similar ventures, for example by sharing the data in a less granular or aggregated form than the level at which it is collected.'') (footnotes omitted).) On October 10, 2008, the BDIA became law. Section 106(h)(1) of the BDIA requires the Commission to ''provide eligible entities access * * * to aggregate data collected by the Commission based on the Form 477 submissions of broadband service providers.'' (47 U.S.C. 1304(h)(1). Section 106(i)(2) of the BDIA defines ''eligible entity'' as: (A) An entity that is either (i) an agency or instrumentality of a State, or a municipality or other subdivision (or agency or instrumentality of a municipality or other subdivision) of a State; (ii) a nonprofit organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and that is exempt from taxation under section 501(a) of such Code; or (iii) an independent agency or commission in which an office of a State is a member on behalf of the State; and (B) is the single eligible entity in the State that has been designated by the State to receive a grant under this section. BDIA Sec. 106(i)(2); 47 U.S.C. 1304(i)(2).) Section 106(h)(2) of the BDIA imposes certain confidentiality requirements on eligible entities that receive the FCC Form 477 ''aggregate data.'' (Specifically, section 106(h)(2) provides that an eligible entity ''shall treat any matter that is a trade secret, commercial or financial information, or privileged or confidential, as a record not subject to public disclosure except as otherwise mutually agreed to by the broadband service provider and the eligible entity. BDIA section 106(h)(2); 47 U.S.C. 1304(h)(2).) In this document, we seek comment on how the Commission should implement these statutory provisions.

First, we seek comment on how we should interpret the term ''aggregate'' in section 106(h)(1). Particularly, to what extent does the adjective ''aggregate'' require the Commission to provide to eligible entities data that is more aggregated than the raw data submitted by Form 477 filers. We also seek comment on whether the confidentiality provisions of section 106(h)(2) indicate that the Commission should provide access to data that is more disaggregated than the Form 477 filing-based data that it makes available to the public in various periodic statistical reports released by the Bureau. (*See, e.g.*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *High-Speed Services for Internet Access: Status as of December 31, 2007* (rel. Jan. 16, 2008), available at *http://www.fcc.gov/wcb/iatd/comp.html.*) More generally, we seek comment on how much the Commission should aggregate the data that it provides to eligible entities, and what factors it should consider in determining the appropriate level of aggregation.

We also seek comment on section 106(h)(2) of the BDIA, which requires eligible entities to treat ''any matter that is a trade secret, commercial or financial information, or privileged or confidential, as a record not subject to public disclosure except as otherwise mutually agreed to by the broadband service provider and the eligible entity.'' In particular, we seek comment on whether that section is self-effectuating or whether the Commission should take any measures to ensure eligible entities' compliance with section 106(h)(2). If parties believe that the Commission should adopt safeguards to ensure compliance with section 106(h)(2), then we ask that they describe with specificity the nature of their proposed safeguards.

We recognize that the periods we are establishing for commenting on these issues are short but note also that the timeframes connected with the grant programs under BDIA require us to make the Form 477 information available in an expedited fashion. Furthermore, while the BDIA was enacted after the *2008 Broadband Data Gathering Order and Further NPRM* was adopted, we note that the data-sharing issues raised by section 106(h) of the BDIA clearly fall within the scope of the more general data-sharing issues raised in the further NPRM, on which we previously received comment.

This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. *See* 47 CFR 1.1200, 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Federal Communications Commission.

Julie A. Veach,

Acting Chief, Wireline Competition Bureau.

[FR Doc. E9–17579 Filed 7–22–09; 8:45 am]

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Notices

Federal Register

Vol. 74, No. 140

Thursday, July 23, 2009

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

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Notice of Funds Availability Under the American Recovery and Reinvestment Act, 2009

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), and Rural Utilities Service (RUS) are administered through USDA Rural Development (RD). This Notice announces the availability of stimulus assistance provided pursuant to Title 1 of Division A of the American Recovery and Reinvestment Act, 2009, (Pub. L. 111–5) (February 17, 2009).

DATES: Unless otherwise specified in this notice, applications will be accepted on a rolling basis until funds are expended. Program funding expires September 30, 2010.

ADDRESSES: Entities wishing to apply for assistance, or that are in need of further information, should contact the USDA Rural Development State Office in the state where the project is located. A list of the USDA Rural Development State Offices addresses and telephone numbers are as follows:

Note: Telephone numbers are not toll-free.

Alabama

Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400/TDD (334) 279–3495.

Alaska

USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7705/TDD (907) 761–8905.

Arizona

USDA Rural Development State Office, 230 N. 1st Ave., Suite 206, Phoenix, AZ 85003, (602) 280–8701/TDD (602) 280–8705.

Arkansas

USDA Rural Development State Office, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200/TDD (501) 301–3279.

California

USDA Rural Development State Office, 430 G Street, # 4169, Davis, CA 95616–4169, (530) 792–5800/TDD (530) 792–5848.

Colorado

USDA Rural Development State Office, 655 Parfet Street, Room E–100, Lakewood, CO 80215, (720) 544–2903/TDD (720) 544–2976.

Connecticut

USDA Rural Development State Office, 451 West Street, Suite 2, Amherst, MA 01002–2999, (413) 253–4300/TDD (413) 253–4590.

Delaware

USDA Rural Development State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3580/TDD (302) 857–3585.

Florida

USDA Rural Development State Office, 4440 NW 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3400/TDD (352) 338–3499.

Georgia

USDA Rural Development State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162/TDD (706) 546–2034.

Hawaii

USDA Rural Development State Office, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8380/TDD (808) 933–8321.

Idaho

USDA Rural Development State Office, 9173 West Barnes Dr., Suite A1, Boise, ID 83709, (208) 378–5600/TDD (208) 378–5644.

Illinois

USDA Rural Development State Office, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6200/TDD (217) 403–6240.

Indiana

USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100/TDD (317) 290–3343.

Iowa

USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663/TDD (515) 284–4858.

Kansas

USDA Rural Development State Office, 1303 S.W. First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2700/TDD (785) 271–2767.

Kentucky

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7300/TDD (859) 224–7422.

Louisiana

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7921/TDD (318) 473–7655.

Maine

USDA Rural Development State Office, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9160/TDD (207) 942–7331.

Maryland

USDA Rural Development State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3580/TDD (302) 857–3585.

Massachusetts

USDA Rural Development State Office, 451 West Street, Suite 2, Amherst, MA 01002–2999, (413) 253–4300/TDD (413) 253–4590.

Michigan

USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5190/TDD (517) 324–5169.

Minnesota

USDA Rural Development State Office, 375 Jackson Street, Suite 410, St. Paul, MN 55101–1853, (651) 602–7800/TDD (651) 602–3799.

Mississippi

USDA Rural Development State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4316/TDD (601) 965–5850.

Missouri

USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0976/TDD (573) 876–9480.

Montana

USDA Rural Development State Office, 900 Technology Boulevard, Suite B, P.O. Box 850, Bozeman, MT 59771, (406) 585–2580/TDD (406) 585–2562.

Nebraska

USDA Rural Development State Office, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, NE 68508, (402) 437–5551/TDD (402) 437–5093.

Nevada

USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV 89703–5146, (775) 887–1222/TDD (775) 885–0633.

New Hampshire

USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6000/TDD (802) 223–6365.

New Jersey

USDA Rural Development State Office, 8000 Midlantic Drive, 5th Floor North, Suite 500, Mt. Laurel, NJ 08054, (856) 787–7700/TDD (856) 787–7784.

New Mexico

USDA Rural Development State Office, 6200 Jefferson Street, NE., Room 255, Albuquerque, NM 87109, (505) 761–4950/TDD (505) 761–4938.

New York

USDA Rural Development State Office, The Galleries of Syracuse, 441 South Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400/TDD (315) 477–6447.

North Carolina

USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000/TDD (919) 873–2003.

North Dakota

USDA Rural Development State Office, Federal Building, Room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2037/TDD (701) 530–2113.

Ohio

USDA Rural Development State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2400/TDD (614) 255–2554.

Oklahoma

USDA Rural Development State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000/TDD (405) 742–1007.

Oregon

USDA Rural Development State Office, 1201 NE. Lloyd Blvd., Suite 801, Portland, OR 97232, (503) 414–3300/TDD (503) 414–3387.

Pennsylvania

USDA Rural Development State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2299/TDD (717) 237–2261.

Puerto Rico

USDA Rural Development State Office, IBM Building, Suite 601, 654 Munos Rivera Avenue, San Juan, PR 00918–6106, (787) 766–5095/TDD (787) 766–5332.

Rhode Island

USDA Rural Development State Office, 451 West Street, Suite 2, Amherst, MA 01002–2999, (413) 253–4300/TDD (413) 253–4590.

South Carolina

USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163/TDD (803) 765–5697.

South Dakota

USDA Rural Development State Office, Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1100/TDD (605) 352–1147.

Tennessee

USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1300.

Texas

USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700/TDD (254) 742–9712.

Utah

USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4320/TDD (801) 524–3309.

Vermont

USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6000/TDD (802) 223–6365.

Virginia

USDA Rural Development State Office, 1606 Santa Rosa Road, Suite 238, Richmond, VA 23229–5014, (804) 287–1550/TDD (804) 287–1753.

Virgin Islands

USDA Rural Development State Office, 4440 NW. 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3400/TDD (352) 338–3499.

Washington

USDA Rural Development State Office, 1835 Black Lake Boulevard SW., Suite B, Olympia, WA 98512–5715, (360) 704–7740/TDD (360) 704–7760.

West Virginia

USDA Rural Development State Office, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4860/TDD (304) 284–4836.

Wisconsin

USDA Rural Development State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600/TDD (715) 345–7614.

Wyoming

USDA Rural Development State Office, 100 East B, Federal Building, Room 1005, P.O. Box 11005, Casper, WY 82602–5006, (307) 233–6700/TDD (307) 233–6733.

FOR FURTHER INFORMATION CONTACT: For information and application assistance contact the appropriate Rural Development State Office listed in the **ADDRESSES** section of this Notice.

For information regarding Housing and Community Facilities Programs: Community Facilities, Anita Outen, Loan Specialist, at 202–720–1497, or Susan Woolard, Loan Specialist, at 202–720–1506; and Single Family Program, Myron Wooden, Loan Specialist, at 202–720–4780.

For further information regarding Business Programs, contact: Fred Kieferle, Business and Industry (B&I) Guaranteed Loan Program, at 202–720–7818, *e-mail: fred.kieferle@wdc.usda.gov,* Cindy Mason, Rural Business Enterprise Grant (RBEG), at 202–690–1433, *e-mail: cindy.mason@wdc.usda.gov.*

For information regarding Water and Environmental Programs' Direct Loan, Guaranteed Loan, and Grant programs, contact: Gayle Auman, Loan Specialist, at 334–279–3620, *e-mail: gayle.auman@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Rural Development Mission Area agencies (RHS, RUS, and RBS of the United States Department of Agriculture) provide a wide variety of grant, loan, and loan guarantee assistance to rural residents, rural communities, and rural utility systems. The eligibility criteria for each of the programs differ widely.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, USDA Rural Development has submitted a new information collection to OMB for emergency review and approval of the reporting and recordkeeping requirements contained in this Notice. The programs being impacted already have information collection packages in place. Therefore, the burden in this new package is solely based on the additional burden hours being generated by the American Recovery and Reinvestment Act of 2009. The breakdown is as follows:

(OMB No. 0572–0121) *7 CFR Part 1780, Water and Waste Loan and Grant Program*

Estimate Burden Increase: 78,111 hours.

(OMB No. 0570–0022) *7 CFR Part 1942–G, Rural Business Enterprise Grants and Television Demonstration Grants.*

Estimated Burden Increase: 19,189 hours.

(OMB No. 0575–0173) *7 CFR 3570–B, Community Facilities Grant Program.*

Estimated Burden Increase: 3,102 hours.

(OMB No. 0575–0015) *7 CFR 1942–A, Community Facility Loans.*

Estimated Burden Increase: 70,560 hours.

(OMB No. 0575–0120) *7 CFR Part 1942–C, ''Fire and Rescue Loans''.*

Estimated Burden Increase: 7,512 hours.

(OMB No. 0575–0172) *Direct Single Family Housing Loan and Grant Programs, 7 CFR Part 3550–HB–1–3550, and HB–2–3550.*

Estimated Burden Increase: 39,198 hours.

(OMB No. 0575–0078) *7 CFR Part 1980–D, Rural Housing Loans.*

Estimated Burden Increase: 106,878 hours.

Reporting and Registration Requirement under Section 1512 of the American Recovery and Reinvestment Act of 2009, Public Law 111–5:

(a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (''Recovery Act'') and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The first report is due no later than ten calendar days after the initial calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act, or by October 10, 2009. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter.

(c) Recipients and their first-tier recipients must maintain current registrations in the Central Contractor Registration *(http://www.ccr.gov)* at all times during which they have active federal awards funded with Recovery Act funds. A Data Universal Numbering System (DUNS) Number is one of the requirements for registration in the Central Contractor Registration.

(d) The recipient shall report the information described in section 1512(c) using the reporting instructions and data elements that will be provided online at *http://www.FederalReporting.gov,* unless the information is pre-populated.

I. American Recovery and Reinvestment Act (Recovery Act), 2009

A. Affected Programs

The following programs are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials, pursuant to 7 CFR 3015.302. These programs or activities are listed in the Catalog of Federal Domestic Assistance (CDFA) under numbers:

10.780 Community Facilities Loans and Grants
10.788 Single Family Housing Direct Loans
10.789 Single Family Housing Guaranteed Loans
10.782 Business and Industry Guaranteed Loans
10.783 Rural Business Enterprise Grants
10.781 Water and Waste Loans and Grants
10.886 Broadband Loans and Grants

B. Definitions

''Agency''—The Rural Housing Service, Rural Utilities Service and Rural Business-Cooperative Service or the successors for the programs it administers.

''Persistent poverty counties''—Any county that has had twenty percent or more of its population living in poverty for the past thirty years, as measured by the 1980, 1990, 2000 decennial census information.

''Recipient''—Any entity that receives Recovery Funds directly from the Federal Government (including Recovery Funds received through loan, grant, or contract) other than an individual and includes a State that receives Recovery Funds.

''Recovery Act''—Refers to Title 1 of Division A of the American Recovery and Reinvestment Act, 2009, (Pub. L. 111–5) (February 17, 2009).

''Recovery Funds''—Any funds that are available from appropriations made under the Recovery Act.

C. General Provisions

1. Preference for Quick-Start Activities

In using the funds made available in the Recovery Act for infrastructure investment, the Agencies shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after the date of enactment of the Recovery Act. Recipients shall also use grant funds in a manner that maximizes job creation and economic benefit. Agencies may use these funds for a backlog of applications on hand as well as new applications. For Water and Environment and Community Facilities programs, those new applications that are submitted in a timely manner complete with Preliminary Engineering Review (PER), Environmental Report (ER), and current financial data will be accelerated in the process.

2. Period of Availability

All funds appropriated in the Recovery Act are available for obligation no later than September 30, 2010. Funding provided through the Recovery Act is one-time funding.

3. Buy American

None of the funds made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States unless USDA Rural Development waives the application of this provision. Since only Community Facilities (CF) and Water and Environmental Programs (WEP) are involved in the construction, alteration, maintenance, or repair of public building and public works, the Buy American provisions are only applicable to CF and WEP. (Recovery Act Sec. 1605)

If the applicant's requested use of Recovery Act funds involves the construction, alteration, maintenance, or repair of a public building or public work, and does not involve iron, steel, and or manufactured goods covered under international agreements, the following is applicable:

Notice of Required Use of American Iron, Steel, and Manufactured Goods—Section 1605 of the American Recovery and Reinvestment Act, 2009

(a) *Definitions.* Manufactured good, public building and public work, and steel, as used in this notice, are defined in 2 CFR 176.140.

(b) *Requests for determinations of inapplicability.* A prospective applicant requesting a determination regarding the inapplicability of Section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) should submit the request to the award official in time to allow a determination before submission of applications or proposals. The prospective applicant shall include the information and applicable supporting data required by 2 CFR 176.140(c) and (d) in the request. If an applicant has not requested a determination regarding the inapplicability of Section 1605 of the Recovery Act before submitting its application or proposal, or has not received a response to a previous request, the applicant shall include the information and supporting data in the application or proposal.

(c) *Evaluation of project proposals.* If the Federal government determines that an exception based on unreasonable cost of domestic iron, steel, and/or manufactured goods applies, the Federal Government will evaluate a project requesting exception to the requirements of Section 1605 of the Recovery Act by adding to the estimated total cost of the project 25 percent of the project cost, if foreign iron, steel, or manufactured goods are used in the project based on unreasonable cost of comparable manufactured domestic iron, steel, and/or manufactured goods.

(d) *Alternate project proposals.*

(1) When a project proposal includes foreign iron, steel, and/or manufactured goods not listed by the Federal Government at 2 CFR 176.140(b)(2), the applicant also may submit an alternate proposal based on use of equivalent domestic iron, steel, and/or manufactured goods.

(2) If an alternate proposal is submitted, the applicant shall submit a separate cost comparison table prepared in accordance with 2 CFR 176.140(c) and (d) for the proposal that is based on the use of any foreign iron, steel, and/or manufactured goods for which the Federal Government has not yet determined an exception applies.

(3) If the Federal Government determines that a particular exception requested in accordance with 2 CFR 176.140(b) does not apply, the Federal Government will evaluate only those proposals based on use of the equivalent domestic iron, steel, and/or manufactured goods, and the applicant shall be required to furnish such domestic items.

If the applicant's requested use of Recovery Act funds involves the construction, alteration, maintenance, or repair of a public building or public work, and involves iron, steel, and/or manufactured goods covered under international agreements, the following is applicable:

Notice of Required Use of American Iron, Steel, and Manufactured Goods (Covered Under International Agreements)—Section 1605 of the American Recovery and Reinvestment Act, 2009

(a) *Definitions.* Designated country iron, steel, and/or manufactured goods, foreign iron, steel, and/or manufactured good, manufactured good, public building and public work, and steel, as used in this provision, are defined in 2 CFR 176.160(a).

(b) *Requests for determinations of inapplicability.* A prospective applicant requesting a determination regarding the inapplicability of Section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) should submit the request to the award official in time to allow a determination before submission of applications or proposals. The prospective applicant shall include the information and applicable supporting data required by 2 CFR 176.160(c) and (d) in the request. If an applicant has not requested a determination regarding the inapplicability of 1605 of the Recovery Act before submitting its application or proposal, or has not received a response to a previous request, the applicant shall include the information and supporting data in the application or proposal.

(c) *Evaluation of project proposals.* If the Federal Government determines that an exception based on unreasonable cost of domestic iron, steel, and/or manufactured goods applies, the Federal Government will evaluate a project requesting exception to the requirements of section 1605 of the Recovery Act by adding to the estimated total cost of the project 25 percent of the project cost if foreign iron, steel, or manufactured goods are used based on unreasonable cost of comparable domestic iron, steel, or manufactured goods.

(d) *Alternate project proposals.*

(1) When a project proposal includes foreign iron, steel, and/or manufactured goods, other than designated country iron, steel, and/or manufactured goods, that are not listed by the Federal Government in this Buy American notice in the request for applications or proposals, the applicant may submit an alternate proposal based on use of equivalent domestic or designated country iron, steel, and/or manufactured goods.

(2) If an alternate proposal is submitted, the applicant shall submit a separate cost comparison table prepared in accordance with 2 CFR 176.160(c) and (d) for the proposal that is based on the use of any foreign iron, steel, and/or manufactured goods for which the Federal Government has not yet determined an exception applies.

(3) If the Federal Government determines that a particular exception requested in accordance with 2 CFR 176.160(b) does not apply, the Federal Government will evaluate only those proposals based on use of the equivalent domestic or designated country iron, steel, and/or manufactured goods and the applicant shall be required to furnish such domestic or designated country items.

4. Wage-Rate Requirements

All laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of 40 U.S.C. In this regard, the award will contain the following provision:

Wage Rate Requirements Under Section 1606 of the American Recovery and Reinvestment Act, 2009

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of 40 U.S.C.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C.

3145, the Department of Labor has issued regulations at 29 CFR Parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of $2,000 for construction, alteration and/or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan No. 14.

5. National Environmental Policy Act of 1969

Implementation of the Recovery Act will utilize existing environmental review compliance requirements in accordance with its statutory and regulatory obligations. The Agency's respective environmental policies and procedures are codified in 7 CFR Part 1940, Subpart G and 7 CFR Part 1794 as applicable. All relevant environmental compliance requirements are integrated in the above regulations, including the National Environmental Policy Act, National Historic Preservation Act and Endangered Species Act compliance processes.

All program applicants are required to integrate environmental factors, along with other technical and financial considerations, into early project planning and design. The environmental review process must be completed, including all public notice requirements prior to funding any proposals.

6. Accountability and Transparency and Responsibility for Informing Sub-Recipients

Recipients and their sub-recipients must maintain current registrations in the Central Contractor Registration (*http://www.ccr.gov*) at all times for which they have active Federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (*http://www.dnb.com/us/)* is one of the requirements for registration in the Central Contractor Registration.

All awards will contain the following tracking and documenting requirements:

Recovery Act Transactions Listed in Schedule of Expenditures of Federal Awards and Recipient Responsibilities for Informing Sub-Recipients

(a) To maximize the transparency and accountability of funds authorized under the Recovery Act as required by Congress and in accordance with 2 CFR 215, subpart 21 and OMB Circular A–102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations,'' recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF–SAC) required by OMB Circular A–133. This shall be accomplished by identifying expenditures for Federal awards made the under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF–SAC by CFDA number, and inclusion of the prefix ''ARRA'' in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF–SAC.

(c) Recipients agree to separately identify to each sub-recipient and document at the time of sub-award and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to sub-recipients shall distinguish the sub-awards of incremental Recovery Act funds from regular sub-awards under the existing program.

(d) Recipients agree to require their sub-recipients to include their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor sub-recipient expenditure of Recovery Act funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

Pursuant to section 1511 of the Recovery Act:

With respect to these funds made available to State or local governments for infrastructure investments, the Governor, mayor, or other chief executive, as appropriate, shall certify that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Such certification shall include a description of the investment, the estimated total cost, and the amount of these funds to be used, and shall be posted on the Recovery.gov Web site at *http://www.recovery.gov.* A State or local agency may not receive infrastructure investment funding from funds made available in the Recovery Act unless this certification is made and posted.

7. Reporting on Use of the Recovery Funds

Recipients of Federal awards from funds authorized under the Recovery Act must comply with all reporting requirements outlined in Section 1512 of the Recovery Act. For purposes of reporting, recipients of recovery funds from RD must report on sub-recipient activities as specified below. Not later than 10 days after the end of each calendar quarter, starting with the quarter ending June 30, 2009, and reporting by July 10, 2009, the recipient must submit a report to the appropriate Agency that will be posted to Recovery.gov. Each award will contain the following reporting requirement:

Reporting and Registration Requirements Under Section 1512 of the American Recovery and Reinvestment Act, 2009

(a) This award requires the recipient to complete projects or activities which are funded under the Recovery Act and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.

(c) Recipients and their sub-recipients must maintain current registrations in the Central Contractor Registration (*http://www.ccr.gov*) at all times during which they have active Federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number *(http://www.dnb.com/us/)* is one of the requirements for registration in the Central Contractor Registration.

(d) The recipient shall report the information described in Section

1512(c) of the Recovery Act, the reporting instructions and data elements that will be provided online at http://*www.FederalReporting.gov,* and ensure that any information that is pre-filled is corrected or updated as needed.

8. Priority

For Water and Environment, Community Facilities, and Rural Business programs, 10 percent of funding shall be allocated for assistance in persistent poverty counties.

9. Whistleblower Protection

Each recipient or sub-recipient awarded funds made available under the Recovery Act shall promptly refer to the USDA Office of Inspector General, any credible evidence that a principal, employee, agent, contractor, sub-recipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.

Section 1553(a) of the Recovery Act provides protection for whistleblowers:

Prohibition of Reprisals—An employee of any non-Federal employer receiving covered funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of—

(1) Gross mismanagement of an agency contract or grant relating to covered funds;

(2) A gross waste of covered funds;

(3) A substantial and specific danger to public health or safety related to the implementation or use of covered funds;

(4) An abuse of authority related to the implementation or use of covered funds; or

(5) A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

10. Schedule of Expenditures of Federal Awards

Recipients agree to separately identify the expenditures for each loan and grant award funded under the Recovery Act on the SEFA and the SF–SAC required by OMB Circular A–133. This identification on the SEFA and SF–SAC shall include the Federal award number, the CFDA number, and amount, such that separate accountability and disclosure is provided for Recovery Act funds by Federal award number consistent with the recipient reports required by Section 1512(c).

11. Prohibitions

None of the funds appropriated or otherwise made available under the Recovery Act may be used by any State or local government or any private entity for any casino or other gambling related establishment, aquarium, zoo, golf course or swimming pool. This prohibition extends to all facilities that maintain such establishments. In implementing this prohibition RD specifically will not finance projects, such as dwellings and hotels, with swimming pools. (Section 1604 of the Recovery Act.)

12. Civil Rights

Programs referenced in this notice are subject to applicable Civil Rights Laws. These laws include the Equal Credit Opportunity Act, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, as amended in 1988, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

13. Application Procedure

Unless otherwise specified in this Notice, the application procedure for assistance under this Notice is the same as the regular application procedure for the particular program for which financial assistance is requested.

D. Funding Availability

1. Community Facilities (CF) Programs

General. The CF Direct Loan and Grant Programs are designed to finance and facilitate the development of essential community facilities servicing rural areas. These facilities include, but are not limited to, hospitals; medical clinics; elderly care facilities; police stations and vehicles; fire and rescue stations and vehicles; vocational and medical rehabilitation centers; and educational facilities. Funds under this Notice can be used to construct, enlarge or improve community facilities for health, public safety, and education. This may include the purchase of equipment or furnishings required for a facility's operation.

Recovery Act Authorization. Pursuant to the Recovery Act, funding is available as follows:

CF Direct Loan Funds	$1,136,188,811
Less National Office Reserve	568,094,811
Allocation to States	568,094,000
CF Grant Funds	61,110,000
Less National Office Reserve	30,553,000
Allocation to States	30,557,000

Applicable Statutory or Regulatory Authority.

• Consolidated Farm and Rural Development Act, Section 306 (7 U.S.C. 1926(a)(1) and (19)).

• 7 CFR Part 1942, Subpart A, Community Facilities Direct Loan Program.

• 7 CFR Part 1942, Subpart C, Fire and Rescue Loans.

• 7 CFR Part 3570, Subpart B, Community Facilities Grant Program.

Further Information. The essential community facility must primarily serve rural areas, be located in a rural area with a population of 20,000 or less, and the median household income of the population to be served by the proposed facility must be below the higher of the poverty line or 90 percent of the State non-metropolitan median household income. The amount of CF grant funds that a project is eligible for will be determined in accordance with 7 CFR Part 3570, Subpart B. CF grant funds will not exceed 75 percent of the total project cost. Additionally, if other Federal grant assistance is received, the aggregate of Federal grant assistance may not exceed 75 percent of the total project cost. Rural Development has determined that it will review and make awards under this NOFA as applications are received based on the existing criteria in 7 CFR, Part 3570, Subpart B, and 7 CFR, Part 1942, Subpart A. Applications will be reviewed, approved, and obligated in the States' Rural Development offices.

2. Single Family Housing (SFH) Programs

General. USDA Rural Development will provide assistance through its SFH loan program in rural areas as authorized under the Recovery Act. The SFH loan programs are designed to assist very low, low-income, and moderate-income households to obtain modest, decent, safe, and sanitary housing for use as a permanent residence in rural areas.

Recovery Act Authorization. Pursuant to the Recovery Act, funding is available as follows:

(a) Section 502 Guaranteed SFH Loans	
Guarantees—Purchase	$9,849,606,299
Guarantees—Refinance	400,000,000
(1) Purchase—Amount Available for 2009 Recovery Act Allocation	
Amount Available for Allocation	9,849,606,299
Less National Office General Reserve	2,849,606,299
Allocation to the States	7,000,000,000
(2) Refinance—Amount Available for 2009 Recovery Act Allocation	
Total Available	400,000,000
Less National Office General Reserve	400,000,000
(b) Section 502 Direct SFH Loans	
Amount Available for Allocation	967,113,095
Less National Office General Reserve	290,143,000
Allocation to the States	676,979,000

Applicable Statutory or Regulatory Authority.

- The Housing Act of 1949 as amended.
- 7 CFR Part 1980, Subpart D (Guaranteed).
- 7 CFR Part 3550 (Direct).

Further Information. All SFH programs typically are administered through field offices. For more information or to request an application, please contact the Rural Development state office servicing your area listed in the **ADDRESSES** section of this notice. Section 502 Guaranteed SFH Refinance loan funds, however, will be distributed from the National Office.

All Section 502 loans involving construction or repair costs greater than $2,000 funded with recovery funds will be subject to the provisions of the Davis-Bacon Act. The National Office will maintain a general reserve. These funds will be available to states that exhaust their Recovery Act allocations.

3. Business & Industry (B&I) Guaranteed Loan Program

USDA Rural Development will provide B&I guaranteed loan funds for eligible businesses as authorized under the Recovery Act. As program details are currently under consideration, a separate NOFA will be issued providing program specifics at a later date.

4. Rural Business Enterprise Grant (RBEG) Program

General. RBS's primary objective is to improve the economic conditions of rural areas. RBEG funding will be used to support the development of small and emerging private business enterprises in rural areas. The USDA Rural Development will administer grant awards made under the RBEG program and 7 U.S.C. 1932(c) for fiscal years (FYs) 2009 and 2010. RBEG program regulations are in 7 CFR part 1942, subpart G. Expenses incurred in developing applications will be at the applicant's risk.

Recovery Act Authorization. Pursuant to the Recovery Act, funding is available as follows:

Rural Business Enterprise Grants—$19,400,000.

Approximate Number of Awards: Estimate 200;

Average Award: $99,000;

Anticipated Award Date: Ongoing until available funds are expended.

Applicable Statutory or Regulatory Authority.

- Consolidated Farm and Rural Development Act, Section 310B (7 U.S.C. 1932).
- 7 CFR Part 1942, subpart G.

Dates. RBEG applications will be accepted in the State Offices on a rolling basis. States will be required to submit applications to the National Office by local close of business on the last business day of each month (June 29, July 31 and so forth) until funds are expended.

Further Information. Applicants can obtain grant application information and submit applications for Rural Business Enterprise Grants through the grants.gov site at *http://www.grants.gov*. Users of grants.gov alternatively may download a copy of the application package to complete offline. Applications in paper format should be submitted to the USDA Rural Development State Office where the project is located. All applicants must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or at *http://www.dnb.com/us/*.

Eligible Projects will be scored, ranked, and submitted to the Secretary for final selection for Recovery Act funding. Unsuccessful projects submitted under the Recovery Act will be returned to the appropriate State Offices for possible funding under the Omnibus Appropriations Act, 2009.

Matching funds are not required.

5. Water and Environmental Programs (WEP)

This Notice is intended to announce the availability of additional assistance to be administered through the WEP as authorized under the Recovery Act, 2009, as follows:

WEP Direct Loans Funds	$2,733,515,732
WEP Grant Funds	924,680,000
Circuit Rider Technical Assistance	14,280,000

USDA Rural Development's WEP provides a wide variety of loan, grant, and loan guarantee assistance to rural residents, rural communities and rural utility systems. Funding shall be used for the cost of direct loans and grants for the rural water, waste water and waste disposal programs authorized by section 306 and described in section 381E(d)(2) of the Consolidated Farm and Rural Development Act.

(a) Assistance Available through This Notice.

The Act enables USDA Rural Development to make additional funds available for WEP with Direct Loans and Grants. Eligible applicants are public bodies, organizations operated on a not-for-profit basis, Indian tribes on Federal and State reservations and other Federally-recognized Indian tribes. These funds will be used to serve rural areas with a population not in excess of 10,000. Eligible loan and grant purposes include, but are not limited to, constructing, enlarging, extending or otherwise improving rural water, sanitary sewage, solid waste disposal and storm wastewater disposal facilities. None of the borrower and project eligibility requirements as outlined in 7 CFR part 1780, including availability of other credit, income or population are waived under this Notice.

Further details on eligible applicants and projects may be found in the relevant regulations listed in applicable statutory or regulatory authority below.

(b) National Environment Policy Act of 1969.

The WEP implementation of the Recovery Act will utilize existing environmental review compliance requirements in accordance with its statutory and regulatory obligations. The agency's environmental policies and procedures are codified in 7 CFR Part 1794. All relevant environmental compliance requirements are integrated in the above regulation, including the National Environmental Policy Act, National Historic Preservation Act and Endangered Species Act compliance processes.

All WEP applicants are required to integrate environmental factors, along with other technical and financial considerations into early project planning and design. The agency has guidance documents for applicants posted on the following webpage—*http://www.usda.gov/rus/water/ees/bulletin.htm.* The environmental review process must be complete, including all public notice requirements prior to funding any proposals.

(c) Applicable Statutory or Regulatory Authority.

- Title 1 of Division A of the American Recovery and Reinvestment Act, 2009;
- Consolidated Farm and Rural Development Act, Section 306(a)(1), (2) and (22) (7 U.S.C. 1926(a)(1), (2) and (22));
- 7 CFR Part 1780, Water and Waste Loans and Grants; and
- RD Instruction 1940–C, Davis Bacon and Related Acts (Available in any RD Office).

6. Broadband Direct Loans and Grants

Rural Development anticipates making Direct Broadband loans and grants available to eligible entities using Recovery Act funds. Further information regarding Broadband loans and grants will be provided separately in a subsequent NOFA or a series of NOFAs.

Civil Rights: Programs referenced in this Notice are subject to applicable Civil Rights Laws. These laws include the Equal Credit Opportunity Act, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, as amended in 1988, Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975.

Non-Discrimination Statement: The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice), or (202) 720–6382 (TDD). ''USDA is an equal opportunity provider, employer, and lender.''

Dated: July 17, 2009.

Dallas Tonsager,

Under Secretary.

[FR Doc. E9–17512 Filed 7–22–09; 8:45 am]

BILLING CODE 3410–XY–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, July 31, 2009; 1:30 p.m. EDT.

PLACE: Via Teleconference, Public Dial In—1–800–597–7623, Conference ID # 21390687.

Meeting Agenda

This meeting is open to the public.

I. Approval of Agenda

II. State Advisory Committee Issues

- Arizona SAC
- Hawaii SAC
- Michigan SAC
- Utah SAC

III. Program Planning

- Update on National Civil Rights Conference

IV. Adjourn

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit, (202) 376–8591. *TDD:* (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202–376–8105. *TDD:* (202) 376–8116.

Dated: July 21, 2009.

David Blackwood,

General Counsel.

[FR Doc. E9–17726 Filed 7–21–09; 4:15 pm]

BILLING CODE 6335–01–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 emergency provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration (NTIA).

Title: Broadband Subscription and Usage Survey (Supplement to the Census Bureau's Current Population Survey).

OMB Control Number: 0660–0021.

Agency Form Number: None.

Type of Request: Emergency submission.

Burden Hours: 581.

Average Time per Response: 38 seconds.

Number of Respondents: 55,000.

Needs and Uses: NTIA proposes to add five questions to the Census Bureau's October 2009 Current Population Survey (CPS) in order to gather reliable data on broadband (also known as high-speed Internet) use by U.S. households. The Administration is committed to providing broadband service to every community in America. To that end, the Administration is working with Congress, NTIA, the Federal Communications Commission, Rural Utilities Service, the States, and other parties to develop and implement economic and regulatory policies that foster broadband deployment. Current, systematic, and comprehensive data on broadband subscription and use by U.S. households is critical to allow policymakers not only to gauge progress made to date, but also to identify problem areas with a specificity that permits carefully targeted and cost effective responses.

The Census Bureau is widely regarded as a superior collector of data based on its centuries of experience and its scientific methods. Collection of NTIA's requested broadband usage data, moreover, will occur in conjunction with Census' scheduled October CPS, thereby significantly reducing the potential burdens on the Bureau and the households surveyed. The questions on Internet usage were included in seven previous Census household surveys.

The need for comprehensive broadband data has become more pressing in recent months and has necessitated this request for expedited review. The General Accountability Office (GAO) recently issued reports noting the lack of useful broadband data for policymakers, and Congress passed legislation—the Broadband Data Improvement Act in 2008 and the American Recovery and Reinvestment Act in 2009—wholly or partly in response to such criticisms. The Organization for Economic Cooperation and Development (OECD) has ranked the United States a disappointing number 18 in household broadband access despite a period of rapid growth in the technology's penetration. The OECD has noted that the user data they are using to benchmark the United States is from 2007 as they have no other current official data from the United States. Modifying the October CPS to include NTIA's requested broadband data will allow the Commerce Department and NTIA to respond to make more informed grant decisions, to respond to Congressional directives, and to work with the OECD on its broadband methodologies with more recent data.

Affected Public: Individuals or households.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Nicholas A. Fraser, (202) 395–5887.

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 7845, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent by August 13, 2009 to Nicholas A. Fraser, OMB Desk Officer, e-mail *Nicholas_A._Fraser@omb.eop.gov* or Fax number (202) 395–5167.

Dated: July 17, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–17508 Filed 7–22–09; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–878]

Saccharin from the People's Republic of China: Notice of Initiation of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') has received information sufficient to warrant initiation of a changed circumstances review of the antidumping duty order on saccharin from the People's Republic of China (''PRC''). Based upon a request filed by PMC Specialties Group, Inc. (''PMCSG''), the Department is initiating a changed circumstances review to determine whether the domestic industry is in fact no longer interested in this order and to potentially revoke the antidumping duty order in this proceeding.

EFFECTIVE DATE: July 23, 2009.

FOR FURTHER INFORMATION CONTACT: Giselle Cubillos or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1778 and (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 2003, the Department published in the **Federal Register** an antidumping duty order on saccharin from the PRC.[1] On June 8, 2009, the Department published the continuation of antidumping duty order on saccharin from the PRC.[2] On June 4, 2009, the Department received a request on behalf of PMCSG for a changed circumstances review to revoke the antidumping duty order on saccharin from the PRC. As part of its submission, PMCSG requested that the Department combine the notice of initiation with a preliminary determination to revoke the *Saccharin Order*. On July 9, 2009, the Department received a letter opposing the request for a changed circumstances review from Kinetic Industries (''Kinetic'').[3] Kinetic claimed that it produces saccharin through a third party toller in the United States and that both parties, Kinetic and its toll producer, are interested parties as domestic producers of saccharin. Both Kinetic and its toll producer requested that the Department not issue an expedited preliminary determination in this changed circumstances review.

Scope of the Order

The product covered by this antidumping duty order is saccharin. Saccharin is defined as a non–nutritive sweetener used in beverages and foods, personal care products such as toothpaste, table top sweeteners, and animal feeds. It is also used in metalworking fluids. There are four primary chemical compositions of saccharin: (1) Sodium saccharin (American Chemical Society Chemical Abstract Service (''CAS'') Registry 128–44–9); (2) calcium saccharin (CAS Registry 6485–34–3); (3) acid (or insoluble) saccharin (CAS Registry 81–07–2); and (4) research grade saccharin. Most of the U.S.-produced and imported grades of saccharin from the PRC are sodium and calcium saccharin, which are available in granular, powder, spray–dried powder, and liquid forms. The merchandise subject to this order is currently classifiable under subheading 2925.11.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS'') and includes all types of saccharin imported under this HTSUS subheading, including research and specialized grades. Although the HTSUS subheading is provided for convenience and customs purposes, the Department's written description of the scope of this order remains dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 751(d) of the Tariff Act of 1930, as amended (the ''Act''), the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review) where the Department determines that producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the continuance of an order. Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order, which shows changed circumstances sufficient to warrant a review of the order. Additionally, section 751(b)(4) of the Act and 19 CFR 351.216(c) state that the Department shall not conduct a review less than 24 months after the date of publication of notice of the final determination in the original investigation. As noted above, PMCSG filed its request for a changed circumstances review on June 4, 2009, well over 24 months after the publication of the final determination

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[1] *See Notice of Antidumping Duty Order: Saccharin from the People's Republic of China*, 68 FR 40906 (June 9, 2003) (''*Saccharin Order*'').

[2] *See Continuation of Antidumping Duty Order on Saccharin from the People's Republicof China*, 74 FR 27089 (June 8, 2009).

[3] Although Kinetic filed a letter opposing PMCSG's request for changed circumstances review on July 2, 2009, the Department rejected that letter because it did not contain the appropriate certifications. The Department requested that Kinetic re-file its submission by July 10, 2009. On July 9, 2009, Kinetic refiled its submission with the appropriate certifications.

and order. *See Saccharin Order.* The Department has determined that the request submitted by PMCSG is sufficient to warrant a changed circumstances review.

In accordance with sections 751(d)(1) and 782(h)(2) of the Act, and 19 CFR 351.216 and 351.222(g), a domestic producer of the like product, PMCSG, claims changed circumstances exist and has made an affirmative statement that no further interest exists in continuing the order on saccharin. PMCSG further alleges that it represents 100 percent of the domestic industry and that it accounts for all of the production of the domestic like product to which the order pertains. Based upon the statement of no interest by PMCSG, the Department has determined that there is sufficient information to conduct a changed circumstances review. However, in light of the opposition to the potential revocation, and Kinetic's claim to be a domestic producer of the like product, the Department does not have sufficient information on the record of this changed circumstances review to determine that PMCSG accounts for substantially all (*i.e.*, at least 85 percent) of the production of the domestic like product. Accordingly, we are initiating a changed circumstances review, but will not conduct an expedited changed circumstances review and preliminary determination, pursuant to 19 CFR 351.221(c)(3)(ii). The Department intends to issue questionnaires to Kinetic, the third party toller of Kinetic's saccharin, and PMCSG to solicit relevant information and fully evaluate the request to revoke the antidumping duty order on saccharin from the PRC as well as the arguments against this revocation.

The Department will issue questionnaires requesting additional information for the review and will publish in the **Federal Register** a notice of the preliminary results of the antidumping duty changed circumstances review, in accordance with 19 CFR 351.221(b)(2) and (4), and 19 CFR 351.221(c)(3)(i). That notice will set forth a description of any action proposed. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of review. In accordance with 19 CFR 351.216(e), the Department intends to issue the final results of its antidumping duty changed circumstances review not later than 270 days after the date on which this review is initiated.

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216.

Dated: July 15, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–17576 Filed 7–22–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–901]

Certain Lined Paper Products from the People's Republic of China: Notice of Rescission, in Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 23, 2009.

FOR FURTHER INFORMATION CONTACT: Joy Zhang or Victoria Cho, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1168, or (202) 482–5075, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 2006, the Department of Commerce (the Department) published in the **Federal Register** an antidumping duty order on certain lined paper products (CLPP) from the People's Republic of China (PRC).[1] On September 2, 2008, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on CLPP from China. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 51272 (September 2, 2008). On September 30, 2008, the Association of American School Paper Suppliers (Petitioner) requested that the Department conduct an administrative review of (1) Shanghai Lian Li Paper Products Co., Ltd. (Lian Li), and (2) the Watanabe Group, which consists of Watanabe Paper Products (Shanghai) Co., Ltd., Watanabe Paper Products (Lingqing) Co., Ltd., and Hotrock Stationery (Shenzhen) Co., Ltd. (collectively, the Watanabe Group) for the period of review (POR) of September 1, 2007 through August 31, 2008.

On October 29, 2008, the Department initiated this review with respect to both requested companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review*, 73 FR 64305 (October 29, 2008). On November 13, 2008, Lian Li submitted a letter certifying that it did not have any shipments of subject merchandise during the POR. The Department conducted an internal U. S. Customs and Border Protection (CBP) data query on November 13, 2008, to investigate Lian Li's claim, and found that Lian Li had made shipments to the United States during the POR, which were entered under the Harmonized Tariff Schedule of the United States (HTSUS) numbers for subject merchandise. *See* Memorandum to File from Joy Zhang titled ''Internal Customs Data Query,'' dated December 2, 2008. Therefore, on December 2, 2008, the Department issued a questionnaire to Lian Li.

On January 9, Petitioner filed comments on Lian Li's no shipment claim, asking the Department to request product samples from Lian Li. On January 29, 2009, Lian Li submitted product samples of the merchandise it exported to the United States during the POR, which Lian Li claimed were non–subject merchandise. On March 4, 2009, counsel for Petitioner inspected Lian Li's product samples. *See* Memorandum to the File from Joy Zhang titled ''Inspecting the Product Samples by Counsel for the Association of American School Paper Supplies,'' dated March 4, 2009.

On June 4, 2009, the Department published a notice extending the deadline for the preliminary results from for 120 days to September 30, 2009. In this notice the Department also published its intent to rescind this administrative review in part with respect to Lian Li because the Department preliminarily determined that the product samples submitted by Lian Li and the Customs data demonstrated that Lian Li did not export subject merchandise to the United States during the POR. *See Certain Lined Paper Products From the People's Republic of China: Notice of Intent to Rescind, In Part, Antidumping Duty Administrative Review and Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 26840, 26841 (June 4, 2009) (*Notice of Intend to Rescind*). We invited

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia*, 71 FR 56949 (September 28, 2006).

interested parties to comment. We received no comments after the publication of the *Notice of Intend to Rescind*.

Scope of the Order

The scope of this order includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non–school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for looseleaf filler paper) including but not limited to such products as single- and multi–subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8–3/4 inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or ''tear–out'' size), and are measured as they appear in the product (*i.e.*, stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated , included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this order are:

- unlined copy machine paper;
- writing pads with a backing (including but not limited to products commonly known as ''tablets,'' ''note pads,'' ''legal pads,'' and ''quadrille pads''), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole–punched or drilled filler paper;
- three–ring or multiple–ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- index cards;
- printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- newspapers;
- pictures and photographs;
- desk and wall calendars and organizers (including but not limited to such products generally known as ''office planners,'' ''time books,'' and ''appointment books'');
- telephone logs;
- address books;
- columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- lined business or office forms, including but not limited to: pre–printed business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- lined continuous computer paper;
- boxed or packaged writing stationary (including but not limited to products commonly known as ''fine business paper,'' ''parchment paper'', and ''letterhead''), whether or not containing a lined header or decorative lines;
- Stenographic pads (''steno pads''), Gregg ruled (''Gregg ruling'' consists of a single- or double–margin vertical ruling line down the center of the page. For a six–inch by nine–inch stenographic pad, the ruling would be located approximately three inches from the left of the book.), measuring 6 inches by 9 inches;

Also excluded from the scope of this order are the following trademarked products:

- Fly™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen–top computer. The product must bear the valid trademark Fly™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- Zwipes™: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially–developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- FiveStar®Advance™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1'' wide elastic fabric band. This band is located 2–3/8'' from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar®Advance™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

• FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3–ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover.

The product must bear the valid trademark FiveStar Flex™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope). Merchandise subject to this order is typically imported under headings 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, 4810.22.5044, 4811.90.9090, 4820.10.2010 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS headings are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review with respect to a particular exporter or producer if the Department concludes that during the POR there were no entries, exports, or sales of the subject merchandise by that exporter or producer. As noted, on November 13, 2008, Lian Li submitted a letter certifying that it did not have entries, exports or sales during the POR. Therefore, the Department conducted a CBP query, and requested that Lian Li provide product samples of products entered during the POR. Based on a review of the product samples submitted by Lian Li and the Customs data, we preliminarily determined that Lian Li did not export subject merchandise to the United States during the POR, pursuant to 19 CFR § 351.213(d)(3), and consistent with our practice. *See Notice of Intent to Rescind*, 74 FR at 26840. The Department did not receive comments from any interested party on the Department's intent to rescind. Based on our analysis of the evidence on the record, the Department has determined that Lian Li is a non–shipper for this review.

Therefore, in accordance with 19 CFR 351.213(d)(3), we are rescinding this review with respect to Lian Li. Only one respondent, the Watanabe Group, remains in this review. We intend to issue assessment instructions to CBP 15 days after the date of publication of this notice of rescission of administrative review.

We are issuing this notice in accordance with section 751 of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: July 16, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary For Antidumping and Countervailing Duty Operations.

[FR Doc. E9–17575 Filed 7–22–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XQ33

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Application for Exempted Fishing Permit; Horseshoe Crabs

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

ACTION: Notification of a proposal to conduct exempted fishing; request for comments.

SUMMARY: NMFS announces that the Director, Office of Sustainable Fisheries (Director), has made a preliminary determination that the subject exempted fishing permit (EFP) application submitted by Limuli Laboratories of Cape May Court House, New Jersey, contains all the required information and warrants further consideration. The proposed EFP would allow the harvest of up to 10,000 horseshoe crabs from the Carl N. Shuster Jr. Horseshoe Crab Reserve for biomedical purposes and require, as a condition of the EFP, the collection of data related to the status of horseshoe crabs within the reserve. The Director has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Atlantic States Marine Fisheries Commission's (Commission) Horseshoe Crab Interstate Fisheries Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Director proposes to recommend that an EFP be issued that would allow up to 3 commercial fishing vessels to conduct fishing operations that are otherwise restricted by the regulations promulgated under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act). The EFP would allow for an exemption from the Carl N. Shuster Jr. Horseshoe Crab Reserve (Reserve).

Regulations under the Atlantic Coastal Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Written comments on this action must be received on or before August 7, 2009.

ADDRESSES: Written comments should be sent to Alan Risenhoover, Director, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Room 13362, Silver Spring, MD 20910. Mark the outside of the envelope ''Comments on Horseshoe Crab EFP Proposal.'' Comments may also be sent via fax to (301) 713–0596. Comments on this notice may also be submitted by e-mail to: *Horseshoe-Crab.EFP@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: Horseshoe Crab EFP Proposal.

FOR FURTHER INFORMATION CONTACT: Brian Hooker, Fishery Management Specialist, (301) 713–2334 x173.

SUPPLEMENTARY INFORMATION:

Background

Limuli Laboratories submitted an application for an EFP on July 13, 2009, to collect up to 10,000 horseshoe crabs for biomedical and data collection purposes from the Reserve. The applicant has applied for, and received, a similar EFP every year from 2001 - 2008. The current EFP application specifies that: (1) the same methods would be used in 2009 that were used in years 2001–2008, (2) at least 15 percent of the bled horseshoe crabs would be tagged, and (3) there had not been any sighting or capture of marine mammals or endangered species in the trawling nets of fishing vessels engaged in the collection of horseshoe crabs since 1993. The project submitted by Limuli Laboratories would provide morphological data on horseshoe crab catch, would tag caught horseshoe crabs, and would use the blood from the caught horseshoe crabs to manufacture Limulus Amebocyte Lysate (LAL), an important health and safety product used for the detection of endotoxins. The LAL assay is used by medical professionals, drug companies, and pharmacies to detect endotoxins in intravenous pharmaceuticals and medical devices that come into contact with human blood or spinal fluid.

Results of 2008 EFP

No horseshoe crabs were collected from the Reserve by the applicant during the 2008 season. Thus, no results were submitted. The 2007 results were published in the **Federal Register** on June 2, 2008 (73 FR 31434) thus are not repeated here. Data collected under previous EFPs were supplied to NMFS, the Commission, and the State of New Jersey.

Proposed 2009 EFP

Limuli Laboratories proposes to conduct an exempted fishery operation using the same means, methods, and seasons utilized during the EFPs in 2001–2008. Limuli proposes to continue to tag at least 15 percent of the bled horseshoe crabs as they did in 2007. NMFS would require that the following terms and conditions be met for issuance of the EFP:

1. Limiting the number of horseshoe crabs collected in the Reserve to no more than 500 crabs per day and to a total of no more than 10,000 crabs per year;

2. Requiring collections to take place over a total of approximately 20 days during the months of August, September, October, and November. Horseshoe crabs are readily available in harvestable concentrations nearshore earlier in the year, and offshore in the Reserve from July through November;

3. Requiring that a 5 ½ inch (14.0 cm) flounder net be used by the vessel to collect the horseshoe crabs. This condition would allow for continuation of traditional harvest gear and adds to the consistency in the way horseshoe crabs are harvested for data collection;

4. Limiting trawl tow times to 30 minutes as a conservation measure to protect sea turtles, which are expected to be migrating through the area during the collection period, and are vulnerable to bottom trawling;

5. Restricting the hours of fishing to daylight hours only, approximately from 7:30 a.m. to 5 p.m. to aid law enforcement;

6. Requiring that the collected horseshoe crabs be picked up from the fishing vessels at docks in the Cape May Area and transported to local laboratories, bled for LAL, and released alive the following morning into the Lower Delaware Bay; and

7. Requiring that any turtle take be reported to NMFS, Northeast Region Assistant Regional Administrator of Protected Resources Division within 24 hours of returning from the trip in which the incidental take occurred.

As part of the terms and conditions of the EFP, for all horseshoe crabs bled for LAL, NMFS would require that the EFP holder provide data on sex ratio and daily harvest. Also, the EFP holder would be required to examine at least 200 horseshoe crabs for morphometric data. Terms and conditions may be added or amended prior to the issuance of the EFP.

The proposed EFP would exempt three commercial vessels from regulations at 50 CFR 697.7(e) and 697.23(f) which prohibit the harvest and possession of horseshoe crabs on a vessel with a trawl or dredge gear aboard from the Reserve.

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

Dated: July 17, 2009.

Kristen C. Koch,

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

[FR Doc. E9–17540 Filed 7–22–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XQ24

Endangered and Threatened Species; Recovery Plans

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

ACTION: Notice of availability; request for comments and notice of public meetings.

SUMMARY: The National Marine Fisheries Service (NMFS) announces that the Draft Southern California Steelhead Recovery Plan (Plan) is available for public review and comment. The Plan addresses the Southern California Steelhead (*Oncorhynchus mykiss*) Distinct Population Segment (DPS), which spawns in watersheds from the Santa Maria River (just north of Point Conception) south to the Tijuana River at the U.S.-Mexico border. NMFS is soliciting review and comment from the public and all interested parties on the Draft Plan. In addition, public meetings will be held on August 25 and September 1, 2009, as opportunities for providing comments on the Draft Plan.

DATES: NMFS will consider and address all substantive comments received during the comment period. Comments must be received no later than 5 p.m. Pacific daylight time on September 21, 2009. Public meetings will also be held (see Public Meetings below).

ADDRESSES: Please send written comments and materials to Penny Ruvelas, National Marine Fisheries Service, 501 W. Ocean Blvd, Suite 4200, Long Beach, CA 90802. Comments may also be submitted by e-mail to: *SteelheadPlan.swr@noaa.gov*. Include in the subject line of the e-mail comment the following identifier: Comments on Southern California Steelhead Plan. Comments may be submitted via facsimile (fax) to 562–980–4027.

Persons wishing to review the Plan can obtain an electronic copy (i.e., CD-ROM) from Kimberly Speech by calling 562–980–4020 or by e-mailing a request to *kimberly.speech@noaa.gov* with the subject line ''CD-ROM Request for Southern California Steelhead Recovery Plan.'' Electronic copies of the Plan are also available on-line on the NMFS website *http://swr.nmfs.noaa.gov/recovery/So__Cal.htm*.

For locations and times of public meetings, see Public Meetings below.

FOR FURTHER INFORMATION CONTACT: Mark Capelli, NMFS Southern California Steelhead Recovery Coordinator at 805–963–6478 x14 or Penny Ruvelas, NMFS SWR Protected Resources Division at 562–980–4197.

SUPPLEMENTARY INFORMATION:

Background

Recovery plans describe actions beneficial to the conservation and recovery of species listed under the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*). The ESA requires that recovery plans incorporate: (1) objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the plan's goals; and (3) estimates of the time required and costs to implement recovery actions. The ESA requires the development of recovery plans for each listed species unless such a plan would not promote its recovery.

NMFS is responsible for developing and implementing ESA recovery plans for listed salmon and steelhead. In so doing, NMFS' goal is to restore endangered and threatened Pacific salmonids to the point that they are again self-sustaining members of their ecosystems and no longer need the protections of the ESA.

Recovery Plans developed under the ESA are guidance documents, not regulatory documents. However, the ESA envisions Recovery Plans as the central organizing tool for guiding the recovery of listed species. Recovery Plans also guide Federal agencies in fulfilling their obligations under section 7(a) (1) of the ESA, which calls on all Federal agencies to ''utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species.'' In addition to outlining proactive measures to achieve species recovery, Recovery Plans provide a context and framework for implementing other provisions of the ESA with respect to a particular species, including consultations on Federal agency activities under section 7(a)(2) and the development of Habitat Conservation Plans in accordance with section 10(a)(1)(B).

This Recovery Plan serves as a guideline for achieving recovery criteria and goals by describing the criteria by which NMFS would measure species recovery, the strategy to achieve recovery, and the recovery actions necessary to achieve viable populations of steelhead within the Southern California steelhead DPS.

Recovery Criteria

Recovery criteria are built upon criteria recommended by the NMFS Technical Recovery Team (TRT) for the identification of viable anadromous *O. mykiss* populations and DPS. A viable population is defined as a population having a negligible risk (<5%) of extinction due to threats from demographic variation, non-catastrophic environmental variation, and genetic diversity changes over a 100-year time frame. A viable DPS is comprised of a sufficient number of viable populations sufficiently dispersed spatially, but well connected enough to maintain long-term (1,000-year) persistence and evolutionary potential (McElhany *et al.* 2000). The viability criteria are intended to describe characteristics of the species and its natural environments necessary for both individual populations and the DPS as a whole to be viable, i.e., persist over a specific period of time, regardless of other ongoing anthropogenic effects.

Recovery of the endangered Southern California Coast Steelhead DPS will require recovery of a sufficient number of viable populations within each of five Biogeographic Population Groups (BPGs) defined by the TRT. Recovery of these individual populations is necessary to conserve the natural diversity (genetic, phenotypic, and behavioral), spatial distribution, and abundance of the species, and thus the long-term viability of the DPS as a whole. Additionally, the DPS as a whole must contain a minimal number of viable populations, or interacting trans-basin populations, within each BPG that inhabit watersheds with drought refugia (needed to sustain juvenile populations throughout the low-flow period), are geographically separated (to maintain maximum genetic diversity and also to spread out the risk of extinction due to local disasters or other mortality factors), and exhibit the natural life-history diversity of the species (fluvial-anadromous, lagoon-anadromous, and freshwater resident).

Recovery Strategy

Achieving species recovery will require a number of coordinated activities, including: implementation of the strategic and threat-specific recovery actions identified in this Recovery Plan; monitoring of existing population's response to recovery actions; and further research into the diverse life-history patterns and adaptations of southern anadromous *O. mykiss* to a semi-arid and highly dynamic environment (e.g., the ecological relationship between anadromous and non-anadromous life-history patterns.

Effective implementation of recovery actions will also entail: (1) Extensive public education (including the general public, non-governmental agencies, and local, regional, State, and Federal governmental agencies,) regarding the role and value of the species within the larger watershed environment; (2) development of cooperative relationships with private land owners, special districts, federally-recognized tribes, and local governments with direct control and responsibilities over non-federal land-use practices; (3) participation in the land use and water planning and regulatory processes of local, regional, State, and Federal agencies; (4) close cooperation with other state resource agencies such as the California Department of Fish and Game, California Coastal Commission, CalTrans, and the California Department of Parks and Recreation, and (5) partnering with Federal resource agencies, including the U.S. Forest Service, U.S. Fish and Wildlife Service, National Park Service, U.S. Bureau of Reclamation, U.S. Bureau of Land Management, U.S. Army Corps of Engineers, U.S. Department of Transportation, U.S. Department of Defense, and the U.S. Environmental Protection Agency.

A comprehensive strategic framework is necessary to serve as a guide to integrate the actions contributing to the larger goal of recovery of the Southern California Coast Steelhead DPS. This strategic framework incorporates the concepts of viability at both the population and DPS levels, and the identification of threats and recovery actions for specific BPGs.

NMFS has identified core populations intended to serve as the foundation for the recovery of the species in the Recovery Planning Area. In addition, threats assessments for the species indicate that recovery actions related to the modification of existing passage barriers and changes in water storage and management regimes within certain rivers of the Recovery Planning Area are critical to the recovery of the species. High quality habitat exists above the significant passage barriers in these river systems. As a result, NMFS expects significant improvements in species status once they are able to access these areas for spawning and rearing of young steelhead.

There remain uncertainties regarding the level of recovery necessary to achieve population viability, therefore, additional research and monitoring of anadromous *O. mykiss* populations within the SCCS Recovery Planning Area is an essential component of this Recovery Plan. As this Recovery Plan is implemented over time, additional information will become available to: (1) refine the viability criteria; (2) up-date and refine the threats assessment and related recovery actions; (3) determine whether individual threats have been abated; and (4) evaluate the overall viability of anadromous *O. mykiss* in the SCCS Recovery Planning Area. Additionally, there will be a review of the recovery actions implemented and population and habitat responses to these actions at the 5-year and 10-year status reviews of the DPS.

Recovery Actions

Many complex and inter-related biological, economic, social, and technological issues must be addressed in order to recover anadromous *O. mykiss* in the Southern California Coast Steelhead DPS. Policy changes at the Federal, state and local levels will likely be necessary to implement many of the recovery actions identified in this Recovery Plan. For example, without substantial strides in water conservation throughout southern California, flow conditions for anadromous salmonids will limit recovery. Similarly, recovery is unlikely without programs to restore properly functioning historic habitat such as estuaries, and access to upstream spawning and rearing habitat.

Although the recovery of this species is expected to be a long process, the TRT recommended certain actions that should be implemented as soon as possible to help guide the recovery process for the Southern California Steelhead DPS (Boughton *et al*. 2007). Additional and more specific recovery actions to address specific threat sources in individual watersheds are discussed in the text.

Implementation and Cost Estimates

Implementation of this Recovery Plan by NMFS will take many forms. To achieve recovery, NMFS will need to promote the Recovery Plan and provide needed technical information and assistance to other entities responsible for actions that may impact the species' recovery. NMFS should work with key partners on planning and implementation of all high priority recovery actions. Additionally it will be important to work with local governments to ensure that protective measures consistent with recovery objectives are included in their general plans and local coastal plans. NMFS should also work with state and Federal regional entities on Regional Water Control Board Basin Plans and U.S. Forest Service Plans.

An implementation schedule describing time frames and costs associated with individual recovery actions is under development. Estimating total cost to recovery is much more challenging, if not impossible to estimate for a variety of reasons. These include the large geographic extent of the DPS; the need to refine recovery criteria; the need to complete watershed-specific investigations such as barrier inventories and assessments; the establishment of flow regimes for individual watersheds; and the review and possible modification of a variety of exiting land-use and water management plans (including waste discharge requirements) under a variety of local, state, and federal jurisdictions. Additionally, the biological response of many of the recovery actions is uncertain, and achieving full recovery will be a long-term effort likely requiring decades, and addressing new stressors that emerge over time. In some instances, however, NMFS is able to estimate the costs associated with certain common restoration activities such as those undertaken as part of the California Department of Fish and Game Fisheries Restoration Grants Program. An appendix to the Plan contains estimates for these categories of typical watershed restoration actions.

The criteria and recovery actions identified in this Recovery Plan provide a comprehensive road-map for recovery and are consistent with many ongoing activities intended to protect and or restore ecosystem functions in southern California watersheds. As a result, many of these recovery actions will be undertaken by local, state and Federal agencies, as well as non-governmental organizations and other private entities as a part of their local ecosystem protection efforts. Also, the wide variety of threats to steelhead provide for a variety of potential funding sources available to develop and implement these recovery actions, often as part of other ongoing natural resource restoration, management, and mitigation programs.

Public Comments Solicited

NMFS solicits written comments on the Draft Plan. All comments received by the date specified above will be considered prior to NMFS' decision whether to approve the Plan. NMFS seeks comments particularly in the following areas: (1) the analysis of limiting factors and threats; (2) the recovery objectives, strategies, and actions; (3) the criteria for removing the DPS from the Federal list of endangered and threatened wildlife and plants; and (4) estimates of time and cost to implement recovery actions. NMFS will also hold public meetings to provide an opportunity for the public to learn more about the Draft Plan, ask questions of NMFS staff, and submit oral or written comments on the Draft Plan.

Public Meetings

NMFS will hold public meetings on the dates and at locations as follows:

–August 25, 2009, 3 p.m. to 5 p.m. at the Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road., Carlsbad, CA 92011.

–September 1, 2009, 5 p.m. to 7 p.m. at the Fess Parker's Double Tree Resort, 633 East Cabrillo Boulevard , Santa Barbara, CA 93103.

These meetings will provide an opportunity for the public to learn more about the Proposed Plan, ask questions of NMFS staff, and submit oral or written comments on the Proposed Plan.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: July 15, 2009.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–17284 Filed 7–22–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–ZP93

Marine Mammals; File No. 14341

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Karen Terio, DVM, PhD, Zoological Pathology Program, College of Veterinary Medicine, University of Illinois, LUMC Room 0745, Building 101, 2160 South First Street, Maywood, IL 60153, has been issued a scientific research permit to import marine mammal specimens for scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281–9300; fax (978)281–9333.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Kate Swails, (301)713–2289.

SUPPLEMENTARY INFORMATION: On March 9, 2009, notice was published in the **Federal Register** (74 FR 10035) that a request for a scientific research permit had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The permit authorizes the importation of unlimited biological samples from up to 200 individuals per year of the orders Cetacea (all species) and Pinnipedia (with the exception of walruses) from yet to be determined locations outside the U.S. All samples will be imported for diagnostic testing to determine the causes of outbreaks or unusual natural mortalities, investigations into the ecology of diseases in free-ranging animals, or unexpected mortalities in captive populations. All biological specimens will originate from animals found deceased in nature, collected opportunistically during the animals' capture by other researchers possessing permits for such activities, or from specimens legally held in captivity outside the U.S.A. No live animals will be taken from the wild for research. The permit is issued for a period of five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 17, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–17543 Filed 7–22–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XQ41

Western Pacific Fishery Management Council; Partially Closed Meeting

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

ACTION: Notice of partially closed meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Sea Turtle Advisory Committee (STAC) in Honolulu, HI. A portion of the meeting will be closed to the public.

DATES: The STAC meeting will be held on Wednesday, August 5, 2009 through Thursday, August 6, 2009, from 8:30am to 5:30pm. The portion of the meeting held from 9:30am to 5:30pm on Wednesday, August 5, 2009 will be closed to the public.

ADDRESSES: The meeting will be held at the Council Office Conference Room, 1164 Bishop Street, Suite 1400, Honolulu, HI; telephone: (808)522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The STAC will review the Council's sea turtle conservation program and other relevant activities, and produce recommendations for future program activities. The meeting will be closed to the public from 9:30am to 5:30pm on Wednesday, August 5, 2009 to discuss confidential employment and other internal administrative matters, in accordance with Section 302 (i)(3)(A)(ii) of the Magnuson-Stevens Fishery Conservation and Management Act. All other portions of this meeting will be open to the public.

Agenda

8:30 a.m. Wednesday, August 5, 2009

1. Introduction and Approval of the Agenda
2. Review of Recommendations from the 4th STAC Meeting
3. Overview of Council Projects

4.–9. STAC Discussion on Contracts and Other Internal Administrative Matters (Closed Sessions)

8:30 a.m. Thursday, August 6, 2009

10. Fishery Impacts Offset Analysis
11. Update of Sea Turtle Interactions in Hawaii-based Fisheries
12. Updates from STAC Members: Ongoing Projects and Recent Developments
13. Overview of Agency Activities
14. Top 20 Research Questions to Inform Marine Turtle Conservation
15. Funding Priorities for the next 5 years
16. Council Project Proposal Protocol
17. Recommendations from the STAC
18. Next meeting and meeting wrap-up

The order in which agenda items are addressed may change. The Committee will meet as late as necessary to complete scheduled business.

Special Accomodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808)522–8220 (voice) or (808)522–8226 (fax), at least five days prior to the meeting date.

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

Dated: July 20, 2009

Tracey L. Thompson,

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

[FR Doc. E9–17511 Filed 7–22–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XQ29

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Boom Exercise Drills at Point Mugu, California

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS received an application from Naval Base Ventura County (NBVC) Point Mugu for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to boom deployment exercises at Point Mugu, California. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to NBVC Point Mugu to take, by Level B harassment only, one species of marine mammal during the specified activity.

DATES: Comments and information must be received no later than August 24, 2009.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *PR1.0648–XQ29@noaa.gov*. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* 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.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Office of Protected Resources, NMFS, (301) 713–2289, ext 156, or Monica DeAngelis, Southwest Regional Office, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [''Level A harassment'']; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [''Level B harassment''].

Summary of Request

NMFS received an application on May 12, 2009, from NBVC Point Mugu for the taking, by harassment, of marine mammals incidental to boom exercise drills at Point Mugu, California. As part of the NBVC Spill Response Program, boom deployment methods in the area contingency plan (US Coast Guard, 2007) need to be tested to ensure response plans for spills are effective and can realistically be achieved. This will also provide training to spill responders, giving them the required training to successfully deploy the booms in the event of an oil spill. The activity will occur within Mugu Lagoon within NBVC Point Mugu. Watercraft operating in the project area will likely affect seals by causing them to disperse from haul-out sites into the adjacent waters. No harassment by acoustic disturbance is anticipated from the boom exercise drill. NBVC Point Mugu requested an authorization to take harbor seals (Phoca vitulina) by Level B harassment.

Description of the Specified Activity

As part of the NBVC Spill Response Program, boom deployment methods in the area contingency plan (US Coast Guard, 2008) need to be tested to ensure response plans for spills can realistically be achieved. This will also provide training to spill responders, giving them the required training to successfully deploy the booms in the event of an oil spill. To protect Mugu Lagoon from offshore oil-spills, the boom needs to be deployed near the mouth of the estuary to keep offshore oil from entering sensitive estuarine habitat. The booms will be attached to zodiac watercraft, and the vessels will cross the estuary and anchor the boom on the north and south side of the estuary. Booming strategies were tested in September 2008, where it became evident that the strategy proposed in 2008 could not be accomplished due to strong currents and the fact that the boom was not placed at a wide enough angle. A new boom deployment strategy will now be tested (which includes increasing the angle at which the boom is placed in relation to the current); however, this changes the location of the activity and requires the boom to be situated within a regular harbor seal haul-out.

The following task descriptions provide an overview of the activities associated with the program. The purpose of this exercise is to develop response strategies that will provide the best possible protection for the lagoon in the event of an oil spill. SUPSALV will deploy the Salvage Skimmer Systems in Mugu Lagoon at the request of NBVC in order to attempt to validate booming strategies for sensitive site protection at Mugu Lagoon. Strategies are listed in the Area Contingency Plan and NBVC Oil and Hazardous Substance Integrated Contingency Plan. The exercise will be conducted by SUPSALV personnel on an annual basis. Once booming strategies prove effective, it is likely training will then occur on a biennial basis.

Specific training and exercise goals include: (1) safety; (2) equipment mission and inventory overview; (3) equipment mobilization, operation, and demobilization; (4) command, control, and communications in coordinating a response in the waters of Mugu Lagoon; (5) boat handling training in shallow water with currents; and (6) site support equipment training. The overall objective of the exercise is for all participants to increase the proficiency of personnel involved in providing oil spill response through the application of hands-on equipment mobilization, deployment, and demobilization. The major objective is to demonstrate that their equipment is adequately maintained for emergency deployments and that the personnel receive training in how to operate the equipment under emergency oil spill response conditions.

The boom exercise drill will occur annually during the month of September; however, training may need to be rescheduled for October or November (or possibly even later), depending on availability of SUPSALV staff. Therefore, NMFS is proposing to make the IHA (if issued) effective from September through January (before the start of pupping season). The exercise will last 5 days. Only days 2 through 4 have the potential to disturb harbor seals. Provided next is a description of what activities will occur on each day of the exercise.

Day 1– Equipment Staging: Equipment such as the boom and boats staged in area. There is no anticipated disturbance to marine mammals associated with this portion of the activity. Equipment includes two zodiac boats, concrete anchors, and approximately 1000 ft (328 m) of boom.

Days 2–4—Perform Exercise: The boats are launched into the water. The tide will likely be high, as it is difficult to navigate boats in the estuary during low or mid-level tides. If harbor seals are hauled out in the area close enough to the boom location that seals would likely be disturbed by placement of the boom, the boat will slowly move toward the seals to have them slowly move into water, rather than spooking seals if boats move quickly towards seals to deploy the boom. The determination whether seals need to be moved before beginning the exercise will be determined by base biologists who will be monitoring the exercise. Once seals move into the water, boats will return to shore to attach the boom. One side of the boom will be anchored on shore. Boats will then pull the boom out into the water pulling the boom across the estuary (see Figure 2 in NBVC Point Mugu's application). The boom will then be anchored on the other side of the estuary. Boats will be used to hold the boom against the current until successfully in place and holding with anchors. If the boom placement is successful, boats would likely return to shore and monitor the boom to ensure it is stable. The boom will be left in place during the change in the tides to ensure its ability to withstand current and tide changes. If the boom anchors break free, boats would have to re-enter the water, secure the boom, and re-anchor in the same location or an alternate location if the previous booming location proved unattainable.

Day 5 – Remove Equipment: Equipment such as the boom and boats will be removed from the proposed action area. There is no anticipated disturbance to marine mammals from this portion of the activity.

The activity will occur in Mugu Lagoon, within NBVC Point Mugu. The base consists of 4,490 acres (1,817 hectares [ha]) along the Pacific coast, located approximately 50 mi (80 km) northwest of Los Angeles (see Figure 1 in NBVC Point Mugu's application). Mugu Lagoon is the largest coastal wetland in southern California, with approximately 2,200 acres (890 ha) of jurisdictional wetlands. The lagoon is composed of two long arms projecting out from a broader central basin, running parallel to the coast. The proposed action site is bounded by the Santa Monica Mountains to the east, the Oxnard Plains to the north, two duck-hunting clubs to the northwest, and Ormond Beach wetlands to the west. The opening to the lagoon migrates and is delineated by a large boulder rip-rap seawall to the west and a highly dynamic sand spit to the east. Large surf conditions are common, and 2 to 4 knot (3.7 to 7.4 km/hr) currents should be expected during flood and ebb tides. Mugu Lagoon has been designated as an area of special significance as the estuary is home to many sensitive species. Federally listed species found in the estuary include the light-footed clapper rail, the western snowy plover, the California least tern, the California brown pelican, and the endangered plant, salt marsh bird's beak. State listed species also include the Belding's savannah sparrow and the peregrine falcon. Mugu Lagoon is also used by thousands of migrating and wintering shorebirds and waterfowl. However, there are no threatened or endangered species listed under the Endangered Species Act (ESA) in the proposed boom exercise drill area.

Mugu Lagoon was classified as an Environmentally Sensitive Site by the Local Area Committee, which is comprised of the US Coast Guard and the Office of Spill Prevention and Response. These provisions are stated in the Area Contingency Plan (4–790–A). Also listed are recommended site strategies to protect resources from oil spills, although recommended and approved, they have not been validated, accomplishable and tested. NBVC is responsible for implementing these strategies as described in the plan when a threat of an offshore spill is present. This exercise will attempt to prove the efficacy of the Area Contingency Plan strategies, as well as recommend more realistic strategies that will provide protection to the wetland and the wildlife that live in it.

Description of Marine Mammals in the Area of the Specified Activity

Harbor seals are the only marine mammal species that will likely be affected by the activity and that are found in the immediate area of the proposed boom drill exercise. The mudflats within Mugu Lagoon are used for resting, molting, and breeding of harbor seals. Mugu Lagoon is one of the few mainland pupping sites, with 60 pups born in 2008. The harbor seal is not listed as threatened or endangered under the ESA, and the California stock, members of which occur in the Mugu Lagoon, is not considered a strategic stock under the MMPA.

Two other pinniped species are known to occur very infrequently in the general area of the proposed activity: northern elephant seals (*Mirounga angustirostris*) and California sea lions (*Zalophus californianus*). When present, these latter species haul out usually on the coastal beaches, located south of the project area on the ocean side of the barrier beach (see Figure 2 in the NBVC Point Mugu's application) and not within the estuary. Occasionally, sea lions may enter the estuary; however most sightings have been of suspected injured or sick sea lions. Due to the rarity of these two pinniped species within the project area, these species are not discussed further in this proposed IHA **Federal Register** notice.

Isolated incidents of cetacean observations have occurred in the Mugu Lagoon area outside of the area affected by the proposed activity. In March 2008, a Risso's dolphin (*Grampus griseus*) stranded on Family Beach (see Figure 3 in NBVC Point Mugu's application). In January 2007, a young gray whale (*Eschrichtius robustus*) stranded temporarily at the mouth of the lagoon. Records include an additional gray whale that beached itself on Family Beach approximately 28 years ago. Around 1995, a gray whale was observed moving in and out of the lagoon mouth entrance (T. Keeney, NBVC Point Mugu Environmental Division, pers. comm., 2001). Sightings of Dall's porpoise (*Phocoenoides dalli*), bottlenose dolphin (*Tursiops truncatus*), and common dolphin (*Delphinus spp.*) could occur in nearby coastal waters, and pilot whales (Globicephala macrorhynchus) have been sighted within 3 nm (5.6 km) of shore in the vicinity of Point Mugu (Koski *et al.*, 1998). However, no cetacean species are expected to occur within the estuary and, therefore, are not expected to be disturbed by this proposed activity. Consequently, these species are not discussed further in this proposed IHA **Federal Register** notice.

NBVC Point Mugu has compiled information on the abundance, status, and distribution of harbor seals in Mugu Lagoon from surveys that they have conducted every month from April 1992 through February 2009, with the exception of 1998, when counts were made only during the period from June through August and from NMFS Stock Assessment Reports (SARs). This information may be viewed in NBVC Point Mugu's application (see ADDRESSES). Additional information is available in the NMFS SARs, which are available on the internet at: *http://www.nmfs.noaa.gov/pr/pdfs/sars/po2008.pdf*.

Potential Effects on Marine Mammals

The boom exercise activities within Mugu Lagoon will introduce boats into the estuary, which are not allowed under normal conditions. It is anticipated that as the boats approach the seals (within approximately 200 ft [61 m]), seals will likely enter the water for safety. It is anticipated that seals located further away from the water (i.e., further up on the haul-out site) will move closer to the water in order to be able to move quickly into the water if needed.

Harbor seals hauled out on shore can be disturbed by passing hikers, recreational vehicles, and small boats. This has been noted in many areas, including the western U.S. and Alaska, eastern Canada, and western Europe (e.g., Bowles and Stewart, 1980; Reijnders, 1981; Renouf *et al.*, 1981; Allen *et al.*, 1984; Osborn, 1985; Brasseur, 1993; Suryan, 1993; Swift and Morgan, 1993). Harbor seals spent more time scanning and less time sleeping in areas with human disturbance and occasional hunting (Terhune, 1985). In the absence of hunting or active harassment, habituation likely occurs (Awbrey, 1980; Bonner, 1982; Thompson, 1992; Brasseur, 1993).

Startle responses or stampedes are not expected to occur, as boats will be visible and will slowly approach the haul-out sites, allowing the seals to see the approaching vessels in advance of their arrival at the haul-out site. This will provide time for individual seals to either move towards or enter the water for safety if necessary. It is anticipated that the seals will move further east down the mudflats or closer towards the mouth of the estuary to avoid the disturbance associated with the presence of the boats and the boom.

Although this booming location is used year-round as a haul-out site for harbor seals, impacts to seals as a result of the activity are expected to be minimal and short-term in nature. Impacts are expected to be limited to Level B behavioral harassment. The training exercise will likely displace harbor seals from the immediate proposed activity area, resulting in hauled out seals moving into the water when watercraft (zodiacs) are placing or maintaining the boom in close proximity to hauled out seals. As there are additional mudflats to haul-out on away from the exercise area, seals will likely move to those sites and use as a haul-out during the boom exercise. Additionally, since a majority of the booming activity will occur during high-tides when zodiacs area able to navigate in the estuary, very few seals should be displaced, as mudflats would be inundated and most seals would be in the estuarine waters or out foraging. No injury or mortality of harbor seals is anticipated as a result of this activity.

Anticipated Effects on Habitat

During the period of the proposed activity, harbor seals may use various haul-outs around the margin of the Mugu Lagoon as places to rest and molt. Any young-of-the-year that are present will be weaned and independent individuals. The seals do not feed when hauled out in the lagoon. The seals leave Mugu Lagoon to feed in the open sea (T. Keeney, NBVC Point Mugu Environmental Division, pers. comm., 1998), therefore it is not expected that the boom exercise activities will have any impact on the food or feeding success of these seals. Thus, the proposed boom exercise is not expected to cause significant impacts on habitats used by seals in Mugu Lagoon or on the food sources that these seals utilize.

Additionally, no loss or modification of the habitat used by harbor seal populations that haul out within Mugu Lagoon is expected. Boom placement would not result in any permanent modifications to the habitat utilized by the seals. The tidal patterns in the lagoon and structure of the nearby sandy haul-out areas will not be altered by these proposed boom exercise activities.

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

The following mitigation measures are proposed to be include in the IHA: (1) The exercise will occur outside of the harbor seal pupping season of February through April; (2) If seals are hauled out within the exercise area before commencement of the exercise, a boat will move slowly towards the animals in order to have them move slowly into the water in order to avoid stampedes into the water; (3) A boat will remain active in the immediate area during most of the day to reduce the chances of seals hauling out in the exercise area during low activity periods. This would minimize the number of seals likely disturbed should activity levels need to be increased; (4) If the boom placement appears to be holding successfully, then boats will refrain from movement to reduce any additional disturbance events; and (5) The majority of the boom deployment exercise activities will occur at high tide when fewer harbor seals are expected to be on the haul-outs.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- the manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- the practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

NBVC biologists will monitor the haul-out areas during the exercise to document and characterize any observed responses by harbor seals to the boom exercise drill. The monitoring will be designed to determine if there are disturbance reactions and to determine how many seals are disturbed by boat activity. Every 2 hours (0700–

1600), biologists will count seals hauled out using a spotting scope and identify haul-out locations. Regarding data to be recorded about the seals present, at a minimum, biologists must record numbers and sex of each age class (if determinable), movements of pinnipeds, including number and proportion moving, direction and distance moved, and pace of movement, and description of reactions. NMFS will review the qualifications of each biologist and approve their selection in advance of the proposed activities.

NBVC will establish a land-based monitoring program to assess effects on the harbor seals hauled out in the estuary. This monitoring will occur at the area during the entire period when boats are in the water. The monitoring will be conducted via direct observation. Through this method, seal reactions, as indicated by numbers of seals hauled out and haul-out locations, will be documented during the planned exercise. This monitoring will also provide data required to characterize the extent and nature of ''taking''. The monitoring work described here has been planned as a self-contained project independent of any other related monitoring projects that may be occurring in the same region. NBVC Point Mugu is prepared to discuss coordination of its monitoring program with other entities that may be conducting related work insofar as this is practical and desirable. As standard procedure, shore count data will be made available to NMFS staff.

NBVC Point Mugu Environmental Division personnel will survey the exercise area prior to activities to count the number of seals and to identify locations before the exercise begins. These marine mammal monitors will also ensure that the proposed mitigation measures (described in the previous section of this document) are being implemented. The biological monitor will make observations as the exercise activities commence and continue to make observations while activities are underway. Depending on results of these initial observations and subsequent planned activities, NBVC's monitors will decide each day whether monitoring for the entire day is needed. If the boom is in place and holding, and there is no need for boats to re-enter the water, then no monitoring will be conducted, other than surveys every 2 hours. If boats again are required to enter the proposed exercise area, biologists will be called and return immediately to the drill site. NBVC anticipates that monitoring will occur throughout the first morning, and if the boom is placed successfully, the site will be visited once every 2 hours to conduct a survey, until it is decided to pull the boom.

In addition to recording specific biological information described earlier in this section, the marine mammal monitors will record a variety of other information which will include: (1) Date and time of the activity; (2) tidal state (the number of hours before or after peak flood tide; exact times for local high tides will be determined by consulting relevant tide tables); (3) weather condition; (4) horizontal visibility; (5) occurrence, or planned occurrence of any other event that might result in behavioral reactions by seals within the lagoon and therefore affect numbers hauled out (such as unusual military aircraft activity or other anthropogenic activities in or around the lagoon); (6) current state of the exercise (i.e., boom being placed, remains in place); and (7) approximate distance of boat from seals when seals react and enter the water.

NBVC will prepare and submit to the NMFS Office of Protected Resources and NMFS Southwest Regional Office a draft report describing the activities that were conducted, marine mammal monitoring work and results, and other information as described in the preceding paragraphs 90 days after the activities cease or after expiration of the IHA, whichever occurs first. This report would include all monitoring results from each annual exercise event. This report will summarize the results of the activities, summarize seal behavioral observations, and estimate the amount and nature of ''take'' of seals by harassment or in other ways. It will also provide locations and numbers of seals hauled out away from the exercise area. The 90–day report will be subject to review and comment by NMFS. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS. If a freshly dead or seriously injured pinniped is found during activity monitoring surveys, the incident must be reported within 48 hours to the NMFS Office of Protected Resources and the NMFS Southwest Regional Office.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]. Only take by Level B behavioral harassment is anticipated as a result of the boom exercise drills. The presence of the boats in the water approaching the haul-out sites have the potential to startle hauled out harbor seals and cause them to enter the water and relocate to other haul-outs closer to the mouth of the lagoon or outside of the lagoon. Although there will be increased boat activity in the area of these haul-out sites, vessel strikes of pinnipeds are not expected to occur, as boats will be approaching at very slow speeds in order to reduce startle reactions by the animals. There is no evidence that the planned activities could result in serious injury or mortality. The mitigation and monitoring measures proposed to be implemented (mentioned earlier in this document) during the exercise will minimize any potential risk to injury or mortality.

The Navy estimates the number of hauled out seals within the lagoon using census data obtained during ground-based surveys of the lagoon by staff of the Point Mugu Environmental Division. These data are described in Section III of NBVC Point Mugu's application and provide the most detailed and recent counts of harbor seals (and other marine mammal species) in the proposed activity area.

Most sex and age classes of harbor seals can be found on the mudflats within the lagoon during the booming exercise, although in reduced numbers at certain times due to foraging patterns, tidal state, and adverse weather. Sex and age will not be able to determined, with exception of possible young of the year still identifiable by their smaller size. Females will not be in reproductive condition due to the timing of the exercise (i.e., September). The peak number of harbor seals hauled out at NBVC Point Mugu during 2008 was 446 adults in mid-June, although there is large day-to-day variation in these counts.

To estimate the likely potential numbers of harbor seals that might be hauled out within the lagoon during the September period of the proposed activity, the Navy calculated using the low counts in September from 2003–2008, as low counts are usually associated with higher tides when the activity is planned to occur. The mean number of low counts is 57 seals (see Table 1 in this document). Take would be expected at the beginning of the exercise as boats are put into the water and seals would be slowly moved off the haul-out. Using mean low numbers for the month of September since 2003, 57 seals could be disturbed and move into the water each time the boats are launched (days 2–4). Seals would likely move to a mudflat away from the boom exercise activity. However once boats are finished deploying the boom and boats return to shore, seals may return to mudflats in the immediate area. In the event the applicant needs to return to the water to check or adjust the boom, there is a possibility there could be another displacement of seals from the mudflats in the project area. The applicant has projected that it may be necessary to return to the site three times during the day, meaning that there would be three opportunities for seals to return to the exercise area each day (57 seals x 3 movements x 3 days), which would equal 513 individual displacement events (i.e., takes). If the boom placement is successful, it would likely lead to fewer disturbance events. However, if the boom placement is problematic, this could result in additional disturbance events. Moreover, these numbers are likely overestimations of actual take estimates, as harbor seal counts are not conducted during high tide events due to low numbers of seals.

TABLE 1. SEPTEMBER HARBOR SEAL SURVEY RESULTS FROM 2003–2008

Year	Mean # Hauled Out	Low Count	High Count
2003	124	36	217
2004	153	11	266
2005	197	88	369
2007	162	107	200
2008	174	42	284
Average	**162**	**57**	**267**

* no survey data available for September 2006

The maximum number of displacements are based on the high counts of seals recorded within the estuary during the last five years (2003 to 2008) for the month of September. The mean high count over those years is 267 seals (see Table 1 in this document). Therefore, with three potential disturbance events, the number of takes could equal as many as 2,403 (267 x 3 x 3). The Navy believes that far less than that might actually be taken by harassment during each training exercise, since it is unlikely that these higher counts would be recorded at high tide when the activity is planned to occur. Therefore, based on these considerations, NMFS is proposing to authorize 513 takes of harbor seals by Level B behavioral harassment incidental to NBVC Point Mugu's proposed boom exercise drill.

Negligible Impact and Small Numbers Analysis and Preliminary Determination

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, and intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

No injuries or mortalities are anticipated to occur as a result of NBVC Point Mugu's proposed boom exercise drills, and none are proposed to be authorized by NMFS. Takes will be limited to Level B behavioral harassment over a 3 day period in the month of September (which may possibly slip to October or November, depending on contractor availability). As mentioned previously, NMFS estimates that 513 harbor seal takes may occur as a result of the proposed activity. It is possible that some individual animals may be taken more than once if the animal returns to the site on one of the later days of the exercise.

There is no habitat of significance for this species. While Mugu Lagoon is one of the few mainland pupping sites for harbor seals, the activity will occur outside of the harbor seal pupping season of February through April. While these haul-out sites are used for resting throughout the year, few (if any) seals are expected to be found on the haul-outs during the drill because the activity will occur at high tide when most animals are in the water. Additionally, there are other haul-out sites in other parts of the lagoon that seals can use during the exercise. The proposed activity is not expected to impact rates of recruitment or survival of harbor seals since no mortality (which would remove individuals from the population) or injury are anticipated to occur. Only short-term Level B behavioral harassment is anticipated to occur over a very short period of time (maximum of 3 days), occurring at very limited times of the day. Additionally, the proposed activity would occur at a time of year when breeding does not occur.

Harbor seals are not listed as threatened or endangered under the ESA. Additionally, the California stock of harbor seals is not listed as depleted under the MMPA. Survey counts conducted by NBVC Point Mugu Environmental Division staff indicate that numbers of harbor seals have increased with an average of 83 seals in 1992 to an average of 231 seals in 2006.

The most recent SAR for the California stock of harbor seals provides a population estimate of 34,233 individuals (Carretta *et al.*, 2009). The take estimate of 513 individuals represents 1.5 percent of the stock size. This estimate does not take into account that survey data is collected during lower tides when more animals are likely to be present on the haul-out sites and the fact that three events may not need to occur per day on each of the three days. Therefore, it is estimated that 1.5 percent of the California stock of harbor seals will be taken by Level B behavioral harassment during the planned exercise if no animals are taken more than once.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that NBVC Point Mugu's boom deployment exercise will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the boom deployment exercise will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

No species listed under the ESA are expected to be affected by these activities. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

NMFS is currently conducting an analysis, pursuant to NEPA, to determine whether or not this proposed activity may have a significant effect on the human environment. This analysis will be completed prior to the issuance or denial of this proposed IHA.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to authorize the take of harbor seals incidental to NBVC Point Mugu's boom deployment exercises at Point Mugu, California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 17, 2009.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–17545 Filed 7–22–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technology and Media Services for Individuals With Disabilities—Center on Accessible and Supported Electronic Text To Improve Mathematics Achievement for Students With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327H.

DATES:

Applications Available: July 23, 2009.

Deadline for Transmittal of Applications: August 24, 2009.

Deadline for Intergovernmental Review: September 1, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of the Technology and Media Services for Individuals with Disabilities program are to: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology, (2) support educational media services activities designed to be of educational value in the classroom setting to children with disabilities, and (3) provide support for captioning and video description of educational materials that are appropriate for use in the classroom setting.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (*see* sections 674 and 681(d) of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 *et seq.*).

Absolute Priority: For FY 2009 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Technology and Media Services for Individuals With Disabilities—Center on Accessible and Supported Electronic Text to Improve Mathematics Achievement for Students With Disabilities.

Background:

IDEA and the Elementary and Secondary Education Act of 1965, as amended (ESEA), require increased accountability for the academic performance of students with disabilities. IDEA requires that students with disabilities participate in the general education curriculum to the maximum extent possible, and ESEA establishes the expectation that all students, including students with disabilities, will achieve proficiency on grade-level academic content. However, students with disabilities, on average, continue to demonstrate lower levels of academic performance when compared to their non-disabled peers. According to the 2007 National Assessment of Educational Progress, 40 percent of fourth graders with disabilities scored below ''Basic'' in mathematics compared to 16 percent of non-disabled students (Lee, Grigg, & Dion, 2007). Recently, the National Mathematics Advisory Panel (2008) called for more coherent and rigorous mathematics instruction focused on the higher-level mathematics skills needed for postsecondary education and the workplace of the future. Accordingly, it is necessary both to close the performance gaps for students with disabilities and to find new approaches for including students with disabilities in challenging curriculum reforms in mathematics.

Educators can address these challenges by using technology tools that expand access to the general education curriculum and improve academic achievement for all students. Electronic text (i.e., text and graphics in a form that can be stored, manipulated, and displayed by a computer) is one such technology tool. Electronic text can be used to provide students with access to challenging academic instruction and can incorporate a variety of instructional supports to facilitate and extend learning (Higgins & Boone, 2001; Rose & Meyer, 2002; Stahl, 2004). Anderson-Inman (2004) described different types of supportive resources that can be added to electronic text, such as resources that provide: Assistance in visualizing information, a condensed view of information, enrichment that supplements required learning, and tools for learning in collaboration with others.

In 2005, the Office of Special Education Programs (OSEP) funded, through a five-year cooperative agreement, the National Center for Supported Electronic Text (NCSET). NCSET investigated, at seven research sites across the country, how supported electronic text affected students with disabilities' reading comprehension of content area material. Initial NCSET findings suggest that supported text can be effective in improving reading comprehension and content area learning. The following Web site provides more information on NCSET: *http://ncset.uoregon.edu/*.

The effectiveness of supported electronic text in improving mathematics learning has not yet been explored and is not in the research plans for NCSET. We propose to address the lack of research on the types of electronic text supports that could facilitate learning in mathematics because of the potential benefits these supports could offer students with disabilities.

As electronic text and other electronic media become more prevalent in schools, they are likely to play an increasing role in mathematics instruction. (Stevenson, 2006; Simba Information, 2008). Moreover, based on what we have learned to date on the effectiveness of supported electronic text in improving the reading comprehension of students with disabilities, we believe that supported electronic text has the potential for facilitating learning mathematics for students with disabilities. For example, learning in mathematics involves acquiring new vocabulary and concepts, applying previous learning to new learning, and constructing meaning from text, which are learning processes for which electronic supports have been developed and studied. Additional research is needed on the use of electronic supports for processes specific to mathematics learning such as interpreting word problems and solving them arithmetically, achieving automaticity in basic mathematics facts, and becoming proficient in complex, multi-step computational procedures (Bryant, Bryant & Hammill, 2000). In addition, electronic supports may also be used to improve access to mathematics content and mathematics learning for students with visual impairments where learning involves understanding visual stimuli (e.g. graphs, diagrams, and geometric shapes).

For all of these reasons, OSEP is establishing a priority for a research center that will explore the effectiveness of supported electronic text in mathematics learning for students with disabilities.

Priority:

The purpose of this priority is to fund a cooperative agreement to support the establishment and operation of a Center on Accessible and Supported Electronic Text to Improve Mathematics Achievement for Students with Disabilities (Center). The Center will conduct a systematic program of research and development on the use of accessible, supported electronic text for improving the mathematics achievement of students with disabilities.

To be considered for funding under this absolute priority, applicants must meet the application requirements contained in this priority. A project funded under this absolute priority also must meet the programmatic and administrative requirements specified in the priority.

Application Requirements. An applicant must include in its application—

(a) A review of research on mathematics learning and instructional technology in relation to students with disabilities that—

(1) Documents the nature of difficulties these students experience in gaining access to mathematics content and in learning mathematics, and the types of instructional supports that have been incorporated into electronic text to address these difficulties;

(2) Discusses previously developed instructional supports that need additional research validation in relation to mathematics learning as well as new instructional supports that might be developed or adapted for use in instructing students with disabilities in mathematics; and

(3) Includes one or more ''theories of change'' that explains how features and components of the instructional supports can facilitate learning in mathematics. A theory of change provides a useful means for evaluating the potential efficacy of the instructional support and for tying it to its theoretical and empirical foundations. The applicant may apply a theory of change that is already available in the literature, or develop a theory of change based on the review of research. The review and theories of change must assume that students are working toward achieving proficiency on grade-level mathematics content standards.

(b) A plan to conduct a program of research that answers the following questions:

(1) What supports can be added to electronic text to increase access to mathematics content and to promote academic achievement in mathematics for students with disabilities?

(2) What student characteristics (*e.g.*, functional, language, and technology skills) and contextual factors (*e.g.*, teacher training, curriculum, and student groupings) influence the effectiveness of the instructional supports in learning mathematics?

The plan must include systematic procedures to develop or adapt (or both) existing instructional supports. These instructional supports should be based on ongoing formative evaluation and testing of the usability of the instructional supports and their impact on student mathematics learning in school settings. The theory or theories of change may provide a useful framework for developing research designs and instruments.

(c) Research designs that:

(1) Align with the research questions being addressed. For research questions involving impact on student learning, the evaluation of the effectiveness of the instructional supports developed or adapted by the Center must employ experimental designs whenever possible, or quasi-experimental group designs or strong single subject designs when experimental designs are not possible.

(2) Describe methodologies and provide documentation that available sample sizes are sufficient to produce the statistical power needed to yield conclusive findings. Outcome measures may include experimenter-developed instruments, but instruments should have instructional relevance and be aligned with grade-level mathematics content; and

(3) Limits research to specific segments of the population of students with disabilities, particular areas of mathematics, or particular student ages. However, the breadth of the project is one factor that may be considered by the reviewers in rating the significance of the project.

(d) A plan that describes the project's strategy for disseminating products and findings to appropriate audiences. The dissemination plan may include presentations and written products, but must include a final report that summarizes the project's findings and their implications for using accessible and supported electronic text to improve mathematics learning and academic achievement for students with disabilities. The plan must also include materials to promote application of the research findings in educational practice;

(e) A budget for a summative evaluation to be conducted by an independent third party; and

(f) A budget for attendance at the following:

(1) A one and one half day kick-off meeting to be held in Washington, DC, within four weeks after receipt of the award, and an annual planning meeting held in Washington, DC, with the OSEP Project Officer during each subsequent year of the project period in conjunction with either the technical work group meeting or the Project Directors' meeting discussed below.

(2) A one-day technical work group meeting to be held in Washington, DC, during each year of the project period.

(3) A three-day Project Directors' Conference in Washington, DC, during each year of the project period.

(4) A two-day Technology Innovation meeting in Washington, DC, during each year of the project period; and

(5) A one-day trip annually to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP.

Project Activities. To meet the requirements of this priority, the project, at a minimum, must conduct the following activities:

(a) Submit for OSEP approval, within the first six months of the project period, a comprehensive work plan that includes any necessary revisions to the research review, the theories of change, the research plan, the timeline for implementing this plan, the evaluation plan, and the dissemination plan.

(b) Establish and maintain a technical work group that must meet in-person at least annually and by teleconference, as needed, to advise the project on research methods, review the designs, plans, activities, and outcomes of the Center, and provide technical support and advice throughout the project period. The technical work group must include individuals who in combination provide strong knowledge and expertise in—

(1) Design and development of accessible and supported electronic text;

(2) Mathematics instruction;

(3) The instructional needs of students with disabilities;

(4) Research design and statistical analysis; and

(5) Technology implementation in schools.

Persons with disabilities and parents of students with disabilities must be represented on the technical work group. The applicant must submit the names of proposed members of the technical work group to OSEP for approval within eight weeks after receipt of the award and hold the first meeting within the first four months of the project period.

(c) Implement the approved work plan according to the timeline.

(d) Maintain a Web site that meets government or industry-recognized standards for accessibility, if applicable; and

(e) Maintain ongoing communication with the OSEP Project Officer through monthly phone conversations, e-mail communication, quarterly progress reports, and annual performance reports.

Fourth and Fifth Years of the Project: In deciding whether to continue funding the Center for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary. This review will be conducted during a one-day intensive meeting in Washington, DC, that will be held during the last half of the second year of the project period. The Center must budget for travel expenses associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) The quality, relevance, and usefulness of the Center's activities and products and the degree to which the Center's findings, activities, products, and services may contribute to changed practice and improved results for students with disabilities.

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Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of the IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1474 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative Agreement.

Estimated Available Funds: $1,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2010 from this competition.

Maximum Award: We will reject any application that proposes a budget exceeding $1,000,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* State educational agencies; local educational agencies (LEAs), including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (*see* section 606 of the IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (*see* section 682(a)(1)(A) of the IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.327H.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 50 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: July 23, 2009.

Deadline for Transmittal of Applications: August 24, 2009.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants system, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 1, 2009.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you choose to submit your application to us electronically, you must use e-Application, accessible through the Department's e-Grants portal page at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• Your participation in e-Application is voluntary.

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until 8 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8 p.m. on Sundays and 6 a.m. on Mondays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–

8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of e-Application. If the E-Application is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.327H), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.327H) 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under the IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within the specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Technology and Media Services for Individuals with Disabilities program. These measures focus on the extent to which projects are high-quality, are relevant to improving outcomes of children with disabilities, and contribute to improving outcomes for children with disabilities. We will collect data on these measures from the project funded under this competition.

The grantee will be required to report information on its project's performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

For Further Information Contact: David Malouf, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4119, Potomac Center Plaza (PCP), Washington, DC 20202–2550. *Telephone:* (202) 245–6253.

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5075, PCP, Washington, DC 20202–2550. *Telephone:* (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Andrew J. Pepin, Executive Administrator for the Office of Special Education and Rehabilitative Services to perform the functions of the Assistant Secretary for Special Education and Rehabilitative Services.

Dated: July 17, 2009.

Andrew J. Pepin,

Executive Administrator for Special Education and Rehabilitative Services.

[FR Doc. E9–17552 Filed 7–22–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Personnel Development To Improve Services and Results for Children With Disabilities—Leadership Preparation in Sensory Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.325V.

DATES:

Applications Available: July 23, 2009.

Deadline for Transmittal of Applications: August 24, 2009.

Deadline for Intergovernmental Review: September 1, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) help address State-identified needs for highly qualified personnel—in special education, related services, early intervention, and regular education—to work with infants, toddlers, and children with disabilities; and (2) ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined through scientifically based research and experience, to be successful in serving those children.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute or otherwise authorized in the statute (see sections 662 and 681 of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et seq.*)).

Absolute Priority: For FY 2009 and any subsequent year in which we make awards based on the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Personnel Development to Improve Services and Results for Children with Disabilities—Leadership Preparation in Sensory Disabilities (84.325V).

Background: During the ten-year period between 1996 and 2006 there was little change in the number of doctorates awarded annually in special education. The numbers ranged from a high of 288 doctorates awarded in 2004 to a low of 213 doctorates awarded in 2002; 237 doctorates were awarded in special education in 2006, the most recent year reported (Hoffer, Hess, Welch, & Williams, 2007). As a general matter, this number of doctoral graduates is insufficient to fill current and anticipated future vacancies for special education faculty at institutions of higher education (IHEs), special education teachers, and special education leaders at State and local public agencies. (Smith, Pion, & Tyler, 2004; Smith, Pion, Tyler, Sindelar, & Rosenberg, 2001; Wasburn-Moses & Therrien, 2008).

The lack of doctoral graduates in special education is even more acute in the area of sensory disabilities (e.g., deaf and hard-of-hearing, visual impairments and blindness, and deaf-blindness). These specialties have an immediate and critical need for doctoral-level personnel (Dilka, Haydon, & Mertens, 2007; Huebner, Merk-Adam, Stryker, & Wolfe, 2004; Johnson, 2003). ''The Study of Special Education Leadership Personnel: With Particular Attention to the Professoriate'' (Smith, Pion, Tyler, Sindelar, & Rosenberg, 2001) reports that one-third of higher education faculty positions available in special education go unfilled every year, including many in sensory disability areas. For doctoral training programs in sensory disabilities that have only one full-time faculty on staff, the inability to fill a vacant position often results in the termination of the program. Because doctoral-level faculty also provide training for teachers and related services providers (*e.g.,* orientation and mobility training) who work with children with sensory disabilities, faculty shortages at IHEs mean that there are fewer resources to train critical direct service staff.

In 2004, the Office of Special Education Programs (OSEP) awarded a five-year cooperative agreement for the establishment of a National Center on Leadership in Visual Impairment (NCLVI) to address the ongoing shortage of doctoral-level leaders in the field of visual impairment and blindness. The 14 universities participating in the NCLVI each offer doctoral degrees with an emphasis on doctoral leadership training in the areas of visual impairment, blindness, or deaf-blindness. The NCLVI, with OSEP input, established the terms of the student awards, offering full tuition awards and a stipend for living expenses for a maximum of four years to offset additional costs related to full-time studies and general living expenses. Scholars were required to be full-time so as to ensure that they completed their doctoral studies as expeditiously as possible to address the immediate and critical need for doctoral professionals in the field.

According to a recently published National Center of Education Statistics (NCES) report, ''The Condition of Education 2007,'' the 2003–04 average annual costs for a doctorate in education were $10,700 for tuition and $17,200 for living expenses, for a total of $27,900. According to NCES, the 2003–2004 average annual costs for all other Ph.D. programs, excluding those in education, totaled $33,600, including an average annual tuition amount of $14,900 and living expenses of approximately $18,700. Without adjusting for inflation, the comparable average NCLVI annual tuition amount for 2007–08 was $10,673, and the average stipend was $20,535, for a total average NCLVI annual award of $31,208. Thus, based on the most recent NCES data available, with no adjustments for inflation, the average costs for tuition and living expenses for NCLVI program fellows are slightly above the average annual costs for doctoral programs in education and slightly below the average annual costs for all other doctoral programs.

Of the 19 NCLVI scholars, six completed their doctoral degrees in their third year of enrollment, three completed in their fourth year, and NCLVI faculty report that the remaining ten students are on schedule to complete their doctorates in their fourth year of enrollment. Assuming that these projections are accurate, the NCLVI average completion time is shorter than the national median time to completion of 7.9 years for Ph.D.s, Ed.D.s, and D.Sc.s. (Hoffer, Hess, Welch, & Williams, 2007). NCLVI graduates have also successfully secured positions in the field of visual impairment.[1]

The consortium design and curriculum used by NCLVI have facilitated the pooling of resources and expertise to provide high-quality training opportunities for NCLVI scholars, including structured research and learning opportunities that extend beyond those available at any of the individual NCLVI partner institutions. NCLVI students have the additional benefit of interacting with professionals and other students outside their home universities.

This priority builds on OSEP's previous investment in a consortium model that is focused on the preparation of doctoral leaders in visual impairment and blindness.

Priority: The purpose of this priority is to fund a consortium (Consortium) that will prepare leaders at the doctoral level to work in the special education field with a specialty in the following sensory disabilities: (1) Visual impairment and blindness; (2) deaf-blindness; and (3) deafness and hard-of-hearing.

To be considered for funding under this absolute priority, applicants must meet the application requirements contained in this priority. All projects funded under this absolute priority also must meet the programmatic and administrative requirements specified in the priority.

All scholars receiving support through this project must satisfy the service obligation requirement in 34 CFR Part 304, which requires 2 years of work for every year of scholarship support. The service obligation requirement, however, does not create an incentive for scholars to obtain employment in postsecondary institutions, which is one of the main objectives of this priority, over other kinds of employment. Thus, the service obligation may indirectly be deterring doctoral-level graduates under this project from seeking and obtaining employment as higher education faculty in postsecondary institutions with low incidence training programs. As a result, under the authority of section 662(h)(2) of IDEA, which authorizes the Secretary to reduce or waive the service obligation in this situation, the Secretary has determined that scholars who complete doctoral-level degrees under this project and go on to obtain employment as higher education faculty at postsecondary institutions in the area for which they received training will only be required to complete 1 year of work for every year of scholarship support instead of 2 years of work for every year of scholarship support.

Application Requirements. An applicant must include in its application—

(a) A logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its outcome and provides a framework for both the formative and summative evaluations of the project;

Note: The following Web site provides more information on logic models and lists multiple on-line resources: *http://www.cdc.gov/eval/resources.htm.*

(b) A plan to implement the activities described in the *Project Activities* section of this priority;

(c) A plan, linked to the proposed project's logic model, for a formative evaluation of the proposed project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the proposed project, including objective measures of progress in implementing the project and ensuring the quality of products and services;

(d) A budget that ensures that at least 70 percent of the total requested budget is used for student support, with a minimum of 30 full-time students to be supported;

(e) A budget for a summative evaluation to be conducted by an independent third party;

(f) A budget for attendance at the following:

(1) A one-and-one-half-day kick-off meeting to be held in Washington, DC, within four weeks after receipt of the award, and an annual planning meeting held in Washington, DC, with the OSEP Project Officer during each subsequent year of the project period.

(2) A three-day Project Director's Conference in Washington, DC, during each year of the project period.

(3) Three two-day trips annually to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(g) A line item in the proposed budget for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's activities, as those needs are identified in consultation with OSEP.

Note: With approval from the OSEP Project Officer, the Consortium must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period.

Project Activities. To meet the requirements of this priority, the project, at a minimum, must conduct the following activities:

(a) Establish a Consortium comprised of IHEs that prepares students to work as doctoral leaders in all of the following sensory disability areas: Visual impairment and blindness, deaf-blindness, and deafness and hard-of-hearing. The project must include at least two established IHE programs in each of the sensory disability areas. The application must include the following information from each proposed Consortium member: The name of the IHE, the specific sensory disability program or programs at each IHE, and a letter of commitment from each IHE. OSEP will approve the Consortium members within eight weeks after making the award.

(b) Establish policies and procedures for the work of the Consortium in areas such as: Decision-making, recruitment, and selection of students who will be supported by the Consortium, distribution of tuition and stipends among participating students, measurement and reporting of student progress, and contingency planning in case of Consortium faculty losses. The Consortium must create standard guidelines for awarding tuition and stipends to all Consortium-supported students and must submit those proposed guidelines to the OSEP project officer for approval prior to their implementation.

[1] The students who completed their doctorates found employment in leadership positions in the field of visual impairment, including five in university faculty positions. One graduate secured a highly competitive two-year post-doctoral internship at the Centers for Disease Control, and the three most recent graduates are actively interviewing for positions in IHEs, SEAs and research organizations.

(c) Develop and implement a single, common research-based curriculum for all Consortium students that aligns with each IHE Consortium member's course of study and that reflects scientifically based practices in course syllabi.

(d) Maintain a Web site that meets government or industry-recognized standards for accessibility and that links to the Web site operated by the Technical Assistance Coordination Center (TACC).

(e) Establish and maintain an advisory committee to review the activities and outcomes of the Consortium and to provide programmatic support and advice throughout the project period. At a minimum, the advisory committee must meet on an annual basis in Washington, DC, and consist of at least one representative from each of the following:

(1) Organizations, agencies, and associations that represent the interests of persons with sensory disabilities, specifically the disability areas addressed by the Consortium.

(2) Persons with sensory disabilities.

(3) Professional organizations representing the interests and work of faculty and administrators of IHEs; and

(4) Students enrolled in Consortium-member universities' sensory disabilities doctoral leadership preparation programs. The Consortium must submit the names of proposed advisory committee members to OSEP for approval within eight weeks after receipt of the award.

(f) Communicate and collaborate, on an ongoing basis, with other OSEP-funded projects, and the Technical Assistance and Dissemination (TA&D) Network Centers. This collaboration could include the joint development and implementation of curriculum activities, accessing and using research-based strategies and promising practices that are disseminated by personnel preparation centers and TA&D Network Centers, and planning and carrying out joint meetings and events with other OSEP-funded projects.

(g) Maintain ongoing communication with the OSEP Project Officer through monthly phone conversations with the grantee and Consortium members and e-mail communication.

Fourth and Fifth Years of the Project: In deciding whether to continue funding the Consortium for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary. This review will be conducted during a one-day intensive meeting in Washington, DC, that will be held during the last half of the second year of the project period. The Consortium must budget for travel expenses associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Consortium; and

(c) The quality, relevance, and usefulness of the Consortium's activities and products and the degree to which the Consortium's activities will contribute to increasing the supply of doctoral leadership personnel in visual impairment and blindness, deaf-blindness, and deafness and hard-of-hearing.

References

Dilka, K., Haydon, D., & Mertens, D. M. (2007). *Program faculty demographics of deaf and hard of hearing teacher preparation programs.* Paper presented at the Association of College Educators-Dear Hard-of-Hearing.

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Huebner, M. K., Merk-Adam, B., Stryker, D., & Wolfe, K. E. (2004). The *national agenda for the education of children and youths with visual impairments, including those with multiple disabilities—revised.* New York: American Foundation for the Blind.

Johnson, H.A. (2003). *U.S. deaf education teacher preparation programs: A look at the present and a vision for the future (COPSSE Document No. IB–9).* Gainesville, FL: University of Florida, Center of Personnel Studies in Special Education.

National Center for Education Statistics: (2007). *The condition of education 2007* (ED–NCES 2007–064). Washington, DC: U.S. Government Printing Office.

Sindelar (Eds.), *Critical Issues in Special Education: Access, Diversity, and Accountability* (pp. 258–276). New York: Pearson Allyn and Bacon.

Smith, D.S., Pion, G., Tyler, N.C., Sindelar, P., & Rosenberg, M. (2001). *The study of special education leadership personnel: With particular attention to the professoriate.* Vanderbilt University, Nashville, TN, University of Florida at Gainesville, Gainesville, FL, and Johns Hopkins University, Baltimore, MD.

Smith, D.D., Pion, G.M., Tyler, N.C. (2004) *Leadership personnel in special education: Can persistent shortage be resolved?* In A. McCray Sorrells, H.J. Rieth, & P.T.

Smith, D.D. (March, 2009). *Special Education Faculty Needs Assessment Brief: A comparison of doctoral funding levels across Federal programs.* Claremont Graduate University: Claremont, CA.

Wasburn-Moses, L. & Therrien, W.J. (2008). The impact of Leadership Personnel Grants on the doctoral student population in special education. *Teacher Education in Special Education.* 31(2), 65–76.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of the IDEA, however, makes the public comment requirements of the APA inapplicable to the priorities in this notice.

Program Authority: 20 U.S.C. 1462 and 1481.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 304.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Awards: Cooperative agreements.

Estimated Available Funds: $1,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2010 from the list of unfunded applicants from this competition.

Estimated Average Size of Awards: $1,000,000.

Maximum Award: We will reject any application that proposes a budget exceeding $1,000,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (*see* section 606 of the IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project (*see* section 682(a)(1)(A) of the IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, *toll free:* 1–877–433–7827. *Fax:* (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, *toll free:* 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its *e-mail address: edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify the competition as follows: CFDA number 84.325V.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: July 23, 2009.

Deadline for Transmittal of Applications: August 24, 2009.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants system, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 1, 2009.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you choose to submit your application to us electronically, you must use e-Application, accessible through the Department's e-Grants portal page at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until 8 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8 p.m. on Sundays and 6 a.m. on Mondays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of e-Application. If e-Application is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.325V), 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.325V), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* In the past, the Department has had difficulty finding peer reviewers for certain competitions, because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under the IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers, by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Personnel Development to Improve Services and Results for Children with Disabilities program. These measures include: (1) The percentage of projects that incorporate scientifically based practices into the curriculum; (2) the percentage of scholars who exit training programs prior to completion due to poor academic performance; (3) the percentage of degree or certification recipients who are working in the area(s) for which they were trained upon program completion; (4) the percentage of degree or certification recipients who are working in the area(s) for which they were trained upon program completion and are fully qualified under the IDEA; (5) the percentage of scholars completing the IDEA-funded training programs who are knowledgeable and skilled in scientifically based practices for infants, toddlers, and children with disabilities; (6) the percentage of low incidence positions that are filled by personnel who are fully qualified under the IDEA; and (7) the percentage of program graduates who maintain employment for three or more years in the area(s) for which they were trained.

Grantees may be asked to participate in assessing and providing information on these aspects of program quality.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Glinda Hill, U.S. Department of Education, 400 Maryland Avenue, SW., room 4063, Potomac Center Plaza (PCP), Washington, DC 20202–2550. *Telephone:* (202) 245–7376.

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. *Telephone:* (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Andrew J. Pepin, Executive Administrator for the Office of Special Education and Rehabilitative Services to perform the functions of the Assistant Secretary for Special Education and Rehabilitative Services.

Dated: July 17, 2009.

Andrew J. Pepin,

Executive Administrator for Special Education and Rehabilitative Services.

[FR Doc. E9–17554 Filed 7–22–09; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of public meeting for EAC Standards Board.

DATE AND TIME: Thursday, August 6, 2009, 8:30 a.m.–5:30 p.m. MDT and Friday, August 7, 2009, 8:30 a.m.–12 p.m. MDT.

PLACE: Sheraton Phoenix Downtown, 340 North Third Street, Phoenix, AZ 85004, Phone Number: (602) 262–2500.

AGENDA: The U.S. Election Assistance Commission (EAC) Standards Board, as required by the Help America Vote Act of 2002, will meet to receive updates on the Voluntary Voting System Guidelines 1.1 (VVSG) which is now available for public comment. The Standards Board will discuss proposed updates and improvements to the VVSG. The Standards Board will hear committee reports on the VVSG, formulate recommendations to the EAC regarding the VVSG, receive updates on EAC activities, and consider other administrative matters.

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 will be open to the public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 566–3100.

Gineen Beach,

Chair, U.S. Election Assistance Commission.

[FR Doc. E9–17752 Filed 7–21–09; 4:15 pm]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC09–546–001]

Commission Information Collection Activities (FERC–546); Comment Request; Submitted for OMB Review

July 16, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to the **Federal Register** notice (74FR6401, 2/9/2009) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by August 27, 2009.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include OMB Control Number 1902–0155 as a point of reference. The Desk Officer may be reached by telephone at 202–395–4638.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket No. IC09–546–001. Comments may be filed either electronically or in paper format. Those persons filing electronically do not need to make a paper filing. Documents filed must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at *http://www.ferc.gov/help/submission-guide.asp.* To file the document electronically, access the Commission's Web site, click on Documents & Filing, E-Filing (*http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. New users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

For paper filings, an original and 2 copies of the comments should be submitted to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. IC09–546–001.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''eLibrary'' link. For user assistance, contact *fercolinesupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by telephone at (202) 502–8663, by fax at (202) 273–0873, and by e-mail at *ellen.brown@ferc.gov.*

SUPPLEMENTARY INFORMATION: FERC–546 (Certificated Rate Filings: Gas Pipeline Rates; OMB Control Number 1902–0155) is required to implement sections 4, 5, 16 and 7(e) of the Natural Gas Act (NGA) (15 U.S.C. 717–717w). NGA sections 4, 5 and 16 authorize the Commission to inquire into rate structures and methodologies and to set rates at a just and reasonable level. Section 7(e) authorizes the Commission to set initial rates that are in keeping with the public convenience and necessity.

The Commission uses the FERC–546 information to examine service and tariff provisions for the transportation and storage, and/or sale of natural gas in interstate commerce filed with the Commission.

When a pipeline company decides to construct and operate a jurisdictional pipeline, it files an application with the Commission and receives a Certificate of Public Convenience and Necessity. As part of its review, the Commission considers and authorizes ''initial rates'' for transportation and/or storage service for the pipeline. Initial rates are established for new services authorized in certificate proceedings and must meet a public convenience and necessity standard. Initial rates established in the certificate proceeding remain in effect until such rates are reviewed by the Commission in a rate proceeding. The information submitted by the pipeline company to the Commission in these applications for initial rates is the subject of FERC–546.

The Commission's reporting requirements for this information collection are provided in 18 CFR 154.4, 154.7, 154.202, 154.204–.209, and 154.602–.603. Failure to collect this information would prevent the Commission from monitoring and properly evaluating pipeline proposals to add or modify services.

Action: The Commission is requesting a three-year extension of the current expiration date, with no change to the existing reporting requirements in FERC–546.

Burden Statement: Public reporting burden for this collection is estimated at:

FERC data collection—FERC–546	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
Natural Gas Companies	77	4	40	12,320
Storage Operators	3	1	350	1,050
Total				13,370

The estimated cost burden [1] to respondents is $824,678.31 (13,370 hours divided by 2,080 hours per year times $128,297 [2] equals $824,678.31). The cost per respondent is $10,308.48.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization, rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates 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,

[1] The figures may not be exact, due to rounding.

[2] The number of hours an employee works each year is 2,080. The average annual salary per employee is $128,297.

e.g. permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17502 Filed 7–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11480–010]

Haida Corporation; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 16, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 11480–010.

c. *Date Filed:* August 1, 2008, and supplemented on May 29, 2009.

d. *Applicant:* Haida Corporation.

e. *Name of Project:* Reynolds Creek Hydroelectric Project.

f. *Location:* When constructed, the project will be located on Reynolds Creek, near the town of Hydaburg, on Prince of Wales Island, in southeast Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Michael V. Stimac, Vice President, HDR Engineering, Inc., 500 108th Avenue NE., Suite 1200, Bellevue, Washington 98004; telephone (425) 450–6330.

i. *FERC Contact:* Linda Stewart, telephone (202) 502–6680, and e-mail address *linda.stewart@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* August 17, 2009.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link. The Commission strongly encourages electronic filings.

All documents (original and eight copies) filed by paper should be sent to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–11480–010) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:*

(i) *Amendment to Project Design:* Haida Corporation proposes to install a single 5.0-megawatt (MW) turbine generating unit instead of installing two turbine generating units, a 1.5–MW unit and a 3.5–MW unit, during a two-phase construction process as authorized in the October 24, 2000 Order Issuing Original License (Major Project). The total installed capacity of the project would remain at 5.0 MW as currently authorized in the project license, and the total hydraulic capacity of the project would remain at 90 cubic feet per second as currently authorized in the project license.

(ii) *Amendment to License Articles:* Haida Corporation proposes to modify or delete Articles 201, 301, 413, and 414 to the extent that they reference two-phase construction.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17504 Filed 7–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–570]

Duke Energy Carolinas, LLC; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 16, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Raw Water Intake on 0.26 Acres of Project Lands.

b. *Project No.:* 2232–570.

c. *Date Filed:* June 18, 2009.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* Catawba-Wateree.

f. *Location:* Lake Rhodhiss on the Catawba River, city of Lenoir, Caldwell County, North Carolina

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791a–825r.

h. *Applicant Contact:* Mr. Kelvin K. Reagan, Duke Energy Carolinas, LLC, P.O. Box 1006, Charlotte, North Carolina 28201–1006, (704) 382–9386.

i. *FERC Contact:* Jeremy Jessup, Jeremy.Jessup@ferc.gov, (202) 502–6779.

j. *Deadline for filing comments, motions to intervene and protests:* August 17, 2009.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Duke Energy Carolinas, LLC, proposes to grant permission to the City of Lenoir to use 0.26 acres of project lands to replace, construct, and maintain a raw water intake pipeline. The proposed eighteen million gallons per day intake would consist of two passive intake screens, two 36-inch diameter ductile iron intake pipes, a 45-ft deep wet well, and a raw water pump station. The area where the proposed intake tubes will be installed may require dredging to achieve the necessary line and grade, and excavation to construct structural supports for the intake screens. The proposed withdrawal is for municipal use by the City of Lenoir, North Carolina.

l. *Location of the Application:* The filing is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426 or by calling (202) 502–8371, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docsfiling/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filing must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(I)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17505 Filed 7–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6885–009–CA]

Cinnamon Ranch Hydroelectric Project; Notice of Availability of Environmental Assessment

July 16, 2009.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a subsequent license for the Cinnamon Ranch Hydroelectric Project, and has prepared an Environmental Assessment. The operating project is located on Pellisier Creek, Middle Creek, and Birch Creek, in the Hammil Valley area of Mono County, near the Town of Benton, California. The project occupies 0.13 acre of U.S. Forest Service lands within the Inyo National Forest and 7.53 acres of lands administered by the Bureau of Land Management.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that relicensing the project would not constitute a major Federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Please contact Gaylord Hoisington by telephone at (202) 502–6032 or by e-mail at *gaylord.hoisington@ferc.gov* if you have any questions.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17506 Filed 7–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1270–001]

Chula Vista Energy Center, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 16, 2009.

This is a supplemental notice in the above-referenced proceeding of Chula Vista Energy Center, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 27, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St.. NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list.

They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17500 Filed 7–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1412–000]

US Energy Partners LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 16, 2009.

This is a supplemental notice in the above-referenced proceeding of US Energy Partners LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is August 5, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17501 Filed 7–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1269–001]

Escondido Energy Center, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 16, 2009.

This is a supplemental notice in the above-referenced proceeding of Escondido Energy Center, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 27, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17499 Filed 7–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Ferc Staff Attendance at Southwest Power Pool Independent Coordinator of Transmission (ICT)—Entergy Transmission Summit and Technical Conference Regarding the ICT Construction and Base Plans

July 16, 2009.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meetings noted below. Their attendance is part of the Commission's ongoing outreach efforts.

Technical Conference Regarding the ICT Construction and Base Plans and the Annual ICT—Entergy Transmission Summit

August 11, 2009 (8 a.m.–5 p.m.),
Astor Crowne Plaza Hotel,
739 Canal Street,
New Orleans, LA 70130,
504–962–0500.

The discussions may address matters at issue in the following proceedings:

Docket No. OA07–32 Entergy Services, Inc.

Docket No. OA08–59 Entergy Services, Inc.

Docket No. OA08–61 Entergy Services, Inc.

Docket No. OA08–75 Entergy Services, Inc.

Docket No. OA08–92 Entergy Services, Inc.

Docket No. OA08–149 Entergy Services, Inc.

Docket No. EL00–66 *Louisiana Public Service Commission* v. *Entergy Services, Inc.*

Docket No. EL01–88 *Louisiana Public Service Commission* v. *Entergy Services, Inc.*

Docket No. EL05–15 *Arkansas Electric Cooperative Corp.* v. *Entergy Arkansas, Inc.*

Docket No. EL07–52 *Louisiana Public Service Commission* v. *Entergy Services, Inc.*

Docket No. EL08–59 *ConocoPhillips* v. *Entergy Services, Inc.*

Docket No. EL08–60 *Union Electric* v. *Entergy Services, Inc.*

Docket No. EL09–35 *Cottonwood Energy LLP* v. *Entergy Services, Inc.*

Docket No. EL09–43 *Arkansas Public Service Commission* v. *Entergy Services, Inc.*

Docket No. EL09–61 *Louisiana Public Service Commission* v. *Entergy Services, Inc.*

Docket No. ER03–583 Entergy Services, Inc.

Docket No. ER05–1065 Entergy Services, Inc.

Docket No. ER07–682 Entergy Services, Inc.

Docket No. ER07–956 Entergy Services, Inc.

Docket No. ER08–515 Entergy Services, Inc.

Docket No. ER08–767 Entergy Services, Inc.

Docket No. ER08–1057 Entergy Services, Inc.

Docket No. ER09–636 Entergy Services, Inc.

Docket No. ER09–659 Entergy Services, Inc.

Docket No. ER09–833 Entergy Services, Inc.

Docket No. ER09–877 Entergy Services, Inc.

Docket No. ER09–878 Entergy Services, Inc.

Docket No. ER09–882 Entergy Services, Inc.

Docket No. ER09–985 Entergy Services, Inc.

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17503 Filed 7–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

July 16, 2009.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Exempt:		
1. OA08–52–006	7–13–09	Hon. Maurice D. Hinchey, Hon. John Hall, Hon. Michael A. Arcuri.
2. P–2232–570	7–02–09	Hon. Patrick McHenry.
3. P–13416–000	7–08–09	Hon. Timothy J. Walz.
4. P–13416–000	7–02–09	Hon. Gene Pelowski, Jr.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17497 Filed 7–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–2001–012; ER07–1250–000]

Electric Quarterly Reports; PowerGrid Systems, Inc.; Notice of Revocation of Market-Based Rate Tariff

July 16, 2009.

On June 22, 2009, the Commission issued an order announcing its intent to revoke the market-based rate authority of the above captioned public utility, which had failed to file its required Electric Quarterly Reports.[1] The Commission provided the utility fifteen days in which to file its overdue Electric Quarterly Reports or face revocation of its market-based rate tariff.

In Order No. 2001, the Commission revised its public utility filing requirements and established a requirement for public utilities, including power marketers, to file Electric Quarterly Reports summarizing the contractual terms and conditions in their agreements for all jurisdictional services (including market-based power sales, cost-based power sales, and transmission service) and providing transaction information (including rates) for short-term and long-term power sales during the most recent calendar quarter.[2]

In the June 22 Order, the Commission directed PowerGrid Systems, Inc. to file the required Electric Quarterly Reports within 15 days of the date of issuance of the order or face revocation of its authority to sell power at market-based rates and termination of its electric market-based rate tariff.[3]

The time period for compliance with the June 22 Order has elapsed. The company identified in the June 22 Order (PowerGrid Systems, Inc.) has failed to file its delinquent Electric Quarterly Reports.

The Commission hereby revokes this company's market-based rate authority and terminates the electric market-based rate tariff.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17507 Filed 7–22–09; 8:45 am]

BILLING CODE 6717–01–P

[1] *Electric Quarterly Reports,* 127 FERC ¶ 61,290 (2009) (June 22 Order).

[2] *Revised Public Utility Filing Requirements,* Order No. 2001, 67 Fed. Reg. 31,043, FERC Stats. & Regs. ¶ 31,127, *reh'g denied,* Order No. 2001–A, 100 FERC ¶ 61,074, *reconsideration and clarification denied,* Order No. 2001–B, 100 FERC ¶ 61,342, *order directing filings,* Order No. 2001–C, 101 FERC ¶ 61,314 (2002), *order directing filing,* Order No. 2001–D, 102 FERC ¶ 61,334 (2003).

[3] June 22 Order at Ordering Paragraph A.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8931–6]

Cross-Media Electronic Reporting Rule State Authorized Program Revision Approval: State of Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval, under regulations for Cross-Media Electronic Reporting, of the State of Tennessee's request to revise certain of their EPA-authorized programs to allow electronic reporting.

DATES: EPA's approval is effective July 23, 2009.

FOR FURTHER INFORMATION CONTACT: Evi Huffer, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566–1697, *huffer.evi@epa.gov,* or David Schwarz, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566–1704, *schwarz.david@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR, requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and get EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, in § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On January 6, 2009, the State of Tennessee Department of Environment and Conservation (TNDEC) submitted an application for its Net Discharge Monitoring Report (NetDMR) electronic document receiving system for revision of Tennessee's 40 CFR Part 123–National Pollutant Discharge Elimination System (NPDES) State Program Requirements EPA-authorized program for electronic reporting of Discharge Monitoring Report (DMR) information under 40 CFR parts 122 and 123.

EPA reviewed TNDEC's request to revise its EPA-authorized program and, based on this review, EPA determined the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Tennessee's request for revision to its 40 CFR Part 123–NPDES State Program Requirements authorized program to allow electronic reporting under 40 CFR parts 122 and 123 is being published in the **Federal Register**.

TNDEC was notified of EPA's determination to approve its application with respect to the authorized program listed above in a letter dated April 23, 2009.

Dated: July 9, 2009.

Lisa Schlosser,

Director, Office of Information Collection.

[FR Doc. E9–17537 Filed 7–22–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8931–5]

Cross-Media Electronic Reporting Rule State Authorized Program Revision Approval: State of North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This action announces EPA's approval, under regulations for Cross-Media Electronic Reporting, of the State of North Carolina's request to revise its EPA-authorized program to allow electronic reporting; and also provides notice of an opportunity to request a public hearing on this action.

DATES: EPA's approval is effective on August 24, 2009 if no timely request for a public hearing is received and accepted by the Agency.

FOR FURTHER INFORMATION CONTACT: Evi Huffer, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566–1697, *huffer.evi@epa.gov,* or David Schwarz, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566–1704, *schwarz.david@epa.gov.* All requests for a hearing should be submitted to both of the above contacts.

SUPPLEMENTARY INFORMATION:

On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that State, Tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and get EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the State, Tribe, or local government will use to implement the electronic reporting. Additionally, in § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the State, Tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the State, Tribe or local government has sufficient legal authority to implement the electronic reporting components of its authorized programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On October 14, 2008, the State of North Carolina Department of Environment and Natural Resources (NCDENR) submitted an application for its Safe Drinking Water Information System (SDWIS)/Lab to State electronic document receiving system for revision of North Carolina's 40 CFR Part 142—National Primary Drinking Water Regulations Implementation EPA-authorized program for electronic reporting of drinking water data submitted under 40 CFR part 141. EPA reviewed NCDENR's request to revise its EPA-authorized program and, based on this review, EPA determined the application met the standards for approval of authorized program revisions set out in 40 CFR part 3, subpart D, for electronic reporting of drinking water data that does not require signature or include an electronic signature. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve North Carolina's request for revision to its 40 CFR Part 142—National Primary Drinking Water Regulations Implementation authorized program, to allow electronic reporting of drinking water data that does not require signature or include an electronic signature, is being published in the **Federal Register**.

NCDENR was notified of EPA's determination to approve its application with respect to the authorized program listed above in a letter dated July 9, 2009.

Also, in today's notice, EPA is informing interested persons that they may request a public hearing on EPA's action to approve the State of North Carolina's request to revise their authorized public water system program under 40 CFR part 142, in accordance with 40 CFR 3.1000(f). Requests for a hearing must be submitted to EPA within 30 days of publication of today's **Federal Register** notice. Such requests should include the following information:

(1) The name, address and telephone number of the individual, organization or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in EPA's determination, a brief explanation as to why EPA should hold a hearing, and any other information that the requesting person wants EPA to consider when determining whether to grant the request;

(3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

In the event a hearing is requested and granted, EPA will provide notice of the hearing in the **Federal Register** not less than 15 days prior to the scheduled hearing date. Frivolous or insubstantial requests for a hearing may be denied by EPA. Following such a public hearing, EPA will review the record of the hearing and issue an order either affirming today's determination or rescinding such determination. If no timely request for a hearing is received and granted, this action will become effective 30 days after today's notice is published, pursuant to CROMERR section 3.1000(f)(4).

Dated: July 9, 2009.

Lisa Schlosser,

Director, Office of Information Collection.

[FR Doc. E9–17572 Filed 7–22–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0045; FRL–8425–2]

Notice of Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a notice in the **Federal Register** of Wednesday, June 10, 2009 (74 FR 27538, FRL–8417–7), concerning the notice of receipt of several pesticide petitions filed for residues of pesticide chemicals in or on various commodities. This document is being issued to correct the omission of papaya at 1.5 ppm under the ''New Tolerance'' section in number 5. PP 9F7537 (EPA–HQ–OPP–2009–0263).

FOR FURTHER INFORMATION CONTACT: Rita Kumar, Registration Division, Mail Code (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8291; e-mail address: *kumar.rita@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the notice a list of those who may be potentially affected by this action. If you have 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?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0263 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.

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*.

II. What Does this Correction Do?

FR Doc. E9-13161 published in the **Federal Register** of Wednesday, June 10, 2009 (Vol. 74, No. 110 FR 27540-27541) (FRL–8417–7) is corrected as follows: Beginning on page 27540, in the third column, under 5. PP 9F7537. (EPA–HQ–OPP–2009–0263), on page 27541, in the 16th line before ''passionfruit'' and after ''mango,'' add ''papaya at 1.5 ppm'' to list of commodities on page 27541.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 10, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E9–17548 Filed 7–22–09; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:02 a.m. on Monday, July 20, 2009, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's corporate, supervisory, and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Martin J. Gruenberg, seconded by Director Thomas J. Curry (Appointive), concurred in by Director John C. Dugan (Comptroller of the Currency), Director John E. Bowman (Acting Director, Office of Thrift Supervision), and Chairman Sheila C. Bair, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: July 20, 2009.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. E9–17521 Filed 7–21–09; 11:15 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Acquisition Regulations in Fiscal Year 2009

AGENCY: Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) is interested in encouraging HHS prime contractors to assist small businesses, small disadvantaged businesses, HUBZone businesses, veteran-owned businesses, service-disabled veteran-owned businesses, and woman-owned businesses, in enhancing their capabilities to perform contracts and subcontracts for HHS and other Federal agencies. The program seeks to provide a Mentor-Protégé Program that assists qualified small businesses to receive development assistance from HHS prime contractors in order to increase the base of small business eligible to perform HHS contracts and subcontracts.

DATES: The Department of Health and Human Services (HHS) is proposing to amend its acquisition regulations in Fiscal Year 2009. Due dates for written comments on the proposed rulemaking will be published at that time. The intent of this notice is to publicize the HHS' proposed mentor-protégé program, specific solicitation and contract guidance will be included in the proposed rulemaking.

To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on August 24, 2009.

ADDRESSES: In commenting, please refer to the HHS Mentor-Protégé Program. You may submit comments in one of four ways (please choose only one of the ways listed):

1. *By facsimile (FAX) transmission.* You may submit FAX comments on this notice to (202) 260–4872.

2. *Electronically.* You may submit electronic comments on this notice to *sbmail@hhs.gov*.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Department of Health and Human Services, Office of Small and Disadvantaged Business Utilization, 200 Independence Ave, SW., Hubert H. Humphrey Building, Room 360G, Washington, DC 20201.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

4. *By regular mail.* You may send written comments to the following address only: Department of Health and Human Services, Office of Small and Disadvantaged Business Utilization, 200 Independence Ave, SW., Hubert H. Humphrey Building, Room 360G, Washington, DC 20201. Please allow sufficient time for mailed comments to be received before the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Nelia K. Holder, Office of Small and Disadvantaged Business Utilization, telephone (202) 690–6286, e-mail: *Nelia.Holder@hhs.gov.*

SUPPLEMENTARY INFORMATION: On September 15, 2008, the Office of Small and Disadvantaged Business Utilization (OSDBU) commissioned an assessment of existing Mentor-Protégé programs and the feasibility of such a program for HHS. The assessment concluded that opportunities exist in such programs to actually encourage meaningful and successful business development between Mentors and Protégés. Mentor-Protégé arrangements represent opportunities for creating access for small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, and woman-owned small business to HHS contracts and awards. The OSDBU believes that Mentor-Protégé programs will afford small and disadvantaged business opportunities to develop their capacity and competencies. Review and analysis of existing Mentor-Protégé programs in the public sector conclude that they are effective against the problems related to small business and minority sub-contracting.

This program is similar to those established by other federal agencies such as the Department of Homeland Security and Department of Treasury. An assessment of best practices in Mentor-Protégé programs identified certain clear benefits for all parties involved. A successful Program may enable HHS to receive a lower price offer from less expensive Mentor-Protégé teams. HHS acknowledges that a structured Mentor-Protégé program provides an opportunity for dual benefits where small and disadvantaged businesses are developed to become prime contractors and technically capable sub-contractors. More importantly, the Program provides a degree of confidence to Program Officers that the Mentor firm stands behind the work of the Protégé firm. Therefore, risks associated with the performance of the small and disadvantaged businesses are mitigated.

Dated: July 17, 2009.

Debbie Ridgely,

Director, OSDBU, ASAM/OS.

1.0 The HHS Mentor-Protégé Program

1.1 Scope

The HHS mentor-protégé program is designed to motivate and encourage large business prime contractor firms to provide mutually beneficial developmental assistance to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and woman-owned small business concerns. The program is also designed to improve the performance of HHS contracts and subcontracts, foster the establishment of long-term business relationships between HHS large prime contractors and small business subcontractors, and strengthen subcontracting opportunities and accomplishments at HHS.

1.2 Definitions

(a) MENTOR, as used in the Mentor-Protégé Program, means a large business concern that demonstrates the commitment and capability to assist in the development of a small business protégé.

(b) PROTÉGÉ, as used in the Mentor-Protégé Program, means a small business concern that is independently owned and operated, not dominant in its field, and meets federal size standards in its primary NAICS code. This includes small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and woman-owned small business concerns.

1.3 Non-Affiliation

For the purpose of qualifying as a small business as defined in Section 1.2, a protégé firm may not be considered an affiliate of a mentor firm solely on the basis that the protégé firm is receiving developmental assistance from the mentor firm under this program.

1.4 General Policy

(a) Eligible large businesses (not included on the ''Debarred'' list) approved as mentor firms will enter into agreements with eligible entities as defined in Section 1.2 as protégés. Mentors will provide appropriate developmental assistance to enhance the capabilities of protégés to perform as prime contractors and/or subcontractors.

(b) Mentor-Protégé activity will be available to any type of contract deemed appropriate by HHS when the requirement for a subcontracting plan is anticipated.

1.5 Incentives for Mentor Participation

(a) Mentors may receive additional evaluation points (for Mentor-Protégé Program participation) toward the award of contracts during the evaluation of competitive offers.

(b) Mentors may receive credit toward attaining subcontracting goals contained in the HHS subcontracting plan(s) for Mentor-Protégé participation on a dollar by dollar basis by counting protégé developmental assistance costs in their various small business subcontracting categories, as appropriate, in addition to traditional subcontracts.

(c) Mentors will be eligible for an annual non-monetary award presented to the mentor firm providing the most effective developmental support to a protégé at the conclusion of the 36-month Mentor-Protégé Agreement. The OSDBU, in consultation with senior HHS management, will solicit nominations from participating mentors and determine the award winner.

1.6 Measurement of Program Success

The overall success of the HHS Mentor-Protégé program, encompassing all participating mentors and protégés will be measured by the extent to which it results in:

(a) An increase in the quality of the technical capabilities of the protégé firm.

(b) An increase in the number and dollar value of contract and subcontract awards to protégé firms since the time of their entry into the program attributable to the mentor-protégé relationship (under HHS contracts, contracts awarded by other Federal agencies and under commercial contracts).

1.7 Mentor Firms

(a) Large firms eligible for receipt of federal contracts may apply.

(b) Mentors will be encouraged to identify and select:

(1) A broad base of small business firms whose core competencies support the HHS mission; and

(2) Protégés in addition to firms with whom they have established business relationships.

(c) Mentors may have multiple protégés. Mentors participating in the Mentor-Protégé programs in addition to the HHS program should maintain a system for preparing separate reports of mentoring activity for each agency's program.

1.8 Protégé Firms

(a) For selection as a protégé, a firm must be:

(1) Eligible as defined in Section 1.2 and

(2) Eligible for receipt of government contracts.

(b) A protégé firm may declare to a mentor firm that it meets the requirements set forth in paragraph (a) of this section. Mentor firms may rely in good faith on written business declarations consistent with the guidance cited in FAR 52.219–1 by potential protégés as evidence of eligibility to participate.

(c) The protégé may not have more than one mentor at a time. However, protégés participating in Mentor-Protégé programs in addition to the HHS program should maintain a system for preparing separate reports of mentoring activity for each agency's program.

1.9 Selection of Protégé Firms

(a) Mentor firms will be solely responsible for selecting protégé firms. The mentor is encouraged to identify and select the types of protégé firms listed in Section 1.8.

(b) The selection of protégé firms by mentor firms may not be protested, except as in paragraph (c) of this section.

(c) Any dispute regarding the size or eligibility status of an entity selected by a mentor to be a protégé shall be referred to the HHS OSDBU for referral to SBA for resolution.

1.10 Application and Agreement Process for Mentor-Protégé Teams To Participate in the Program

(a) Firms interested in becoming approved mentor-protégé participants must submit a joint written HHS Mentor-Protégé Agreement to the OSDBU for review and approval. The Mentor-Protégé Agreement will be evaluated on the extent to which the mentor firm plans to provide developmental assistance. The information required in Section 1.10 (b) may be submitted electronically or in hard copy to be considered for approval of the Mentor-Protégé Agreement.

(b) The Mentor-Protégé Agreement must contain:

(1) Name and address of mentor and protégé firm and a point of contact within both firms who will oversee the agreement;

(2) A statement from the protégé representing that the firm is currently eligible as a small business to participate in the Mentor-Protégé program;

(3) A description of the type of developmental program that will be provided by the mentor firm to the protégé firm, to include a description of the subcontract work;

(4) A schedule with milestones for providing assistance;

(5) Criteria for evaluation of the protégé's developmental success to measure the effectiveness of the capabilities and how the mentor's assistance will potentially increase contracting and subcontracting opportunities for the protégé firm;

(6) An estimate of the total cost provided to the protégé by the mentor;

(7) Program participation term of 36 months with a mid-term review at the 18 month interval;

(8) A listing of the anticipated number and types of subcontracts to be awarded to the protégé firm;

(9) Termination procedures including procedures for the mentor firm to notify the protégé firm, OSDBU, and the contracting officer, in writing, at least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the program; and the procedures for a protégé firm to notify the mentor firm in writing at least 30 days in advance of the protégé firm's intent to voluntarily terminate the Mentor-Protégé Agreement;

(10) Plan for accomplishing work should the agreement be terminated;

(11) Other terms and conditions as appropriate;

(12) Signed agreement with signatures and dates.

1.11 HHS Review and Approval of Mentor-Protégé Application and Agreement

(a) The information specified in Section 1.10 is reviewed by the HHS OSDBU. This review will be completed no later than 45 days after receipt by the OSDBU, and written approval of the Mentor-Protégé Agreement will be provided to each party.

(b) Upon agreement approval, the mentor may implement the development assistance program.

(c) If the application is disapproved, the mentor-protégé team may provide additional information for reconsideration. The review of any supplemental material will be completed within 30 days after receipt by the OSDBU.

1.12 Developmental Assistance

The forms of developmental assistance a mentor firm can provide to a protégé firm include:

(a) Management guidance related to—

(1) Financial management

(2) Organizational management

(3) Overall business management/planning

(4) Business development

(b) Technical assistance

(c) Rent-free use of facilities and/or equipment

(d) Temporary assignment of personnel to the protégé firm for the purpose of training

(e) Property

(f) Loans

(g) Any other types of mutually beneficial assistance.

1.13 Obligation

(a) Mentor or protégé firms may voluntarily withdraw from the program as mutually agreed to by both the mentor and protégé firms. However, in no event shall such withdrawal impact the program mission and contract requirements under the prime contract.

(b) Mentor and protégé firms shall submit a ''lessons learned'' evaluation to the HHS OSDBU at the conclusion of their effort.

1.14 Internal Controls

The HHS OSDBU, in conjunction with the HHS small business specialists, will manage the program. Internal controls will be established by the HHS OSDBU to achieve the stated program objectives (by serving as checks and balances against undesired actions or consequences) such as:

(a) Reviewing and evaluating mentor applications for realism, validity, and accuracy of information provided;

(b) Conducting a mid-term evaluation at an 18-month interval (out of a 36-month agreement) to measure protégé progress against the developmental plan contained in the approved agreement; and

(c) Site visits, as appropriate, where Mentor-Protégé activity is on-going.

1.15 Reports

A written progress report shall be submitted by the mentor-protégé team to the HHS OSDBU at the mid-term (18 months) of the 36-month Mentor-Protégé Agreement.

1.16 Program Review

(a) At the conclusion of the mid-term 18-month period of the Mentor-Protégé Program (out of a 36-month agreement), the mentor/large prime contractor and protégé/small business shall formally brief the HHS OSDBU regarding program accomplishments as pertains to the approved agreement.

(b) Mentor and protégé firms shall submit a ''lessons-learned'' evaluation to the HHS OSDBU at the conclusion of their effort.

[FR Doc. E9–17584 Filed 7–22–09; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Health Education Assistance Loan (HEAL) Program: Forms (OMB No. 0915–0034 Extension)

The HEAL program provided federally insured loans to assure the availability of funds for loans to eligible students to pay for their education costs. In order to administer and monitor the HEAL program the following forms are utilized: The Lenders Application for Contract of Federal Loan Insurance form (used by lenders to make application to the HEAL insurance program); the Borrower's Deferment Request form (used by borrowers to request deferments on HEAL loans and used by lenders to determine borrower's eligibility for deferment); the Borrower Loan Status update electronic submission (submitted monthly by lenders to the Secretary on the status of each loan); and the Loan Purchase/ Consolidation electronic submission (submitted by lenders to the Secretary to report sales, and purchases of HEAL loans).

The estimates of burden for the forms are as follows:

HRSA form	Number of respondents	Responses per respondent	Total responses	Hours per responses	Total burden hours
Lender's Application for Contract of Federal Loan Insurance	13	1	13	0.13	2
Borrower's Deferment Request:					
Borrowers	58	1	58	0.17	10
Employers	43	1.34	58	0.08	5
Borrower Loan Status Update	8	13	104	0.17	18
Loan Purchase/Consolidation	1	1	1	0.07	.06
Total	123		234		35

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to (202) 395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: July 15, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–17428 Filed 7–22–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Evaluation of the State Early Childhood Comprehensive Systems (ECCS) Grant Program: New

HRSA's Maternal and Child Health Bureau (MCHB) is conducting an assessment of MCHB's State Early Childhood Comprehensive Systems (ECCS) Grant Program. The purpose of the ECCS Grant Program is to assist States and Territories in their efforts to build and implement Statewide ECCS that support families and communities in their development of children that are healthy and ready to learn at school entry. These systems must be multi-agency and be comprised of the key public and private agencies that provide services and resources to support families and communities in providing for the healthy physical, social, and emotional development of all young children. Grantees are also charged with addressing seven key elements of early childhood comprehensive systems: (1) Governance, (2) financing, (3) communications, (4) family leadership development, (5) provider/practitioner support, (6) standards, and (7) monitoring/accountability. ECCS funding is offered to 52 States and Jurisdictions.

An evaluation will be conducted to: (1) Identify and analyze the strategies that grantees and partners are using to build comprehensive early childhood systems, (2) measure the level of progress grantees have made in meeting both the overarching Federal goals and objectives for ECCS grantees and those of their statewide plans, and (3) assess the effectiveness of grantees' early childhood systems development activities. The information from the evaluation will supplement and enhance MCHB's current data collection efforts by providing a quantifiable, standardized, systematic mechanism for collecting information across the funded implementation grantees. The results will also provide MCHB with timely feedback on the achievements of the ECCS Program and identify potential areas for improvement which will inform program planning and operational decisions.

Data collection tools for which OMB approval is being requested include Web-based surveys, telephone interviews, and a Web-based indicator reporting system. Web-based surveys are intended to collect information from all grantees regarding the structure and functioning of the State Team, the nature of activities, and perceptions of progress made in achieving outcomes. One survey will be directed at ECCS Coordinators while a second similar, but shorter survey will be directed at selected State Team members (5 State Team members from each State). The telephone interviews will be conducted with ECCS Coordinators to collect more detailed information on how early childhood services have been integrated, challenges and successes of implementation, and how the activities are designed to improve the lives of children and families. ECCS Coordinators will also be asked to enter information on three early child and family outcome indicators and provide a theory of change, or rationale, on how a specific ECCS activity or set of related activities will produce a measurable change in each outcome indicator.

Respondents: ECCS Coordinators and State Team members from the 52 grantees will be the primary respondents for the instruments. The estimated response burden is as follows:

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Web-based Survey	ECCS Coordinators	52	1	0.75	39
Web-based Survey	State Team Members	260	1	0.3	78
Telephone Interview	ECCS Coordinators	52	1	1.5	78
Indicator Reporting System	ECCS Coordinators	52	1	1.5	78
Total		416			273

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 16, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–17429 Filed 7–22–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Submission for OMB Review; Comment Request; SMP (Formerly Senior Medicare Patrol) Program Outcome Measurement

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by August 24, 2009.

ADDRESSES: Submit written comments on the collection of information by fax 202.395.6974 to the OMB Desk Officer for AoA, Office of Information and Regulatory Affairs, OMB.

FOR FURTHER INFORMATION CONTACT: Doris Summey, telephone (202) 357–3533; *e-mail: doris.summey@aoa.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, AoA has submitted the following proposed collection of information to OMB for review and clearance.

Grantees are required by Congress to provide information for use in program monitoring and for Government Performance and Results Act (GPRA) purposes. This information collection reports the number of active volunteers, issues and inquiries received, other SMP program outreach activities, and the number of Medicare dollars recovered, among other SMP performance outcomes. This information is used as the primary method for monitoring the SMP Projects.

AoA estimates the burden of this collection of information as follows: Respondents: 54 SMP grantees at 23 hours per month (276 hours per year, per grantee). Total Estimated Burden Hours: 14,904 hours per year.

Dated: July 17, 2009.

Kathy Greenlee,

Assistant Secretary for Aging.

[FR Doc. E9–17528 Filed 7–22–09; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–09–08AA]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of health communication messages for Infertility Prevention Campaign—New—National Center for HIV/AIDS, Viral Hepatitis, Sexually Transmitted Diseases, and Tuberculosis Elimination Programs (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of the proposed study is to develop, test, implement, and evaluate the effectiveness and satisfaction with Chlamydia health messages, products, and methods of dissemination.

Chlamydia (CT) is among the leading causes of pelvic inflammatory disease (PID), which can lead to infertility, ectopic pregnancy, and chronic pelvic pain. Most cases of CT are asymptomatic so infected girls and women are unaware of their infections. CDC estimates that in 2006, young women aged 15 to 19 years had the highest CT rate (2,862 cases per 100,000 females), followed by women aged 20 to 24 (2,797 cases per 100,000 females). These rates are likely to be underestimates, because many infected persons do not seek medical care and testing. Data at CDC suggests that CT develops into PID in up to 40% of untreated women and that 12% of women are infertile after their first experience with PID.

CDC plans to obtain public preferences that will guide the development of health communication messages/materials about CT with females in the following age groups: 15–17 years who attend school; 15–17 years who do not attend school: 18–25 years who are employed: And 18–25 years who attend school full-time. Focus groups will be conducted at local pre-determined focus group facilities, and surveys will be conducted online and in malls. Women ages 18–25 years, both employed and working full-time, will be recruited by phone through professional recruitment vendors for focus groups; and in malls and on social networking sites for surveys. Girls ages 15–17 years, who do and do not attend school full-time, will be recruited by phone through professional recruitment vendors for focus groups, after obtaining parental consent; and, in malls and through social networking sites (without parental consent) for surveys. The Academy for Educational Development will be conducting the research. There is no cost to respondents other than their time. The total estimated annual burden hours are 481.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Parents of 15–17 yr old	Focus Group Screener for Parents of Minors	54	1	5/60
Females (15–17 yr old)	Focus Group Screener for Minors	54	1	5/60
Female (18–25 yr old)	Focus Group Screener for Adult Women	126	1	5/60
Female (15–25 yr old)	Focus Group Moderator Guide (15–25)	180	1	2
Female (15–25 yr old)	Mall Intercept Screener & Moderator Guide (15–25).	200	1	10/60
Female (15–25 yr old)	Online Screener and Survey (15–25)	500	1	8/60

Dated: July 16, 2009.

Marilyn S. Radke,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–17525 Filed 7–22–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–253]

Availability of Draft Toxicological Profile for Perfluoroalkyls

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the draft toxicological profile for perfluoroalkyls, prepared by ATSDR, for review and comment.

DATES: In order to be considered, comments on this draft toxicological profile must be received on or before October 30, 2009. Comments received after the public comment period will be considered at the discretion of ATSDR on the basis of what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for a printed copy of the draft toxicological profile should be sent to the attention of Ms. Olga Dawkins, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, Mailstop F–32, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Electronic access to the document is also available at the ATSDR Web site: *http://www.atsdr.cdc.gov/toxpro2.html.*

Requests for printed copies of the draft toxicological profile must be in writing and must specifically identify the toxicological profile that you wish to receive. ATSDR reserves the right to provide free of charge only one copy of each profile requested. In case of extended distribution delays, requestors will be notified.

Comments regarding the draft toxicological profile for perfluoroalkyls should be sent to the attention of Ms. Nickolette Roney, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, Mailstop F–62, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Electronic comments may be sent to *TPPublicComments@cdc.gov.* All comments sent electronically should contain the docket control number ATSDR–253 in the subject line.

Written comments and other data submitted in response to this notice and the draft toxicological profile should bear the docket control number ATSDR–253. Send one copy of all comments and three copies of all supporting documents to Ms. Roney at the above address by the end of the comment period. Because all public comments regarding ATSDR toxicological profiles are available for public inspection, no confidential information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Olga Dawkins, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, Mailstop F–62, 1600 Clifton Road, NE., Atlanta, Georgia 30333; telephone number (800) 232–4636 or (770) 488–3315.

SUPPLEMENTARY INFORMATION: This draft toxicological profile for perfluoroalkyls was prepared in accordance with guidelines developed by the Agency for Toxic Substances and Disease Registry and the Environmental Protection Agency (EPA) for the preparation of toxicological profiles. The original guidelines were published in the **Federal Register** on April 17, 1987. While perfluoroalkyls are not found on the ATSDR Priority List of Hazardous Substances, ATSDR has determined that a profile for these substances was necessary because data indicate that some perfluoroalkyls are found in the blood of the United States general population and in the environment. The agency also determined that it was important to characterize the current available information regarding the health effects from exposure to perfluoroalkyls in order to support and inform public health responses and activities by ATSDR and others. This profile will be revised and republished as necessary.

Section 104(i)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9604(i)(3)] outlines the content of the toxicological profiles. Each profile includes an examination, a summary, and an interpretation of available toxicological information and epidemiologic evaluations. This information and these data are to be used to identify the levels of significant human exposure to a substance and the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), will initiate a research program to determine these health effects.

Although key studies for this substance were considered during the profile development process, this **Federal Register** notice solicits any additional studies, particularly unpublished data and ongoing studies, which will be evaluated for possible addition to the profile now or in the future.

The following draft toxicological profile will be made available to the public on or about July 6, 2009.

Document	Toxicological profile	CAS No.
1	PERFLUOROALKYLS	000375–22–4 000335–67–1 001763–23–1

All profiles issued as ''Draft for Public Comment'' represent ATSDR's best efforts to provide important toxicological information on priority substances. We are seeking public comments and additional information that may be used to supplement this profile. ATSDR remains committed to providing a public comment period for these documents as the best means to serve public health and our clients.

Ken Rose,

Director, Office of Policy, Planning, and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. E9–17529 Filed 7–22–09; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–254]

Notice of Development of Set 23 Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the development of Set 23 Toxicological Profiles. Set 23 Toxicological Profiles consists of three new drafts and two updated drafts. These profiles will be available to the public on or about October 17, 2009. Electronic access to these documents will be available at the ATSDR Web site: *http://www.atsdr.cdc.gov/toxpro2.html.*

Set 23 Toxicological Profiles

The following toxicological profiles are now being developed:

Toxicological profile	CAS No.
1. Acrylamide*	79–06–1
2. Carbon Monoxide*	630–08–0
3. 1,3-Butadiene	106–99–0
4. Phosphate Ester Flame Retardants*	126–73–8, 126–71–6, 78–51–3, 115–86–6, 13674–84–5, 13674–87–8, 115–96–8
5. Vanadium	7440–62–2

*Denotes new profile.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9601 *et seq.*) amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for ATSDR and the U.S. Environmental Protection Agency (EPA) with regard to hazardous substances that are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the Priority List of Hazardous Substances (*http://www.atsdr.cdc.gov/cercla/07list.html*). This list names 275 hazardous substances that pose the most significant potential threat to human health as determined by ATSDR and EPA. The availability of the revised list of the 275 priority substances was announced in the **Federal Register** on March 6, 2008 (73 FR 12178). For prior versions of the list of substances, *see* **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); February 28, 1994 (59 FR 9486); April 29, 1996 (61 FR 18744; November 17, 1997 (62 FR 61332); October 21, 1999 (64 FR 56792); October 25, 2001 (66 FR 54014); November 7, 2003 (68 FR 63098); and December 7, 2005 (70 FR 70284).

The Set 23 Toxicological Profiles for 1,3-Butadiene and Vanadium are updates of previously published profiles for NPL priority substances. In addition, to address emerging public health concerns related to substances not currently on the NPL, ATSDR is also developing Set 23 Toxicological Profiles for Carbon Monoxide, Acrylamide, and Phosphate Ester Flame Retardants. Carbon monoxide is a toxic gas produced from the incomplete combustion of carbon-based fuels. Because it is colorless and odorless, toxicity can occur with no indication that exposure is occurring. Thousands of hospitalizations and hundreds of deaths occur every year as a result of inadvertent exposure to carbon monoxide. Acrylamide is a known animal carcinogen that is widely used in industry to synthesize polyacrylamides. Acrylamide also occurs naturally in a few foods, is formed in many foods as a byproduct of numerous cooking processes, and has been detected recently in human biomonitoring studies. Phosphate ester flame retardants comprise a large group of structurally related chemicals with increasing uses in clothing, fabrics, furniture, and structural components. However, there is an increasing body of information regarding exposures, body burdens, and toxicity related to this group of chemicals.

Notice of the availability of drafts of these two updated and three new toxicological profiles for public review and comment will be published in the **Federal Register** on/or about October 17, 2009, with notice of a 90-day public comment period for each profile, starting from the actual release date. Following the close of the comment period, chemical-specific comments will be addressed, and, where appropriate, changes will be incorporated into each profile.

FOR FURTHER INFORMATION CONTACT: Commander Jessilynn B. Taylor, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop F–32, Atlanta, GA 30333, telephone 770–488–3313.

Ken Rose,

Director, Office of Policy, Planning and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. E9–17527 Filed 7–22–09; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Public Health Informatics (BSC, NCPHI)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

Time and Date: 1 p.m.–5 p.m., August 7, 2009 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Purpose: The committee shall advise the Secretary, HHS, and the Director, CDC, concerning strategies and goals for the programs and research within the national centers; shall conduct peer-review of scientific programs; and monitor the overall strategic direction and focus of the national centers. The board, after conducting its periodic reviews, shall submit a written description of the results of the review and its recommendations to the Director, CDC. The board shall perform second-level peer review of applications for grants-in-aid for research and research training activities, cooperative agreements, and research contract proposals relating to the broad areas within the national center.

Matters To Be Discussed: The board will perform a secondary review of previously rated grant applications received by NCPHI based on RFA–HK–09–001; Centers of Excellence in Public Health Informatics (P01) and reviewed by an expert panel convened by NCPHI on July 22—24, 2009.

Contact Person for More Information: Dr. Scott McNabb, National Center for Public Health Informatics, CDC, 1600 Clifton Road, NE., (E–78), Atlanta, Georgia 30333, Telephone (404) 498–6427, Fax (404) 498–6235.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and the Agency for Toxic Substance and Disease Registry.

Dated: July 17, 2009.

Elaine L. Baker,

Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–17524 Filed 7–22–09; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, HIV Exploratory Applications.

Date: July 28, 2009.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Enid Light, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6132, MSC 9608, Bethesda, MD 20852–9608, 301–443–0322, *elight@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17430 Filed 7–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC); Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Times and Dates:

8:30 a.m.–5 p.m., September 2, 2009.

8:30 a.m.–3 p.m., September 3, 2009.

Place: CDC, 1600 Clifton Road, NE., Tom Harkin Global Communications Center, Building 19, Room 232, Auditorium B, Atlanta, Georgia 30333.

New Information—Online Registration Required: In order to expedite the security clearance process at the CDC Roybal Campus located on Clifton Road, all CLIAC attendees are required to register for the meeting online at least 14 days in advance at *http://wwwn.cdc.gov/cliac/default.aspx* by clicking the ''Register for a Meeting'' link and completing all forms according to the instructions given. Please complete all the required fields before submitting your registration and submit no later than August 19, 2009.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This Committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact on medical and laboratory practice of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters To Be Discussed: The agenda will include agency updates from the CDC, the Centers for Medicare & Medicaid Services, and the Food and Drug Administration; and presentations and discussion that address assuring laboratory testing quality during public health emergencies, assessing the performance and impact of waived testing, and the current state of HIV testing. Agenda items are subject to change as priorities dictate.

Providing Oral or Written Comments: It is the policy of CLIAC to accept written public comments and provide a brief period for oral public comments whenever possible.

Oral Comments: In general, each individual or group requesting to make an oral presentation will be limited to a total time of five minutes (unless otherwise indicated). Speakers must also submit their comments in writing for inclusion in the meeting's Summary Report. To assure adequate time is scheduled for public comments, individuals or groups planning to make an oral presentation should, when possible, notify the contact person below at least one week prior to the meeting date.

Written Comments: For individuals or groups unable to attend the meeting, CLIAC accepts written comments until the date of the meeting (unless otherwise stated). However, the comments should be received at least one week prior to the meeting date so that the comments may be made available to the Committee for their consideration and public distribution. Written comments, one hard copy with original signature, should be provided to the contact person below. Written comments will be included in the meeting's Summary Report.

Contact Person for Additional Information: Nancy Anderson, Chief, Laboratory Practice Standards Branch, Division of Laboratory Systems, National Center for Preparedness, Detection, and Control of Infectious Diseases, Coordinating Center for Infectious Diseases, CDC, 1600 Clifton Road, NE., Mailstop F–11, Atlanta, Georgia 30333; Telephone (404) 498–2471; Fax (404) 498–2215; or via e-mail at *Nancy.Anderson@cdc.hhs.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 15, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–17519 Filed 7–22–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI–ARRA Grand Opportunities Clinical/Translational.

Date: August 5–6, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To provide concept review of proposed grant applications.

Place: Marriott Bethesda North Hotel & Conference Ctr., Bethesda, MD.

Contact Person: Majed M. Hamawy, MBA, PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8135, Bethesda, MD 20852, 301–594–5659, *mh101v@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17440 Filed 7–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, CD8 Immune Responses Against Viral Pathogens.

Date: August 19, 2009.

Time: 12 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Room 3128, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Katrin Eichelberg, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–496–0818, *keichelberg@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17438 Filed 7–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: September 11, 2009.

Time: 11:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Camilla E. Day, PhD, Scientific Review Officer, CIDR, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4075, Bethesda, MD 20892, 301–402–8837, *camilla.day@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: July 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17437 Filed 7–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK ''Bariatric Surgery Ancillary Study''.

Date: August 10, 2009.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Thomas A. Tatham, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17436 Filed 7–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, Review of R03 and ARRA Revision Applications.

Date: July 31, 2009.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bethesda, MD 20892.

Contact Person: Jonathan Horsford, PhD, Scientific Review Officer, Natl Inst of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Blvd., Room 664, Bethesda, MD 20892, 301–594–4859, *horsforj@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: July 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17435 Filed 7–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, American Recovery and Reinvestment Act (ARRA) Competitive Revision Application: Differentiated Function of Tissues Involved in Nutrition.

Date: August 14, 2009.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *ls38z@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17434 Filed 7–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Mentored Training Grant Application Review.

Date: August 5, 2009.

Time: 9:50 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: John F. Connaughton, PhD, Chief, Chartered Committees Section, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17433 Filed 7–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, ARRA–RC2–SEP 8.

Date: July 31, 2009.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Rebecca J. Ferrell, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7703, *ferrellrj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, ARRA–RC2–SEP–15.

Date: August 19, 2009.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20814. (Telephone Conference Call)

Contact Person: Ramesh Vemuri, PhD, Chief, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17432 Filed 7–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Exploratory Studies of iPS cells from Healthy & Mental Health Populations: Part 2.

Date: July 30, 2009.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: David W. Miller, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–9734, *millerda@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17431 Filed 7–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Tissue Engineering.

Date: July 28, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jo Pelham, BA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786, *pelhamj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17442 Filed 7–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, GO Applications.

Date: July 30, 2009.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Shanta Rajaram, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC9529, Bethesda, MD 20852, (301) 435–6033, *rajarams@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17441 Filed 7–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0009; No Forms.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before August 24, 2009.

ADDRESSES: 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 Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: The Declaration Process: Requests for Preliminary Damage Assessment, Federal Disaster Assistance, Cost Share Adjustment, and Appeals.

Type of information collection: Revision of a currently approved information collection.

OMB Number: 1660–0009.

Form Titles and Numbers: No Forms.

Abstract: When a disaster occurs in a State, the Governor of the State or the Acting Governor in his/her absence, may request a major disaster declaration or an emergency declaration. The Governor should submit the request to the President through the appropriate Regional Administrator to ensure prompt acknowledgement and processing. The information obtained by joint Federal, State, and local preliminary damage assessments will be analyzed by FEMA regional senior level staff. The regional summary and the regional analysis and recommendation shall include a discussion of State and local resources and capabilities, and other assistance available to meet the disaster related needs. The Administrator of FEMA provides a recommendation to the President and also provides a copy of the Governor's request. In the event the information required by law is not contained in the request, the Governor's request cannot be processed and forwarded to the White House. In the event the Governor's request for a major disaster declaration or an emergency declaration is not granted, the Governor may appeal the decision.

Affected Public: ''State, Local or Tribal Governments''.

Estimated Number of Respondents: 56.

Frequency of Response: On Occasion.

Estimated Average Hour Burden per Respondent: 198 Hours.

Estimated Total Annual Burden Hours: 11,088 Hours. The total Annual Burden Hours has decreased since publication of the 60-day **Federal Register** Notice at 74 FR 10956, March 13, 2009.

Estimated Cost: There is no annual reporting or recordkeeping costs associated with this collection.

Larry Gray,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–17513 Filed 7–22–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee

AGENCY: Office of the Secretary, National Invasive Species Council.

ACTION: Notice of public meeting of the Invasive Species Advisory Committee.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App., notice is hereby given of a meeting of the Invasive Species Advisory Committee (ISAC). The purpose of ISAC is to provide advice to the National Invasive Species Council (NISC), as authorized by Executive Order 13112, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. NISC is co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. NISC provides national leadership regarding invasive species issues. A meeting of ISAC will be held on August 11, 2009 from 1 p.m. until 3 p.m. EDT. Members of the public are invited to attend. A teleconference call-in number will be established. The purpose of this meeting is to convene the full ISAC to discuss, modify, and consider for adoption the ISAC position paper concerning the use of plant species that may be invasive in Federal biofuel programs. Meeting space is limited to fifteen individuals and the number of telephone call-in lines is limited to seventy. Members of the public that wish to attend this meeting or wish to access the teleconference lines are requested to contact Delpha Arnold at 202–513–7243, Fax: (202) 371–1751, or e-mail *Delpha_Arnold@ios.doi.gov* to obtain the call-in number and access code. Requests for call-in numbers or to attend must be received before 4:30 p.m. EDT August 7, 2009. Attendance will be on a first come first served basis.

DATES: Meeting of the Invasive Species Advisory Committee: August 11, 2009 from 1 p.m. until 3 p.m. EDT.

ADDRESSES: National Invasive Species Council, 1201 Eye Street, NW., Suite 570–A; Washington, DC 20005. Members of the public must provide photo identification and be cleared through building security prior to being escorted to the meeting room.

FOR FURTHER INFORMATION CONTACT: Chris Dionigi, NISC Acting Executive Director, (202) 513–7243; Fax: (202) 371–1751, or e-mail *Chris_Dionigi@ios.doi.gov.*

Dated: July 17, 2009.

Christopher P. Dionigi,

Acting Executive Director, National Invasive Species Council.

[FR Doc. E9–17469 Filed 7–22–09; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection; Activities Under OMB Review; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal of a currently approved collection (OMB No. 1006–0002).

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Reclamation (Reclamation) has forwarded the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval: Recreation Use Data Report, OMB Control Number: 1006–0002. As part of its continuing effort to reduce paperwork and respondent burdens, Reclamation invites other Federal agencies, State, local, or tribal governments which manage recreation sites at Reclamation projects; concessionaires, sub-concessionaires, and not-for-profit organizations who operate concessions on Reclamation lands; and the public, to comment on this information collection.

DATES: Comments on this notice must be received by August 24, 2009.

ADDRESSES: You may send written comments to the Desk Officer for the Department of the Interior at the Office of Management and Budget, Office of Information and Regulatory Affairs, via facsimile to (202) 395–5806, or e-mail to *OIRA_DOCKET@omb.eop.gov*. A copy of your comments should also be directed to the Bureau of Reclamation, Attention: 84–53000, P.O. Box 25007, Denver, CO 80225–0007.

FOR FURTHER INFORMATION CONTACT: Greek Taylor, Bureau of Reclamation, 303–445–2895. You may also contact the above to obtain copies, at no cost, of the forms and information collection.

SUPPLEMENTARY INFORMATION:

Title: Recreation Use Data Report (Part I, Form 7–2534, Managing Partners, and Part II, Form 7–2535, Concessionaires).

OMB No.: OMB No. 1006–0002.

Abstract: Reclamation collects Reclamation-wide recreation and concession information in support of existing public laws including the Federal Water Project Recreation Act (Pub. L. 89–72) and the Federal Lands Recreation Enhancement Act (Pub. L. 108–477), and to fulfill reports to the President and the Congress. This collection of information allows Reclamation to (1) Meet the requirements of the Government Performance and Results Act (GPRA); (2) fulfill congressional and financial reporting requirements; and (3) support specific information required by the Department of the Interior's GPRA-based strategic plan. Collected information will permit relevant program assessments of resources managed by Reclamation, its recreation managing partners, and/or concessionaires for the purpose of implementing Reclamation's mission to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American people. Specifically, the collected information provides Reclamation with the ability to evaluate program and management effectiveness pertaining to existing recreation and concessionaire resources and facilities, and validate effective public use of managed recreation resources located on Reclamation project lands and waterbodies in the 17 Western States.

Description of respondents: The respondents will include non-Federal government entities who manage recreation resources on Reclamation lands and waterbodies, and the concessions at those areas and other areas managed directly by Reclamation. Responses are voluntary.

Frequency: Annually.

Estimated completion time: An average of 30 minutes is required to complete Forms 7–2534 and 7–2535 each.

Annual responses: 282.

Annual burden hours: 142 hours.

Form No.	Burden estimate per form (in minutes)	Annual number of respondents	Annual burden on respondents (in hours)
7–2534 (Part I, Managing Partners)	30	167	84
7–2535 (Part II, Concessionaires)	30	115	58
Total burden hours	....	....	142

Comments:

Reclamation invites your comments on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) the accuracy of our burden estimate for the proposed collection of information;

(c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

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. Reclamation will display a valid OMB control number on Forms 7–2534 and 7–2535, OMB Control Number: 1006–0002.

A **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published in the **Federal Register** (74 FR 9634, March 5, 2009). No public comments were received.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

Before including your address, telephone 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.

Roseann Gonzales,

Director, Policy and Program Services, Denver Office.

[FR Doc. E9–17563 Filed 7–22–09; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–R–2008–N0189; BAC–4311–K9–S3]

Rappahannock River Valley National Wildlife Refuge, Caroline, Essex, King George, Lancaster, Middlesex, Richmond, and Westmoreland Counties, VA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of draft comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft comprehensive conservation plan (CCP) and draft environmental assessment (EA) for Rappahannock River Valley National Wildlife Refuge (NWR) for a 30-day public review and comment period. In this draft CCP/EA, we describe three alternatives, including our Service-preferred Alternative B, for managing this refuge for the next 15 years. Also available for public review and comment are the draft compatibility determinations, which are included as Appendix B in the draft CCP/EA.

DATES: To ensure our consideration of your written comments, we must receive them by August 24, 2009. We will also hold public meetings in Warsaw and Richmond, Virginia, during the 30-day review period to receive comments and provide information on the draft plan. We will announce and post details about public meetings in local news media, via our project mailing list, and on our regional planning Web site, *http://www.fws.gov/northeast/planning/rappahannock/ccphome.html.*

ADDRESSES: Send your comments or requests for copies of the draft CCP/EA by any of the following methods. You may also drop off comments in person at Rappahannock River Valley NWR headquarters, located at 336 Wilna Road in Warsaw, Virginia.

U.S. Mail: Nancy McGarigal, Natural Resource Planner, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035.

Fax: Attention: Nancy McGarigal, 413–253–8468.

E-mail: northeastplanning@fws.gov. Include ''Rappahannock NWR CCP'' in the subject line of your e-mail.

Agency Web site: View or download the draft document at *http://www.fws.gov/northeast/planning/Rappahannock.html.*

FOR FURTHER INFORMATION CONTACT: Joseph McCauley, Project Leader, Eastern Virginia Rivers NWR Complex, 336 Wilna Road, P.O. Box 1030, Warsaw, VA 22572–1030; (804) 333–1470 (phone); 804–333–3396 (fax); *fw5rw_evrnwr@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Rappahannock River Valley NWR, which was started with the notice of intent we published in the **Federal Register** (70 FR 65931) on November 1, 2005. We prepared the draft CCP in compliance with the National Environmental Policy Act of 1969 and the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997. This refuge is the newest of the four refuges that comprise the Eastern Virginia Rivers NWR Complex. The other three are the James River, Plum Tree Island, and Presquile NWRs.

Rappahannock River Valley NWR, currently 7,711 acres, was established in 1996 to conserve and protect fish and wildlife resources, including endangered and threatened species, and wetlands. Refuge habitats include freshwater tidal marsh, forested swamp, upland deciduous forest, mixed pine forest, and managed grassland. Two Federally listed species are found on the refuge, the endangered shortnose sturgeon (*Acipenser brevirostrum*) and threatened Sensitive joint-vetch (*Aeschynomene virginica*). The State of Virginia's largest wintering population of bald eagles is located within the refuge boundary. Neotropical migratory songbirds, shorebirds, raptors, and marsh birds also rely on the Rappahannock River corridor during their spring and fall migrations. With help from partners and volunteers, we are restoring native grasslands and riparian forests along the river and its tributary streams to provide additional habitat for these important species.

Although wildlife and habitat conservation is the refuge's first priority, the public can observe and photograph wildlife, fish, hunt, or participate in environmental education and interpretation on several units of the refuge. The refuge contains three sites on the Virginia Birding and Wildlife Trail. The Wilna Unit, located in Richmond County, offers accessible fishing, excellent wildlife observation opportunities, and accessible nature trails. Other units of the refuge are open for visits by reservation.

Background

The CCP Process

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose for developing CCPs is to provide refuge managers with 15-year plans for achieving refuge purposes and the mission of the National Wildlife Refuge System, in conformance with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update each CCP at least every 15 years, in accordance with the Improvement Act.

Public Outreach

In conjunction with our November 2005, **Federal Register** notice announcing our intent to begin the CCP process, we distributed a newsletter to more than 300 State agencies, organizations, and individuals on our project mailing list, asking about their interest in the refuge and whether they had issues or concerns they would like us to address. We distributed another newsletter in December 2005, providing more detailed information on the refuge and the planning process. In that newsletter, we also asked people to share their vision for the future of the refuge and provide us with feedback or comments on its management. Also in December 2005, we held three public scoping meetings, in Richmond, Port Royal, and Warsaw, Virginia. We asked those who attended to identify issues and concerns they would like us to address and to comment on the draft vision, goals and objectives we had at that time. Forty-five people attended those meetings. In 2006, we sponsored a survey of 1,200 local residents, randomly selected, asking specific questions about their recreation on the Rappahannock River, their preferences for future wildlife-dependent recreation on the refuge, and whether they knew about refuge opportunities. Throughout the process, we have conducted additional outreach via newsletters and participation in meetings, community events and other public forums, and continued to request public input on refuge management and programs.

Some of the key issues identified include the amount of grassland to manage, other priority habitat types to conserve, land protection and conservation priorities, improving the visibility of the Service and refuge, providing desired facilities and activities, and ways to improve opportunities for public use while ensuring the restoration and protection of priority resources.

CCP Actions We Are Considering, Including the Service-Preferred Alternative

We developed three management alternatives based on the purposes for establishing the refuge, its vision and goals, and the issues and concerns the public, State agencies, and the Service identified during the planning process. The alternatives have some actions in common, such as protecting and monitoring Federally listed species and the regionally significant bald eagle population, controlling invasive plants and wildlife diseases, encouraging research that benefits our resource decisions, protecting cultural resources, continuing to acquire land from willing sellers within our approved refuge boundary, and distributing refuge revenue sharing payments to counties.

Other actions distinguish the alternatives. The draft CCP/EA describes the alternatives in detail, and relates them to the issues and concerns we identified. Highlights follow.

Alternative A (Current Management)

This alternative is the ''No Action'' alternative required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347, as amended). Alternative A defines our current management activities, and serves as the baseline against which to compare the other alternatives. Our habitat management focus on the 700 acres of grasslands and old fields would continue, and we would continue to use tools such as prescribed fire, mowing, herbicides and disking to keep them in an early stage of succession and increase plant diversity. We intend to phase out our cooperative farming program on another 200 acres over the next 5 years and convert to grasslands. We would continue to monitor our forests and wetlands for invasive plants and disease, and treat them if we have available funding and staffing. Our biological monitoring and inventory program would continue at its current levels, focusing on surveys of breeding and wintering birds.

Our visitor services programs would not change; we would conduct most of the activities on the Wilna Unit. The Wilna Unit is the only refuge unit open 7 days a week, from sunrise to sunset. The other units are open by reservation only. Wildlife observation and photography, white-tailed deer hunting, and fishing are the most popular activities. Our staffing and facilities would remain the same. Seven staff positions for the refuge complex would remain in place, and the headquarters would remain at the historic Wilna House.

Alternative B (Enhanced Habitat Diversity and the Service-Preferred Alternative)

This alternative is the one we propose as the best way to manage this refuge over the next 15 years. It includes an array of management actions that, in our professional judgment, works best toward achieving the refuge purposes, our vision and goals, and the goals of other State and regional conservation plans. We also believe it most effectively addresses the key issues raised during the planning process.

Our habitat management program would expand to include up to 1,200 acres of managed grasslands and old fields, primarily through new acquisitions from willing sellers within our approved refuge boundary. We would use all the tools identified under Alternative A. We would also phase out our cooperative farming program within 5 years and convert it to grasslands, although we may maintain a minimal number of acres if we determine it would be useful in our interpretation program, or would provide benefits for other programs. We would manage our existing planted pine stands through thinning, to facilitate their growth into a healthy, mature, mixed forest. As in Alternative A, we would continue to monitor our forests and wetlands for invasive plants and disease, and treat them to the extent our funding allows. Protecting and enhancing riparian and wetlands habitat would be a priority. We would also continue our monitoring and inventory program, but regularly evaluate the results to help us better understand the implications of our management actions and identify ways to improve their effectiveness.

We would expand opportunities for all six priority public uses. We would seek partnerships to help us achieve any new or expanded programs, including interpretive trails construction, adding a self-guided canoe trail, and leading environmental education programs using the refuge as a living laboratory. We plan to further evaluate opportunities for waterfowl and turkey hunting. We would also improve and expand access for freshwater fishing. If we can secure permanent funding, we would fill up to four new staff positions to provide depth to our programs and achieve our goals and objectives. We also propose to construct a new, Service-standard small refuge headquarters and visitor contact facility on the Hutchinson tract to increase our visibility and improve public access to refuge land.

Alternative C (Forest Management Emphasis)

This alternative resembles Alternative B in its refuge administration, facilities, and visitor services programs, but differs in its habitat management.

Under Alternative C, we would allow grasslands, old fields, and croplands to revert to shrub and forest, supplementing that process with such activities as plantings, applying herbicides, and cutting or brush-hogging (mowing) as necessary to achieve the desired results. As in Alternative B, we would protect and enhance riparian and wetlands habitats as a priority. We also propose to manage our existing planted pine stands as in Alternative B, and continue to monitor our forests and wetlands for invasive plants and disease and treat them to the extent funding allows. Protecting and enhancing riparian and wetland habitats would also be a priority. Compared to Alternative B, we would conduct a more intensive, focused monitoring and inventory program designed to address more specific questions about habitat quality and the response of wildlife populations. In the near term, monitoring would be aimed specifically at documenting the transition from grasslands, old fields, and croplands to shrub and young forest. Under Alternative C, our public use programs would be similar to those proposed under Alternative B, including our plans to pursue a new headquarters and visitor contact facility.

Public Meetings

We will give the public opportunities to provide input at two public meetings in Warsaw and Richmond, Virginia. You can obtain the schedule from the project leader or natural resource planner (*see* **ADDRESSES** or **FOR FURTHER INFORMATION CONTACT,** above). You may also submit comments at any time during the planning process by any means shown in the **ADDRESSES** section.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made 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.

Dated: May 8, 2009.

Wendi Weber,

Acting Regional Director, U.S. Fish and Wildlife Service, Hadley, MA 01035.

[FR Doc. E9–17546 Filed 7–22–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2009–N123; 14420–1115–1SGR–A2]

Endangered and Threatened Wildlife and Plants; Permit Application; Greater Sage-Grouse; Washington, Adams, Gem, and Payette Counties, Idaho

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Receipt of application for enhancement of survival permit; notice of availability of programmatic candidate conservation agreement with assurances and draft environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce receipt of an application for an enhancement of survival permit (permit) under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA). The permit application includes a proposed programmatic candidate conservation agreement with assurances (CCAA) for the Greater sage grouse (*Centrocercus urophasianus;* hereafter, sage-grouse) between us and the Idaho Department of Fish and Game (IDFG). The term of the proposed CCAA is 30 years, and the requested term of the permit is 30 years. Consistent with the requirements of the National Environmental Policy Act of 1969 (NEPA), we have prepared a draft environmental assessment (EA) of the impacts of the proposed CCAA and permit application. We are accepting comments on the application, the proposed CCAA, and the draft EA.

DATES: We will consider comments we receive on or before August 24, 2009.

ADDRESSES: Address any written comments concerning this notice to Kendra Womack, Idaho Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1387 S Vinnell Way, Room 368, Boise, ID 83709. Alternatively, fax written comments to 208–378–5262, or e-mail comments to *fw1srbocomment@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Kendra Womack, 208–378–5243. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Document Availability

Copies of the permit application, the draft CCAA, and the draft EA are available for public inspection, by appointment, at the Idaho Fish and Wildlife Office (*see* **ADDRESSES**), or you may view them on the Internet at *http://www.fws.gov/idaho.* We furnish this notice to provide the public, other State and Federal agencies, and interested Tribes an opportunity to review and comment on the draft CCAA, permit application, and draft EA.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Background

Candidate Conservation Agreements with Assurances encourage non-Federal property owners to implement conservation efforts for candidate or at-risk species by assuring property owners they will not be subjected to increased property use restrictions if the covered species becomes listed in the future. Application requirements and issuance criteria for enhancement of survival permits through CCAAs are in the Code of Regulations (CFR) at 50 CFR 17.22(d) and 17.32(d), respectively. See also our joint policy on CCAAs, which we published in the **Federal Register** with the Department of Commerce's National Oceanic and Atmospheric Administration, National Marine Fisheries Service (64 FR 32726; June 17, 1999).

The proposed CCAA is programmatic in nature, and, under it, individual property owners who wish to participate would enroll their properties under the IDFG's section 10(a)(1)(A) permit through the issuance of a Certificate of Inclusion. The individual property owner would work with IDFG and us to develop a mutually agreeable site-specific management plan for the enrolled property. The site-specific plan will address known threats to sage-grouse through the implementation of identified conservation measures that are consistent with the participating landowner's land use activities and the CCAA. If a Certificate of Inclusion is signed and issued to a participating property owner, they would then be authorized to incidentally take sage-grouse if the species becomes listed under the ESA in the future, as long as the terms and conditions of the permit and the existing site-specific plan are followed.

The area to be covered under this proposed CCAA (Covered Area) is approximately 930,000 acres (ac) located in the West Central Planning Area (WCPA) in Washington, Adams, Gem, and Payette Counties, Idaho. Within the Covered Area, approximately 590,707 ac is non-Federally owned and would potentially be eligible for enrollment under the proposed CCAA. Sage grouse use habitats throughout the WCPA, including lekking (breeding display) areas, and nesting, brood rearing, and wintering habitats. Accurate estimates of the number of sage-grouse in the WCPA are not available.

The proposed CCAA identifies important sage-grouse use areas using a combination of known lek locations, and yearlong telemetry data identifying nesting, brood-rearing, and wintering habitats. The proposed CCAA also assumes that there are some areas where land uses or historic events have reduced habitat values so that they are no longer used by sage-grouse. However, the inherent physical factors and proximity to currently used habitat may make these areas candidates for restoration efforts.

The proposed CCAA is intended to result in benefits to sage-grouse by reducing or eliminating threats to the species on enrolled properties, and creating or maintaining habitat conditions that are suitable for all life-history stages of the species through the implementation of conservation measures. The proposed CCAA describes all of the threats to sage-grouse that have been identified in the WCPA, and a suite of potential conservation actions that could be implemented to address those threats. The conservation measures that would be implemented on any enrolled property would be identified in a site-specific conservation plan for that property. Activities that are covered under the CCAA and may be included in a site-specific plan as applicable include range and livestock management, farming operations, recreational activities, and general ranch operation and maintenance. These activities are described in more detail in the proposed CCAA.

Consistent with our CCAA Policy (64 FR 32726), the conservation goal of the proposed CCAA is to encourage enhancement and protection of suitable sage-grouse habitat on non-Federal lands by either maintaining or modifying existing land uses so that they are consistent with the conservation needs of sage-grouse. We can meet this conservation goal with the use of a CCAA by giving non-Federal landowners incentives to implement conservation measures, primarily through regulatory certainty concerning land-use restrictions that might otherwise apply should sage-grouse become listed under the ESA.

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and the implementing regulations for NEPA (40 CFR 1506.6). We will evaluate the permit application, associated documents, and comments we receive to determine whether the permit application meets the requirements of section 10(a) of the ESA and NEPA and its implementing regulations. If we determine that all requirements are met, we will sign the proposed CCAA and issue a permit under section 10(a)(1)(A) of the ESA to the IDFG for take of sage-grouse. We will not make our final decision until after the end of the 30-day public comment period, and we will fully consider all comments we receive during the public comment period.

Dated: July 15, 2009.

David J. Wesley,

Deputy Regional Director, Region 1, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. E9–17523 Filed 7–22–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA 49561, LLCAD08000L5101 ER0000LVRWB09B3220]

Notice of Intent To Prepare an Environmental Impact Statement and Amendment to the California Desert Conservation Area Plan for the Lucerne Valley Solar Project; San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) Barstow Field Office, Barstow, California intends to prepare an Environmental Impact Statement (EIS) and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues. The EIS will analyze the impacts of the Lucerne Valley Solar Plant on public lands in San Bernardino County, California. The project is being proposed by Chevron Energy Solutions (the Applicant). The applicant has requested a right-of-way (ROW) authorization to construct and operate a 45 megawatt solar photovoltaic project and connect it to the existing Southern California Edison 33 kV distribution system. Within the 516-acre solar facility, the project would include a new switchyard, control/maintenance building, and parking area. The EIS will analyze the site-specific impacts to the environment from the proposed grant of the ROW.

DATES: This notice initiates a public participation and scoping period for the EIS of at least 30 days. This scoping period will also be announced through the local news media, newspapers, and BLM's Web page (*http://www.blm.gov/ca/st/en/fo/barstow.html*). During the public scoping period the BLM will solicit public comment on issues, concerns and opportunities that should be considered in the analysis of the proposed action. The BLM expects to hold two public meetings, one in Lucerne Valley and another in the city of San Bernardino. The meeting in Lucerne Valley will take place on July 29, 2009 at the Lucerne Valley Community Center located at 33187 Highway 247 East, Lucerne Valley, California from 6:30 p.m. to 8:30 p.m. The meeting in San Bernardino will take place on July 30, 2009 at the Family Life Public Enterprise Center, Conference Room 13, located at 1505 West Highland Ave., San Bernardino, California 92411 from 6:30 p.m. to 8:30 p.m. Information about the two meetings has been announced through the local news media, newspapers and BLM Web site (*http://www.blm.gov/ca/st/en/fo/barstow.html*). Comments on issues, potential impacts, or suggestions for additional alternatives may also be submitted in writing to the address listed below. In order to be included in the Draft EIS, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit comments related to the Lucerne Valley Solar Project by any of the following methods:

- *Web Site: http://www.blm.gov/ca/st/en/fo/barstow.html*.
- *E-mail: LucerneSolar@blm.gov*.
- *Fax:* (760) 252–6098.
- *Mail:* BLM Barstow Field Office, 2601 Barstow Road, Barstow, California 92311.

Documents pertinent to this proposal may be examined at the BLM Barstow Field Office.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, send requests to: ATTN: Lucerne Valley Solar Project; contact Greg Thomsen, telephone (951) 697–5237; address BLM Barstow Field Office, 2601 Barstow Road, Barstow, California 92311; e-mail *LucerneSolar@blm.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Title V of FLPMA, sites associated with power generation or transmission not identified in the BLM's California Desert Conservation Area (CDCA) Plan (1980, as amended) will be considered through the plan amendment process.

Under Federal law, the BLM is responsible for processing requests for rights-of-way to authorize solar projects and other appurtenant facilities on the land it manages. BLM must comply with the requirements of NEPA to ensure that environmental impacts associated with construction, operation, and decommissioning will be identified, analyzed and considered in the application process. This will be accomplished through preparation of a Draft and Final EIS. The BLM will utilize the NEPA commenting process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f) as provided for in 36 CFR 800.2 (d)(3).

This notice announces a period for public scoping of alternatives, issues, impacts and planning criteria associated with this project. In addition, the BLM is requesting the views of other agencies as to the scope and content of the environmental information that is germane to the statutory responsibilities or areas of expertise for those agencies in connection with the proposed project and the analysis of its impacts. Federal, State, and local agencies, as well as individuals or organizations that may be interested or affected by the BLM's decision on this project are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

The Applicant has applied for a ROW authorization to construct and operate a solar photovoltaic project on public lands. The public lands are managed by the BLM in accordance with the CDCA Plan and the West Mojave Plan, an amendment to the CDCA Plan. The 516-acre project would be built approximately 8 miles east of Lucerne Valley, San Bernardino County, California, at T. 4 N., R. 2 E., Section 19 (NE ¼ SW ¼, S ½ SW ¼, NW ¼ SE ¼, S ½ SE ¼), section 20 (W ½ W ½), section 29 (NW ¼ NW ¼), section 30 (N ½ NE ¼).

The EIS will describe and analyze the proposed project and will include:

(1) Measures to avoid, minimize, or mitigate impacts on the environment;

(2) The ''No Action'' alternative (no project would be built); and

(3) The ''no solar'' alternative (lands would be determined unsuitable for one or more types of solar generation).

Through public scoping, BLM will identify various issues, potential impacts, and mitigation measures.

The BLM has identified a potential list of issues that will need to be addressed in this analysis including, but not limited to, social and economic impacts, including impacts to the public from traffic; ground and surface water quantity and quality; plant and animal species including special status species; Tribal and cultural resources; and visual resources. If approved, the solar project on public lands would be authorized in accordance with the FLPMA and Federal regulations at Title 43 Code of Federal Regulations part 2800.

The CDCA Plan (1980, as amended) requires that all power generating facilities be considered through the planning process. Planning criteria for consideration of a CDCA plan amendment to provide for power generation at this site include:

a. The plan amendment will be completed in compliance with FLPMA, NEPA and all other applicable Federal and State laws, Executive orders, and management policies of the BLM;

b. The plan amendment will recognize and conform to previous site-specific planning decisions from BLM regional and bioregional plans;

c. Where existing planning decisions are still valid, those decisions will remain unchanged;

d. The plan amendment and any rights-of-way issued will recognize valid existing rights; and

e. Interagency and Native American Tribal consultations will be conducted in accordance with policy, and will be given due consideration. The planning process will include the consideration of impacts on Indian trust assets, other jurisdictions, and agencies.

You may submit written comments on issues and planning criteria at the public scoping meeting, or you may submit them via e-mail (*see* **ADDRESSES** section above). To be most helpful, you should submit comments within 15 days after the public scoping meeting. The BLM will identify issues and will place them into one of three categories:

1. Issues to be resolved in the plan;

2. Issues to be resolved through policy or administrative action; or

3. Issues beyond the scope of this plan.

The BLM will provide an explanation in the plan as to why we placed an issue in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

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.

Tom Pogacnik,

Deputy State Director for Natural Resources, California State Office.

[FR Doc. E9–17571 Filed 7–22–09; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Glen Canyon Dam Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP includes a federal advisory committee, the Adaptive Management Work Group (AMWG), a technical work group (TWG), a Grand Canyon Monitoring and Research Center, and independent review panels. The AMWG makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam consistent with the Grand Canyon Protection Act. The TWG is a subcommittee of the AMWG and provides technical advice and recommendations to the AMWG.

DATES AND ADDRESSES: The AMWG will conduct the following meeting:

Date: Wednesday–Thursday, August 12–13, 2009. The meeting will begin at 9:30 a.m. and end at 5 p.m. the first day and will begin at 8 a.m. and conclude at approximately 3 p.m. on the second day. The meeting will be held at the Fiesta Inn, 2100 S. Priest Drive, Tempe, Arizona.

Agenda: The primary purpose of the meeting will be for the AMWG to discuss and recommend the Fiscal Year 2010–11 biennial budget, workplan, and hydrograph. In addition, they will receive updates and discuss the following items: (1) Mid-fiscal Year 2009 expenditures, (2) Status of Grand Canyon Monitoring and Research Center projects, (3) 2007 and 2008 Biological Opinion conservation measures, (4) Colorado River Basin hydrology, (5) Future Funding Sources for Non-native Fish Control Efforts, (6) the Draft Humpback Chub Comprehensive Plan, (7) a stakeholder's perspective by the Arizona Game and Fish Department, and other administrative and resource issues pertaining to the AMP. To view a copy of the agenda and documents related to the above meeting, please visit Reclamation's Web site at: *http://www.usbr.gov/uc/rm/amp/amwg/mtgs/09aug12/index.html.* Time will be allowed at the meeting for any individual or organization wishing to make formal oral comments. To allow for full consideration of information by the AMWG members, written notice must be provided to Dennis Kubly, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah, 84138; telephone 801–524–3715; facsimile 801–524–3858; e-mail at *dkubly@usbr.gov* at least five (5) days prior to the call. Any written comments received will be provided to the AMWG members.

FOR FURTHER INFORMATION CONTACT: Dennis Kubly, Bureau of Reclamation, telephone (801) 524–3715; facsimile (801) 524–3858; e-mail at *dkubly@usbr.gov.*

Dated: July 7, 2009.

Tom Ryan,

Manager, Environmental Resources Division, Upper Colorado Regional Office, Salt Lake City, Utah.

[FR Doc. E9–17526 Filed 7–22–09; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO07000.L16100000.DQ0000.CO–03]

Meeting Notice: Southwest Resource Advisory Council; Canyons of the Ancients National Monument Subgroup

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Southwest Resource Advisory Council (RAC) Canyons of the Ancients National Monument (Monument) Subgroup, will meet as directed below.

DATES: The Southwest RAC Canyons of the Ancients National Monument (Monument) Subgroup will meet on August 14, 2009 at the Anasazi Heritage Center in Dolores, Colorado. The meeting will begin at 9 a.m. One public comment period is planned and will begin at approximately 10 a.m. The meeting will adjourn at approximately 12 p.m.

FOR FURTHER INFORMATION CONTACT: Heather Musclow, Planner, 970–882–5632, LouAnn Jacobson, Manager, 970–882–5600, or e-mail *Heather_Musclow@blm.gov,* or visit the monument Web site at *http://www.co.blm.gov/canm/.*

SUPPLEMENTARY INFORMATION: The ten member subgroup has provided recommendations to the Southwest Resource Advisory Council concerning development and implementation of a management plan developed in accordance with FLMPA, for public lands within the Monument. We plan to discuss comments received during public review of the Draft Resource Management Plan/Draft Environmental Impact Statement. An overview of the Proposed Resource Management Plan/Final Environmental Impact Statement will be presented.

The meeting will be open to the public and will include a time set aside for public comment. Interested persons may make oral statements at the meeting or submit written statements at any meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of Committee and Subgroup meetings are maintained at the Anasazi Heritage Center in Dolores, Colorado. They are available for public inspection and reproduction during regular business hours within thirty (30) days of the meeting. In addition, minutes and other information concerning the Committee and Subgroup can be obtained from the Monument planning Web site at: *http://www.blm.gov/rmp/canmwhich.*

Barbara Sharrow,

Designated Federal Official, Colorado Southwest Resource Advisory Council.

[FR Doc. E9–17358 Filed 7–22–09; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Office of the Special Trustee for American Indians

Notice of Additional Tribal Consultation Meetings

AGENCY: Office of the Special Trustee for American Indians, Interior.

ACTION: Notice of Tribal Consultation Meetings.

SUMMARY: Notice is hereby given of additional Tribal Consultation Sessions

to be held between the Department of the Interior, Office of the Special Trustee for American Indians (DOI/OST) and tribal governments interested in, or currently operating the real estate appraisal services program. The purpose of these consultation sessions is to discuss ideas in developing new tribal share allocation formulas (TSAFs) to be used to apportion funds to tribes that perform the appraisal program pursuant to Public Law 93–638 (The Indian Self-Determination and Education Assistance Act of 1975, as amended) [25 U.S.C. 450j–1(a)]. The original notice appeared in 74 FR 28521, June 16, 2009.

DATES: Two additional consultation sessions will be held on August 13, 2009. The morning session is scheduled from 9 a.m. to 12 p.m. The afternoon session will be presented from 1:30 p.m. to 4:30 p.m. Both sessions will have the same agenda.

ADDRESSES: The two sessions will be held at the Dimond Center Hotel, 700 E. Dimond Blvd., Anchorage, AK 88515.

FOR FURTHER INFORMATION CONTACT: Debbie Meisner, Director Administrative Operations, Office of Appraisal Services at (505) 816–1318 or *Debbie_Meisner@ost.doi.gov*. Detailed information on the project background, schedule and locations are posted on the DOI/OST Web site at *http://www.ost.doi.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the consultation sessions is to discuss ideas in developing new tribal share allocation formulas that will be used to apportion funds for tribes performing, or interested in performing, the appraisal program pursuant to Public Law 93–638 contracts and compacts. These formulas will ensure uniformity and transparency in determining tribal shares and funding residual for the inherent federal functions.

A report of each consultation session will be prepared and made available within 90 days of the consultation to all tribal governments that currently compact or contract the appraisal program. Tribes wishing to submit written testimony for the consultation report should send it to Debbie Meisner, Director Administrative Operations, Office of Appraisal Services at *Debbie_Meisner@ost.doi.gov*, either prior to the consultation session or by September 18, 2009. Please note that only written testimony submitted to DOI/OST will be included in the report, as an appendix. Testimony and comments made orally will be summarized in the report without attribution, along with topics of concern and recommendations.

Dated: July 14, 2009.

Donna Erwin,

Acting Special Trustee for American Indians.

[FR Doc. E9–17461 Filed 7–22–09; 8:45 am]

BILLING CODE 4310–2W–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM920000 L13100000 FI0000; NMNM–119267]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease NMNM 119267

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of reinstatement of terminated oil and gas lease.

SUMMARY: Under the Class II provisions of Title IV, Public Law 97–451, The Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease NMNM 119267 from the lessee, J Bar Cane Inc., for lands in Chaves County, New Mexico. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Lourdes B. Ortiz, Bureau of Land Management, New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502 or at (505) 438–7586.

SUPPLEMENTARY INFORMATION: No valid lease has been issued that affects the lands. The lessee agrees to new lease terms for rentals and royalties of $10.00 per acre or fraction thereof, per year, and 16 ⅔ percent, respectively. The lessee paid the required $500.00 administrative fee for the reinstatement of the lease and $166.00 cost for publishing this Notice in the **Federal Register.** The lessee met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate lease NMNM 119267, effective the date of termination, December 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Lourdes B. Ortiz,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. E9–17573 Filed 7–22–09; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management
[LLCON03000–L12200000–PA0000]

Notice of Proposed Supplementary Rules for Public Lands in Colorado: Bangs Canyon Special Recreation Management Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed supplementary rules.

SUMMARY: The Bureau of Land Management's (BLM) Grand Junction Field Office is proposing supplementary rules to regulate conduct on public lands within Bangs Canyon Special Recreation Management Area (BCSRMA). These supplementary rules are needed to implement decisions found in the Bangs Canyon Management Plan Environmental Assessment (EA) and Resource Management Plan (RMP) revision that protects public lands, resources, and public health and provides public safety.

DATES: Please send comments to the following address by September 21, 2009. The BLM is not obligated to consider comments received or postmarked after this date.

ADDRESSES: Please mail comments to Chris Ham, Bangs Canyon Special Recreation Management Area, 2815 H Road, Grand Junction, Colorado 81506; or e-mail comments to *gjfo_webmail@blm.gov,* Attn: ''Bangs Canyon.''

FOR FURTHER INFORMATION CONTACT: Eric Boik, BLM Field Staff Law Enforcement Ranger, (970) 244–3070, e-mail: *Eric_Boik@blm.gov* or Chris Ham, Recreation Program Lead, (970) 244–3031, e-mail: *Chris_Ham@blm.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written comments on the proposed supplementary rules should be specific, be confined to issues pertinent to the proposed supplementary rules, and explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the comment is addressing. The BLM is not obligated to consider or include in the Administrative Record for the supplementary rules comments that the BLM receives after the close of the comment period (See **DATES**), unless they are postmarked or electronically dated before the deadline, or comments delivered to an address other than the address listed above (See **ADDRESSES**).

Comments—including names, street addresses, and other contact information of respondents—will be available for public review at 2815 H Road, Grand Junction, Colorado 81506, during regular business hours (7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal 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.

II. Background

Recreation resource management decisions for the Grand Junction Field Office (GJFO) were detailed in the Grand Junction Resource Area Management Plan (RMP) in 1987. The Grand Valley, including the Bangs Canyon area, was designated as an Intensive Recreation Management Area (IRMA) in the RMP. The plan recommended the need for additional planning for the IRMA due to its distinguishing characteristics and significance to recreation. The Bangs Canyon Management Plan (BCMP) was approved in 1999 and fulfills the obligation of the GJFO to complete a site-specific plan for this area. It establishes management objectives and identifies management strategies to achieve those objectives. The BCMP (an integrated, issue-driven recreation plan) amends the Grand Junction Resource Area Management Plan, implementation Environmental Assessment and its amendments. It is consistent with direction for recreation actions outlined in the Recreation Guidelines to meet Public Land Health Standards on BLM Managed Lands in Colorado (2000), as well as the BLM Off-Highway Vehicle Strategy and the BLM priorities for Recreation and Visitor Services. These three documents may be viewed at *http://www.blm.gov*.

III. Discussion of the Proposed Supplementary Rules

The proposed supplementary rules apply to the public lands within the Bangs Canyon Management Area. The Bangs Canyon Special Recreation Management Area (BCSRMA) Plan includes specific management actions that restrict certain activities and define allowable uses which were identified and analyzed in the BCSRMA plan EA. The proposed supplementary rules implement these management actions within the BCSRMA. Many of the proposed supplementary rules apply to the entire area, but some apply to specific areas within the BCSRMA. This approach allows for flexibility in management actions based on the results of resource and visitor monitoring. The proposed supplementary rules are written to allow for this management flexibility.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These supplementary rules do not comprise a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an annual effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor do they raise novel legal or policy issues. These supplementary rules merely establish rules of conduct for public use of a limited area of public lands.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make these supplementary rules easier to understand, including answers to questions such as the following:

1. Are the requirements in the supplementary rules clearly stated?
2. Do the supplementary rules contain technical language or jargon that interferes with their clarity?
3. Does the format of the supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce clarity?
4. Is the description of the supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the supplementary rules? How could this description be more helpful in making the supplementary rules easier to understand?

Please send any comments you have on the clarity of the rule to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

The Management Plan and Final Environmental Assessment for the BCSRMA was completed in 1999 and the Record of Decision was signed in 1999. The supplementary rules are consistent with and necessary to carry out the direction of the RMP and the Bangs Canyon Management Plan. They establish rules of conduct for public use within BCSRMA to protect public health and safety and improve the protection of the resources.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act(RFA) of 1980, as amended (5 U.S.C. 601–612) to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These supplementary rules merely establish rules of conduct for public use of a limited area of public lands. Therefore, the BLM has determined under the RFA that the supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules are not considered a ''major rule'' as defined under 5 U.S.C. 804(2). The supplementary rules merely establish rules of conduct for public use of a limited area of public lands and do not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

These supplementary rules do not impose an unfunded mandate on State, local, or tribal governments in the aggregate, or the private sector of more than $100 million per year; nor do they have a significant or unique effect on small governments. The rules have no effect on governmental or tribal entities and would impose no requirements on any of these entities. The supplementary rules merely establish rules of conduct for public use of a limited area of public lands and do not affect tribal, commercial, or business activities of any kind. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

These supplementary rules do not have significant takings implications, nor are they capable of interfering with Constitutionally-protected property rights. The supplementary rules merely establish rules of conduct for public use of a limited area of public lands and do not affect anyone's property rights. Therefore, the Department of the Interior has determined that these rules will not cause a taking of private property or require preparation of a takings assessment under this Executive Order.

Executive Order 13132, Federalism

These supplementary rules will not have a substantial direct effect on the states, the relationship between the national government and the states, nor the distribution of power and responsibilities among the various levels of government. These supplementary rules do not come into conflict with any State law or regulation. Therefore, in accordance with Executive Order 13132, the BLM has determined that these supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, these rules will not unduly burden the judicial system and they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that these supplementary rules do not include policies that have tribal implications. The supplementary rules do not affect land held for the benefit, nor impede the rights, of Indians or Alaska Natives.

Paperwork Reduction Act

These proposed supplementary rules do not directly provide for any information collection that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Any information collection that may result from Federal criminal investigations or prosecutions conducted under these proposed supplementary rules are exempt from the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3518(c)(1).

Author

The principal author of these proposed supplementary rules is Chris Ham, Recreation Program Lead, Bangs Canyon Special Recreation Management Area, 2815 H Road Grand Junction, Colorado 81506.

For the reasons stated in the preamble and under the authorities for supplementary rules found under 43 U.S.C. 1740 and 43 CFR 8365.1–6, the Colorado State Director, Bureau of Land Management, proposes supplementary rules for public lands managed by the BLM in Colorado, to read as follows:

Supplementary Rules for Bangs Canyon Special Recreation Management Area

1. These supplementary rules apply, except as specifically exempted, to activities within the Bangs Canyon Special Recreation Management Area (BCSRMA), which is comprised of public lands administered by the Bureau of Land Management near Grand Junction, Colorado.
2. These supplementary rules are in effect on a year-round basis and will remain in effect until modified by the authorized officer.
3. You must not start or maintain a fire in sites or areas not designated as open for such use by a BLM sign or map.
4. You must not start or maintain a fire outside of a metal fire ring at sites or areas where fire rings are provided by the BLM. Mechanical stoves and other appliances that are fueled by gas, and equipped with a valve that allows the operator to control the flame, are among the devices that fulfill the requirement for a metal fire ring.
5. You must not cut, collect or use live, dead, or down wood except in areas designated open to such use by a BLM sign or map.
6. You must not camp in sites or areas not designated as open to camping by a BLM sign or map.
7. You must dispose of solid human waste as indicated by a BLM sign or map.
8. You must not use roads and/or trails by motorized or mechanized vehicle or equestrian or pedestrian travel, except where designated as open to such use by a BLM sign or map.
9. You must not operate a motorized or mechanized vehicle in violation of trail width and/or vehicle type restrictions as indicated by a BLM sign or map.
10. You must not operate an off-highway vehicle (OHV) that produces sound exceeding 96 decibels.
11. You must not discharge a firearm of any kind, including those used for target shooting or paintball where indicated by a BLM sign or map. Licensed hunters in legitimate pursuit of game during the proper season with appropriate firearms, as defined by the Colorado Division of Wildlife, are exempt from this rule.
12. You must not enter an area that is designated closed by a BLM sign or map.
13. You must remove and properly dispose of canine solid waste when and where indicated by a BLM sign or map.
14. You must not bring any dog into the BCSRMA that is not controlled by visual, audible, or physical means.
15. You must not park in areas not designated for parking by a BLM sign or map.
16. You must not burn material, including wood, that contains nails, glass or any metal.
17. The hours of operation are sunrise to sunset in any area that is for day-use only as indicated by a BLM sign or map. You must not enter or remain in such an area after sunset or before sunrise.

Exemptions: The following persons are exempt from these supplementary rules:

A. Federal, State, local and/or military personnel in the scope of their official duties;

B. Members of an organized rescue or fire-fighting force in performance of their official duties; and

C. Persons, agencies, municipalities, or companies holding an existing special-use permit inside the BCSRMA and operating within the scope of their permit.

Penalties: Any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. 43 U.S.C. 1733(a); 43 CFR 8360.0–7. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Colorado law.

Dave Hunsaker,

Associate State Director.

[FR Doc. E9–17591 Filed 7–22–09; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNML003100 L14300000.ES0000; NMNM 117441]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has examined approximately 639 acres of public land in Dona Ana County, New Mexico and found them suitable for classification for lease and/or conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended. New Mexico State Parks Division proposes to incorporate the public land for additional trails and visitor education as part of the Mesilla Valley Bosque State Park in Dona Ana County, New Mexico.

DATES: Interested parties may submit written comments regarding the proposed lease/conveyance or classification of the land on or before September 8, 2009.

ADDRESSES: Written comments concerning this Notice should be addressed to: District Manager, BLM Las Cruces District Office, 1800 Marquess Street, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Lori Allen, Realty Specialist, at the above address or at (575) 525–4454.

SUPPLEMENTARY INFORMATION: In accordance with Section 7 of the Taylor Grazing Act (43 U.S.C. 315(f)), the following public land in Dona Ana County, New Mexico, has been examined and found suitable for classification for lease and/or conveyance to New Mexico State Parks under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*):

New Mexico Principal Meridian

T. 24 S., R. 1 E.,
Sec. 10, NE¼, N½SE¼, SE¼SE¼, NE¼SW¼SE¼, and N½SE¼SW¼SE¼;
Sec. 11, lots 7 to 10, inclusive, SW¼NW¼, NW¼SW¼, NE¼SW¼, SW¼SW¼, and N½SE¼SW¼, N½SW¼SE¼;
Sec. 12, lot 1;
Sec. 13, portions of lot 6 (the exact acreage and legal description will be determined by a cadastral survey);
Sec. 14, N½N½NE¼NE¼.

The area described contains 639 acres, more or less, in Dona Ana County, New Mexico.

The portion of land identified in Section 13 is currently under a withdrawal to the Bureau of Reclamation (BOR). The BOR has submitted a partial withdrawal revocation request to the Las Cruces District Office. A cadastral survey is necessary to delineate the portion that would be revoked. Once returned to the BLM, this parcel of land could then be leased and/or conveyed to New Mexico State Parks through the R&PP Act. This Notice acts as the public notice for all parcels.

In accordance with the R&PP Act, New Mexico State Parks proposes to construct a park for the purpose of meeting recreational needs for the community of Las Cruces. Additional detailed information pertaining to this application, plan of development, and site plans are in case file NMNM 117441 located in the BLM Las Cruces District Office. Lease and/or conveyance of the land to New Mexico State Parks is consistent with the Mimbres Resource Management Plan, dated December 1993, and would be in the public interest. New Mexico State Parks has not applied for more than the 6,400-acre limitation for recreation use in a year and has submitted a statement in compliance with the regulation at 43 CFR 2741.4(b).

The lease and/or conveyance, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and all applicable regulations of the Secretary of the Interior, including, but not limited to, the terms required by 43 CFR 2741.9.
2. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).
3. Lease and/or patent of the public land shall be subject to valid existing rights. Subject to limitations prescribed by law and regulation, prior to patent issuance, a holder of any right-of-way within the lease area may be given the opportunity to amend the right-of-way for conversion to a new term, including perpetuity, if applicable.
4. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.
5. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal land and interests therein.
6. An appropriate indemnification clause protecting the United States from claims arising out of the lessee/patentee's use, occupancy, or operations on the property.

Detailed information concerning this proposed project, including, but not limited to documentation relating to compliance with applicable environmental and cultural resource laws, is available for review at the address above.

On July 23, 2009, the land described above will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease and/or conveyance under the R&PP Act, and leasing under the mineral leasing laws.

Interested parties may submit comments involving the suitability of the land for the proposed park. Comments on the classification are restricted to whether the land is physically suited for the proposal, where the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for R&PP use.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Any adverse comments will be reviewed by the BLM State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective September 21, 2009. The land will not be available for lease or conveyance until after the classification becomes effective.

(Authority: 43 CFR 2741.5)

Bill Childress,

District Management.

[FR Doc. E9–17570 Filed 7–22–09; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0045]

Agency Information Collection Activities; Proposed Collection, Comments Requested

ACTION: 30-day notice of information collection under review customer satisfaction assessment.

The Department of Justice, Federal Bureau of Investigation, Laboratory Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. The proposed information collection was previously published in the **Federal Register** on May 8, 2009, Volume 74, Number 88, Pages 21718, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 24, 2009. This process is conducted in accordance with 5 CFR 1320.10.

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Catherine E. Theisen, Quality Manager, FBI Laboratory, 2501 Investigation Parkway, Quantico, Virginia, 22135.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including the use of automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

1. *Type of information collection:* Customer survey.
2. *The title of the form/collection:* Customer Satisfaction Assessment.
3. *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form (form number to be assigned by the forms desk); Laboratory Division, Federal Bureau of Investigation, Department of Justice.
4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary—Local and State law enforcement agencies. This collection is needed to evaluate the quality of services provided by the FBI Laboratory.
5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that there will be 5,000 respondents at 5 minutes per form.
6. *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 416 hours annual burden associated with this information collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Justice Management Division, United States Department of Justice, Policy and Planning Staff, 601 D Street, NW., Suite 1600, Patrick Henry Building, Washington, DC 20530.

Dated: July 20, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–17619 Filed 7–22–09; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0323]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Revision of currently approved collection. Office of Justice Programs and Office on Violence Against Women Recovery Act solicitation template.

The Department of Justice, Office of Justice Programs will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until September 21, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Amy Callaghan, (202) 514–9292, Office of Audit, Assessment, and Management, Office of Justice Programs, Department of Justice, 810 Seventh Street, NW., Washington, DC 20531 or *Amy.Callaghan@usdoj.gov.*

Written comments and suggestions from the public and affected parties concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Information in response to the required data elements outlined in the solicitation template for programs funded under the American Recovery and Reinvestment Act of 2009.

(2) *The title of the form/collection:* Office of Justice Programs and the Office on Violence Against Women Recovery Act solicitation template.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form label is OMB No. 1121–0323. The Office of Audit, Assessment, and Management, Office of Justice Programs, U.S. Department of Justice is sponsoring the collection.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* State agencies, tribal governments, local governments, colleges and universities, non-profit organizations, and for-profit organizations. The purpose of the Recovery Act solicitation template is to provide a framework to develop program-specific announcements soliciting applications for funding. A program solicitation outlines the specifics of the funding program; describes requirements for eligibility; instructs an applicant on the necessary components of an application under a specific program (*e.g.,* project activities and timeline, proposed budget); and provides registration dates, due dates, and instructions on how to apply within the designated application system.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that information will be collected annually from 250 applicants, representing State agencies, tribal governments, local governments, colleges and universities, non-profit organizations, and for-profit organizations. Annual cost to the respondents is based on the number of hours involved in preparing and submitting a complete application package. Public reporting burden for this collection of information is estimated at up to 30 hours per application. The 30-hour estimate is based on the amount of time to prepare research and evaluation proposals, one of the most time intensive types of applications solicited by OJP. The estimate of burden hours is based on OJP's prior experience with the application submission process.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 7,500 hours.

If additional information is required contact: Mrs. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: July 20, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–17569 Filed 7–22–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

[OMB Number 1121–0218]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review; Census of Juveniles in Residential Placement (Reinstatement, without change, of a previously approved collection for which approval has expired).

The Department of Justice (DOJ), Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until September 21, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Janet Chiancone, (202) 353–9258, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Extension of previously approved collection.

(2) *The title of the form/collection:* Census of Juveniles in Residential Placement.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is CJ–14, Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federal Government, State, Local or Tribal. *Other:* Not-for-profit institutions; business or other for-profit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 3,500 respondents will complete a 3-hour questionnaire.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 11,550 hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, U.S. Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: July 20, 2009.

Lynn Bryant,

Department Deputy Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9–17565 Filed 7–22–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–317R]

Controlled Substances: Proposed Revised Aggregate Production Quotas for 2009

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed revised 2009 aggregate production quotas.

SUMMARY: This notice proposes revised 2009 aggregate production quotas for

controlled substances in schedules I and II of the Controlled Substances Act (CSA).

DATES: Written comments must be postmarked, and electronic comments must be sent, on or before *August 24, 2009.*

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–317R'' on all written and electronic correspondence. Written comments should be sent to the DEA Headquarters, *Attention:* DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152. Comments may be directly sent to DEA electronically by sending an electronic message to *dea.diversion.policy@usdoj.gov.* An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. However, persons wishing to request a hearing should note that such requests must be written and manually signed; requests for a hearing will not be accepted via electronic means. DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file format other than those specifically listed here.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, or by telephone at (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in schedules I and II. This responsibility has been delegated to the Administrator of the DEA by 28 CFR 0.100. The Administrator in turn, has redelegated this function to the Deputy Administrator, pursuant to 28 CFR 0.104.

On November 7, 2008, a notice of proposed 2009 aggregate production quotas for certain controlled substances in schedules I and II was published in the **Federal Register** (73 FR 66256). This notice stipulated that the DEA would adjust the quotas in 2009 as provided for in 21 CFR part 1303.

The proposed revised 2009 aggregate production quotas represent those quantities of controlled substances in schedules I and II that may be produced in the United States in 2009 to provide adequate supplies of each substance for: The estimated medical, scientific, research and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks. These quotas do not include imports of controlled substances for use in industrial processes.

The proposed revisions are based on a review of 2008 year-end inventories, 2008 disposition data submitted by quota applicants, estimates of the medical needs of the United States, product development, and other information available to the DEA.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA (21 U.S.C. 826), and delegated to the Administrator of the DEA by 28 CFR 0.100, and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby proposes the following revised 2009 aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base:

Basic class—schedule I	Previously established initial 2009 quotas	Proposed revised 2009 quotas
2,5-Dimethoxyamphetamine	2 g	2 g
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2 g	2 g
3-Methylfentanyl	2 g	2 g
3-Methylthiofentanyl	2 g	2 g
3,4-Methylenedioxyamphetamine (MDA)	25 g	25 g
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	10 g	10 g
3,4-Methylenedioxymethamphetamine (MDMA)	20 g	20 g
3,4,5-Trimethoxyamphetamine	2 g	2 g
4-Bromo-2,5-dimethoxyamphetamine (DOB)	2 g	2 g
4-Bromo-2,5-dimethoxyphenethylamine (2–CB)	2 g	2 g
4-Methoxyamphetamine	27 g	27 g
4-Methylaminorex	2 g	2 g
4-Methyl-2,5-dimethoxyamphetamine (DOM)	2 g	2 g
5-Methoxy-3,4-methylenedioxyamphetamine	2 g	2 g
5-Methoxy-N,N-diisopropyltryptamine	5 g	5 g
Acetyl-alpha-methylfentanyl	2 g	2 g
Acetyldihydrocodeine	2 g	2 g
Acetylmethadol	2 g	2 g
Allylprodine	2 g	2 g
Alphacetylmethadol	2 g	2 g
Alpha-ethyltryptamine	2 g	2 g
Alphameprodine	2 g	2 g
Alphamethadol	2 g	2 g
Alpha-methylfentanyl	2 g	2 g
Alpha-methylthiofentanyl	2 g	2 g
Aminorex	2 g	2 g
Benzylmorphine	2 g	2 g
Betacetylmethadol	2 g	2 g
Beta-hydroxy-3-methylfentanyl	2 g	2 g
Beta-hydroxyfentanyl	2 g	2 g
Betameprodine	2 g	2 g
Betamethadol	2 g	2 g
Betaprodine	2 g	2 g
Bufotenine	3 g	3 g
Cathinone	3 g	3 g
Codeine-N-oxide	602 g	602 g

Basic class—schedule I	Previously established initial 2009 quotas	Proposed revised 2009 quotas
Diethyltryptamine	2 g	2 g
Difenoxin	3,000 g	3,000 g
Dihydromorphine	2,549,000 g	2,549,000 g
Dimethyltryptamine	3 g	3 g
Gamma-hydroxybutyric acid	24,200,00 g	24,200,000 g
Heroin	20 g	20 g
Hydromorphinol	2 g	2 g
Hydroxypethidine	2 g	2 g
Ibogaine	1 g	1 g
Lysergic acid diethylamide (LSD)	10 g	10 g
Marihuana	4,500,000 g	4,500,000 g
Mescaline	7 g	7 g
Methaqualone	5 g	5 g
Methcathinone	4 g	4 g
Methyldihydromorphine	2 g	2 g
Morphine-N-oxide	605 g	605 g
N-Benzylpiperazine	2 g	2 g
N,N-Dimethylamphetamine	7 g	7 g
N-Ethylamphetamine	2 g	2 g
N-Hydroxy-3,4-methylenedioxyamphetamine	2 g	2 g
Noracymethadol	2 g	2 g
Norlevorphanol	52 g	52 g
Normethadone	2 g	2 g
Normorphine	16 g	16 g
Para-fluorofentanyl	2 g	2 g
Phenomorphan	2 g	2 g
Pholcodine	2 g	2 g
Psilocybin	7 g	7 g
Psilocyn	7 g	7 g
Tetrahydrocannabinols	312,500 g	312,500 g
Thiofentanyl	2 g	2 g
Trimeperidine	2 g	2 g

Basic class—schedule II	Previously established initial 2009 quotas	Proposed revised 2009 quotas
1-Phenylcyclohexylamine	2 g	2 g
1-Piperdinocyclohexanecarbonitrile	2 g	2 g
Alfentanil	8,000 g	8,000 g
Alphaprodine	2 g	2 g
Amobarbital	3 g	3 g
Amphetamine (for sale)	17,000,000 g	17,000,000 g
Amphetamine (for conversion)	5,000,000 g	5,000,000 g
Cocaine	247,000 g	247,000 g
Codeine (for sale)	39,605,000 g	39,605,000 g
Codeine (for conversion)	65,000,000 g	65,000,000 g
Dextropropoxyphene	106,000,000 g	106,000,000 g
Dihydrocodeine	1,200,000 g	1,200,000 g
Diphenoxylate	947,000 g	947,000 g
Ecgonine	83,000 g	83,000 g
Ethylmorphine	2 g	2 g
Fentanyl	1,428,000 g	1,428,000 g
Glutethimide	2 g	2 g
Hydrocodone (for sale)	55,000,000 g	55,000,000 g
Hydromorphone	3,300,000 g	3,300,000 g
Isomethadone	2 g	2 g
Levo-alphacetylmethadol (LAAM)	3 g	3 g
Levomethorphan	5 g	5 g
Levorphanol	10,000 g	10,000 g
Lisdexamfetamine	6,200,000 g	6,200,000 g
Meperidine	8,600,000 g	8,600,000 g
Meperidine Intermediate-A	3 g	3 g
Meperidine Intermediate-B	7 g	7 g
Meperidine Intermediate-C	3 g	3 g
Metazocine	1 g	1 g
Methadone (for sale)	25,000,000 g	25,000,000 g
Methadone Intermediate	26,000,000 g	26,000,000 g
Methamphetamine	3,130,000 g	3,130,000 g

Basic class—schedule II	Previously established initial 2009 quotas	Proposed revised 2009 quotas
[680,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 2,405,000 grams for methamphetamine mostly for conversion to a schedule III product; and 45,000 grams for methamphetamine (for sale)]		
Methylphenidate	50,000,000 g	50,000,000 g
Morphine (for sale)	35,000,000 g	35,000,000 g
Morphine (for conversion)	100,000,000 g	100,000,000 g
Nabilone	9,002 g	9,002 g
Noroxymorphone (for sale)	10,000 g	10,000 g
Noroxymorphone (for conversion)	9,000,000 g	9,000,000 g
Opium (powder)	1,050,000 g	230,000 g
Opium (tincture)	230,000 g	1,050,000 g
Oripavine	15,000,000 g	15,000,000 g
Oxycodone (for sale)	77,560,000 g	77,560,000 g
Oxycodone (for conversion)	3,400,000 g	3,400,000 g
Oxymorphone	2,000,000 g	2,000,000 g
Oxymorphone (for conversion)	12,000,000 g	12,000,000 g
Pentobarbital	28,000,000 g	28,000,000 g
Phenazocine	1 g	1 g
Phencyclidine	20 g	20 g
Phenmetrazine	2 g	2 g
Phenylacetone	1 g	1 g
Racemethorphan	2 g	2 g
Remifentanil	500 g	500 g
Secobarbital	67,000 g	67,000 g
Sufentanil	10,300 g	10,300 g
Tapentadol [1]	0 g	519,000 g
Thebaine	126,000,000 g	126,000,000 g

[1] Tapentadol was placed in schedule II of the Controlled Substances Act by a final order published by the Drug Enforcement Administration on May 21, 2009 (74 FR 23790).

The Deputy Administrator further proposes that aggregate production quotas for all other schedules I and II controlled substances included in 21 CFR 1308.11 and 1308.12 remain at zero.

All interested persons are invited to submit their comments in writing or electronically regarding this proposal following the procedures in the **ADDRESSES** section of this document. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief. Persons wishing to request a hearing should note that such requests must be written and manually signed; requests for a hearing will not be accepted via electronic means.

In the event that comments or objections to this proposal raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing as per 21 CFR 1303.13(c).

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this action will not have a significant economic impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601–612. The establishment of aggregate production quotas for schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for lawful export requirements, and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Executive Order 12866

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866.

Executive Order 13132

This action does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

Executive Order 12988

This action meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Unfunded Mandates Reform Act of 1995

This action will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This action will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: July 16, 2009.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–17536 Filed 7–22–09; 8:45 am]

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DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

F.C.S.C. Meeting Notice No. 4–09

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of Commission business and other matters specified, as follows:

Date and Time: Tuesday, July 28, 2009, at 11 a.m.

Subject Matter: Issuance of Proposed Decisions in claims against Albania and Libya.

Status: Open.

All meetings are held at the Foreign claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. *Telephone:* (202) 616–6975.

Dated at Washington, DC.

Mauricio J. Tamargo,

Chairman.

[FR Doc. E9–17443 Filed 7–22–09; 8:45 am]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. and Proposed Exemption Involving: Bank of New York Mellon Corporation, D–11553]

Notice of Proposed Exemption

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. D–11553. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffitt.betty@dol.gov,* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemption was requested in an application filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

The application contains representations with regard to the proposed exemption which is summarized below. Interested persons are referred to the application on file with the Department for a complete statement of the facts and representations.

Bank of New York Mellon Corporation

Located in Pittsburgh, PA

[Application No. D–11553]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A) through (D), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,[1] shall not apply, effective November 25, 2008, to the cash sale of certain securities (the Securities) issued by Lehman Brothers Holdings Inc. or its affiliates (Lehman) for an aggregate purchase price of approximately $5,512,395 by the EB SMAM Securities Lending Temporary Investment Fund (the Cash Collateral Fund) to the Bank of New York Mellon Corporation (BNYMC), a party in interest with respect to the employee benefit plans (the Plan(s)) invested, directly or indirectly, in the Cash Collateral Fund; provided that the following conditions are met:

(a) The sale of the Securities was a one-time transaction for cash;

(b) The Cash Collateral Fund received an amount for the sale of the Securities which was equal to the sum of:

(1) the amortized cost of the Securities, and (2) the accrued but

[1] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

unpaid interest on each of the Securities, determined as of the earlier of: (A) the date of the sale of the Securities, or (B) the maturity date of each of the Securities;

(c) The amount received by the Cash Collateral Fund for the sale of the Securities was greater than the aggregate market value of the Securities at the time of the sale, as determined based on information regarding the then prevailing trading prices for the Securities obtained from two independent broker-dealers;

(d) The Cash Collateral Fund did not bear any commissions, fees, transactions costs, or other expenses in connection with the sale of the Securities;

(e) The Bank of New York Mellon (BNY Mellon), as trustee of the Cash Collateral Fund, determined that the sale of the Securities was appropriate for and in the best interest of the Cash Collateral Fund, and the Plans invested, directly or indirectly, in the Cash Collateral Fund, at the time of the transaction;

(f) BNY Mellon took all appropriate actions necessary to safeguard the interests of the Cash Collateral Fund, and the Plans invested, directly or indirectly, in the Cash Collateral Fund, in connection with the transaction, given that Lehman had filed for bankruptcy and that the value of the Securities had declined substantially;

(g) If the exercise of any of BNYMC's rights, claims, or causes of action in connection with its ownership of the Securities results in BNYMC recovering from Lehman, the issuer of the Securities, or from any third party, an aggregate amount that is more than the sum of:

(1) The purchase price paid for such Securities by BNYMC; and

(2) The interest due on the Securities from and after the date BNYMC purchased the Securities from the Cash Collateral Fund, determined at the last-published interest rate on the Securities preceding Lehman's bankruptcy filing, BNYMC will refund such excess amount promptly to the Cash Collateral Fund (after deducting all reasonable expenses incurred in connection with the recovery);

(h) BNY Mellon and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of the transaction such records as are necessary to enable the persons described, below, in paragraph (i)(1), to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to a Plan which engages in the transaction, other than BNY Mellon and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (i)(1); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of BNY Mellon and its affiliates, as applicable, such records are lost or destroyed prior to the end of the six-year period.

(i)(1) Except as provided, below, in paragraph (i)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in paragraph (h) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission; or

(B) Any fiduciary of a Plan that engages in the transaction, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the transaction, or any authorized employee or representative of these entities; or

(D) Any participant or beneficiary of a Plan that engages in the transaction, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described, above, in paragraph (i)(1)(B)–(D) shall be authorized to examine trade secrets of BNY Mellon and its affiliates, as applicable, or commercial or financial information which is privileged or confidential; and

(3) Should BNY Mellon and its affiliates, as applicable, refuse to disclose information on the basis that such information is exempt from disclosure, BNY Mellon and its affiliates, as applicable, shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Effective Date: This proposed exemption, if granted will be effective, as of November 25, 2008.

Summary of Facts and Representations

1. BNY Mellon is a state bank subject to regulation by the state of New York. As of December 31, 2008, BNY Mellon managed assets in excess of $210 billion, a substantial portion of which consisted of assets of plans subject to the Act. BNY Mellon is a subsidiary of BNYMC.

2. BNYMC is the parent of BNY Mellon by reason of its 100 percent (100%) ownership of BNY Mellon. BNYMC has numerous other subsidiaries and affiliates. BNYMC is a Delaware financial services company that provides a wide range of banking and fiduciary services to a broad array of clients, including plans subject to the Act and plans subject to section 4975 of the Code.

3. The Cash Collateral Fund is a collective investment fund managed by BNY Mellon. The Cash Collateral Fund is a group trust that is exempt from federal income tax, pursuant to Rev. Rul. 81–100. BNY Mellon serves as a discretionary trustee for the Cash Collateral Fund. As of November 25, 2008, the value of the portfolio of the Cash Collateral Fund was approximately $486,303,272.

4. The Cash Collateral Fund was established to hold collateral received in connection with the securities lending activities of three collective investment funds: (a) The EB SMAM 1–3 Year Government Bond Index Fund, (b) the EB SMAM 3–10 Year Government Bond Index Fund, and (c) the EB SMAM Long Government Bond Index Fund (collectively, the Lending Funds and together with the Cash Collateral Fund (the Funds)). As of November 25, 2008, the effective date of this proposed exemption, the Lending Funds were the only investors in the Cash Collateral Fund.

5. Each of the Lending Funds is a group trust that is exempt from federal income tax, pursuant to Rev. Rul. 81–100. BNY Mellon serves as a discretionary trustee for the Lending Funds. As of November 25, 2008, the value of the aggregate portfolios of the Lending Funds was approximately, $686,048,723.

6. Because the requested exemption involves a transaction with a collective investment fund in which a large number of Plans have a direct or indirect interest, the applicant, BNYMC, has not specifically identified any of the Plans involved in the subject transaction. No plans maintained by BNYMC or any of its affiliates had an interest, directly or indirectly, in any of the Funds at the time of the transaction.

7. BNY Mellon is a fiduciary, pursuant to section 3(14)(A) of the Act, as the discretionary trustee of the Funds in which the Plans invest. BNY Mellon is also a party in interest, pursuant to section 3(14)(B) of the Act, as a services

provider with respect to the Plans invested, directly or indirectly, in the Funds. Pursuant to section 3(14)(H) of the Act, BNYMC is a party in interest with respect to the Plans invested, directly or indirectly, in the Funds, as the 100 percent (100%) owner of BNY Mellon, a service provider to the Funds.

8. As of November 25, 2008, there were five direct investors in the Lending Funds, including: (a) Two other collective investment funds maintained by BNY Mellon (the BNY Mellon Funds), (b) one collective investment fund maintained by an entity unrelated to BNY Mellon, and (c) two Plans subject to the Act. In addition, thirty-eight (38) other Plans subject to the Act were indirect investors in the Lending Funds by reason of such Plans' interests, directly or indirectly, in the BNY Mellon Funds. It is represented that none of these Plans owns, directly or indirectly, greater than 20 percent (20%) of the interests in the Cash Collateral Fund.

9. The Securities which are the subject of this proposed exemption are floating rate securities issued by Lehman. Three Securities were acquired and held by the Cash Collateral Fund, prior to November 25, 2008. At the time the Securities were acquired, the Securities were rated ''A1'' by Moody's and ''A+'' by S&P rating agencies. These three Securities are identified as: (a) LEHMAN BROTHERS HLDG–LEH (purchased 12/19/06; maturity date 12/23/08); (b) LEHMAN BROTHERS HLDG–LEH (purchased 3/21/07; maturity date 3/23/09); and (c) LEHMAN BROTHERS HLDG–LEH (purchased 3/22/07; maturity date 10/22/08).

The Cash Collateral Fund purchased two of the Securities involved in the subject transaction from Lehman at par (*i.e.,* $100) in connection with the initial issuance of such Securities by Lehman. As a result, there was no premium to amortize and no discount to accrete with respect to these two Securities. The third of the Securities involved in the subject transaction was purchased by the Cash Collateral Fund from Morgan Stanley at a slight premium to par ($100.0528). The premium reflects the fact that this security was purchased on the secondary market after its initial issuance. In this regard, it is represented that the purchase occurred at a time when interest rates had fallen slightly subsequent to the most recent reset date, thereby causing the value of this security at the time of purchase to be slightly higher than its par value.

10. The decision for the Cash Collateral Fund to invest in the Securities was made by BNY Mellon. Prior to the investment by the Cash Collateral Fund in the Securities, BNY Mellon conducted an investigation of the potential investment, examining and considering the economic and other terms of the Securities. BNY Mellon represents that the investment in the Securities was consistent with the applicable investment policies and objectives of the Cash Collateral Fund.[2]

11. On September 15, 2008, Lehman filed for Chapter 11 bankruptcy protection. BNY Mellon represents that following the date of Lehman's bankruptcy filing, the market value of the Securities decreased substantially, the Securities became relatively illiquid, and the Securities traded, if at all, at prices substantially below amortized cost.

12. It is represented that because the first two Securities were purchased in connection with the initial issuance of such Securities by Lehman there was no premium to amortize and no discount with respect to these two Securities, such that the amortized cost of these two Securities was at all times equal to their par value (*i.e.,* $100). Accordingly, the amortized cost for each of these two Securities is represented as approximately $1,703,424, and $3,407,847, respectively.

However, the premium (*i.e.,* $.0528 per $100) on the third security, consistent with standard accounting and valuation practice, would have been amortized on a straight-line, daily basis from the date of purchase (3/22/07) of this security through its maturity date (10/28/08). When Lehman filed for bankruptcy on September 15, 2008, the amortization was discontinued with the result that a tiny portion of the premium (approximately $12 on the aggregate holding) remained. As a result, the amortized cost of this security was slightly above par when it was purchased by BNYMC on November 25, 2008. Accordingly, the par value and the amortized cost for this security are represented as approximately $354,744 and $354,756, respectively.

13. BNY Mellon further represents that on or about November 25, 2008, it obtained information from two independent broker-dealers—UBS and Bank of America Securities—that the market for the Securities was in extreme distress, with prices for actual trades being substantially lower than the sum of the amortized cost for the Securities, plus accrued and unpaid interest thereon. In particular, BNYMC was informed by each of these broker-dealers that the prevailing prices for the Securities were in the range of $8.50 to $9.00 per $100 of par value (*i.e.,* a discount of approximately 90 percent (90%)) from the price paid by BNYMC.

14. In view of the substantial decrease in the value of the Securities, BNY Mellon has submitted an application for an individual exemption requesting relief from sections 406(a)(1)(A) through (D), for the cash sale of the Securities by the Cash Collateral Fund for a lump sum payment in the aggregate amount of approximately $5,512,395 by BNYMC, given that BNYMC is a party in interest by reason of its 100 percent (100%) ownership of BNY Mellon, a service provider to each of the Plans invested, directly or indirectly, in the Cash Collateral Fund.

In addition, BNY Mellon has requested relief from 406(b)(1) and 406(b)(2) of the Act for the purchase by BNYMC of the Securities from the Cash Collateral fund, because BNYMC (an affiliate of BNY Mellon, the discretionary trustee) would be purchasing the Securities for its own account.

15. On November 25, 2008, BNYMC purchased the Securities from the Cash Collateral Fund. In this regard, shortly before the consummation of the transaction, BNY Mellon sent a written notice to the designated representative

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[2] The Department is expressing no opinion in this proposed exemption regarding whether the acquisition and holding of the Securities by the Cash Collateral Fund violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act. In this regard, the Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of such plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of such plan. Section 404(a) of the Act also states that the fiduciary of a plan should diversify the investments of such plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

In this regard, the Department is not providing an opinion as to whether a particular category of investments or an investment strategy would be considered prudent or in the best interests of a plan as required by section 404 of the Act. The determination of the prudence of a particular investment or investment course of action must be made by a plan fiduciary after appropriate consideration of those facts and circumstances that given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including a plan's potential exposure to losses and the role of the investment or investment course of action plays in that portion of the plan's portfolio with respect to which the fiduciary has investment duties (see 29 CFR 2550.404a–1). The Department also notes that in order to act prudently in making investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Thus, a particular investment by a plan, which is selected in preference to other alternative investments, would generally not be prudent if such investment involves a greater risk to the security of a plan's assets than other comparable investments offering a similar return or result.

of each of the investors having a direct interest in the Lending Funds of BNY Mellon. The notice informed such investors of BNY Mellon's intent to cause the Cash Collateral Fund to sell the Securities to BNYMC. Accordingly, BNYMC, the applicant, has requested that the exemption provide retroactive relief, effective November 25, 2008.

16. As of November 25, 2008, the effective date of this proposed exemption, the amortized cost for each of the Securities were represented as approximately $1,703,424, $3,407,847, and $354,756, respectively. The Securities had a total amortized cost of approximately $5,466,027. The accrued but unpaid interest for each of the Securities is represented as approximately $11,217, $32,568, and $2,583, respectively. The total accrued but unpaid interest on the Securities was approximately $46,368. BNYMC purchased the Securities from the Cash Collateral Fund for a lump sum payment of approximately $5,512,395, which sum represented the aggregate amortized cost of the Securities (*i.e.,* $5,466,027), plus the aggregate accrued but unpaid interest on such Securities (*i.e.,* $46,368) through the earlier of November 25, 2008, or the maturity date of the Securities. BNY Mellon notes that, in determining the amount of accrued interest subsequent to the date preceding Lehman's bankruptcy filing, the last published interest rate on the Securities prior to the bankruptcy filing was utilized. With regard to the three (3) Securities which are the subject of this exemption, the last published interest rates were, respectively 2.52188 percent (2.52188%); and 3.66 percent (3.66%), and 2.88063 percent (2.88063%).

17. BNY Mellon represents that the requested exemption is administratively feasible, because the transaction was a one-time sale for cash. Further, the exemption involves an easily identifiable transaction which does not require on-going monitoring by the Department.

18. BNY Mellon, as trustee of the Funds, believes that the sale of the Securities to BNYMC was in the best interest of the Funds, and the Plans invested, directly, or indirectly, in the Funds, at the time of the transaction. In this regard, the aggregate value of the assets of the Funds increased, as a result of the subject transaction, and each Plan's *pro rata* share, directly or indirectly, of such value increased as well.

BNY Mellon states that any sale of the Securities on the open market would have produced significant losses for the Funds and for the investors, including the Plans, participating in the Funds, given Lehman's bankruptcy filing, the resulting distressed market for the Securities, and the general disruption in the debt markets. In this regard, BNY Mellon represents that the sale of the Securities by the Cash Collateral Fund to BNYMC benefited the investors in the Funds, because the purchase price paid by BNYMC for the Securities substantially exceeded the aggregate fair market value of the Securities, as determined based on information regarding the then prevailing trading prices for the Securities obtained from two (2) independent broker-dealers. It is represented that the purchase of the Securities by BNYMC placed the Cash Collateral Fund in substantially the same position, as would have been the case had Lehman, the issuer of the Securities, not become insolvent. Further, in connection with the proposed transaction, the Funds did not bear any brokerage commissions, fees, transactions costs, or other expenses.

19. It is represented that BNY Mellon determined that the purchase price of approximately $5,512,395 paid by BNYMC to the Cash Collateral would be appropriate and in the best interest of the Funds, as such price would protect the Funds and the investors having an interest in the Funds, including the Plans, from investment losses with respect to the Securities. BNY Mellon also determined that the purchase price of the Securities paid by BNYMC would be permissible under applicable banking law.

20. BNY Mellon represents that it took all appropriate actions necessary to safeguard the interests of the Funds and their participating investors in connection with the sale of the Securities, given that Lehman had filed for bankruptcy and that the value of the Securities had declined substantially. In this regard, it is represented that the exemption is protective of the rights of the participants and beneficiaries of the Plans, because the requested exemption contains safeguards that are similar to two (2) other exemptions previously granted by the Department and are equally protective as those other exemptions.[3] In particular, the sale of the Securities by the Cash Collateral Fund to BNYMC resulted in an assignment of all of the Cash Collateral Fund's rights, claims, and causes of action against Lehman or any third party arising in connection with or out of the issuance of the Securities or the purchase of the Securities by the Cash Collateral Fund. Further, the exemption would require that if the exercise of any of the foregoing rights, claims, or causes of action results in BNYMC recovering from Lehman or from any third party an aggregate amount that is more than the sum of: (a) The purchase price paid for the Securities by BNYMC; and (b) the interest due on the Securities from and after the date BNYMC purchased the Securities from the Cash Collateral Fund, determined at the last published rate on the Securities preceding the Lehman's bankruptcy filings, then BNYMC will refund such excess amount promptly to the Cash Collateral Fund (after deducting all reasonable expenses incurred in connection with the recovery).

21. In summary, BNY Mellon, the applicant, represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975 of the Code because:

(a) The sale of the Securities was a one-time transaction for cash;

(b) The Cash Collateral Fund received an amount for the sale of the Securities which was equal to the sum of:

(1) the amortized cost of the Securities, and

(2) the accrued but unpaid interest on each of the Securities, determined as of the earlier of: (A) the date of the sale of the Securities, or (B) the maturity date of the each of the Securities;

(c) The amount paid for the Securities was substantially greater than the aggregate market value of the Securities at the time of the sale, as determined based on information regarding the then prevailing trading prices for the Securities obtained from two (2) independent broker-dealers;

(d) The Cash Collateral Fund did not bear any commissions, fees, transactions costs, or other expenses in connection with the sale of the Securities;

(e) BNY Mellon, as trustee of the Cash Collateral Fund, determined that the sale of the Securities was appropriate for and in the best interest of the Cash Collateral Fund, and the Plans invested, directly or indirectly, in the Cash Collateral Fund, at the time of the transaction;

(f) BNY Mellon took all appropriate actions necessary to safeguard the interests of the Cash Collateral Fund, and the Plans invested, directly or indirectly, in the Cash Collateral Fund, in connection with the transaction, given that Lehman had filed for bankruptcy and that the value of the Securities had declined substantially;

(g) BNYMC will promptly refund to the Cash Collateral Fund any amount recovered from Lehman or any third party in connection with the exercise of

[3] Prohibited Transaction Exemption 2008–12, Mellon Bank N.A. (73 FR 55540, September 25, 2008) and Prohibited Transaction Exemption 95–98, Boston Safe Deposit and Trust Company (60 FR 53811, October 17, 1995).

any rights, claims, or causes of action in connection as a result of BNYMC's ownership of the Securities, if such amounts are in excess of the sum of:

(1) The purchase price paid for the Securities by BNYMC; and

(2) The interest due on the Securities from and after the date BNYMC purchased the Securities from the Cash Collateral Fund, determined at the last-published interest rate on the Securities preceding Lehman's bankruptcy filing (after deducting all reasonable expenses incurred in connection with the recovery);

(h) BNY Mellon and its affiliates, as applicable, will maintain, or cause to be maintained, for a period of six (6) years from the date of any of covered transaction such records as are necessary to determine whether the conditions of this exemption have been met.

Notice to Interested Persons

The persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include each of the investors with a direct interest in the Cash Collateral Fund.

It is represented that each of these interested persons will be notified of the publication of the Notice by personal or express delivery, within fifteen (15) calendar days of publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise all interested persons of their right to comment and to request a hearing.

Any written comments and/or requests for a hearing must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 16th day of July 2009.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E9–17467 Filed 7–22–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Brookwood-Sago Mine Safety Grants

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice, change in the grant application deadline.

SUMMARY: On June 29, 2009, the U.S. Department of Labor, Mine Safety and Health Administration (MSHA), announced it was making $500,000 available in grant funds for educational and training programs to help identify, avoid, and prevent unsafe working conditions in and around mines. 74 FR 31049–31051. This notice advised that the solicitation for grant applications would be available June 30, 2009, on the *Grants.gov* Web site. The closing date for receipt of the grant applications was July 31, 2009. Because of administrative limitations associated with the *Grants.gov* Web site, MSHA is extending the deadline for receipt of grant applications for the Brookwood-Sago Mine Safety Grants to August 1, 2009.

DATES: The closing date for submitting grant applications will be August 1, 2009 (no later than 11:59 p.m. EDST). MSHA will award grants on or before September 30, 2009.

ADDRESSES: Applications for grants submitted under this competition must be submitted electronically using the Government-wide site at *http://www.grants.gov*. If applying online poses a hardship to any applicant, the MSHA Directorate of Educational Policy and Development will provide assistance to ensure that applications can be submitted online by the closing date. MSHA's Web page at *http://www.msha.gov* is a valuable source of background information on Brookwood-Sago Safety Grants.

FOR FURTHER INFORMATION CONTACT: Any questions regarding this solicitation for grant applications (SGA 09–3BS) should be directed to Robert Glatter at *glatter.robert@dol.gov* or at 202–693–9570 (this is not a toll-free number) or the Grant Officer, Darrell A. Cooper at *cooper.darrell@dol.gov* or at 202–693–9831 (this is not a toll-free number).

Authority: 30 U.S.C. 965.

Michael A. Davis,

Deputy Assistant Secretary for Operations, Mine Safety and Health.

[FR Doc. E9–17487 Filed 7–22–09; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Employment and Training Administration

Solicitation for Grant Applications; National Farmworker Jobs Program for Program Year 2009

AGENCY: U.S. Department of Labor (Department or DOL), Employment and Training Administration (ETA).

ACTION: Announcement of a Program Year (PY) 2009 grant competition for the Arkansas, Hawaii, Indiana, Maine, and Nebraska service delivery areas for operating the National Farmworker Jobs Program (NFJP) under section 167 of the Workforce Investment Act of 1998

(WIA), 29 U.S.C. 2912. This funding announcement is applicable to NFJP service delivery areas not meeting waiver eligibility as described in Training and Employment Guidance Letter (TEGL) 25–08, and the service delivery area of Maine.

Funding Opportunity Number: SGA/DFA PY 09–02.

Catalog of Federal Domestic Assistance (CFDA) Number: 17.264.

SUMMARY: The DOL, ETA, Office of Workforce Investment, Division of Adult Services, announces a grant competition for operating the NFJP, under section 167 of the WIA, 29 U.S.C. 2912 in certain specified service delivery areas. The WIA generally requires the DOL to conduct a grants competition every two years to select entities to operate the NFJP. DOL is exercising its option under WIA sec. 167 (c)(4)(B) to waive competition for the biannual grant competition scheduled for PY 2009 for those grantees determined to have performed successfully as described in TEGL 25–08.

As explained in TEGL 25–08, the grantees operating in the following service delivery areas were determined to be ineligible for waiver: Arkansas, Hawaii, Indiana, and Nebraska. The current grantee in Maine will cease business operations effective July 1, 2009, necessitating competition in that service delivery area. Accordingly, this notice solicits proposals for grant applications from eligible organizations to serve these areas during PY 2009 and 2010 (October 1, 2009 through June 30, 2011). Due to the late publication date of this announcement, current NFJP grantees have been given an extension to operate the NFJP for the first quarter of PY 2009 (July 1, 2009 through September 30, 2009). The extension is a necessity in order to avoid a disruption in service and harm to the participants caused by the late onset of the competition, which is no fault of the current grantees. The current grant will be funded on a pro-rated basis until September 30, 2009. The ETA will determine the exact percentage of pro-rated funds. Current grantees in the service delivery areas defined above are invited to submit applications to compete for PY 2009 NFJP funds. All interested applicants should read this notice in its entirety.

DATES: The closing date for receipt of applications under this announcement is September 1, 2009. Applications must be received at the address below no later than 4 p.m., Eastern Time.

ADDRESSES: Mailed applications must be directed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, *Attention:* B. Jai Johnson, Ref: SGA/DFA PY 09–02, Room N–4716, 200 Constitution Avenue, NW., Washington, DC 20210. Other submission options are discussed in Section IV of this solicitation.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

The ETA is requesting grant applications from eligible applicants to operate the NFJP in accordance with section 167 of the WIA during PY 2009 and PY 2010 in the following service delivery areas: Arkansas, Hawaii, Indiana, Maine, and Nebraska. The NFJP is designed to serve economically disadvantaged persons who primarily depend on employment in agricultural labor performed within the United States, including Puerto Rico, and who experience chronic unemployment or underemployment. Qualifying participants are typically those persons employed on a seasonal or part-time basis in the unskilled and semi-skilled manual labor occupations in crop and animal production. Through training and other workforce development services, the program is intended to assist eligible migrants and seasonal farmworkers and their families to prepare for jobs likely to provide stable, year-round employment both within and outside agriculture.

The NFJP is subject to the requirements found at WIA section 167 and the Department's regulations at 20 CFR part 669. This program is also subject to the requirements of 29 CFR parts 93 (New Restrictions on Lobbying), 96 (Audit Requirements), and 98 (Debarment, Suspension, and Drug-Free Workplace Requirements), the non-discrimination regulations implementing WIA section 188 at 29 CFR part 37, as well as DOL's Equal Treatment regulations, found at 29 CFR part 2, Subpart D. Applicants should be familiar with these requirements and consult the WIA regulations at 20 CFR parts 660 through 671 in developing their grant proposals. Should the regulations at part 669 of WIA conflict with regulations elsewhere in 20 CFR, the regulations at part 669 will control. In addition, this program is subject to the provisions of the ''Jobs for Veterans Act,'' Public Law 107–288, and its implementing regulations at 20 CFR part 1010 (73 FR 78132 (Dec. 19, 2008)), which provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by the U.S. DOL. In circumstances where a NFJP grant recipient must choose between two equally qualified candidates for training, one of whom is a veteran, the Jobs for Veterans Act requires that NFJP grant recipients give the veteran priority of service by admitting him or her into the program. Please note that, to obtain priority of service, a veteran must first meet the program's eligibility requirements. Guidance on veterans priority is available at the ''Jobs for Veterans Priority of Service'' Web site at *http://www.doleta.gov/programs/vets.*

The NFJP is subject to the common performance measures for job training and employment programs established by the Office of Management and Budget (OMB). Guidance on the common performance measures can be found in ETA's TEGL No. 17–05 (February 17, 2006), available at *http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2195.* Applications submitted in response to this solicitation are required to include estimates of expected performance against these common performance measures. The common performance measures are: Entered Employment, Employment Retention, and Average Earnings. To assist applicants with their estimates, the national goals for PY 2009 for the three measures are: Entered Employment, 72.2%; Employment Retention, 71.8%; and Average Earnings, $8,844.

Applicants are required to describe their reporting system that allows for the data collection necessary to report results against the common measures. The NFJP began data collection for the common measures on July 1, 2005.

II. Award Information

The type of assistance instrument to be used for the NFJP is the grant. Grants awarded through this solicitation will be for a two-year period, as prescribed in WIA section 167, but funded on an annual basis. Through the formula allotment process as determined by ETA, a total of $2,779,204 is available for the Arkansas, Indiana, Hawaii, Maine, and Nebraska service delivery areas. Be advised that this total provides funding for these five NFJP grantees for a portion of PY 2009 only (October 1, 2009 through June 30, 2010). Thereafter, second year total allocations will be dependent on the availability of funding through the FY 2010 appropriations process and on the grantee's compliance with all current and future ETA guidance related to the NFJP.

State allocations are established through a formula process, and are published in a separate **Federal Register** Notice. Please refer to our Web site (*http://www.doleta.gov/MSFW/pdf/allocationtable.pdf*) for a list of individual state allocations.

Be advised that in the event that no grant application is received for a state, or all applications received are considered not fundable by the Grant Officer after the panel review and scoring process, or a grant agreement is not successfully negotiated with a selected applicant, the Department will offer the Governor of that state an opportunity to submit an application, if that state has not applied (*i.e.,* if no state agency in that state applied for a grant in this competition). If the Governor does not accept this offer within 15 days after being notified, or the Department finds the Governor's application not fundable, the Department reserves the right to designate another organization to operate the NFJP in that state. In cases where the state agency was an applicant, and all applications are found not fundable or are not successfully negotiated, the Department reserves the right to designate an organization to operate the NFJP in that state based on the Grant Officer's judgment on how to best serve the needs of the migrant and seasonal farmworker population in the service delivery area. The Grant Officer shall retain full authority in soliciting applications from governors and making final determinations as to which entities best qualify to serve the migrant and seasonal farmworker population in each service delivery area.

Note: Selection of an organization as a grantee does not constitute approval of the grant application as submitted. Before the actual grant is awarded, the Department may enter into negotiations about such items as program components, staffing and funding levels, and administrative systems in place to support grant implementation. If the negotiations do not result in a mutually acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application.

III. Eligibility Information

Eligible Applicants—Applicants need not be a current or prior WIA section 167 grantee to establish eligibility to be awarded a grant under this solicitation. State agencies, Local Workforce Investment Boards (LWIBs), faith-based and community organizations, institutions of higher learning, and other entities capable of delivering services on a statewide basis are all examples of organizations eligible to apply for WIA section 167 grants. WIA section 167(b) describes entities eligible to receive a grant as those that have:

- An understanding of the problems of eligible migrant and seasonal farmworkers, including their dependents;
- A familiarity with the geographical area to be served; and
- A demonstrated capacity to effectively administer a diversified program of workforce investment activities for eligible migrant and seasonal farmworkers.

Cost Sharing or Matching—The WIA section 167 does not require grantees to share costs or provide matching funds.

Other Eligibility Criteria—In accordance with 29 CFR Part 98, entities that are debarred or suspended shall be excluded from Federal financial assistance and are ineligible to receive a WIA section 167 grant. Prior to awarding a grant, the Grant Officer will conduct a responsibility review of each potential grantee through available records. The responsibility review relies on examining available records to determine if an applicant has a satisfactory history of accounting for Federal funds and property. The responsibility review is independent of the competitive process. Applicants failing to meet the standards of the responsibility review may be disqualified for selection as grantees, irrespective of their standing in the competition. Any applicant that is not selected as a result of the responsibility review will be advised of their appeal rights. The responsibility tests that will be applied are those found in the WIA regulations (20 CFR 667.170).

Veterans Priority. The Jobs for Veterans Act (Pub. L. 107–288) provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by the Department. In circumstances where a grant recipient must choose between two equally qualified candidates for training, one of whom is a veteran, the Jobs for Veterans Act requires that grant recipients give the veteran priority of service by admitting him or her into the program. Please note that, to obtain priority of service, a veteran must meet the program's eligibility requirements. ETA Training and Employment Guidance Letter (TEGL) No. 5–03 (September 16, 2003) provides general guidance on the scope of the Job for Veterans Act and its effect on current employment and training programs. TEGL No. 5–03, along with additional guidance, is available at ''Jobs for Veterans Priority of Services'' Web site at: *http://www.doleta.gov/programs/vets.*

IV. Application and Submission Information

A. Address To Request Application Package

This SGA contains all of the information and links to forms needed to apply for grant funding.

B. Content and Form of Application Submission

An application must include two (2) separate and distinct parts: Part I—a cost proposal, and Part II—a technical proposal. Applications that fail to adhere to the instructions in this section will be deemed non-responsive and will not be considered. Part I, the Cost Proposal, must include the following items:

Part I. Cost Proposal. The Cost Proposal must include the following three items:

- The Standard Form (SF) 424, ''Application for Federal Assistance'' (available at *http://www07.grants.gov/agencies/forms_repository_information.jsp* and *http://www.doleta.gov/sga/forms.cfm.*). The SF 424 must clearly identify the applicant and be signed by an individual with authority to enter into a grant agreement. Upon confirmation of an award, the individual signing the SF 424 on behalf of the applicant shall be considered the representative of the applicant.
- All applicants for Federal grant and funding opportunities are required to have a Dun and Bradstreet (DUNS) number. *See* Office of Management and Budget (OMB) Notice of Final Policy Issuance, 68 FR 38402 (June 27, 2003). Applicants must supply their DUNS number on the SF 424. The DUNS number is a nine-digit identification number that uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access this Web site: *http://www.dunandbradstreet.com* or call 1–866–705–5711.
- The SF 424A Budget Information Form (available at *http://www07.grants.gov/agencies/forms_repository_information.jsp* and *http://www.doleta.gov/sga/forms.cfm.*). In preparing the Budget Information Form, the applicant must provide a detailed budget for both the planning and operations aspects of the project, with a narrative explanation in support of the request. The budget narrative should break down the budget and leveraged resources by project activity,

should discuss cost-per-participant, and should discuss precisely how the administrative costs support the project goals. Administrative costs do not need to be identified separately from program costs on the SF 424A Budget Information Form.

Please note that applicants who fail to provide a SF 424, SF 424A, and/or a budget narrative will be removed from consideration prior to the technical review process. If the proposal calls for integrating WIA or other Federal funds or includes other leveraged resources, these funds should not be listed on the SF 424 or SF 424A Budget Information Form, but should be described in the budget narrative and in Part II of the proposal. The amount of Federal funding requested for the entire period of performance should be shown on the SF 424 and SF 424A Budget Information Form. Applicants are also encouraged, but not required, to submit OMB Survey N. 1890–0014: Survey on Ensuring Equal Opportunity for Applicants, which can be found at *http://www.doleta.gov/sga/forms.cfm.*

Part II. Technical Proposal. The Technical Proposal will demonstrate the applicant's capability to plan and implement a project in accordance with the provisions of this solicitation. The guidelines for the content of the Technical Proposal are provided in Part V, Section A of this SGA. The Technical Proposal is limited to twenty (20) double-spaced single-sided pages with 12-point text font and one-inch margins. Any pages submitted in excess of this 20-page limit will not be reviewed. Letters of support and any required attachments will not be subject to the page limitations, nor will they be included in the materials provided to the panel for review of the proposal. If any attachments are included, please label each accordingly and specify the content of the attachment.

Applicants submitting proposals in hard-copy must submit an original signed application (including the SF–424) and one (1) ''copy-ready'' version free of bindings, staples or protruding tabs to ease in the reproduction of the proposal by DOL. Applicants submitting proposals in hard-copy are also requested, though not required, to provide an electronic copy of the proposal on CD–ROM. No cost data or reference to prices should be included in the Technical Proposal. Instead, applicants should provide a two-page abstract summarizing the proposed project and applicant profile information, including the applicant's name, the project title, and the funding level requested. The two-page abstract is not included in the 20-page limit.

Applications that do not meet these requirements will not be considered.

Submission Procedures. This SGA includes all information and forms needed to apply for this funding opportunity.

Content and Form of Application Submission. Applicants may apply online through Grants.gov (*http://www.grants.gov*), however, due to the expected increase in system activity resulting from the American Recovery and Reinvestment Act of 2009, applicants are encouraged to use an alternate method to submit grant applications during this heightened period of demand. While not mandatory, DOL encourages the submission of applications thru professional overnight delivery service.

Applications that are submitted thru Grants.gov must be successfully submitted at *http://www.grants.gov* no later than 4 p.m. (Eastern Time) on September 1, 2009, and then subsequently validated by Grants.gov. The submission and validation process is described in more detail below. The process can be complicated and time-consuming. Applicants are strongly advised to initiate the process as soon as possible and to plan for time to resolve technical problems if necessary.

It is strongly recommended that before the applicant begins to write the proposal, applicants should immediately initiate and complete the ''Get Registered'' registration steps at *http://www.grants.gov/applicants/get_registered.jsp.* These steps may take multiple days or weeks to complete, and this time should be factored into plans for electronic submission in order to avoid unexpected delays that could result in the rejection of an application. It is highly recommended that applicants use the ''Organization Registration Checklist'' at *http://www.grants.gov/assets/Organization_Steps_Complete_Registration.pdf* to ensure the registration process is complete.

Within two business days of application submission, Grants.gov will send the applicant two e-mail messages to provide the status of application progress through the system. The first e-mail, almost immediate, will confirm receipt of the application by Grants.gov. The second e-mail will indicate the application has either been successfully validated or has been rejected due to errors. Only applications that have been successfully submitted and successfully validated will be considered. It is the sole responsibility of the applicant to ensure a timely submission, therefore sufficient time should be allotted for submission (two business days), and if applicable, subsequent time to address errors and receive validation upon resubmission (an additional two business days for each ensuing submission). It is important to note that if sufficient time is not allotted and a rejection notice is received after the due date and time, the application will not be considered.

The components of the application must be saved as either .doc, .xls or .pdf files. Documents received in a format other than .doc, .xls or .pdf will not be read. Applicants are strongly advised to utilize the plethora of tools and documents, including FAQs, that are available on the ''Applicant Resources'' page at *http://www.grants.gov/applicants/app_help_reso.jsp#faqs.* To receive updated information about critical issues, new tips for users and other time sensitive updates as information is available, applicants may subscribe to ''Grants.gov Updates'' at *http://www.grants.gov/applicants/email_subscription_signup.jsp.* If applicants encounter a problem with Grants.gov and do not find an answer in any of the other resources, call 1–800–518–4726 to speak to a Customer Support Representative or e-mail ''*support@grants.gov''.*

Late Applications. Any application received after the closing date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and (a) it was sent by the U.S. Postal Service registered or certified mail no later than the fifth calendar day before the date specified for receipt of applications (*e.g.,* an application required to be received by the 20th of the month must be postmarked by the 15th of that month); or (b) it was sent via professional overnight delivery service or submitted on Grants.gov to the addressee not later than one working day prior to the date specified for receipt of applications. The term ''working days'' excludes weekends and Federal holidays. ''Postmarked'' means a printed, stamped, or otherwise placed impression that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

Intergovernmental Review. Executive Order No. 12372, ''Intergovernmental Review of Federal Programs,'' and the implementing regulations at 29 CFR part 17 are applicable to this program. Under these requirements, an applicant must provide a copy of the funding proposal for comment to the states that have established a consultation process under the Executive Order. Applications must be submitted to the state's Single Point of Contact (SPOC), no later than the deadline for submission of the application to the Department. For states that have not established a consultative process under E.O. 12372, but have a State Workforce Investment Board (State Board), the State Board will be the SPOC. For WIA implementation purposes, this consultative process fulfills the requirement of WIA section 167(e) concerning consultation with Governors and Local Workforce Investment Boards (LWIB). To strengthen the implementation of E.O. 12372, the Department establishes the following timeframe for the treatment of comments from the state's SPOC on WIA section 167 applications: (1) The SPOC must submit comments, if any, to the Department and to the applicant, no later than 30 days after the deadline date for the submission of applications; (2) the applicant's response to the SPOC comments, if any, must be submitted to the Department no later than 15 days after the postmarked date of the comments from the SPOC; (3) the Department will notify the SPOC (with copy to the applicant) of its decision regarding the SPOC comments and applicant response; and (4) the Department will implement that decision within 10 days after it has notified the SPOC. The names and addresses of the SPOCs are listed in the Office of Management and Budget's (OMB) home page at *http://www.whitehouse.gov/omb/grants/spoc.html.*

Allowable Costs. The Department shall determine what constitutes allowable costs in accordance with the following Federal cost principles, as applicable: OMB Circular A–87, State and Local Governments; OMB Circular A–21, Educational Institutions; OMB Circular A–122, Nonprofit Organizations; and 48 CFR part 31, Profit-Making Commercial Firms.

C. Submission Date, Time, and Address

The closing date for receipt of applications under this announcement is September 1, 2009. Applications must be received at the address below, or electronically received at the Web site below, no later than 4 p.m. Eastern Time. Applications sent by e-mail, telegram, or facsimile (fax) will not be accepted. Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the mailing and delivery requirements set forth in this notice will be granted.

Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: B. Jai Johnson, Ref: SGA/DFA PY 09–02, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures. Hand-delivered proposals will be received at the above address. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified closing date and time.

Applicants may apply online through Grants.gov (*http://www.grants.gov*). Any application received after the deadline will not be accepted. It is strongly recommended that applicants applying online for the first time via Grants.gov immediately initiate and complete the ''Get Registered'' registration steps at *http://www.grants.gov/applicants/get_registered.jsp.* These steps may take multiple days or weeks to complete, and this time should be factored into plans for electronic application submission in order to avoid unexpected delays that could result in rejection of an application. If submitted electronically through Grants.gov, the application must be submitted as either .doc, .xls, or .pdf files.

D. Funding Restrictions

All proposal costs must be necessary and reasonable in accordance with Federal guidelines. Determinations of allowable costs will be made in accordance with the applicable Federal cost principles. Disallowed costs are those charges to a grant that the grantor agency or its representative determines not to be allowed in accordance with the applicable Federal Cost Principles or other conditions contained in the grant. Applicants will not be entitled to reimbursement of pre-award costs. Funds provided under these grants shall only be used for activities that are in addition to those that would otherwise be available in the local area in the absence of such funds.

Indirect Costs. As specified in OMB Circulars on Cost Principles, indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular cost objective. In order to utilize grant funds for indirect costs incurred, the applicant must obtain an Indirect Cost Rate Agreement with its Federal Cognizant Agency either before or shortly after the grant award. The Federal Cognizant Agency is generally determined based on the preponderance of Federal dollars received by the recipient.

Administrative Costs. An entity that receives a grant to carry out a project or program may not use more than 15 percent of the amount of the grant to pay administrative costs associated with the program or project. Administrative costs could be both direct and indirect costs and are defined at 20 CFR 667.220. Administrative costs do not need to be identified separately from program costs on the SF 424A Budget Information Form. They should be discussed in the budget narrative and tracked through the grantee's accounting system. To claim any administrative costs that are also indirect costs, the applicant must obtain an Indirect Cost Rate Agreement from its Federal Cognizant Agency as specified above.

E. Salary and Bonus Limitations

In compliance with Public Law 109–234 and Public Law 110–5, none of the funds appropriated in Public Law 109–149, Public Law 110–5, or prior Acts under the heading ''Employment and Training'' that are available for expenditure on or after June 15, 2006, shall be used by a recipient or sub-recipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II, except as Public Law 109–149. This limitation shall not apply to vendors providing goods and services as defined in OMB Circular A–133. See Training and Employment Guidance Letter Number 5–06 for further clarification: *http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2262.*

F. Legal Rules Pertaining to Inherently Religious Activities by Organizations That Receive Federal Financial Assistance

Direct Federal grants, sub-award funds, or contracts under this program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this program. Neutral, secular criteria that neither favor nor disfavor religion must be employed in the selection of grant and sub-grant recipients. In addition, under the Workforce Investment Act of 1998 and DOL regulations implementing the Workforce Investment Act, a recipient may not use direct Federal assistance to train a participant in religious activities, or employ participants to construct, operate, or maintain any part of a facility that is used or to be used for religious instruction or worship. *See* 29 CFR 37.6(f). Under WIA, ''no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under Title IX of the Education Amendments of 1972), national origin, age, disability, or political affiliation or belief.'' Regulations pertaining to the Equal Treatment for Faith-Based Organizations, which includes the prohibition against Federal funding of inherently religious activities, can be found at *See* 29 CFR Part 2, Subpart D. Provision relating to the use of indirect support (such as vouchers) are at 29 CFR 2.33(c) and 20 CFR 667.266.

A faith-based organization receiving federal funds retains its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs. For example, a faith-based organization may use space in its facilities to provide secular programs or services funded with Federal funds without removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization that receives Federal funds retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents in accordance with all program requirements, statutes, and other applicable requirements governing the conduct of DOL funded activities. Faith and community-based organizations may also reference ETA Training and Employment Guidance Letter (TEGL) No. 01–05 (July 6, 2005), available at *http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2088.* Faith-based and community organizations may learn about equal treatment and religion-related regulations through the DOL's new online training course at Workforce3one (*http://www.workforce3one.org*). The course can be found by typing the key words ''equal treatment'' in the search box on the upper right hand corner of the page. If you are previously registered on this site, you can find the course directly at *http://www.workforce3one.org/public/shared/detail.cfm?id=5566&simple=false.*

Intellectual Property Rights. The Federal Government reserves a paid-up, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for Federal purposes: (i) The copyright in all products developed under the grant, including a subgrant or contract under the grant or subgrant; and (ii) any rights of copyright to which the grantee, subgrantee or a contractor purchases ownership under an award (including but not limited to curricula, training models, technical assistance products, and any related materials). Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically or otherwise. Federal funds may not be used to pay any royalty or licensing fee associated with such copyrighted material, although they may be used to pay costs for obtaining a copy which are limited to the developer/seller costs of copying and shipping. If revenues are generated through selling products developed with grant funds, including intellectual property, these revenues are program income. Program income is added to the grant and must be expended for allowable grant activities.

If applicable, the following needs to be on all products developed in whole or in part with grant funds: ''This workforce solution was funded by a grant awarded by the U.S. Department of Labor's Employment and Training Administration.

The solution was created by the grantee and does not necessarily reflect the official position of the U.S. Department of Labor. The Department of Labor makes no guarantees, warranties, or assurances of any kind, express or implied, with respect to such information, including any information on linked sites and including, but not limited to, accuracy of the information or its completeness, timeliness, usefulness, adequacy, continued availability, or ownership. This solution is copyrighted by the institution that created it. Internal use by an organization and/or personal use by an individual for non-commercial purposes is permissible. All other uses require the prior authorization of the copyright owner.''

G. Withdrawal of Application

Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

Other Submission Requirements. All other material required to be submitted is identified in the various sections of this solicitation.

V. Application Review Information Criteria

The following review criteria, totaling a maximum of 100 points, apply to all applications:

1. Economic Analysis of the Area: Understanding the Problems of the Eligible Migrants and Seasonal Farmworkers in the State Service Area—15 Points. To fully understand the problems encountered by migrants and seasonal farmworkers as they seek enhanced employment opportunities requires a full understanding and analysis of the economy in the state service area, its industries and the employment opportunities they present for farmworkers, and the outreach strategies necessary to secure those opportunities for farmworkers; (as described in the priorities listed in Section I). Therefore, applicants must provide an analysis of the economy (agricultural and non-agricultural) in the geographic area they propose to serve, the employment outlook for the area, including the number of employers with whom they currently work, and a plan for outreach to and recruitment of new employers. A description of the expected job opportunities for migrants and seasonal farmworkers from these new employers, and how economic conditions and employer hiring needs affect the employment prospects of eligible migrant and seasonal farmworkers must also be provided.

This section must also include a detailed description of the state/regional labor market, both agricultural and non-agricultural, the economic conditions expected during the course of the program year, and the hiring implications those economic conditions pose for the employers in the region/area. In addition, this section must include a discussion of the industries that are declining in the service area/region as well as those industries targeted for growth and expansion that hold the potential for improved employment and earnings for farmworkers. Applicants should also discuss the strategies to be used in securing those opportunities for farmworkers.

Applicants must also describe the socio-economic characteristics and problems faced by eligible farmworkers, and their dependents, in the proposed service area/region. To do so, applicants must describe the implications that economic conditions and challenges in the region, the labor market outlook, and the analysis of potential high growth occupations hold for the workforce strategies proposed through this solicitation. Scoring will also be based on how well the proposal demonstrates the nexus between economic conditions, the characteristics of the eligible farmworkers, the educational resources, and the workforce investment needs of the population to be served. The review and evaluation of this factor will also look at the strategies developed for outreach to and recruitment of new employers that can provide improved job placement opportunities, both within and outside agriculture, for the farmworkers to be served. The proposal should clearly describe the links between the economic analysis conducted for this application and the applicant's assessment of the number of new employers to be recruited, including a description of how this will result in improved employment opportunities for farmworkers in higher-skilled, higher-paid occupations.

2. Strategic Partnerships and Collaboration: Familiarity With the Proposed Service Area—25 Points. This section must include a description of the agencies and strategic partners in the requested service area, including faith-based and community organizations, and the applicant's experience in collaborating with these organizations in a service delivery strategy for migrant and seasonal farmworkers. It should also include a description of the services available through local service organizations, including faith-based and community organizations, and the applicant's strategy to mobilize those organizations to provide comprehensive services to farmworkers while optimizing the use of limited NFJP resources, particularly supportive or related assistance services.

All applicants must describe their organization's prior experience, if any, and demonstrated effectiveness in working with the One-Stop Career Center system in the requested service area to provide services to farmworkers. Include a description of the applicant's collaborative efforts to date to integrate services to farmworkers across all partners in the One-Stop Career Center system, and the steps to be taken to establish a significant, consistent impact on services integration.

These steps may include, but are not limited to:

- Participation in local/state activities to develop the modification to the State Strategic Plans for Title I of the WIA and the Wagner-Peyser Act for years three and four of the current five-year planning cycle;
- Participation in activities that connect workforce investment and education with economic development planning;
- Participation in activities that help the State Board or LWIB to get more agricultural employers involved in the workforce investment system;
- Setting co-enrollment targets (between the NFJP and the WIA formula funded programs) that represent a substantial increase in services to farmworkers;
- Creating better pathways to both basic and post-secondary education, specifically with community colleges;
- Entering into and implementing agreements with the State Board or the LWIBs and One-Stop operators to significantly increase outreach to farmworkers, and to significantly increase the number of One-Stop Career Center staff who are cross-trained in NFJP/adult and dislocated workers services and requirements. Applicants must describe their experience with developing or improving existing working relationships between partners in the One-Stop Career Center system, and how that experience will be translated into improved services integration for eligible farmworkers.

Scoring on this factor will be based how the information requested above represents evidence of the applicant's knowledge of and working relationship with the network of workforce investment and related services in the requested service area, including the One-Stop Career Center system, and the services offered by social, educational, faith-based, community, and health organizations that are available to assist farmworkers. Scoring will also be based on the applicant's effectiveness and success with causing these organizations to direct their resources towards addressing the needs of farmworkers in the requested service area in ways that maximize the availability of limited NFJP resources while increasing the services provided to farmworkers through the One-Stop and/or other service agencies.

3. Administrative Capacity—20 Points. Applicants must demonstrate that they have adequate and sustainable management information, performance management, case management, accounting, and program and fiscal reporting systems in place to ensure program and fiscal integrity. Because the NFJP has eligibility requirements for participation in the program, the applicant must also describe the eligibility determination and verification system in place that will allow for correct eligibility determinations and minimize enrollment of ineligible participants. Additionally, all ETA-funded job training programs, including the NFJP, are implementing a data validation initiative intended to ensure that the data collected and reported to ETA is accurate. An applicant's participant and reporting system must be able to implement data validation procedures, as described in TEGL 3–03, 3–03 change 1, and 3–03 change 2 (OMB clearance issued August 31, 2004).

Applicants must describe their systems in support of program integrity, such as management information, performance management, and program participation (including individual participant records), needed for quarterly reporting and performance accountability and management, and to establish and maintain a client-centered case management system. Applicants are reminded that the NFJP is subject to OMB's common measures for job training and employment (Entered Employment, Employment Retention, and Average Earnings, described earlier in this solicitation); therefore, the data collection and reporting system, as well as its link to performance management and accountability, must be described in detail.

Fiscal integrity is a critical component of operating any federally funded program. The applicant must describe a system that is sufficient to prepare financial reports and to trace funds to adequate levels of expenditures to ensure lawful spending.

The system must have the capacity to track spending by program, to ensure that, for those organizations with funding from more than one federal program, expenditures are posted against the appropriate program. The system must also be able to track program income generated through activities funded by the NFJP grants, and show the link between program income and those additional participants and/or services funded through program income. Applicants must describe their capacity to manage supportive services, also described as related assistance services, and to account for expenditures related to these services.

The NFJP is required to use electronic reporting via the Internet. Applicants must describe their capacity to provide the equipment, access, and staff qualified to perform on-line reporting. The applicant must also demonstrate its capacity to provide case management as well as the electronic tools to be utilized (Personal Computer, software, Internet access, and e-mail accounts) to implement a client-centered case management system.

Scoring on this factor will be based on evidence of effective systems for performance accountability and management, program and fiscal reporting, case management, eligibility determination and verification, as well as the ability to report electronically through the Internet.

4. Integrated Service Delivery Strategies: Proposed Plan of Services—40 Points Total. This criterion is broken into three sub-criteria, with individual point values defined below. This criterion should include a description of how the proposed service plan will strengthen migrant and seasonal farmworkers' ability to obtain or retain employment and to access appropriate educational opportunities (remediation, career guidance, apprenticeships). Please note that the *Proposed Plan of Service, Integration of Services, and Opportunities for Farmworkers* sub-criteria equal a total of 40 points.

A. Proposed Plan of Service—20 points. The proposal should describe the applicant's vision, strategy, goals and objectives that guide the proposed plan of service and the results expected from implementing the proposed plan. The program plan of service section must include descriptions of:

• The state service area covered by the plan.

• An estimate of the number of migrant and seasonal farmworkers, broken out by category, to be provided training services. An estimate should be included of the number of migrant and seasonal farmworkers, broken out by category, who will be provided related assistance services only.

• The strategies for conducting participant outreach and recruitment, including the involvement, where applicable, of faith-based and community organizations in those strategies, as well as other One-Stop Career Center partner programs.

• The proposed client-centered case management system, including the staff's responsibilities for managing the system, the staff development opportunities available to enhance their skills in case management, and the capacity to increase community resources available for case management through joint alliances and/or endeavors, such as through faith-based or community organizations, or through the One-Stop Career Center system.

• The core services proposed, and how those services will be delivered in collaboration with the One-Stop system. Include a description of the eligibility determination system and how the applicant determines service priorities.

• The intensive services proposed, the strategy for providing them, and the collaboration with the One-Stop Career Center system in the provision of these services (*see* definition of intensive services at WIA section 134(d)(3) and 20 CFR 669.370). Please note that the NFJP regulations at 20 CFR 669.380 provide that the delivery of intensive and training services should flow from an objective assessment process that includes an Individual Employment Plan. The proposal must describe the strategy for doing this, as well as the organization's capacity to appropriately address an individual's needs as identified through the objective assessment. Intensive services are described in WIA 134(d)(3)(C) and 20 CFR 669.370.

• If work experience is to be offered as an activity, the process by which the determination to use it is based, and the strategy for measuring its success as a program activity. (*See* 20 CFR 669.370 (b)(i) and (b)(ii)(B) for additional information on work experience activities.) The training services to be provided to eligible farmworkers, including the process used to determine a participant's enrollment in training services, and the process used when the determination is made not to place a participant in training. (See 20 CFR 669.410 for a description of training services.) In addition, the proposal should describe the strategy to be used to promote co-enrollment of participants in the WIA formula funded programs.

• Related assistance services (*see* definition at 20 CFR 669.110), including supportive services, needed by migrant and seasonal farmworkers and their dependents, and the strategy for providing those services, including the agencies or organizations with whom the applicant will collaborate and/or coordinate these services. The proposal should provide separate descriptions for those farmworkers receiving supportive services and also intensive and/or training services, and those farmworkers for whom related assistance services will be the only services provided. It should also include a description of the process used to determine the need for related assistance services, the differences in the determination process, if any, among migrant and seasonal farmworker groups, and the rationale for the differences. Applicants are reminded that the NFJP is intended to be a job training program, whose purpose is to assist eligible migrant and seasonal farmworkers and their families prepare for jobs that provide stable, year-round employment, both within and outside agriculture. Related assistance services include supportive services that assist eligible migrant and seasonal farmworkers to retain employment or enter into or remain in training. While no limitation is placed on the numbers of participants receiving related assistance services only, applicants are expected to describe in full how they will continue to increase the number of participants receiving employment and training services.

• The strategy for balancing related assistance services with the need to increase employment and training services.

• The educational approaches to be used, including remediation, GED attainment, GED leading to apprenticeships, career guidance and other pathways leading to credentialing or post secondary opportunities, if applicable, to assist the participant in obtaining the occupational skills that lead to employment in high-growth occupations or to higher paying employment within the agricultural industry.

• The strategies to be used to achieve performance results with respect to job placement, employment retention, and average earnings (i.e., the common measures).

• The strategies to address how job placement opportunities will be pursued among the employers in the service area, including how job placement opportunities from new employers will be secured, as well as opportunities in high growth industries/occupations.

• The process by which the applicant will conduct follow-up services for those who are placed in jobs or engaged in entrepreneurial activities.

Scoring of this factor will be based on evidence that the plan of service contains a balanced program of activities and a rationale for the proposed services.

B. Integration of Services—10 points. All applicants must demonstrate how the service strategy achieves integration of services by all partners in the One-Stop system, and how this integration results in enhanced and improved workforce investment services to farmworkers, within a state service area and/or regional economy. The plan should provide clear evidence that the service plan expands the workforce and related services available to farmworkers due to a closer integration and specific collaboration between the NFJP and the local workforce investment system, new or stronger partnerships with faith-based and community organizations, as appropriate. Scoring on this factor will be based on evidence that the service plan encompasses resources and program activities available from other One-Stop Career Center partners and/or the local services agencies, including faith-based and community organizations.

C. Opportunities for Farmworkers—10 points. The evaluation of this factor will assess whether the service strategy and service plan presented by the applicant reflects knowledge of the local workforce investment plan and proposes services that complement that plan in a way that increases employment opportunities for farmworkers. Applicants should include service delivery strategies that will provide farmworkers with career pathways both within and outside agricultural employment; *i.e.,* remediation leading to post secondary education or credentialing (if appropriate); high school diplomas or GED leading to apprenticeship opportunities, if applicable; and/or industry-accepted certifications. Also included in this criterion should be activities to upgrade farmworkers' employment opportunities within agriculture.

Review and Selection Process. A review panel will rate each proposal according to the criteria scoring factors specified in this solicitation. Panel reviews are critical to the selection of grantees but are advisory in nature, and their recommendations are not binding on the Grant Officer. The Grant Officer, in selecting potential grantees, may consider any information that comes to his or her attention, including past performance under a previous grant and information from the program office, and will make the final selection determination based on what best meets the needs of eligible migrants and seasonal farmworkers in the area to be served. The Grant Officer may consider factors such as panel findings, geographic presence of the applicants, proposed areas to be served, and other pertinent factors. In making award determinations, the Grant Officer retains full authority to set aside panel results and scoring in cases that the Grant Officer considers appropriate, and to select the applicant the Grant Officer deems best suited to serve the migrant and seasonal farmworker population.

The Grant Officer's determination for award under this SGA is final. The Grant Officer may elect to make awards either with or without discussions and negotiations with the applicant. In situations without discussions, an award will be based on the applicant's signature on the SF–424, which constitutes a binding offer.

Applications rated by the review panel with a score of less than 80 points will not be recommended for an award. The Grant Officer retains full authority to designate a grantee he or she deems best suited to serve the migrant and seasonal farmworker population, regardless of whether the applicant is the incumbent provider, a challenger, or an entity that did not initially submit an application pursuant to the criteria defined herein; especially in those areas with no applications receiving a score equal to or greater than 80. In areas where there are no applications with a score of 80 or above, the process for selecting another potential grantee, described in Section II, will be implemented.

VI. Award Administration Information

Award Notices. The Grant Officer will notify applicants, in writing, if they are selected as potential grantees. The notification will invite each potential grantee to negotiate the final terms and conditions of the grant as applicable, will establish a reasonable time and place for the negotiations, and will indicate the specific state service area and amount of funds to be allocated under the grant. FY2009 funds will be awarded for the period October 1, 2009 to June 30, 2010.

An applicant that is not selected as a potential grantee or whose application has been denied in part or in whole by the Department will be notified in writing by the Grant Officer and advised of all appeal rights. The notification will outline the deficiencies as noted by the review panel. The written notification by the Grant Officer constitutes a final decision, for the purposes of 20 CFR 667.800.

Administrative and National Policy Requirements. There are no additional administrative or national policy requirements.

Reporting. An applicant's proposal becomes the annual grant plan after a grant award is made, with additional information as appropriate and requested by the funding agency. WIA section 167 grantees will be required to submit reports on financial expenditures, program participation, and participant outcomes on a quarterly basis. Grantees will also have to submit planned financial expenditures and planned program participation forms at the beginning of the program year. Grantees must report electronically, but may be asked to submit reports in paper form on occasion. As reflected earlier in this solicitation, this program is subject to the common measures of performance. Grantees will be required to provide the data necessary to collect information for reporting performance results against the common measures.

VII. Agency Contacts

Questions related to this solicitation may be directed to Ms. Mamie Williams, Grants Management Specialist, telephone 202–693–3341; *e-mail address: Williams.mamie@dol.gov;* fax: 202–693–2879 (this is not a toll free number). Please include a contact name, fax and telephone number. This announcement is also being made available on the ETA Web site at *http://doleta.gov/sga/sga.cfm* and *http://www.grants.gov.*

VII. Other Information

OMB Information Collection No. 1225–0086 Expires September 30, 2009

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 20 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503. Please do not return your completed application to the OMB. Send it to the sponsoring agency as specified in this solicitation.

This information is being collected for the purpose of awarding a grant. The information collected through this ''Solicitation for Grant Applications'' will be used by DOL to ensure that grants are awarded to the applicant best suited to perform the functions of the grant. Submission of this information is required in order for the applicant to be considered for award of this grant. Unless otherwise specifically noted in this announcement, information submitted in the respondent's application is not considered to be confidential.

Dated: July 15, 2009.

B. Jai Johnson,

Grant Officer, Employment and Training Administration.

[FR Doc. E9–17520 Filed 7–22–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment & Training Administration

[SGA/DFA–PY–08–21]

Solicitation for Grant Applications (SGA); Amendment One; Green Capacity Building Grants

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice: Amendment to SGA/DFA–PY–08–21.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** on June 24, 2009, announcing the availability of funds and Solicitation for Grant Applications (SGA) for Green Capacity Building Grants to be awarded through a competitive process. This notice is the first amendment to the SGA and clarifies items related to (1) Eligible Applicants (Section III.A); (2) Participants Eligible to Receive Training (Section III.C.1); and, (3) Section B on Green Industries and Occupations (Supplementary Information). The document is hereby amended.

(1) *Section III.A, Eligible Applicants:* The eligible applicant list in Section III, A. on p. 30167 is revised by removing the following grantee program, ''Advancing Registered Apprenticeship into the 21st Century: Collaborating for Success (SGA/DFA PY 08–11)'' because funding decisions for this program have not been made and resultant grantees will not be eligible to apply for funds through this SGA. Accordingly, Section III, A. on p. 30167 is revised by replacing the language designated below as ''old text'' with the language designated as ''new text'':

Old Text: ''DOL intends to build the green training capacity of our current grantees, therefore, eligible applicants are limited to the following DOL grantees who received funding through the SGA number indicated in the parentheses: Indian and Native American Program (SGA/DFA PY 07–04), National Farmworker Jobs Program (NFJP) (SGA/DFA PY 06–04), Prisoner Re-Entry Initiative (PRI) (SGA/DFA PY 08–03 & SGA/DFA PY 07–05), Senior Community Service Employment Program (SCSEP) (SGA/DFA PY 07–02 & SGA/DFA PY 05–06), Women in Apprenticeship and Non-Traditional Occupations (WANTO) (SGA/DFA PY 07–08 & SGA/DFA PY 06–01), Advancing Registered Apprenticeship into the 21st Century: Collaborating for Success (SGA/DFA PY 08–11), YouthBuild (SGA/DFA PY 08–07 & SGA/DFA PY 06–08), and Young Offender Grants (SGA/DFA PY 08–09, SGA/DFA PY 06–10, & SGA/DFA PY 06–14).''

New Text: ''DOL intends to build the green training capacity of our current grantees, therefore, eligible applicants are limited to the following DOL grantees who received funding through the SGA number indicated in the parentheses: Indian and Native American Program (SGA/DFA PY 07–04), National Farmworker Jobs Program (NFJP) (SGA/DFA PY 06–04), Prisoner Re-Entry Initiative (PRI) (SGA/DFA PY 08–03 & SGA/DFA PY 07–05), Senior Community Service Employment Program (SCSEP) (SGA/DFA PY 07–02 & SGA/DFA PY 05–06), Women in Apprenticeship and Non-Traditional Occupations (WANTO) (SGA/DFA PY 07–08 & SGA/DFA PY 06–01), YouthBuild (SGA/DFA PY 08–07 & SGA/DFA PY 06–08), and Young Offender Grants (SGA/DFA PY 08–09, SGA/DFA PY 06–10, & SGA/DFA PY 06–14).''

(2) *Section III.C.1, Participants Eligible to Receive Training:* A portion of this section is revised to clarify that individuals with disabilities are among the populations that may be served. Accordingly, Section III.C.1 on p. 30167 is revised by replacing the language designated below as ''old text'' with the language designated as ''new text'':

Old Text: ''Other individuals, such as untapped labor pools and entry-level and incumbent workers that do not fit into the categories above, may also be served through these projects subject to the priority considerations given to the populations above and consistent with the populations to be served through the grantee's statements of work for their existing grant(s).''

Next Text: ''Other individuals, such as untapped labor pools including individuals with disabilities and entry-level and incumbent workers that do not fit into the categories above, may also be served through these projects subject to the priority considerations given to the populations above and consistent with the populations to be served through the grantee's statements of work for their existing grant(s).''

(3) *Supplementary Information Section B ''Green Industries and Occupations'':* On p. 30166 is revised to provide further information on the industries in which applicants may focus and includes the following statement:

New Text: ''We will also evaluate applications for projects that include emerging green occupations from industries that have not been discussed in this section.''

FOR FURTHER INFORMATION CONTACT: Denise Roach, Grants Management Specialist, Division of Federal Assistance, at (202) 693–3820.

Signed at Washington, DC this 17th day of July, 2009.

Eric D. Luetkenhaus,

Grant Officer.

[FR Doc. E9–17455 Filed 7–22–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment & Training Administration

[SGA/DFA–PY–08–20]

Solicitation for Grant Applications (SGA) Amendment One; State Energy Sector Partnership (SESP) and Training Grants

AGENCY: Employment and Training Administration (ETA, Labor).

ACTION: Notice: Amendment to SGA/DFA–PY–08–20.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** on June 24, 2009, announcing the availability of funds and solicitation for grant applications (SGA) for State Energy Sector Partnership (SESP) and Training Grants to be awarded through a competitive process. This notice is the first amendment to the SGA and clarifies items related to: (1) Updated Attachment 1—Counties Impacted by Automotive-Related Restructuring; (2) the number of parts to the technical proposal (Section IV: Application and Submission Information, Part 2 Technical Proposal); (3) the number of sub criteria to the Strategy and Project Work Plan criteria in Section V.A.3); (4) participants eligible to receive training (Section III.D.1); and, (5) Section B on Green Industries and Occupations (Supplementary Information). The document is hereby amended.

1. Attachment I—Counties Impacted by Automotive Restructuring. This notice replaces ''Attachment I'' as referenced on p. 30127–30128, which is a list of 281 counties impacted by automotive-related restructuring from the Center for Automotive Research. In addition to the 281 counties, an additional 31 counties have been included on the list due to an inadvertent omission on the original list. This is the complete and final list and there will be no further changes to this list. Accordingly, the ''old'' Attachment I on p. 30127–30128 is being replaced by the ''new'' Attachment I below:

ATTACHMENT I—COUNTIES IMPACTED BY AUTOMOTIVE-RELATED RESTRUCTURING

FIPS	County name	State
1013	Butler	AL
1021	Chilton	AL
1083	Limestone	AL
1085	Lowndes	AL
1089	Madison	AL
1095	Marshall	AL
1101	Montgomery	AL
1121	Talladega	AL
1125	Tuscaloosa	AL
5023	Cleburne	AR
5041	Desha	AR
5055	Greene	AR
5083	Logan	AR
6001	Alameda	CA
6037	Los Angeles	CA
10003	New Castle	DE
13089	DeKalb	GA
13121	Fulton	GA
13139	Hall	GA
13143	Haralson	GA
13167	Johnson	GA
13285	Troup	GA
19029	Cass	IA
19037	Chickasaw	IA
19071	Fremont	IA
19089	Howard	IA
19095	Iowa	IA
19115	Louisa	IA
19149	Plymouth	IA
19157	Poweshiek	IA
19175	Union	IA
19197	Wright	IA
17007	Boone	IL
17025	Clay	IL
17031	Cook	IL
17047	Edwards	IL
17067	Hancock	IL
17121	Marion	IL
17113	McLean	IL
17155	Putnam	IL
17187	Warren	IL
17189	Washington	IL
17191	Wayne	IL
18001	Adams	IN
18003	Allen	IN
18005	Bartholomew	IN
18009	Blackford	IN
18015	Carroll	IN
18017	Cass	IN
18025	Crawford	IN
18033	De Kalb	IN
18031	Decatur	IN
18035	Delaware	IN
18037	Dubois	IN
18039	Elkhart	IN
18041	Fayette	IN
18045	Fountain	IN
18047	Franklin	IN
18051	Gibson	IN
18053	Grant	IN
18059	Hancock	IN
18061	Harrison	IN
18065	Henry	IN
18067	Howard	IN
18071	Jackson	IN
18075	Jay	IN
18077	Jefferson	IN
18081	Johnson	IN
18087	Lagrange	IN
18093	Lawrence	IN
18097	Marion	IN
18103	Miami	IN
18107	Montgomery	IN
18113	Noble	IN
18123	Perry	IN
18133	Putnam	IN
18135	Randolph	IN
18143	Scott	IN
18147	Spencer	IN
18141	St. Joseph	IN
18149	Starke	IN
18151	Steuben	IN
18153	Sullivan	IN
18157	Tippecanoe	IN
18159	Tipton	IN
18175	Washington	IN
18179	Wells	IN
18183	Whitley	IN
20001	Allen	KS
20209	Wyandotte	KS
21003	Allen	KY
21009	Barren	KY
21017	Bourbon	KY
21023	Bracken	KY
21031	Butler	KY
21033	Caldwell	KY
21041	Carroll	KY
21043	Carter	KY
21055	Crittenden	KY
21057	Cumberland	KY
21069	Fleming	KY
21073	Franklin	KY
21075	Fulton	KY
21077	Gallatin	KY
21081	Grant	KY
21093	Hardin	KY
21099	Hart	KY
21101	Henderson	KY
21103	Henry	KY
21107	Hopkins	KY
21111	Jefferson	KY
21113	Jessamine	KY
21121	Knox	KY
21123	Larue	KY
21137	Lincoln	KY
21151	Madison	KY
21155	Marion	KY
21167	Mercer	KY
21169	Metcalfe	KY
21173	Montgomery	KY
21179	Nelson	KY
21183	Ohio	KY
21191	Pendleton	KY
21199	Pulaski	KY
21207	Russell	KY
21209	Scott	KY
21211	Shelby	KY
21213	Simpson	KY
21221	Trigg	KY
21227	Warren	KY
21229	Washington	KY
22017	Caddo	LA
24510	Baltimore (city)	MD
24043	Washington	MD
26009	Antrim	MI
26017	Bay	MI
26025	Calhoun	MI
26045	Eaton	MI
26049	Genesee	MI
26059	Hillsdale	MI
26063	Huron	MI
26065	Ingham	MI
26067	Ionia	MI
26069	Iosco	MI
26075	Jackson	MI
26079	Kalkaska	MI
26081	Kent	MI
26087	Lapeer	MI
26091	Lenawee	MI
26093	Livingston	MI
26099	Macomb	MI
26107	Mecosta	MI
26111	Midland	MI
26113	Missaukee	MI
26115	Monroe	MI
26125	Oakland	MI
26127	Oceana	MI
26133	Osceola	MI
26135	Oscoda	MI
26139	Ottawa	MI
26143	Roscommon	MI
26145	Saginaw	MI
26147	St. Clair	MI
26149	St. Joseph	MI
26157	Tuscola	MI
26159	Van Buren	MI
26161	Washtenaw	MI
26163	Wayne	MI
26165	Wexford	MI
27029	Clearwater	MN
27123	Ramsey	MN
29047	Clay	MO
29061	Daviess	MO
29079	Grundy	MO
29105	Laclede	MO
29113	Lincoln	MO
29147	Nodaway	MO
29175	Randolph	MO
29183	St. Charles	MO
29189	St. Louis	MO
29229	Wright	MO
28009	Benton	MS
28011	Bolivar	MS
28051	Holmes	MS
28089	Madison	MS
28119	Quitman	MS
28129	Smith	MS
28145	Union	MS
28161	Yalobusha	MS
37063	Durham	NC
37071	Gaston	NC
37089	Henderson	NC
37145	Person	NC
37165	Scotland	NC
38051	McIntosh	ND
31019	Buffalo	NE
31047	Dawson	NE
31051	Dixon	NE
31141	Platte	NE
31159	Seward	NE
34023	Middlesex	NJ
34039	Union	NJ
36029	Erie	NY
36063	Niagara	NY
36067	Onondaga	NY
36089	St. Lawrence	NY
39001	Adams	OH
39003	Allen	OH
39011	Auglaize	OH
39019	Carroll	OH

ATTACHMENT I—COUNTIES IMPACTED BY AUTOMOTIVE-RELATED RESTRUCTURING—Continued

FIPS	County name	State
39021 ...	Champaign	OH
39025 ...	Clermont	OH
39027 ...	Clinton	OH
39033 ...	Crawford	OH
39035 ...	Cuyahoga	OH
39039 ...	Defiance	OH
39043 ...	Erie	OH
39051 ...	Fulton	OH
39061 ...	Hamilton	OH
39063 ...	Hancock	OH
39065 ...	Hardin	OH
39069 ...	Henry	OH
39071 ...	Highland	OH
39077 ...	Huron	OH
39079 ...	Jackson	OH
39083 ...	Knox	OH
39091 ...	Logan	OH
39093 ...	Lorain	OH
39095 ...	Lucas	OH
39097 ...	Madison	OH
39113 ...	Montgomery	OH
39117 ...	Morrow	OH
39121 ...	Noble	OH
39125 ...	Paulding	OH
39131 ...	Pike	OH
39135 ...	Preble	OH
39137 ...	Putnam	OH
39139 ...	Richland	OH
39141 ...	Ross	OH
39143 ...	Sandusky	OH
39147 ...	Seneca	OH
39149 ...	Shelby	OH
39153 ...	Summit	OH
39155 ...	Trumbull	OH
39159 ...	Union	OH
39161 ...	Van Wert	OH
39169 ...	Wayne	OH
39171 ...	Williams	OH
39173 ...	Wood	OH
39175 ...	Wyandot	OH
40095 ...	Marshall	OK
40109 ...	Oklahoma	OK
42003 ...	Allegheny	PA
42117 ...	Tioga	PA
45007 ...	Anderson	SC
45019 ...	Charleston	SC
45021 ...	Cherokee	SC
45035 ...	Dorchester	SC
45067 ...	Marion	SC
45083 ...	Spartanburg	SC
47001 ...	Anderson	TN
47003 ...	Bedford	TN
47007 ...	Bledsoe	TN
47009 ...	Blount	TN
47015 ...	Cannon	TN
47031 ...	Coffee	TN
47041 ...	DeKalb	TN
47045 ...	Dyer	TN
47051 ...	Franklin	TN
47053 ...	Gibson	TN
47055 ...	Giles	TN
47061 ...	Grundy	TN
47063 ...	Hamblen	TN
47065 ...	Hamilton	TN
47069 ...	Hardeman	TN
47073 ...	Hawkins	TN
47077 ...	Henderson	TN
47079 ...	Henry	TN
47087 ...	Jackson	TN
47097 ...	Lauderdale	TN
47099 ...	Lawrence	TN
47105 ...	Loudon	TN
47113 ...	Madison	TN
47117 ...	Marshall	TN
47119 ...	Maury	TN
47107 ...	McMinn	TN
47109 ...	McNairy	TN
47121 ...	Meigs	TN
47123 ...	Monroe	TN
47131 ...	Obion	TN
47133 ...	Overton	TN
47135 ...	Perry	TN
47141 ...	Putnam	TN
47143 ...	Rhea	TN
47147 ...	Robertson	TN
47149 ...	Rutherford	TN
47151 ...	Scott	TN
47159 ...	Smith	TN
47177 ...	Warren	TN
47185 ...	White	TN
48029 ...	Bexar	TX
48439 ...	Tarrant	TX
49003 ...	Box Elder	UT
51023 ...	Botetourt	VA
51710 ...	Norfolk (city)	VA
51155 ...	Pulaski	VA
51173 ...	Smyth	VA
51177 ...	Spotsylvania	VA
55059 ...	Kenosha	WI
55075 ...	Marinette	WI
55105 ...	Rock	WI
54079 ...	Putnam	WV

2. Section IV: Application and Submission Information, Part 2. Technical Proposal (page 30119) is revised to confirm the number of parts that are referenced in the technical proposal as follows:

a. Old Text—''Under the leadership of the State Workforce Investment Board, the SESP will develop a comprehensive Sector Plan that will serve as the technical proposal in response to this Solicitation. The Sector Plan will present the State's overall strategy for preparing workers in the energy efficiency and renewable energy industries and consists of four parts: (1) Statement of Need; (2) State Energy Sector Partnership; (3) Strategy and Work Plan; and (4) Implementation Timeline and Projected Outcomes. Applicants will be evaluated on the completeness and quality of their submissions. A full description of the criteria that will be used to evaluate each submission and points are awarded are outlined in section V.A.''

b. New Text—''Under the leadership of the State Workforce Investment Board, the SESP will develop a comprehensive Sector Plan that will serve as the technical proposal in response to this Solicitation. The Sector Plan will present the State's overall strategy for preparing workers in the energy efficiency and renewable energy industries and consists of five parts: (1) Statement of Need; (2) State Energy Sector Partnership; (3) Strategy and Work Plan; (4) Implementation Timeline and Projected Outcomes; and (5) Suitability for Evaluation. Applicants will be evaluated on the completeness and quality of their submissions. A full description of the criteria that will be used to evaluate each submission and points are awarded are outlined in section V.A.''

3. Section V.A.3, Application and Review Information, Evaluation Criteria (page 30122) is revised to clarify the number of sub-criteria in the Strategy and Project Work Plan as follows:

a. Old Text—''iii. Strong evidence that the applicant has the fiscal, administrative, and performance management capacity to effectively administer this grant. The applicant must fully describe its capacity to lead and manage the SESP, and oversee the local and regional project teams in order to successfully implement the State Energy Sector Plan.''

b. New Text—''iv. Strong evidence that the applicant has the fiscal, administrative, and performance management capacity to effectively administer this grant. The applicant must fully describe its capacity to lead and manage the SESP, and oversee the local and regional project teams in order to successfully implement the Sector Plan.''

4. Section III.D.1, Participants Eligible to Receive Training (page 30118) is revised to clarify that individuals with disabilities are among the populations that may be served. Accordingly, Section III.D.1 on p. 30118 is revised by replacing the language designated below as ''old text'' with the language designated as ''new text'':

a. Old Text—''Other individuals, such as untapped labor pools and entry-level and incumbent workers that do not fit into the categories above, may also be served through these projects.''

b. Next Text—''Other individuals, such as untapped labor pools including individuals with disabilities and entry-level and incumbent workers that do not fit into the categories above, may also be served through these projects subject to the priority considerations given to the populations above and consistent with the populations to be served through the grantee's statements of work for their existing grant(s).''

5. Supplementary Information Section B ''Green Industries and Occupations'' on p. 30115 is revised to provide further information on the industries in which

applicants may focus and includes the following statement:

a. New Text: We will also evaluate applications for projects that include emerging green occupations from industries that have not been discussed in this section.

FOR FURTHER INFORMATION CONTACT: Jeannette Flowers, Grants Management Specialist, Division of Federal Assistance, at (202) 693–3322 (this is not a toll-free number).

Signed at Washington, DC this 17th day of July, 2009.

Eric D. Luetkenhaus,

Grant Officer.

[FR Doc. E9–17456 Filed 7–22–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment & Training Administration

[SGA/DFA–PY 08–18]

Solicitation for Grant Applications (SGA); Amendment One—Energy Training Partnership Grants

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice: Amendment to SGA/DFA–PY 08–18.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** on June 24, 2009, announcing the availability of funds and solicitation for grant applications (SGA) for Energy Training Partnerships awarded through a competitive process. This amendment to the SGA clarifies items related to: (1) Eligible applicants (Section III.A); (2) Statewide and local entities that are eligible applicants (Section III.A.2); (3) participants eligible to receive training (Section III.E.1); (4) correction to formatting of ''Other Eligibility Requirements'' section; (5) Attachment 1 for the list of auto-impacted communities; and (6) supplementary information in Section B ''Green Industries and Occupations.'' The document is hereby amended.

1. *Section III.A., ''Eligible Applicants'':* (page 30154) Is revised to confirm that Local Workforce Investment Boards and One Stop Career Centers are not eligible applicants, confirm that the applicant in the proposed project must be clearly designated, and provide information on the definition of non-profit entities. In the SGA, the language designated below as ''old text'' is replaced with the language designated as ''new text,'' as follows:

a. Old Text—''Under this announcement, eligible applicants are private nonprofit organizations that must apply under one of two categories: (1) National labor-management organizations with local networks; or (2) Statewide or local nonprofit partnerships. All applicants are expected to work in conjunction with partnerships consisting of labor organizations, employers, Workforce Investment Boards (WIBs), and other organizations as defined in section 171(e)(2)(B)(ii) of WIA. These categories create two applicant pools, which will compete separately for funding under this SGA.''

b. New Text—''Under this announcement, eligible applicants are private nonprofit organizations that must apply under one of two categories: (1) National labor-management organizations with local networks; or (2) Statewide or local nonprofit partnerships. All applicants are expected to work in conjunction with partnerships consisting of labor organizations, employers, Workforce Investment Boards, and other organizations as defined in section 171(e)(2)(B)(ii) of WIA. While the SGA indicates required and suggested partners, the proposal must designate a lead applicant. These categories create two applicant pools, which will compete separately for funding under this SGA. Local Workforce Investment Boards and One Stop Career Centers are not eligible applicants under this SGA. A private nonprofit entity is an organization that is legally organized for the purposes of tax exempt nonprofit status under the Internal Revenue Service (IRS), or is actively pursuing IRS nonprofit tax exempt status.''

2. *Section III.A.2.,''Statewide and Local Entities'':* (page 30154) Is revised to confirm that eligible applicants for the State and local category are Statewide or local private nonprofit entities, including private nonprofit entities that serve American Indian reservations. In the SGA, the language designated below as ''old text'' is replaced with the language designated as ''new text,'' as follows:

a. Old Text—''Statewide and Local Entities: Applicants for the State and local category are local or Statewide non-profit entities with a joint partnership of labor organizations, employers or industry organizations, Workforce Investment Boards and One Stop Career Centers. A Statewide or local entity that receives an award under category 2 of this SGA may not receive sub-grant or sub-contract funding from a national organization that receives an award under category 1. For the purposes of this SGA, the term 'State' means each of the 50 States of the United States, the District of Columbia, and U.S. territories as defined in Section VI.B.''

b. New Text—''Statewide and Local Entities: Applicants for the State and local category are Statewide or local private nonprofit entities, including private nonprofit entities that serve American Indian reservations, with a joint partnership of labor organizations, employers or industry organizations, Workforce Investment Boards and One Stop Career Centers. A Statewide or local private nonprofit entity that receives an award under category 2 of this SGA may not receive sub-grant or sub-contract funding from a national organization that receives an award under category 1. For the purposes of this SGA, the term 'State' means each of the 50 States of the United States, the District of Columbia, and U.S. territories as defined in Section VI.B.''

3. *Section III.E.1, ''Participants Eligible to Receive Training'':* (page 30156) Is revised to clarify that individuals with disabilities are among the populations that can be served through grants awarded through this SGA by replacing the language designated below as ''old text'' with the language designated as ''new text,'' as follows:

a. Old Text—''Projects may also serve individuals with a criminal record; and populations that have not traditionally been employed in construction and skilled trade occupations, such as women and minorities.''

b. New Text—''Projects may also serve other types of individuals that may not be a part of the categories above, such as: individuals with a criminal record; individuals with disabilities; and populations that have not traditionally been employed in construction and skilled trade occupations, such as women and minorities.''

4. *Correction to formatting of ''Other Eligibility Requirements'' section:* The ''Other Eligibility Requirements'' section of the SGA is currently listed as section ''D. Other Eligibility Requirements'' on p. 30155. The section was formatted incorrectly, and the SGA is revised so that the ''Other Eligibility Requirements'' section is now listed as ''C. Other Eligibility Requirements'' instead of ''D. Other Eligibility Requirements''. With this correction, ''Other Eligibility Requirements'' is now correctly listed as Section III.C. of the SGA.

5. *Attachment I—Counties Impacted By Automotive-Related Restructuring:* This notice is to provide ''Attachment I''

as referenced on p. 30154, Section II.A which is a list of 281 counties impacted by automotive-related restructuring from the Center for Automotive Research. In addition to the 281 counties, an additional 31 counties have been included on the list due to an inadvertent omission on the original list. This is the complete and final list and there will be no further changes to this list.

ATTACHMENT I: COUNTIES IMPACTED BY AUTOMOTIVE-RELATED RESTRUCTURING

FIPS	County name	State
1013	Butler	AL
1021	Chilton	AL
1083	Limestone	AL
1085	Lowndes	AL
1089	Madison	AL
1095	Marshall	AL
1101	Montgomery	AL
1121	Talladega	AL
1125	Tuscaloosa	AL
5023	Cleburne	AR
5041	Desha	AR
5055	Greene	AR
5083	Logan	AR
6001	Alameda	CA
6037	Los Angeles	CA
10003	New Castle	DE
13089	DeKalb	GA
13121	Fulton	GA
13139	Hall	GA
13143	Haralson	GA
13167	Johnson	GA
13285	Troup	GA
19029	Cass	IA
19037	Chickasaw	IA
19071	Fremont	IA
19089	Howard	IA
19095	Iowa	IA
19115	Louisa	IA
19149	Plymouth	IA
19157	Poweshiek	IA
19175	Union	IA
19197	Wright	IA
17007	Boone	IL
17025	Clay	IL
17031	Cook	IL
17047	Edwards	IL
17067	Hancock	IL
17121	Marion	IL
17113	McLean	IL
17155	Putnam	IL
17187	Warren	IL
17189	Washington	IL
17191	Wayne	IL
18001	Adams	IN
18003	Allen	IN
18005	Bartholomew	IN
18009	Blackford	IN
18015	Carroll	IN
18017	Cass	IN
18025	Crawford	IN
18033	De Kalb	IN
18031	Decatur	IN
18035	Delaware	IN
18037	Dubois	IN
18039	Elkhart	IN
18041	Fayette	IN
18045	Fountain	IN
18047	Franklin	IN
18051	Gibson	IN
18053	Grant	IN
18059	Hancock	IN
18061	Harrison	IN
18065	Henry	IN
18067	Howard	IN
18071	Jackson	IN
18075	Jay	IN
18077	Jefferson	IN
18081	Johnson	IN
18087	Lagrange	IN
18093	Lawrence	IN
18097	Marion	IN
18103	Miami	IN
18107	Montgomery	IN
18113	Noble	IN
18123	Perry	IN
18133	Putnam	IN
18135	Randolph	IN
18143	Scott	IN
18147	Spencer	IN
18141	St. Joseph	IN
18149	Starke	IN
18151	Steuben	IN
18153	Sullivan	IN
18157	Tippecanoe	IN
18159	Tipton	IN
18175	Washington	IN
18179	Wells	IN
18183	Whitley	IN
20001	Allen	KS
20209	Wyandotte	KS
21003	Allen	KY
21009	Barren	KY
21017	Bourbon	KY
21023	Bracken	KY
21031	Butler	KY
21033	Caldwell	KY
21041	Carroll	KY
21043	Carter	KY
21055	Crittenden	KY
21057	Cumberland	KY
21069	Fleming	KY
21073	Franklin	KY
21075	Fulton	KY
21077	Gallatin	KY
21081	Grant	KY
21093	Hardin	KY
21099	Hart	KY
21101	Henderson	KY
21103	Henry	KY
21107	Hopkins	KY
21111	Jefferson	KY
21113	Jessamine	KY
21121	Knox	KY
21123	Larue	KY
21137	Lincoln	KY
21151	Madison	KY
21155	Marion	KY
21167	Mercer	KY
21169	Metcalfe	KY
21173	Montgomery	KY
21179	Nelson	KY
21183	Ohio	KY
21191	Pendleton	KY
21199	Pulaski	KY
21207	Russell	KY
21209	Scott	KY
21211	Shelby	KY
21213	Simpson	KY
21221	Trigg	KY
21227	Warren	KY
21229	Washington	KY
22017	Caddo	LA
24510	Baltimore (city)	MD
24043	Washington	MD
26009	Antrim	MI
26017	Bay	MI
26025	Calhoun	MI
26045	Eaton	MI
26049	Genesee	MI
26059	Hillsdale	MI
26063	Huron	MI
26065	Ingham	MI
26067	Ionia	MI
26069	Iosco	MI
26075	Jackson	MI
26079	Kalkaska	MI
26081	Kent	MI
26087	Lapeer	MI
26091	Lenawee	MI
26093	Livingston	MI
26099	Macomb	MI
26107	Mecosta	MI
26111	Midland	MI
26113	Missaukee	MI
26115	Monroe	MI
26125	Oakland	MI
26127	Oceana	MI
26133	Osceola	MI
26135	Oscoda	MI
26139	Ottawa	MI
26143	Roscommon	MI
26145	Saginaw	MI
26147	St. Clair	MI
26149	St. Joseph	MI
26157	Tuscola	MI
26159	Van Buren	MI
26161	Washtenaw	MI
26163	Wayne	MI
26165	Wexford	MI
27029	Clearwater	MN
27123	Ramsey	MN
29047	Clay	MO
29061	Daviess	MO
29079	Grundy	MO
29105	Laclede	MO
29113	Lincoln	MO
29147	Nodaway	MO
29175	Randolph	MO
29183	St. Charles	MO
29189	St. Louis	MO
29229	Wright	MO
28009	Benton	MS
28011	Bolivar	MS
28051	Holmes	MS
28089	Madison	MS
28119	Quitman	MS
28129	Smith	MS
28145	Union	MS
28161	Yalobusha	MS
37063	Durham	NC
37071	Gaston	NC
37089	Henderson	NC
37145	Person	NC
37165	Scotland	NC
38051	McIntosh	ND
31019	Buffalo	NE

ATTACHMENT I: COUNTIES IMPACTED BY AUTOMOTIVE-RELATED RESTRUCTURING—Continued

FIPS	County name	State
31047 ...	Dawson	NE
31051 ...	Dixon	NE
31141 ...	Platte	NE
31159 ...	Seward	NE
34023 ...	Middlesex	NJ
34039 ...	Union	NJ
36029 ...	Erie	NY
36063 ...	Niagara	NY
36067 ...	Onondaga	NY
36089 ...	St. Lawrence	NY
39001 ...	Adams	OH
39003 ...	Allen	OH
39011 ...	Auglaize	OH
39019 ...	Carroll	OH
39021 ...	Champaign	OH
39025 ...	Clermont	OH
39027 ...	Clinton	OH
39033 ...	Crawford	OH
39035 ...	Cuyahoga	OH
39039 ...	Defiance	OH
39043 ...	Erie	OH
39051 ...	Fulton	OH
39061 ...	Hamilton	OH
39063 ...	Hancock	OH
39065 ...	Hardin	OH
39069 ...	Henry	OH
39071 ...	Highland	OH
39077 ...	Huron	OH
39079 ...	Jackson	OH
39083 ...	Knox	OH
39091 ...	Logan	OH
39093 ...	Lorain	OH
39095 ...	Lucas	OH
39097 ...	Madison	OH
39113 ...	Montgomery	OH
39117 ...	Morrow	OH
39121 ...	Noble	OH
39125 ...	Paulding	OH
39131 ...	Pike	OH
39135 ...	Preble	OH
39137 ...	Putnam	OH
39139 ...	Richland	OH
39141 ...	Ross	OH
39143 ...	Sandusky	OH
39147 ...	Seneca	OH
39149 ...	Shelby	OH
39153 ...	Summit	OH
39155 ...	Trumbull	OH
39159 ...	Union	OH
39161 ...	Van Wert	OH
39169 ...	Wayne	OH
39171 ...	Williams	OH
39173 ...	Wood	OH
39175 ...	Wyandot	OH
40095 ...	Marshall	OK
40109 ...	Oklahoma	OK
42003 ...	Allegheny	PA
42117 ...	Tioga	PA
45007 ...	Anderson	SC
45019 ...	Charleston	SC
45021 ...	Cherokee	SC
45035 ...	Dorchester	SC
45067 ...	Marion	SC
45083 ...	Spartanburg	SC
47001 ...	Anderson	TN
47003 ...	Bedford	TN
47007 ...	Bledsoe	TN
47009 ...	Blount	TN
47015 ...	Cannon	TN
47031 ...	Coffee	TN
47041 ...	DeKalb	TN
47045 ...	Dyer	TN
47051 ...	Franklin	TN
47053 ...	Gibson	TN
47055 ...	Giles	TN
47061 ...	Grundy	TN
47063 ...	Hamblen	TN
47065 ...	Hamilton	TN
47069 ...	Hardeman	TN
47073 ...	Hawkins	TN
47077 ...	Henderson	TN
47079 ...	Henry	TN
47087 ...	Jackson	TN
47097 ...	Lauderdale	TN
47099 ...	Lawrence	TN
47105 ...	Loudon	TN
47113 ...	Madison	TN
47117 ...	Marshall	TN
47119 ...	Maury	TN
47107 ...	McMinn	TN
47109 ...	McNairy	TN
47121 ...	Meigs	TN
47123 ...	Monroe	TN
47131 ...	Obion	TN
47133 ...	Overton	TN
47135 ...	Perry	TN
47141 ...	Putnam	TN
47143 ...	Rhea	TN
47147 ...	Robertson	TN
47149 ...	Rutherford	TN
47151 ...	Scott	TN
47159 ...	Smith	TN
47177 ...	Warren	TN
47185 ...	White	TN
48029 ...	Bexar	TX
48439 ...	Tarrant	TX
49003 ...	Box Elder	UT
51023 ...	Botetourt	VA
51710 ...	Norfolk (city)	VA
51155 ...	Pulaski	VA
51173 ...	Smyth	VA
51177 ...	Spotsylvania	VA
55059 ...	Kenosha	WI
55075 ...	Marinette	WI
55105 ...	Rock	WI
54079 ...	Putnam	WV

6. *Supplementary Information Section B ''Green Industries and Occupations'':* Is revised to provide further information on the industries on which applicants may focus by adding the language designated below as ''new text'' to the existing language in that section:

a. New Text: ''We will also evaluate applications for projects that include emerging green occupations from industries that have not been discussed in this section.''

FOR FURTHER INFORMATION CONTACT: Janice Sheelor, Grants Management Specialist, Division of Federal Assistance, at (202) 693–3538.

Signed at Washington, DC, this 17th day of July 2009.

Donna Kelly,

Grant Officer, Employment & Training Administration.

[FR Doc. E9–17458 Filed 7–22–09; 8:45 am]

BILLING CODE 4510–FN–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446 NRC–2009–0318]

Luminant Generation Company LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation

The U.S. Nuclear Regulatory Commission (NRC, the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–87 and NPF–89 issued to Luminant Generation Company LLC for operation of the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, located in Somervell County, Texas.

The proposed amendment would revise Technical Specification (TS) 5.5.9.2, ''Unit 1 Model D76 and Unit 2 Model D5 Steam Generator (SG) Program,'' to exclude portions of the CPSES, Unit 2 Model D5 SG below the top of the SG tubesheet from periodic SG tube inspections. In addition, the proposed amendment would revise TS 5.6.9, ''Unit 1 Model D76 and Unit 2 Model D5 Steam Generator Tube Inspection Report,'' to include reporting requirements specific to the permanent alternate repair criteria for CPSES, Unit 2. The amendment request is supported by Westinghouse WCAP–17072–P, ''H*: Alternate Repair Criteria for the Tube Sheet Expansion Region in Steam Generators with Hydraulically Expanded Tubes (Model D5),'' May 2009. The amendment application dated June 8, 2009, contains sensitive unclassified non-safeguards information (SUNSI).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), § 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Of the accidents previously evaluated, the limiting transients with consideration to the proposed change to the SG tube inspection and repair criteria are the steam generator tube rupture (SGTR) event, the steam line break (SLB), and the feed line break (FLB) postulated accidents.

During the SGTR event, the required structural integrity margins of the SG tubes and the tube-to-tubesheet joint over the H* [the structural integrity of the primary-to-secondary pressure boundary is unaffected by degradation of any magnitude below a specific depth, designated as H*] distance will be maintained. Tube rupture in tubes with cracks within the tubesheet is precluded by the constraint provided by the presence of the tubesheet and the tube-to-tubesheet joint. Tube burst cannot occur within the thickness of the tubesheet. The tube-to-tubesheet joint constraint results from the hydraulic expansion process, thermal expansion mismatch between the tube and tubesheet, differential pressure between the primary and secondary side, and tubesheet rotation. Based on this design, the structural margins against burst, as discussed in Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR [Pressurized-Water Reactor] Steam Generator Tubes,'' and TS 5.5.9.2 are maintained for both normal and postulated accident conditions.

The proposed change has no impact on the structural or leakage integrity of the portion of the tube outside of the tubesheet. The proposed change maintains structural and leakage integrity of the SG tubes consistent with the performance criteria in TS 5.5.9.2. Therefore, the proposed change results in no significant increase in the probability of the occurrence of a SGTR accident.

At normal operating pressures, leakage from tube degradation below the proposed limited inspection depth is limited by the tube-to-tubesheet crevice. Consequently, negligible normal operating leakage is expected from degradation below the inspected depth within the tubesheet region. The consequences of an SGTR event are not affected by the primary-to-secondary leakage flow during the event as primary-to-secondary leakage flow through a postulated tube that has been pulled out of the tubesheet is essentially equivalent to a severed tube. Therefore, the proposed change does not result in a significant increase in the consequences of a SGTR.

The probability of a SLB is unaffected by the potential failure of a steam generator tube as the failure of tube is not an initiator for [an] SLB event.

The leakage factor of 1.94 for Comanche Peak Unit 2 [CPSES, Unit 2], for a postulated SLB/FLB, has been calculated as shown in Table 9–7 of Reference 8.1 [Westinghouse WCAP–17072–P]. However, Luminant Power [Luminant Generation Company LLC] will apply a factor of 2.03 to the normal operating leakage associated with the tubesheet expansion region in the condition monitoring (CM) and operational assessment (OA). The leakage factor of 2.03 is a bounding value for all SGs, both hot and cold legs, in Table 9–7 of Reference 8.1. Through application of the limited tubesheet inspection scope, the existing operating leakage limit provides assurance that excessive leakage (i.e., greater than accident analysis assumptions) will not occur. The accident-induced leak rate limit for Comanche Peak Unit 2 is 1.0 gpm [gallons per minute]. The TS operational leak rate limit through any one steam generator is 150 gpd [gallons per day] (0.1 gpm). Consequently, there is significant margin between accident leakage and allowable operational leakage. The SLB/FLB overall leakage factor is only 2.03 resulting in significant margin between the conservatively estimated accident induced leakage and the allowable accident leakage.

No leakage factor was applied to the locked rotor or control rod ejection transients due to their short duration.

For the CM assessment, the component of leakage from the prior cycle from below the H* distance will be multiplied by a factor of 2.03 and added to the total leakage from any other source and compared to the allowable accident induced leakage limit. For the OA, the difference in the leakage between the allowable leakage and the accident induced leakage from sources other than the tubesheet expansion region will be divided by 2.03 and compared to the observed operational leakage.

The previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The proposed change that alters the steam generator (SG) inspection and reporting criteria does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change that alters the steam generator inspection and reporting criteria does not introduce any new equipment, create new failure modes for existing equipment, or create any new limiting single failures. Plant operation will not be altered, and all safety functions will continue to perform as previously assumed in accident analyses. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety?

Response: No.

The proposed change defines the safety significant portion of the tube that must be inspected and repaired. WCAP–17072–P identifies the specific inspection depth below which any type tube degradation is shown to have no impact on the performance criteria in NEI [Nuclear Energy Institute] 97–06 Rev. 2, ''Steam Generator Program Guidelines.''

The proposed change that alters the steam generator inspection and reporting criteria maintains the required structural margins of the SG tubes for both normal and accident conditions. Nuclear Energy Institute 97–06, ''Steam Generator Program Guidelines,'' and NRC Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR Steam Generator Tubes,'' are used as the bases in the development of the limited hot leg tubesheet inspection depth methodology for determining that SG tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC for meeting General Design Criteria (GDC) 14, ''Reactor Coolant Pressure Boundary,'' GDC 15, ''Reactor Coolant System Design,'' GDC 31, ''Fracture Prevention of Reactor Coolant Pressure Boundary,'' and GDC 32, ''Inspection of Reactor Coolant Pressure Boundary,'' by reducing the probability and consequences of [an] SGTR. RG 1.121 concludes that by determining the limiting safe conditions for tube wall degradation, the probability and consequences of [an] SGTR are reduced. RG 1.121 uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the American Society of Mechanical Engineers (ASME) Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially oriented cracking, Westinghouse WCAP–17072–P defines a length of degradation-free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces, with applicable safety factors applied. Application of the limited hot and cold leg tubesheet inspection criteria will preclude unacceptable primary-to-secondary leakage during all plant conditions. Using the methodology for determining leakage as described in WCAP–17072–P, it is shown that significant margin exists between conservatively estimated accident induced leakage and the allowable accident leakage (1.0 gpm) if all four generators are assumed to be leaking at the Technical Specification 3.4.13 leakage limit at the beginning of the design basis accident.

Therefore, the proposed change does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking and Directives Branch (RDB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RDB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by calling 301–415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the

E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory e-filing system may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC Meta-System Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The Meta-System Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov.*

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the request and/or petition should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/ehd_proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submissions.

For further details with respect to this license amendment application, see the application for amendment dated June 8, 2009, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Attorney for licensee: Timothy P. Matthews, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation

1. This order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information.

2. Within ten (10) days after publication of this notice of opportunity for hearing any potential party as defined in 10 CFR 2.4 who believes access to SUNSI is necessary for a response to the notice may request access to such information. A ''potential party'' is any person who intends or may intend to participate as a party by demonstrating standing and the filing of an admissible contention under 10 CFR 2.309. Requests submitted later than ten (10) days will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

3. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCMailCenter.Resource@nrc.gov*,

respectively.[1] The request must include the following information:

a. A description of the licensing action with a citation to this **Federal Register** notice of opportunity for hearing;

b. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the potential licensing action;

c. The identity of the individual requesting access to SUNSI and the requester's need for the information in order to meaningfully participate in this adjudicatory proceeding, particularly why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention;

4. Based on an evaluation of the information submitted under items 2 and 3.a through 3.c, above, the NRC staff will determine within ten days of receipt of the written access request whether (1) there is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding, and (2) there is a legitimate need for access to SUNSI.

5. A request for access to SUNSI will be granted if:

a. The request has demonstrated that there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in this proceeding;

b. The proposed recipient of the information has demonstrated a need for SUNSI;

c. The proposed recipient of the information has executed a Non-Disclosure Agreement or Affidavit and agrees to be bound by the terms of a Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI; and

d. The presiding officer has issued a protective order concerning the information or documents requested.[2] Any protective order issued shall provide that the petitioner must file SUNSI contentions 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

6. If the request for access to SUNSI is granted, the terms and conditions for access to such information will be set forth in a draft protective order and affidavit of non-disclosure appended to a joint motion by the NRC staff, any other affected parties to this proceeding,[3] and the petitioner(s). If the diligent efforts by the relevant parties or petitioner(s) fail to result in an agreement on the terms and conditions for a draft protective order or non-disclosure affidavit, the relevant parties to the proceeding or the petitioner(s) should notify the presiding officer within five (5) days, describing the obstacles to the agreement.

7. If the request for access to SUNSI is denied by the NRC staff, the NRC staff shall briefly state the reasons for the denial. The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI (including with respect to standing) by filing a challenge within five (5) days of receipt of that determination with (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

In the same manner, a party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within five (5) days of the notification by the NRC staff of its grant of such a request.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[4]

8. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2.

Dated at Rockville, Maryland, this 17th day of July 2009.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) in This Proceeding

Day	Event
0	Publication of [**Federal Register** notice/other notice of proposed action and opportunity for hearing], including order with instructions for access requests.
10	Deadline for submitting requests for access to SUNSI with information: supporting the standing of a potential party identified by name and address; and describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
[20,30 or 60]	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).

[1] *See* footnote 4. While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] If a presiding officer has not yet been designated, the Chief Administrative Judge will issue such orders, or will appoint a presiding officer to do so.

[3] Parties/persons other than the requester and the NRC staff will be notified by the NRC staff of a favorable access determination (and may participate in the development of such a motion and protective order) if it concerns SUNSI and if the party/person's interest independent of the proceeding would be harmed by the release of the information (e.g., as with proprietary information).

[4] As of October 15, 2007, the NRC's final ''E-Filing Rule'' became effective. *See* Use of Electronic Submissions in Agency Hearings (August 28, 2007; 72 FR 49139). Requesters should note that the filing requirements of that rule apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI requests submitted to the NRC staff under these procedures.

Day	Event
20	NRC staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information. If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" for SUNSI or likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A+3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A+28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A+53 (Contention receipt +25).	Answers to contentions whose development depends upon access to SUNSI.
A+60 (Answer receipt +7)	Petitioner/Intervenor reply to answers.
B	Decision on contention admission.

[FR Doc. E9–17568 Filed 7–22–09; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2009–50; Order No. 251]

Global Expedited Package Services Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to include an additional Priority Mail Contract 1 on the Competitive Product List. This notice addresses procedural steps associated with this filing.

DATES: Comments are due July 27, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

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

SUPPLEMENTARY INFORMATION:

I. Introduction

On July 16, 2009, the Postal Service filed a notice announcing that it has entered into an additional Global Expedited Package Services 1 (GEPS 1) contract.[1] GEPS 1 provides volume-based incentives for mailers that send large volumes of Express Mail International (EMI) and/or Priority Mail International (PMI). The Postal Service believes the instant contract is functionally equivalent to previously submitted GEPS 1 contracts, and is supported by the Governors' Decision filed in Docket No. CP2008–4.[2] Notice at 1. It further notes that in Order No. 86, which established GEPS 1 as a product, the Commission held that additional contracts may be included as part of the GEPS 1 product if they meet the requirements of 39 U.S.C. 3633, and if they are functionally equivalent to the initial GEPS 1 contract filed in Docket No. CP2008–5.[3] Notice at 1.

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the contract is in accordance with Order No. 86. The Postal Service states that the instant contract replaces the contract for the customer in Docket No. CP2008–5 which will end on August 1, 2009. *Id.* at 2. It submitted the contract and supporting material under seal, and attached a redacted copy of the contract and certified statement required by 39 CFR 3015.5(c)(2) to the Notice as Attachments 1 and 2, respectively. *Id.* at 1–2. The term of the instant contract is 1 year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received.

The Notice advances reasons why the instant GEPS 1 contract fits within the Mail Classification Schedule language for GEPS 1. The Postal Service contends that the instant contract is functionally equivalent to the GEPS 1 contracts filed previously. It states that in Governors' Decision No. 08–7, a pricing formula and classification system were established to ensure that each contract meets the statutory and regulatory requirements of 39 U.S.C. 3633. The Postal Service contends that the instant contract demonstrates its functional equivalence with the previous GEPS 1 contracts because of several factors: The customers are small or medium-sized businesses that mail directly to foreign destinations using EMI and/or PMI, the contract term of one year applies to all GEPS 1 contracts, the contracts have similar cost and market characteristics, and each requires payment through permit imprint. *Id.* at 4. It asserts that even though prices may be different

[1] Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreement, July 16, 2009 (Notice).

[2] *See* Docket No. CP2008–4, Notice of United States Postal Service of Governors' Decision Establishing Prices and Classifications for Global Expedited Package Services Contents, May 20, 2008. The docket referenced in the caption should be the docket in which the Governors' Decision is filed. In this instance, that was Docket No. CP2008–4. The contract being suspended was filed in Docket No. CP2008–5.

[3] *See* Docket No. CP2008–5, Order Concerning Global Expedited Package Services Contracts, June 27, 2008, at 7 (Order No. 86).

based on volume or postage commitments made by the customers, or updated costing information, these differences do not affect the contracts' functional equivalency because the GEPS 1 contracts share similar cost attributes and methodology. *Id.* at 4–5.

The Postal Service also states the instant contract has minor differences in terms compared to other GEPS 1 contracts based on the individual mailers. These distinctions include provisions clarifying the correlation between regulatory oversight and contract expiration [4] and the availability of other Postal Service products and services; exclusion of certain flat rate products from the mail qualifying for discounts; a simpler mailing notice requirement along with provisions to meet scheduling needs; mail tender location changes; specific liquidated damages terms; provisions clarifying the mailer's volume and revenue commitment calculation in the event of early termination; and provisions clarifying aspects subject to regulatory oversight or revisions to update terms or references from a prior contract. *Id.* at 5–6.

The Postal Service states that these differences related to a particular mailer are ''incidental differences'' and do not change the conclusion that these agreements are functionally equivalent in all substantive aspects. *Id.* at 7.

The Postal Service requests that this contract be included within the GEPS 1 product and be considered the baseline contract for determining functional equivalence for additional GEPS 1 contracts. *Id.*

II. Notice of Filing

The Commission establishes Docket No. CP2009–50 for consideration of matters related to the contract identified in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's contract is consistent with the policies of 39 U.S.C. 3632, 3622 or 3642. Comments are due no later than July 27, 2009. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned filings.

[4] The Postal Service states that some of the contracts generally provide that if all applicable reviews have not been completed at the time an older contract expires, the mailer must pay published prices until some alternative becomes available. It seeks approval for the instant agreement prior to expiration of the current agreement.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2009–50 for consideration of the issues raised in this docket.

2. Comments by interested persons in these proceedings are due no later than July 27, 2009.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as 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.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9–17605 Filed 7–22–09; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of information collection: Request for Medicare Payment; OMB 3220–0131.

Under Section 7(d) of the Railroad Retirement Act, the RRB administers the Medicare program for persons covered by the railroad retirement system. The collection obtains the information needed by Palmetto GBA, the Medicare carrier for railroad retirement beneficiaries, to pay claims for payments under Part B of the Medicare program. Authority for collecting the information is prescribed in 42 CFR 424.32.

The RRB currently utilizes Forms G–740S, Patient's Request for Medicare Payment, (along with Centers for Medicare and Medicaid Services Form CMS–1500) to secure the information necessary to pay Part B Medicare Claims. One response is completed for each claim. Completion is required to obtain a benefit. The RRB proposes minor, non-burden impacting editorial changes to RRB Form G–740S. The RRB estimates annual respondent burden associated with RRB Form G–740s as follows:

Estimated number of responses: 100.

Estimated completion time per response: 15 minutes.

Estimated annual burden hours: 25.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E9–17509 Filed 7–22–09; 8:45 am]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding two (2) Information Collection Requests (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

1. *Title and purpose of information collection:* Non-Resident Questionnaire; 3220–0145.

Under Public Laws 98–21 and 98–76, benefits under the Railroad Retirement Act payable to annuitants living outside the United States may be subject to taxation under United States income tax laws. Whether the social security equivalent and non-social security equivalent portions of Tier I, Tier II, vested dual benefit, or supplemental annuity payments are subject to tax withholding, and whether the same or different rates are applied to each payment, depends on a beneficiary's citizenship and legal residence status, and whether exemption under a tax treaty between the United States and the country in which the beneficiary is a legal resident has been claimed. To effect the tax withholding, the Railroad Retirement Board (RRB) needs to know a nonresidents citizenship and legal residence status.

To secure the required information, the RRB utilizes Form RRB–1001, Nonresident Questionnaire, as a supplement to an application as part of the initial application process, and as an independent vehicle for obtaining the needed information when an annuitant's residence or tax treaty status changes. Completion is voluntary. One response is requested of each respondent.

The RRB estimates that 1,300 Form RRB–1001's are completed annually. The completion time for Form RRB–1001 is estimated at 30 minutes.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (74 FR 17895 on April 17, 2009) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Nonresident Questionnaire.

Form(s) submitted: RRB–1001.

OMB Control Number: 3220–0145.

Expiration date of current OMB clearance: 7/31/2009.

Type of request: Extension without change of a currently approved collection.

Affected Public: Individuals or households.

Estimated annual number of respondents: 1,300.

Total annual responses: 1,300.

Total annual reporting hours: 650.

Abstract: Under the Railroad Retirement Act, the benefits payable to an annuitant living outside the United States may be subject to withholding under Public Laws 98–21 and 98–76. The form obtains the information needed to determine the amount to be withheld.

Changes Proposed: The RRB proposes no changes to Form RRB–1001.

2. *Title and Purpose of Information Collection:* Application for Survivor Insurance Annuities.

Under Section 2(d) of the Railroad Retirement Act (RRA), monthly survivor annuities are payable to surviving widow(er)s, parents, unmarried children, and in certain cases, divorced wives (husbands), mothers (fathers), remarried widow(er)s, and grandchildren of deceased railroad employees. The collection obtains the information required by the RRB to determine entitlement to and the amount of the annuity applied for.

The RRB currently utilizes Form(s) AA–17, Application for Widow(ers) Annuity, AA–17b Applications for Determination of Widow(er) Disability, AA–17cert, Application Summary and Certification, AA–18, Application for Mother's/Father's and Child's Annuity, AA–19, Application for Child's Annuity, AA–19a, Application for Determination of Child Disability, and AA–20, Application for Parent's Annuity to obtain the necessary information. One response is requested of each respondent. Completion is required to obtain benefits.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (min)	Burden (hrs)
AA–17 (without assistance)	100	47	78
AA–17b (total)	300		270
(with assistance)	280	40	187
(without assistance)	20	50	17
AA–17cert	3,000	20	1,000
AA–18 (without assistance)	12	47	9
AA–19 (without assistance)	9	47	7
AA–19a (total)	300		230
(with assistance)	285	45	214
(without assistance)	15	65	16
AA–20 (without assistance)	1	47	1
Total	4,022		1,529

Previous Requests for Comments: The RRB has already published the initial 60-day notice (74 FR 18408 on April 22, 2009) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Application for Survivor Insurance Annuities.

OMB Control Number: 3220–0030.

Form(s) submitted: AA–17, AA–17b, AA–17cert, AA–18, AA–19, AA–19a, AA–20.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or households.

Abstract: Under Section 2(d) of the Railroad Retirement Act, monthly survivor annuities are payable to surviving widow(er)s, parents, unmarried children, and in certain cases, divorced wives (husband), mothers (fathers), remarried widow(er)s and grandchildren of deceased railroad employees. The collection obtains information needed by the RRB for determining entitlement to and amount of the annuity applied for.

Changes Proposed: The RRB proposes no changes to the forms in the information collection.

The burden estimate for the ICR is as follows:

Estimated annual number of respondents: 4,022.

Total annual responses: 4,022.

Total annual reporting hours: 1,529.

Additional Information or Comments: Copies of the form and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312–751–3363) or *Charles.Mierzwa@rrb.gov*.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E9–17510 Filed 7–22–09; 8:45 am]

BILLING CODE 7905–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11813 and #11814]

Illinois Disaster #IL–00021

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Illinois dated 07/16/2009.

Incident: Severe storms and tornadoes.

Incident Period: 05/08/2009.

DATES: *Effective Date:* 07/16/2009.

Physical Loan Application Deadline Date: 09/14/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 04/16/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Jackson, Williamson.

Contiguous Counties:

Illinois: Franklin, Johnson, Perry, Pope, Randolph, Saline, Union.

Missouri: Perry.

The Interest Rates are:

Homeowners with Credit Available Elsewhere	4.875
Homeowners without Credit Available Elsewhere	2.437
Businesses with Credit Available Elsewhere	6.000
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	4.500
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11813 B and for economic injury is 11814 0.

The States which received an EIDL Declaration # are Illinois, Missouri.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: July 16, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–17518 Filed 7–22–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form N–4, SEC File No. 270–282, OMB Control No. 3235–0318.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The collection of information is entitled: ''Form N–4 (17 CFR 239.17b and 274.11c) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) registration statement of separate accounts organized as unit investment trusts.'' Form N–4 is the form used by insurance company separate accounts organized as unit investment trusts that offer variable annuity contracts to register as investment companies under the Investment Company Act of 1940 and/or to register their securities under the Securities Act of 1933. The primary purpose of the registration process is to provide disclosure of financial and other information to investors and potential investors for the purpose of evaluating an investment in a security. Form N–4 also permits separate accounts organized as unit investment trusts that offer variable annuity contracts to provide investors with a prospectus containing the information required in a registration statement prior to the sale or at the time of confirmation or delivery of the securities. The estimated annual number of respondents filing on Form N–4 is 104 for those filing initial registration statements and 1,360 for those filing post-effective amendments. The proposed frequency of response is annual. The estimate of the total annual reporting burden of the collection of information is approximately 278.5 hours per initial filing and 197.25 hours for a post-effective amendment, for a total of 297,224 hours ((104 initial registration statements × 278.5 hours) + (1,360 post-effective amendments × 197.25 hour)). Providing the information required by Form N–4 is mandatory. Responses will not be kept confidential. Estimates of the burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: July 17, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–17532 Filed 7–22–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

RDM Sports Group, Inc., et al.; Order of Suspension of Trading

July 20, 2009.

Order of Suspension of Trading

In the Matter of RDM Sports Group, Inc., Real Del Monte Mining Corp., Recoton Corp., Red Hot Concepts, Inc., RedHand International, Inc. (n/k/a African Diamond Co., Inc. or Coal Corp.), Redlaw Industries, Inc., Republic Resources, Inc., Reward Enterprises, Inc., Rhino Enterprises Group, Inc. (n/k/a Physicians Adult Daycare, Inc.), Ridgeview, Inc., Riverside Group, Inc., and Rocky Mount Undergarment Co., Inc.; Respondents.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of RDM Sports Group, Inc. because it has not filed any periodic reports since the period ended June 29, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Real Del Monte Mining Corp. because it has not filed any periodic reports since the period ended December 31, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Recoton Corp. because it has not filed any periodic reports since the period ended September 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Red Hot Concepts, Inc. because it has not filed any periodic reports since the period ended December 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of RedHand International, Inc. (n/k/a African Diamond Co., Inc. or Coal Corp.) because it has not filed any periodic reports since the period ended September 30, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Redlaw Industries, Inc. because it has not filed any periodic reports since the period ended December 31, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Republic Resources, Inc. because it has not filed any periodic reports since the period ended September 30, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Reward Enterprises, Inc. because it has not filed any periodic reports since the period ended March 31, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Rhino Enterprises Group, Inc. (n/k/a Physicians Adult Daycare, Inc.) because it has not filed any periodic reports since the period ended September 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ridgeview, Inc. because it has not filed any periodic reports since the period ended September 30, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Riverside Group, Inc. because it has not filed any periodic reports since the period ended September 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Rocky Mount Undergarment Co., Inc. because it has not filed any periodic reports since the period ended October 1, 1995.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed companies is suspended for the period from 9:30 a.m. EDT on July 20, 2009, through 11:59 p.m. EDT on July 31, 2009.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E9–17517 Filed 7–21–09; 11:15 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60324; File No. SR–NASDAQ–2009–068]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center

July 16, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 9, 2009, The NASDAQ Stock Market LLC (''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. Pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing.

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

NASDAQ proposes to modify pricing for NASDAQ members using the Nasdaq Market Center. NASDAQ will implement the proposed rule change with respect to trading activity during the month of July 2009. The text of the proposed rule change is available at *http://nasdaqomx.cchwallstreet.com/*, at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

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

In SR–NASDAQ–2009–067,[5] which was effective on July 1, 2009, NASDAQ established a new pricing tier for members that (1) add, route, and/or remove an average daily volume of more than 150 million shares of liquidity through the NASDAQ Market Center and (2) add an average daily volume of more than 35 million shares of liquidity to the NASDAQ Market Center. Members meeting these criteria will be charged a ''take'' rate of $0.0027 per share executed in the NASDAQ Market Center. Because the availability of the new pricing tier was not made known to market participants until late in the day on July 1, NASDAQ believes that it would be appropriate to exclude one trading day from the month of July when calculating a member's average daily volume for the month; thus, the month will be deemed to have 21 trading days, rather than the actual number of 22 days. Rather than automatically excluding July 1, however, NASDAQ proposes to exclude, for each member, the day in July on which it had its lowest trading volume at NASDAQ. NASDAQ believes that this approach will ensure that members will not be disadvantaged in efforts to attain the pricing tier by low trading volumes on July 1; however, if a member seeking to attain the pricing tier had higher volumes on July 1, NASDAQ would instead exclude another day on which that member had low volumes, to provide members with an equitable opportunity to attain the required volumes.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. In SR–NASDAQ–2009–067, NASDAQ significantly reduced the charge to access liquidity for market participants that both access and provide significant quantities of liquidity. Because NASDAQ announced this pricing change late in the day of July 1, 2009, NASDAQ is proposing to exclude one trading day from the month of July 2009 to ensure that members wishing to qualify for the price reduction have an equitable opportunity to reach the required volume levels.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2009–068 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–068. 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 inspection and copying 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 NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–068 and should be submitted on or before August 13, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–17531 Filed 7–22–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60323; File No. SR–NASDAQ–2009–067]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center

July 16, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2]

[5] SR–NASDAQ–2009–067 (July 1, 2009).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(a)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on July 1, 2009, The NASDAQ Stock Market LLC (''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. Pursuant to Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing.

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

NASDAQ proposes to modify pricing for NASDAQ members using the Nasdaq Market Center. NASDAQ will implement this rule change on July 1, 2009. The text of the proposed rule change is available at *http://nasdaqomx.cchwallstreet.com/,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing several changes to its transaction services pricing. First, NASDAQ is proposing to lower the per-share fee for executions in the NASDAQ Market Center in securities listed on NASDAQ or on the New York Stock Exchange. Specifically, NASDAQ is establishing a new pricing tier for members that are most active in the NASDAQ Market Center. Currently, NASDAQ's highest activity tier offers a rebate of $0.00295 for members that add an average daily volume of 125 million shares of liquidity to the NASDAQ Market Center, but NASDAQ charges $0.0030 per share for accessing liquidity.[5] Effective July 1, 2009, NASDAQ will establish a tier that requires members to meet two criteria: (1) Add, route, and/or remove an average daily volume of more than 150 million shares of liquidity through the NASDAQ Market Center and (2) add an average daily volume of more than 35 million shares of liquidity to the NASDAQ Market Center. Members meeting these criteria will be charged a ''take'' rate of $0.0027 per share executed in the NASDAQ Market Center.[6] The proposed rule change is designed to attract additional activity to the NASDAQ Market Center and to return to members the efficiencies that are gained when members increase their level of activity at NASDAQ markets. Ultimately, those efficiencies are returned to investors in the form of lower overall trading costs.

Second, NASDAQ is proposing to increase the fee it charges for Market-on-Close and Limit-on-Close orders executed in its closing cross, from $0.0005 per share executed to $0.0007 per share executed. NASDAQ will continue to charge no fee for other quotes and orders executed in the closing cross. NASDAQ has not modified this fee since it first began to operate as a national securities exchange in 2006, and believes that an increase is now warranted to provide for additional revenue to mitigate the impact of the significant reduction to fees to access liquidity otherwise provided by this filing. The fee remains far lower than the fees charged to access liquidity during regular market hours, which are themselves subject to reduction under this proposal.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. NASDAQ is significantly reducing the charge to access liquidity for market participants that both access and provide significant quantities of liquidity. This aspect of the proposal is aimed at recognizing the value to the market of its most active participants, and is similar to volume-based discounts that have long been in effect at NASDAQ and other trading venues. NASDAQ is also increasing its fee for Market-on-Close and Limit-on-Close orders to allocate a greater proportion of overall fees to members that benefit from using these valuable and popular order types. The overall impact of this fee increase is modest in comparison with the corresponding reductions.

The impact of the changes upon the net fees paid by a particular market participant will depend upon a number of variables, including its monthly volume, the order types it uses, and the prices of its quotes and orders (*i.e.,* its propensity to add or remove liquidity and to set the best bid and offer). NASDAQ notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. NASDAQ is reducing fees for many of its market participants to remain competitive with those charged by other venues and therefore strongly believes that its fees are reasonable and equitably allocated to those members that opt to direct orders to NASDAQ rather than competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [9] and subparagraph (f)(2) of Rule 19b–4 thereunder.[10] At any time within 60

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The fees and rebates described in this filing apply to securities priced at $1 or more per share. Fees and rebates applicable to lower-priced securities remain unchanged.

[6] Firms that add average daily volume of 125 million shares currently receive a rebate of $0.00295 per share, the highest rebate available to NASDAQ members. Members meeting that criteria will continue to receive that rebate regardless of whether they also qualify for the new ''take'' rate tier.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(a)(ii).

[10] 17 CFR 240.19b–4(f)(2).

days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2009–067 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–067. 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 inspection and copying 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 NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–067 and should be submitted on or before August 13, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–17530 Filed 7–22–09; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6707]

Culturally Significant Objects Imported for Exhibition Determinations: "The Moon: Houston, Tranquility Base here. The Eagle has landed."

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "The Moon: Houston, Tranquility Base here. The Eagle has landed," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Fine Arts, Houston, TX, in celebration of the fortieth anniversary of the first men walking on the moon, from on or about September 27, 2009, until on or about January 10, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202/453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 14, 2009.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–17547 Filed 7–22–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption from the Vehicle Theft Prevention Standard; Mercedes-Benz

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Mercedes-Benz USA, LLC.'s (MBUSA) petition for exemption of the SLK Class Line Chassis (SLK–Class) vehicle line in accordance with 49 CFR part 543, *Exemption from the Theft Prevention Standard*. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

DATES: The exemption granted by this notice is effective beginning with the 2010 model year.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, West Building, W43–302, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Proctor's phone number is (202) 366–0846. Her fax number is (202) 493–0073.

SUPPLEMENTARY INFORMATION: In a petition dated June 19, 2009, MBUSA requested exemption from the parts-marking requirements of the theft prevention standard (49 CFR part 541) for the SLK–Class Line Chassis vehicle line, beginning with the 2010 model year. The petition has been filed pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for an entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, MBUSA provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the SLK–Class Chassis vehicle line. MBUSA stated that all SLK–Class Chassis vehicles will be equipped with a passive, transponder-based electronic immobilizer device and a locking system as standard equipment beginning with MY 2010. Features of the antitheft device will include an electronic transmitter key, a passive immobilizer system (FBS III) which includes an electronic ignition starter switch control unit (EIS) and an engine control unit (ECU). MBUSA stated that the transmitter key, the electronic ignition starter switch control unit and the engine control unit will work collectively to perform the immobilizer function. The immobilizer will prevent the engine from running unless a valid key is used in the ignition switch. Immobilization is activated when the key is removed from the ignition switch, whether the doors are open or closed. Once activated, a valid, coded-key must be inserted into the ignition switch to disable immobilization and permit the vehicle to start.

The device also incorporates an access code-protected locking system. MBUSA stated that there is an encoded data exchange that occurs between the transmitter key and the central controller for the lock/unlock function of the locking system to be carried out. The unlocking signal from the remote key triggers a message to the vehicle's central electronic control unit using a permanent and rolling code. Once the codes are verified and matched, the locking system unlocks the doors, tailgate and fuel filler cover. MBUSA stated that the device will not incorporate a visible and audible alarm. MBUSA's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in 543.5 and the specific content requirements of 543.6.

In addressing the specific content requirements of 543.6, MBUSA provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device and to verify its ability to satisfactorily perform under extreme conditions, MBUSA conducted various tests based on its own specified standards. MBUSA provided a detailed list of the various tests conducted and believes that the device is reliable and durable since the device complied with its own specific test conditions.

MBUSA also compared the device proposed for its vehicle line with other devices which NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. MBUSA stated that its proposed device is functionally equivalent to the systems used in the C–Line Chassis, E–Line Chassis and S–Line Chassis vehicles which the agency has granted exemptions from the parts-marking requirements of the theft prevention standard. The theft rates using an average of three model years' data (2005–2007) are 1.4366, 0.7416 and 1.5975 respectively. MBUSA concluded that the antitheft device for its SLK–Class Chassis vehicle line is no less effective than those devices in lines for which NHTSA has already granted full exemption. The agency agrees that the device is substantially similar to devices in other vehicle lines for which the agency has already granted exemptions.

MBUSA informed the agency that the theft rate for the SLK–Class Chassis vehicle line decreased following installation of an immobilizer device in MY 2006. MBUSA stated that based on NHTSA's theft rates from 2005 to 2006, the average theft rate of the SLK–Class Chassis vehicles without the immobilizer was 1.6489 (CY 2005) and 0.1484 after installation of the immobilizer device (CY 2006). MBUSA concluded that the data indicates that the immobilizer was effective in contributing to the theft rate reduction for its SLK–Class Chassis vehicles. MBUSA also stated that its overall experience with other vehicles indicates that low theft rates can also be expected from other vehicles equipped with immobilizer devices as standard equipment. In its petition, MBUSA compared the theft rates of the SLK–Class Chassis to its competitive lines before and after installation of a standard equipment immobilizer device. The data showed that theft rates for the Honda S2000, BMW Z4, Audi TT and the Porsche Boxster vehicle lines also decreased following installation of a standard equipment immobilizer device.

Based on the evidence submitted by MBUSA, the agency believes that the antitheft device for the SLK–Class Chassis vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for an exemption from the parts-marking requirements of part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541. The agency finds that MBUSA has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information MBUSA provided about its device.

The agency concludes that the device will provide the four types of performance listed in § 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device. The agency agrees that the device is substantially similar to devices in other vehicle lines for which the agency has already granted exemptions. In addition, the theft rate has reduced since the installation of this device on the line.

For the foregoing reasons, the agency hereby grants in full MBUSA's petition for exemption for the vehicle line from the parts-marking requirements of 49 CFR part 541. The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If MBUSA decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, the line must be fully marked as required by 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if MBUSA wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E9–17557 Filed 7–22–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–FSC and Schedule P (Form 1120–FSC)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–FSC, U.S. Income Tax Return of a Foreign Sales Corporation, and Schedule P (Form 1120–FSC), Transfer Price or Commission.

DATES: Written comments should be received on or before September 21, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Evelyn J. Mack, (202) 622–7381, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Evelyn.J.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form 1120–FSC, U.S. Income Tax Return of a Foreign Sales Corporation, and Schedule P (Form 1120–FSC), Transfer Price or Commission.

OMB Number: 1545–0935.

Form Number: 1120–FSC and Schedule P (Form 1120–FSC).

Abstract: Form 1120–FSC is filed by foreign corporations that have elected to be FSCs or small FSCs. The FSC uses Form 1120–FSC to report income and expenses and to figure its tax liability. IRS uses Form 1120–FSC and Schedule P (Form 1120–FSC) to determine whether the FSC has correctly reported its income and expenses and figured its tax liability correctly.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 30,000.

Estimated Time Per Respondent: 165 hours, 37 minutes.

Estimated Total Annual Burden Hours: 1,088,250.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 15, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–17472 Filed 7–22–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–978–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, INTL–978–86, Information Reporting by Passport and Permanent Residence Applicants (§ 301.6039E–1(c)).

DATES: Written comments should be received on or before September 21, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Robert Kennedy at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3403, or through the Internet at *(Robert.J.Kennedy@irs.gov).*

SUPPLEMENTARY INFORMATION:

Title: Information Reporting by Passport and Permanent Residence Applicants.

OMB Number: 1545–1359.

Regulation Project Number: INTL–978–86.

Abstract: This regulation requires applicants for passports and permanent residence status to report certain tax information on the applications. The regulation is intended to enable the IRS to identify U.S. citizens who have not filed tax returns and permanent residents who have undisclosed sources of foreign income to notify such persons of their duty to file United States Tax returns.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents for Passport Applicants: 5,000,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours for Passport Applicants: 500,000 hours.

Estimated Number of Respondents for Permanent Residence Applicants: 500,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours for Permanent Residence Applicants: 250,000 hours.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 16, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–17486 Filed 7–22–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for TD 9054

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: This final regulation relates to the disclosure of returns and return information to a designee of the taxpayer. The regulation provides guidance to IRS employees responsible for disclosing returns and return information and to taxpayers who wish to designate a person or persons to whom returns and return information may be disclosed.

Currently, the IRS is soliciting comments concerning an existing final regulation, TD 9054, Disclosure of Returns and Return Information to Designee of Taxpayer.

DATES: Written comments should be received on or before September 21, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Robert Kennedy at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202)622–3403, or through the Internet at *(Robert.J.Kennedy@irs.gov).*

SUPPLEMENTARY INFORMATION:

Title: Disclosure of Returns and Return Information to Designee of Taxpayer.

OMB Number: 1545–1816.

Regulation Project Number: TD 9054

Abstract: Under section 6103(a), returns and return information are confidential unless disclosure is otherwise authorized by the Code. Section 6103(c), as amended in 1996 by section 1207 of the Taxpayer Bill of Rights II, Public Law 104–168 (110 Stat. 1452), authorizes the IRS to disclose returns and return information to such person or persons as the taxpayer may designate in a request for or consent to disclosure, or to any other person at the taxpayer's request to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. Disclosure is permitted subject to such requirements and conditions as may be prescribed by regulations. With the amendment in 1996, Congress eliminated the longstanding requirement that disclosures to designees of the taxpayer must be pursuant to the written request or consent of the taxpayer.

Current Actions: There is no change to this final regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Individuals or households, business or other not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 4,000.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 16, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–17480 Filed 7–22–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4970

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4970, Tax on Accumulation Distributions of Trusts.

DATES: Written comments should be received on or before September 21, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Evelyn J. Mack at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–7381, or through the Internet at *Evelyn.J.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tax on Accumulation Distribution of Trusts.

OMB Number: 1545–0192.

Form Number: 4970.

Abstract: Form 4970 is used by beneficiary of domestic or foreign trust to compute the tax adjustment attributable to an accumulation distribution. This form is used to verify whether the correct tax has been paid on the accumulation distribution.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 30,000.

Estimated Time per Response: 1 hour, 4 minutes.

Estimated Total Annual Burden Hours: 32,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 15, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–17474 Filed 7–22–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, August 19, 2009.

FOR FURTHER INFORMATION CONTACT: Marianne Ayala at 1–888–912–1227 or 954–423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, August 19, 2009, at 2:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Ayala. For more information please contact Mrs. Ayala at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: July 16, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–17457 Filed 7–22–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and the Territory of Puerto Rico)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, August 17, 2009.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227 or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 3 Taxpayer Advocacy Panel will be held Monday, August 17, 2009, at 12:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Sallie Chavez. For more information please contact Ms. Chavez at 1–888–912–1227 or 954–423–7979, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 16, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–17459 Filed 7–22–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, August 27, 2009.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Issue Committee will be held Thursday, August 27, 2009, at 8:30 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 16, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–17477 Filed 7–22–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Taxpayer Advocacy Panel Notice Improvement Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notice Improvement Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, August 20, 2009.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Notice Improvement Issue Committee will be held Thursday, August 20, 2009, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Sallie Chavez. For more information please contact Ms. Chavez at 1–888–912–1227 or 954–423–7979, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 16, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–17476 Filed 7–22–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Multi-Lingual Initiatives Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Multi-Lingual Initiatives Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, August 13, 2009.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Multi-Lingual Initiatives Issue Committee will be held Thursday, August 13, 2009, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marisa Knispel. For more information please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 16, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–17475 Filed 7–22–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, August 5, 2009.

FOR FURTHER INFORMATION CONTACT: Marianne Ayala at 1–888–912–1227 or 954–423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Issue Committee will be held Wednesday, August 5, 2009, at Noon, Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Ayala. For more information please contact Ms. Ayala at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 16, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–17447 Filed 7–22–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, August 20, 2009, Friday, August 21, 2009 and Saturday, August 22, 2009.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Thursday, August 20, 2009 from 12 p.m. to 4:30 p.m., Friday, August 21, 2009 from 8 a.m. to 4:30 p.m. and Saturday, August 22, 2009 from 8 to 12 p.m. Eastern Time in Atlanta, GA. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 16, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–17446 Filed 7–22–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be Wednesday, August 12, 2009.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Wednesday, August 12, 2009, at 1 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Y. Jenkins. For more information please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 16, 2009..

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–17445 Filed 7–22–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, August 18, 2009.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, August 18, 2009, at 10 a.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Y. Jenkins. For more information please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 16, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–17444 Filed 7–22–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, August 11, 2009.

FOR FURTHER INFORMATION CONTACT: Patricia Robb at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Tuesday, August 11, 2009, at 9:30 a.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Patricia Robb. For more information please contact Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 16, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–17483 Filed 7–22–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Arizona, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 6 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, August 4, 2009.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227 or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Tuesday, August 4, 2009, at 1 p.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Dave Coffman. For more information please contact Mr. Coffman at 1–888–912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site*: http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: July 16, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–17481 Filed 7–22–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, August 19, 2009.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 7 Taxpayer Advocacy Panel will be held Wednesday, August 19, 2009, at 2 p.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 16, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–17479 Filed 7–22–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, August 18, 2009.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, August 18, 2009, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 16, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–17460 Filed 7–22–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, August 25, 2009.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee will be held Tuesday, August 25, 2009, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 16, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–17463 Filed 7–22–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, August 11, 2009.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718 488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Issue Committee will be held Tuesday, August 11, 2009, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marisa Knispel. For more information please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org*.

The agenda will include various IRS Issues.

Dated: July 16, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–17465 Filed 7–22–09; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
July 23, 2009

Part II

Department of Education

34 CFR Parts 674, 682, and 685

Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

[Docket ID ED–2009–OPE–0004]

34 CFR Parts 674, 682, and 685

RIN 1840–AC98

Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Federal Perkins Loan (Perkins Loan) Program, Federal Family Education Loan (FFEL) Program, and William D. Ford Federal Direct Loan (Direct Loan) Program regulations. These proposed regulations are needed to implement provisions of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Opportunity Act of 2008 (HEOA).

DATES: We must receive your comments on or before August 24, 2009.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How To Use This Site.''
- *Postal Mail, Commercial Delivery, or Hand Delivery.*

If you mail or deliver your comments about these proposed regulations, address them to Pamela Moran, U.S. Department of Education, 1990 K Street, NW., room 8033, Washington, DC 20006–8502.

Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: Pamela Moran, U.S. Department of Education, 1990 K Street, NW., Room 8033, Washington, DC 20006–8502. Telephone: (202) 502–7732 or via the Internet at: *pamela.moran@ed.gov*.

If you use a telecommunications device for the deaf, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

As outlined in the section of this notice entitled ''*Negotiated Rulemaking,''* significant public participation, through six public hearings and three negotiated rulemaking sessions, has occurred in developing this notice of proposed rulemaking (NPRM). In accordance with the requirements of the Administrative Procedure Act, the Department invites you to submit comments regarding these proposed regulations on or before August 24, 2009. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866, including its overall requirements to assess both the costs and the benefits of the proposed regulations and feasible alternatives, and to make a reasoned determination that the benefits of these proposed regulations justify their costs. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

As noted elsewhere in this NPRM, two of the Department's negotiated rulemaking committees considered proposed revisions to 34 CFR 674.51, Special Definitions, in Subpart D of the Federal Perkins Loan Program regulations. Team I—Loans-Lender General Loan Issues, the negotiating committee responsible for regulations involving issues related to lender and general loan issues, negotiated the proposed definitions of ''substantial gainful activity'' and ''permanent and total disability.'' Team II—Loans-School-based Loans Issues negotiated all other changes in this section.

We have included all proposed changes to 34 CFR 674.51 in this NPRM as well as in the NPRM that we are publishing as a result of the negotiations of Team II—School-based Loans Issues. However, we ask that when submitting your comments on the proposed changes to 34 CFR 674.51, you submit any comments on the proposed definitions of ''substantial gainful activity'' and ''total and permanent disability'' in the docket (Docket ID ED–2009–OPE–0004) for this NPRM. Comments on all other provisions in this section should be submitted in the docket (Docket ID ED–2009–OPE–0003) for the Team II—School-based Loans Issues NPRM.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments in person in Room 8033, 1990 K Street, NW., Washington, DC between the hours of 8:30 a.m. and 4:00 p.m. Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Negotiated Rulemaking

Section 492 of the HEA requires the Secretary, before publishing any proposed regulations for programs authorized by title IV of the HEA, to obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from the public, including individuals and representatives of groups involved in the Federal student assistance programs, the Secretary must subject the proposed regulations to a negotiated rulemaking process. All proposed regulations that the Department publishes on which the negotiators reached consensus must conform to final agreements resulting from that process unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreements. Further information on the negotiated rulemaking process can be found at: *http://www.ed.gov/policy/highered/leg/hea08/index.html.*

On September 8, 2008, the Department published a notice in the **Federal Register** (73 FR 51990) announcing our intent to establish negotiated rulemaking committees to develop proposed regulations to (1) implement the changes made to the HEA by the Higher Education Opportunity Act of 2008 (HEOA, Pub. L. 110–315) that affected programs authorized under title IV of the HEA, and (2) possibly address the provision added to section 207(c) of the HEA by the HEOA regarding the prohibition on a teacher preparation program from which the State has withdrawn approval or terminated financial support from accepting or enrolling any student who received title IV aid.

On December 31, 2008, the Department published a notice in the **Federal Register** (73 FR 80314) announcing our intent to establish up to five negotiated rulemaking committees to prepare proposed regulations. The notice indicated that no requests from the public were received to negotiate the provision added to section 207(c) of the HEA. The Secretary determined it was not necessary to issue regulations in that area and therefore did not submit that issue to a negotiated rulemaking committee. The five committees that were established were: (1) A committee on lender and general loan issues (Loans Team I); (2) a committee on school-based loan issues (Loans Team II); (3) a committee on accreditation; (4) a committee on discretionary grant programs; and (5) a committee on general and non-loan programmatic issues. The notice informed the public that, due to the large volume of changes made by the HEOA that needed to be implemented through negotiated rulemaking, not all provisions would be addressed during this round of committee meetings. The notice requested nominations of individuals for membership on the committees who could represent the interests significantly affected by the proposed regulations and had demonstrated expertise or experience in the relevant subjects under negotiation.

Loans Team I met in three sessions to develop proposed regulations: Session 1, February 23–25, 2009; session 2, March 30–April 1, 2009; and session 3, May 4–6, 2009. These proposed regulations relate to the administration of the Federal student loan programs. This NPRM resulted primarily from the work of Loans Team I and, in a couple of instances where the subject matter of the proposed regulations overlapped, the work of Loans Team II.[1]

The Department developed a list of proposed regulatory provisions from advice and recommendations submitted by individuals and organizations as testimony to the Department in a series of six public hearings held on:

• September 19, 2008, at the Texas Christian University, in Fort Worth, Texas.

• September 29, 2008, at the University of Rhode Island, in Providence, Rhode Island.

• October 2, 2008, at the Pepperdine University, in Malibu, California.

• October 6, 2008, at Johnson C. Smith University, in Charlotte, North Carolina.

• October 8, 2008, at the U.S. Department of Education, in Washington, DC.

• October 15, 2008, at Cuyahoga Community College, in Warrensville Heights, Ohio.

In addition, the Department accepted written comments on possible regulations submitted directly to the Department by interested parties and organizations. A summary of all comments received orally and in writing is posted as background material in the docket for this NPRM. Transcripts of the regional meetings can be accessed at: *http://www.ed.gov/policy/highered/leg/hea08/index.html.* The Department also identified issues for discussion and negotiation.

At its first meeting, the Loans Team I Committee reached agreement on its protocols and proposed agenda. The agenda included the statutory changes identified for the Committee's consideration. In addition, at the second meeting of the Committee, the negotiators agreed by consensus to add two additional agenda items affecting the determination of eligibility and calculation of borrower payment amounts under the income-based repayment plan in the FFEL and Direct Loan programs that becomes available to borrowers on July 1, 2009.

The Loans Team I Committee members (and the organizations they represented) included the following:

• *Representing students:* Jonathan S. Sachs, primary, and Adam Briones, alternate (U.S. Public Interest Research Group; United States Student Association; University of Maryland Student Government Association; The Greenlining Institute);

• *Representing legal assistance organizations that represent students and borrowers:* Deanne Loonin, primary, and Lauren Saunders, alternate (National Consumer Law Center);

• *Representing 2-year public institutions:* George Chin, primary (American Association of State Colleges and Universities);

• *Representing 4-year public institutions:* Carrie Steere-Salazar, primary, and Kris Wright, alternate (Association of American Medical Colleges; National Direct Loan Coalition);

• *Representing private, nonprofit institutions of higher education:* Heather McDonnell, primary, and Bonnie Lee Behm, alternate (National Association of Student Financial Aid Administrators; Pennsylvania Association of Student Financial Aid Administrators);

• *Representing private, for-profit institutions of higher education:* Thomas A. Babel, primary, and William Leach, alternate (DeVry University; Career College Association);

• *Representing guaranty agencies:* Mary Mowdy, primary, and Dick George, alternate (Oklahoma State Regents for Higher Education; National Council of Higher Education Loan Programs (NCHELP));

• *Representing for-profit lenders:* Brenda Dillon, primary, and Tom Levandowski, alternate (NCHELP; Consumer Bankers Association);

• *Representing not-for-profit lenders:* Cheryl Hughes, primary, and Scott Giles, alternate (NCHELP; Education Finance Council (EFC));

• *Representing credit unions:* Michael Kim, primary, and Rhonda Summerbell, alternate (Coalition of the following credit unions: University Federal Credit Union, USC Credit Union, UW Credit Union, Navy Federal Credit Union, Notre Dame Federal Credit Union);

• *Representing lender servicers:* Diane Freundel, primary, and Wanda Hall, alternate (EFC; NCHELP; Student Loan Servicing Alliance); and

• *Representing the U.S. Department of Education:* Pam Moran.

The Committee's protocols provided that the committee would operate by consensus, meaning there must be no dissent by any member in order for the committee to be considered to have reached agreement. Under the protocols, if the Committee reaches final consensus on all issues, the Department will use the consensus-based language in the proposed regulations and committee members and the

[1] As discussed elsewhere in this preamble, Loans Team II was responsible for negotiating the following provisions, which appear in this NPRM: 34 CFR 674.51, definitions of the terms *child with a disability, community defender organizations, educational service agency, faculty member at a Tribal College or University, Federal public defender organization, firefighter, infant or toddler with a disability, librarian with a master's degree, speech language pathologist with a master's degree,* and *Tribal College or University.*

organizations whom they represent will refrain from commenting negatively on the package, except where provided for in the agreed upon protocols.

During its meetings, the Loans Team I Committee reviewed and discussed drafts of the proposed regulations. At the final meeting in May 2009, the Committee reached consensus on the proposed regulations in this document, with the exception of those definitions included in 34 CFR 674.51 that were negotiated by Loans Team II, as discussed elsewhere in this notice.

In addition to the proposed regulations considered by Loans Team I, this NPRM also includes some additional definitions that appear in 34 CFR 674.51 (Special Definitions). Only the definitions of ''substantial gainful activity'' and ''total and permanent disability'' were included in the proposed regulations agreed to by Loans Team I. The remaining definitions in this section were added or amended as part of the negotiations of Loans Team II, but are being included here to provide context for the changes to this section.

Team I and Team II were advised that, to ensure transparency and ease of use for public commenters, the Department would propose the entirety of 34 CFR part 601 in a single NPRM. Given Team I's consensus, which included consensus on the definitions of the terms *lender* and *private education loan* in proposed § 601.2 as well as the requirements in § 601.40, Team I members were advised that they may not comment negatively on the provisions they negotiated notwithstanding that they would appear in Team II's NPRM. Likewise, Team II members were advised that, while they may not comment negatively on the majority of proposed 34 CFR part 601 as a result of their consensus agreement, they may comment on the definitions of *lender* and *private education loan* as well as proposed § 601.40.

With regard to the proposed changes to § 674.51, the Department determined that it would be helpful for the public to be able to view all proposed changes to this special definitions section for the Perkins Program in both Team I's NPRM and Team II's NPRM. Team I and Team II were advised that the proposed changes to § 674.51 would appear in their entirety in both documents to provide context and enhance understanding of both committees' proposed changes to this section. Each team was advised by its respective Federal negotiator that its consensus agreement did not apply to the definitions negotiated by the other team and that any comments they may have on the definitions negotiated by the other team should be submitted in response to the NPRM published as a result of the other team's negotiations.

More information on the work of Team I can be found at *http://www.ed.gov/policy/highered/reg/hearulemaking/2009/loans-lender.html* and more information on the work of Team II can be found at *http://www.ed.gov/policy/highered/reg/hearulemaking/2009/loans-school-based*.

Summary of Proposed Changes

These proposed regulations would implement general and lender-based loan provisions of the HEA, as amended by the HEOA, that include:

- A revised definition of ''totally and permanently disabled'' for purposes of discharging a borrower's title IV loans and a revised disability discharge process;
- Expansion of the conditions under which a borrower with only FFEL loans may consolidate those loans into a Direct Consolidation Loan;
- Additional disclosures for FFEL and Direct consolidation loan applicants, and a new requirement for FFEL Consolidation loan lenders to notify borrowers who have applied for a Consolidation loan that they may cancel the loan within a specified time period;
- An additional method for granting in-school deferments on FFEL or Direct Loan program loans, and a new notification requirement for FFEL lenders when granting a borrower a deferment on an unsubsidized loan;
- New in-school deferment provisions for PLUS loan borrowers and related changes to administrative forbearance provisions;
- Clarification of PLUS loan interest capitalization provisions;
- A revised definition of ''partial financial hardship'' for purposes of determining eligibility for the income-based repayment (IBR) plan in the FFEL and Direct Loan programs, and revised regulations for determining the IBR payment amount;
- An expansion of the eligibility requirements for teacher loan forgiveness in the FFEL and Direct Loan programs to allow borrowers who perform qualifying teaching service at an eligible educational service agency to receive forgiveness;
- A revision of the regulations related to loan rehabilitation to provide that a FFEL or Direct Loan borrower may rehabilitate a defaulted loan only once;
- Revisions to the regulations governing prohibited inducements by guaranty agencies and lenders in the FFEL Program;
- Revised and expanded disclosure requirements for FFEL Program lenders at the time of or prior to loan disbursement and during the loan repayment period;
- An expansion of the information that must be provided to a FFEL borrower when the transfer, sale, or assignment of the borrower's loan results in a change in the identity of the party to whom payments and communications must be sent;
- Revised forbearance disclosure requirements related to interest capitalization for FFEL lenders;
- Revised regulations related to the audit requirements for a FFEL school lender or an eligible lender trustee that originates FFEL loans for a school or school-affiliated organization;
- A new requirement for guaranty agencies to work with the schools that they serve to develop and make available to students and their families consumer education materials related to budgeting and financial management;
- A new requirement for guaranty agencies to make available certain financial and economic education materials to borrowers who have rehabilitated defaulted loans;
- Revised consumer credit reporting requirements for guaranty agencies and prior loan holders after a borrower has rehabilitated a defaulted loan; and
- Revised requirements related to the notifications that guaranty agencies must send to borrowers with defaulted loans.

Significant Proposed Regulations

We group major issues according to subject, with appropriate sections of the proposed regulations referenced in parentheses, beginning with issues that apply to all three title IV loan programs, followed by issues that apply to the FFEL and Direct Loan programs, and then issues that apply only to the FFEL Program. We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Total and Permanent Disability Loan Discharges

Definitions (§§ 674.51 and 682.200(b))

Statute: Prior to the enactment of the HEOA, the HEA provided that a Perkins Loan, FFEL, or Direct Loan could be discharged if the borrower had a total and permanent disability as determined in accordance with the regulations of the Secretary. The HEOA amended sections 437(a) and 464(c)(1)(F) of the HEA to provide for the discharge of a borrower's title IV loans if the borrower becomes totally and permanently disabled in accordance with the Secretary's regulations, or if the borrower is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, has lasted for a continuous period of not less than 60 months, or can be expected to last for a continuous period of not less than 60 months.

The HEOA further amended sections 437(a) and 464(c)(1)(F) of the HEA by establishing a separate total and permanent disability standard for certain veterans. Specifically, the HEA now provides that a borrower who is a military veteran is considered totally and permanently disabled for title IV loan discharge purposes if the borrower provides documentation showing that he or she has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability. A borrower who provides such documentation is not required to present additional documentation for purposes of establishing eligibility for loan discharge based on total and permanent disability.

Current Regulations: The current regulations governing the Perkins, FFEL, and Direct Loan programs define ''total and permanent disability'' as the condition of an individual who is unable to work and earn money because of an injury or illness that is expected to continue indefinitely or result in death. Current regulations do not define ''substantial gainful activity.''

Proposed Regulations: Proposed §§ 674.51(aa) and 682.200(b) would define total and permanent disability as the condition of an individual who: (1) Is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, has lasted for a continuous period of not less than 60 months, or can be expected to last for a continuous period of not less than 60 months; or (2) is a veteran and who has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability.

The proposed regulations would also add a definition of substantial gainful activity in §§ 674.51(x) and 682.200(b). The proposed definition would specify that substantial gainful activity means a level of work performed for pay or profit that involves doing significant physical or mental activities, or both.

Reasons: The proposed regulations reflect the new statutory definition of totally and permanently disabled. Although the HEA provides that a borrower may be considered totally and permanently disabled either in accordance with the Secretary's regulations or under the standards specified in sections 437(a) and 464(c)(1)(F) of the HEA as described above, the Department has decided to use only the new specific statutory substantial gainful activity standard. The Department has decided not to add any additional regulatory standards. Therefore, the proposed revised definition of total and permanent disability reflects only the statutory total and permanent disability standards that were added to the HEA by the HEOA.

The proposed definition of substantial gainful activity is based, in part, on the definition of substantial gainful activity that the Social Security Administration (SSA) uses in connection with determining an individual's eligibility for Social Security disability benefits. However, the Department's proposed definition relies solely on a medical determination and, unlike SSA's definition, does not require a physician to consider whether a borrower can earn more than a specified amount. The Department does not believe that, for purposes of the discharge, it is necessary for a physician to evaluate whether a borrower is able to earn more than a specified amount each year.

Some of the non-Federal negotiators asked for clarification of the reference to work performed ''for profit'' in the proposed definition of substantial gainful activity. They expressed concerns that the term ''profit'' would include income from sources other than employment. The Department explained that the reference to work performed for profit was borrowed from the SSA's definition of substantial gainful activity and is intended to cover self-employed individuals who are not paid by an employer. The Department further noted that the proposed definition of substantial gainful activity refers to ''work'' performed for pay or profit. The term ''work performed for profit'' does not refer to income from sources other than employment (including self employment) and non-employment income will not be considered when determining whether a borrower is capable of substantial gainful activity.

Discharge Process for Borrowers Other Than Certain Veterans (§§ 674.61(b), 682.402(c)(2) Through (c)(7), and 685.213(b))

Statute: Sections 437(a)(1) and 464(k) of the HEA, as amended by the HEOA, provide for the discharge of a borrower's title IV loans if the borrower becomes totally and permanently disabled. Those provisions also authorize the Secretary to promulgate regulations to reinstate a borrower's obligation to repay a loan that was discharged due to disability if, after the discharge, the borrower receives another title IV loan or has earned income in excess of the poverty line, or under other circumstances that the Secretary determines to be necessary.

Current Regulations: Under current regulations, a borrower applies for a total and permanent disability discharge of a title IV loan by submitting a completed loan discharge application that has been certified by a physician to the borrower's loan holder. For Perkins Loans, the loan holder is the Perkins school lender. For FFEL loans, the holder is the lender or, if a default claim has been paid on the loan, the guaranty agency. For Direct Loans and for Perkins or FFEL loans that have been assigned to the Secretary, the loan holder is the Department.

For a Perkins loan held by a school, if the loan holder determines that the information provided on the discharge application supports the conclusion that the borrower is totally and permanently disabled in accordance with the current regulatory definition, the loan holder assigns the loan to the Secretary.

For a FFEL loan that is held by a lender, if the lender determines that the discharge application supports the conclusion that the borrower is totally and permanently disabled, the lender files a disability discharge claim with the guaranty agency. The guaranty agency reviews the borrower's application, and if the guaranty agency concurs with the lender's preliminary determination of discharge eligibility, it pays the lender's discharge claim and assigns the loan to the Secretary.

Once the loan has been assigned, the Secretary reviews the loan discharge application and makes an initial determination of the borrower's eligibility for discharge. For Direct Loans or for Perkins or FFEL loans that were already held by the Secretary, the Secretary's review is the initial review of the borrower's loan discharge application.

If the Secretary concludes that the information on the discharge application does not support the conclusion that the borrower is eligible for a total and permanent disability discharge, the Secretary notifies the borrower that the discharge request has been denied and that the loan is due and payable to the Secretary under the terms and conditions of the promissory note.

If the Secretary determines that the borrower appears to meet the eligibility requirements for a total and permanent disability discharge, the Secretary grants the borrower a conditional discharge for a period of up to three years, beginning on the date the physician certified the borrower's discharge application. During the conditional discharge period, the borrower is not required to make any payments on the loan and no interest accrues on the loan. The Secretary grants a final discharge if, during and at the end of the conditional discharge period, the borrower: (1) Does not receive a new title IV loan or a Teacher Education Assistance for College and Higher Education (TEACH) Grant; (2) does not have earnings from employment that exceed the poverty line amount for a family of two; and (3) ensures that the full amount of any title IV loan disbursement made after the physician's certification date for a loan the borrower received prior to the physician's certification date is returned to the holder within 120 days of the disbursement date. After granting a final discharge of a loan, the Secretary returns to the sender any payments on the loan that were received after the physician's certification date.

If at any time during or at the end of the conditional discharge period the borrower fails to meet one of the requirements for a final discharge, the Secretary ends the conditional discharge period and resumes collection activity on the loan. The borrower is not charged interest for the period during which the loan was conditionally discharged.

Proposed Regulations: The proposed regulations would establish two separate loan discharge processes, one for veterans who have been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability, and a different process (the general discharge process) for borrowers who have been determined (as certified by a physician) to be unable to engage in substantial gainful activity due to a physical or mental impairment that can be expected to result in death or that has lasted for a continuous period of not less than 60 months, or that can be expected to last for a continuous period of not less than 60 months. The discharge process for veterans who have been determined to be unemployable due to a service-connected disability is discussed below under the heading "*Discharge Process for Veterans Who Have Been Determined to be Unemployable Due to a Service-Connected Disability.*" This section covers the general discharge process for other borrowers.

The general discharge process included in these proposed regulations is similar in some respects to the discharge process under the current regulations. However, instead of using the current conditional discharge process, the Secretary would discharge a borrower's obligation to repay a loan after determining that the borrower meets the discharge eligibility requirements. The Secretary would then reinstate the borrower's obligation to repay the loan if the borrower fails to meet certain requirements during a post-discharge monitoring period.

Under the proposed regulations, a borrower who wishes to apply for a total and permanent disability loan discharge would submit to his or her loan holders a completed loan discharge application that has been certified by a physician. The loan holder review process would be the same as under the current regulations. If the loan holder and, if applicable, the guaranty agency determine that the information provided on the discharge application supports the conclusion that the borrower is totally and permanently disabled in accordance with the regulatory definition, the loan would be assigned to the Secretary, as under the current regulations. The Secretary would then review the loan discharge application and make a determination of the borrower's eligibility for discharge. As under the current regulations, the Secretary's review would be the initial review of the borrower's discharge application in the case of a Direct Loan or a Perkins or FFEL loan that is already held by the Secretary.

If the Secretary concludes that the information on the discharge application does not support the conclusion that the borrower is eligible for a total and permanent disability loan discharge, the Secretary would notify the borrower that the discharge request has been denied and that the loan is due and payable to the Secretary under the terms and conditions of the promissory note.

Under the proposed regulations, if the Secretary determines that the borrower meets the eligibility requirements for a total and permanent disability discharge, the Secretary would grant a final discharge and return to the sender any payments on the loan that were received after the physician's certification date. At the same time, the Secretary would notify the borrower that the borrower's obligation to repay the loan will be reinstated if, within three years from the discharge date, the borrower: (1) Receives a new title IV loan or TEACH Grant; (2) has earnings from employment that exceed the poverty line amount for a family of two; or (3) fails to ensure that the full amount of any title IV loan or TEACH Grant disbursement made after the discharge date for a loan or TEACH Grant the borrower received prior to the discharge date is returned to the holder or to the Secretary, as applicable, within 120 days of the disbursement date. If a borrower's obligation to repay a loan is reinstated, the borrower is not charged interest for the period from the discharge date to the date of the reinstatement.

The proposed regulations would also provide that, if a borrower received a title IV loan or TEACH Grant before the date the physician certified the loan discharge application and a disbursement of that loan or grant is made after the date of the physician's certification but before the date the Secretary grants the discharge, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

Finally, the proposed regulations would provide that if a borrower's obligation to repay a loan is reinstated after a total and permanent disability discharge, the Secretary will notify the borrower of the reinstatement. The notification will provide the borrower with the reason or reasons for the reinstatement, an explanation that the first loan payment following reinstatement will be due no earlier than 60 days after the date of the notification, and information on how the borrower may contact the Department if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

Reasons: The proposed regulations reflect the statutory provisions that authorize the Secretary to reinstate a borrower's obligation to repay a previously discharged loan under certain conditions. Under the proposed regulations, the general discharge process would, in many respects, be similar to the discharge process under the current regulations. The non-Federal negotiators were generally supportive of this approach. The most significant difference between the proposed and current regulations is that the current conditional discharge process will be replaced by a process in which the Secretary discharges the borrower's obligation to repay the loan after determining that the borrower is totally and permanently disabled, but reinstates the borrower's repayment obligation if the borrower fails to meet certain requirements during a 3-year post-discharge monitoring period. The proposed 3-year post-discharge monitoring period is consistent with the current 3-year conditional discharge period, and the conditions that would result in the reinstatement of a borrower's obligation to repay a previously discharged loan are essentially the same as the conditions that, under the current regulations, result in a conditionally discharged loan being returned to repayment status.

The Department initially proposed a 5-year post-discharge monitoring period and also proposed that upon the reinstatement of a borrower's obligation to repay a previously discharged loan for failure to meet one of the post-discharge requirements, the borrower would be charged interest for the period from the date of discharge to the reinstatement date. The non-Federal negotiators did not support these proposals. Some negotiators questioned the basis for having a 5-year post-discharge monitoring period, since under current regulations the conditional discharge period is only three years. With regard to the Department's initial proposal to charge interest from the discharge date if a borrower's obligation to repay a discharged loan is reinstated, the non-Federal negotiators noted that, under current regulations, a borrower is not charged interest from the conditional discharge date if a conditionally discharged loan is returned to repayment status before the end of the conditional discharge period. After further consideration of the non-Federal negotiators' concerns, the Department revised the proposed regulations by changing the post-discharge monitoring period from five years to three years, and by removing the provision that would have required a borrower to pay interest from the date of discharge if the borrower's repayment obligation is reinstated.

The Department also initially proposed that one of the conditions for reinstatement of a borrower's obligation to repay a previously discharged loan would be if the borrower had annual earnings from employment during the post-discharge monitoring period that exceeded the poverty guideline amount for the borrower's family size. Current regulations provide that a conditionally discharged loan is returned to repayment status if the borrower has employment earnings during the conditional discharge period that exceed the poverty guideline amount for a family of two, regardless of the borrower's actual family size. The Department believed that the proposed change to a standard based on the borrower's actual family size would be more equitable, as it would allow a borrower with a family size greater than two to have a higher level of employment earnings during the post-discharge monitoring period without being subject to reinstatement of the borrower's repayment obligation on the discharged loan. However, some non-Federal negotiators expressed concerns that the proposed change to an employment earnings standard based on actual family size would be confusing to borrowers, since a borrower's family size could change during the post-discharge monitoring period. These non-Federal negotiators believed that it would be preferable to maintain the current standard based on a family size of two, so that a borrower would not need to monitor changes in the employment earnings limit if the borrower's family size increased or decreased during the post-discharge monitoring period. The Department agreed.

The Department's initial proposed regulations did not include a provision comparable to the provision in current regulations that addresses the treatment of a title IV loan disbursement made during the conditional discharge period for a loan the borrower received prior to the physician's certification date. Under the current regulations, a borrower is ineligible for a final discharge unless the borrower ensures that such a disbursement is returned to the loan holder within 120 days of the disbursement date. The Department initially did not include a similar provision in the proposed regulations because the current regulatory provision is tied to the conditional discharge period, which would be eliminated under the proposed regulations. Under the proposed regulations, the post-discharge monitoring period begins on a later date than the current conditional discharge period, and a disbursement of a title IV loan received prior to the physician's certification date is less likely to occur. However, some non-Federal negotiators noted that this situation could still arise under the proposed regulations and recommended that the proposed regulations be revised to include a provision comparable to the provision in the current regulations. The Department agreed. The proposed regulations would provide that a borrower's obligation to repay a discharged loan will not be reinstated if the borrower ensures that a title IV loan or TEACH Grant disbursement made during the post-discharge monitoring period for a loan or TEACH Grant received prior to the discharge date is returned to the loan holder within 120 days of the disbursement date. The proposed regulations would include TEACH Grant disbursements in this provision because a condition for receiving a TEACH Grant is that the student must agree to complete a teaching service obligation. A student who accepts a TEACH Grant presumably would not be totally and permanently disabled, as this condition would preclude the student from completing the TEACH Grant service obligation.

The Committee also discussed the possible effect on a borrower's discharge request of a disbursement being made during the period between the physician's certification date and the discharge date for a loan or TEACH Grant received prior to the physician's certification date. This issue does not arise under the current regulations because of the structure of the conditional discharge period. Based on these discussions, the Department revised the proposed regulations to provide that if a disbursement of a title IV loan or TEACH Grant is made during the period between the physician's certification date and the discharge date, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the disbursement is returned to the loan holder or the Secretary, as applicable.

Finally, some of the non-Federal negotiators expressed concern that the Department's initial proposal did not explicitly provide that the Secretary would notify a borrower who fails to meet one of the eligibility requirements during the post-discharge monitoring period that the borrower's obligation to repay the discharged loan has been reinstated. The Department's regulations generally do not specifically address the actions of the Department, but the non-Federal negotiators strongly urged the Department to include such a provision in the proposed regulations. These negotiators also requested that the proposed regulations specify that the Secretary's notification of reinstatement will tell borrowers the reason for the reinstatement and provide the borrower with information on how to contact an appropriate office or official if they have questions or believe that the reinstatement was based on incorrect information. The Department agreed to add to the proposed regulations a provision stating that the Secretary will notify a borrower that his or her obligation to repay a previously discharged loan has been reinstated. The proposed regulations also provide that the notification of reinstatement will include the reason or reasons for the reinstatement, an explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement, and information on how the borrower may contact the Department if he or she has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

The Department also agreed to take steps to further improve its notices to borrowers who have applied for or received disability discharges under the proposed regulations to more clearly explain the discharge process and the borrower's rights and responsibilities with respect to that process. In particular, the Department intends to take steps to develop a process to acknowledge receipt of a borrower's submission of a request that the Department reconsider its determination and to provide borrowers with information on the Secretary's process for considering such requests and how the borrower will be made aware of the Secretary's decision.

Discharge Process for Veterans Who Have Been Determined To Be Unemployable Due to a Service-Connected Disability (§§ 674.61(c), 682.402(c)(8), and 685.213(c))

Statute: The HEOA added sections 437(a)(2) and 464(c)(1)(F)(iv) to the HEA to provide that a borrower who has been determined by the Secretary of Veterans Affairs (VA) to be unemployable due to a service-connected disability and who provides documentation of that determination to the Secretary is to be considered totally and permanently disabled for the purpose of discharging the borrower's title IV loans. Section 437(a)(2) of the HEA further specifies that a borrower who provides such documentation may not be required to present additional documentation for the purpose of determining eligibility for a total and permanent disability loan discharge.

Proposed Regulations: The proposed regulations would establish a separate discharge application process for borrowers who provide documentation showing that they have been determined by the VA to be unemployable due to a service-connected disability. Under the proposed regulations, the borrower would submit to the loan holder a loan discharge application accompanied by documentation from the VA showing that the borrower has been determined to be unemployable due to a service-connected disability. The borrower would not be required to have a physician certify the loan discharge application, and would not be required to provide any additional documentation related to the borrower's service-connected disability.

If the documentation from the VA does not indicate that the borrower has been determined to be unemployable due to a service-connected disability, the loan holder would deny the borrower's discharge request. However, if the documentation indicates that the borrower may be totally and permanently disabled under the general definition of a total and permanent disability, the loan holder would inform the borrower that he or she may reapply for a loan discharge under the general procedures for a disability discharge.

If the documentation indicates that the VA has determined that a Perkins Loan borrower is unemployable due to a service-connected disability, the Perkins school loan holder would submit a copy of the borrower's discharge application and supporting documentation to the Secretary, and would notify the borrower that the discharge request has been referred to the Secretary for a determination of eligibility. In the case of a FFEL loan that is held by a lender, the lender would refer the borrower's application to the guaranty agency and file a disability discharge claim with the agency. If the guaranty agency agrees that the VA documentation shows the borrower has been determined to be unemployable due to a service-connected disability, the guaranty agency would refer the borrower's application to the Secretary. In contrast to the general discharge procedures, the borrower's loan would not be assigned to the Secretary.

Under the proposed regulations, if the Secretary determines that the borrower meets the total and permanent disability standard based on a determination by the VA that the borrower is unemployable due to a service-connected disability, the Secretary would notify the Perkins Loan school or guaranty agency that the borrower is eligible for a total and permanent disability loan discharge. The Perkins Loan school would then discharge the borrower's loan and return to the sender any payments on the loan that were received on or after the effective date of the VA's determination that the borrower is unemployable due to a service-connected disability. The guaranty agency would pay the lender's disability discharge claim and notify the borrower that the borrower's obligation to make any further payments on the loan has been discharged. Upon receipt of the claim payment from the guaranty agency, the lender would return any payments on the loan received on or after the effective date of the VA's determination to the person who made the payments. There would be no post-discharge monitoring period for a borrower who receives a total and permanent disability discharge through this process, and the borrower would not be subject to reinstatement of his or her obligation to repay the discharged loan based on post-discharge employment earnings or receipt of a new title IV loan or TEACH Grant. The same discharge process would apply to borrowers with Direct Loans or Perkins or FFEL loans that are held by the Department.

If the Secretary determines, based on a review of the documentation from the VA, that the borrower does not meet the standard for a disability discharge, the Secretary would notify the Perkins Loan school or guaranty agency of that decision, and collection on the loan would resume.

Reasons: The proposed regulations are necessary to implement the statutory total and permanent disability discharge standard for certain veterans.

Borrower Eligibility for New Title IV Loans After a Prior Total and Permanent Disability Discharge (§§ 674.9(g), 682.201(a), and 685.200(a))

Statute: The HEA does not specify eligibility requirements for borrowers who apply for a new title IV loan after a prior loan has been discharged due to a total and permanent disability.

Current Regulations: Under the current regulations in the Perkins, FFEL, and Direct Loan programs, a borrower whose prior title IV loan was discharged due to a total and permanent disability must meet certain requirements before receiving a new loan. Specifically, the borrower must: (1) Provide a certification from a physician that the borrower is able to engage in substantial gainful activity; and (2) sign a statement acknowledging that any new loan the borrower receives cannot be discharged in the future based on any present condition, unless that condition substantially deteriorates. In addition, if a borrower's prior loan is in a conditional discharge status, the conditionally discharged loan must be returned to repayment status before the borrower may receive a new loan.

Proposed Regulations: The proposed regulations would retain the current requirement that, to receive a new title IV loan after a disability discharge, a borrower would have to obtain a certification from a physician that the borrower is able to engage in substantial gainful activity, and acknowledge that the new loan may not be discharged in the future based on any present condition unless the condition substantially deteriorates. The proposed regulations would also provide that if a borrower receives a new title IV loan within three years of the date that a prior title IV loan or TEACH Grant service obligation was discharged on the basis of the borrower's disability, the borrower would be required to resume repayment on the previously discharged loan or acknowledge that he or she is again subject to the terms of the TEACH Grant agreement to serve before receiving the new loan.

The current total and permanent disability discharge regulations will continue to apply to any borrower whose loan discharge application is received prior to the effective date of any final regulations published as a result of this NPRM. Therefore, the proposed regulations would retain the current provision that requires a loan in a conditional discharge status to be returned to repayment status before a borrower who received a conditional discharge may receive a new loan.

Reasons: The changes to the borrower eligibility regulations are conforming changes that are needed to effectively implement the new total and permanent disability loan discharge process.

Consolidation Loans (§§ 682.201(e), 682.206(f) and 685.220(d))

Statute: The HEOA amended sections 428C(a)(3)(B)(i)(V) and 428C(b)(5) of the HEA to provide that FFEL loan borrowers may consolidate their loans into a Direct Consolidation Loan for the purpose of using the no interest accrual benefit for active duty service members, which is only available in the Direct Loan Program. This benefit provides that interest will not accrue on the Direct Loan of an eligible military borrower for a period of not more than 60 months while the borrower is serving on active duty during a war or other military operation or national emergency, or performing qualifying National Guard duty during a war or other military operation or national emergency, and is serving in an area of hostilities in which service qualifies for special pay under section 310 of title 37 of the United States Code.

The HEOA also amended section 433 of the HEA by adding a separate set of disclosures for Consolidation loan borrowers. At the time a lender provides a Consolidation loan application to a prospective borrower, it must provide specific information about Consolidation loans. In particular, a lender must inform the borrower that by applying for a Consolidation loan, the borrower is not obligated to take the loan.

Current regulations: Section 682.201 of the regulations establishes the eligibility requirements for borrowers seeking a FFEL Consolidation loan. Section 685.220 of the current regulations establishes the eligibility requirements for a borrower seeking a Direct Consolidation Loan. Current regulations permit borrowers who have only FFEL loans to consolidate those loans into a Direct Consolidation Loan to obtain an income contingent repayment plan or to qualify for the Public Service Loan Forgiveness Program. In addition, FFEL borrowers whose loans have been submitted to the guaranty agency for default aversion assistance may apply for a Direct Consolidation Loan.

Section 682.206(f) of the current regulations includes requirements for lenders in the making of FFEL Consolidation loans. Those requirements include the requirement that the lender obtain lender verification certifications from the holders of the loans to be repaid by the Consolidation loan.

Proposed regulations: The proposed regulations would amend §§ 682.201(e) and 685.220(d) to include an additional condition under which a borrower with only FFEL loans may consolidate those loans into a Direct Consolidation Loan. The proposed regulations would provide that a borrower with only FFEL loans may consolidate into the Direct Loan Program to use the no accrual of interest benefit for active duty military service personnel.

The proposed regulations would also incorporate into the regulations a statutory change made by the College Cost Reduction and Access Act of 2007 (CCRAA) that is not currently reflected in the Department's regulations. Specifically, the proposed regulations would provide that a borrower may consolidate a FFEL Consolidation loan into the Direct Loan Program without including another eligible loan in the consolidation if the FFEL Consolidation loan is in default, or if the borrower wishes to obtain an income-based repayment plan.

The proposed regulations would also modify section 682.206(f) to incorporate a new requirement that is needed to fully implement § 682.205(i)(7), which requires lenders to inform borrowers that, by applying for the Consolidation loan, the borrower is not obligated to agree to take the loan. Section 682.206(f) would be amended to include a requirement that the lender provide a Consolidation loan borrower a period of not less than 10 days, from the date the borrower is notified by the lender that it is ready to make the Consolidation loan, to cancel the loan. The proposed regulations would require the lender to send the notice of the option to cancel the loan to the borrower before making any payments to pay off a loan with the proceeds of a Consolidation loan.

Reasons: The proposed changes to §§ 682.201(e) and 685.220(d) are being made to implement statutory requirements. The proposed change to § 682.206(f) is being made to ensure that borrowers are given an appropriate opportunity to cancel a Consolidation loan for which they may have applied.

The HEOA instituted several new disclosure requirements for lenders and established very specific disclosures requirements for lenders making a Consolidation loan. In particular, the HEOA requires a lender to inform a Consolidation loan applicant that applying for the loan does not obligate the borrower to agree to take the loan. The Department determined that it was important to ensure that borrowers are given both a clear explanation of the process for canceling a Consolidation loan and the time frame within which they may exercise their right to cancel the loan. Therefore, the Department is proposing language in § 682.206(f) providing borrowers with a 10-day period, before a Consolidation loan is made, during which the borrower could reconsider the Consolidation loan and cancel the loan if appropriate.

There were a number of issues raised by the negotiators regarding this provision. Some non-Federal negotiators expressed concern about the Department's original proposal to provide a five-day period for a borrower to cancel the loan with the lender. These non-Federal negotiators did not think the initial proposal provided enough clarity as to the date on which the five-day period would begin. One non-Federal negotiator indicated that the consolidation process is highly automated and if the servicer of the loans to be consolidated is also the servicer or lender for the Consolidation loan, the loan process could be completed in as little as 24–48 hours. The Department was asked to provide an opportunity for a borrower to waive his or her right to cancel the loan to allow the process to occur more quickly if the borrower chose to do so.

During the negotiations, the Department described how the Direct Loan Program currently provides borrowers an opportunity to affirm their decision to take a Consolidation loan.

Based on the practice in the Direct Loan Program, the Department proposed revised language establishing a timeframe for a borrower to cancel a Consolidation loan that would be similar to the timeframe in the Direct Loan Program, and that would be clear and understandable to all participants. The language in proposed § 682.206(f)(ii) reflects the revised proposal.

The Department strongly believes that the HEA clearly intends that a standard process should be established to provide a Consolidation loan applicant with the opportunity to cancel the application for the loan. The Department believes the proposed regulatory language reflects an appropriate balance between allowing the borrower sufficient time to make an informed determination about moving forward with the process for a Consolidation loan while not unnecessarily delaying its completion. The Department does not agree with the recommendation that the regulations provide an opportunity for a borrower to waive the right to cancel a Consolidation loan if the borrower wants the consolidation process to occur more quickly. The Department believes that the 10-day cancellation period provides appropriate protection to the borrower. Accordingly, under the proposed regulations, the 10-day cancellation period may not be waived by the borrower.

One non-Federal negotiator asked if the proposed cancellation notification requirement would apply to a request by a borrower to add loans to an existing Consolidation loan during a 180-day period as permitted by the HEA. The negotiator was concerned that if the requirement applied to requests to add loans to an existing Consolidation loan, it could have a negative consequence to a borrower if a loan was inadvertently left out of the consolidation process and simply needed to be added. The Department agreed that once the loan is made, the 10-day waiting period does not apply if the borrower adds additional loans during the permitted 180-day period.

In-School Deferments, Interest Capitalization, and Administrative Forbearance for PLUS Loans (§§ 682.202(b), 682.210(v), 682.211(f), 685.202(b), 685.204(g), and 685.205(b))

Statute: Section 428B(d) of the HEA, as amended by the HEOA, adds new in-school deferment provisions for PLUS loans first disbursed on or after July 1, 2008. Specifically, the HEA provides that a parent PLUS borrower may defer repayment of a PLUS loan first disbursed on or after July 1, 2008 during the period while the student on whose behalf the loan was obtained is enrolled at an eligible institution on at least a half-time basis, and during the 6-month period that begins on the later of the day after the student ceases to be enrolled on at least a half-time basis or, if the parent borrower is also a student, the day after the parent ceases to be enrolled on at least a half-time basis. A graduate or professional student PLUS borrower may defer repayment of a PLUS loan first disbursed on or after July 1, 2008 during the 6-month period that begins on the day after the student ceases to be enrolled at an eligible institution on at least a half-time basis.

The HEA does not address the capitalization of interest on a PLUS loan that accrues during the period from the date of the first disbursement until the date the repayment period begins.

Current Regulations: Current regulations do not address the capitalization of interest on a PLUS loan that accrues from the date of the first disbursement until the date the repayment period begins.

Proposed Regulations: The proposed regulations would revise §§ 682.210 and 685.204 to provide that, upon the request of the borrower, a parent PLUS borrower must be granted a deferment on a PLUS loan first disbursed on or after July 1, 2008, during the period when the student on whose behalf the loan was obtained is enrolled on at least a half-time basis at an eligible institution, and during the 6-month period that begins on the later of the day after the student ceases to be enrolled on at least a half-time basis or, if the parent borrower is also a student, the day after the parent ceases to be enrolled on at least a half-time basis.

For graduate and professional student PLUS borrowers, the proposed regulations would provide that a borrower may be granted a deferment on a PLUS loan first disbursed on or after July 1, 2008 during the 6-month period that begins on the day after the student ceases to be enrolled on at least a half-time basis at an eligible institution. If a lender or the Secretary grants an in-school deferment on a student PLUS loan based on information from the borrower's school about the borrower's eligibility for a new loan, student status information from the school or information from the National Student Loan Data System (NSLDS) confirming the borrower's half-time enrollment status, the in-school deferment period for a student PLUS loan first disbursed on or after July 1, 2008 would include the 6-month period that begins on the day after the student PLUS borrower ceases to be enrolled on at least a half-time basis.

The proposed regulations would revise the interest capitalization provisions in § 682.202(b) to provide that a lender may capitalize interest on a PLUS loan that has accrued from the date of the first disbursement until the date the repayment period begins, and would make a corresponding change in the Direct Loan Program regulations by revising § 685.202(b) to provide that the Secretary may capitalize unpaid interest on a PLUS loan when the loan enters repayment.

Finally, the proposed regulations would add a new administrative forbearance provision to § 682.211(f) allowing a lender to grant a forbearance, upon notice to the borrower, on a borrower's PLUS loans first disbursed before July 1, 2008 to align repayment with a borrower's PLUS loans first disbursed on or after July 1, 2008, or with a borrower's Stafford Loans that are subject to a grace period. The lender would be required to notify the borrower that he or she has the option to cancel the forbearance and to continue paying on the loan. A corresponding administrative forbearance provision would be added to § 685.205(b) in the Direct Loan Program regulations.

Reasons: The proposed PLUS loan deferment regulations implement statutory provisions that were added to the HEA by the HEOA.

The Department is proposing to amend the current interest capitalization provisions for PLUS loans to reflect current practice with regard to capitalization of unpaid loan interest that accrues from the date of the first disbursement until the date the loan enters repayment.

The proposed new administrative forbearance provision reflects a recommendation from one of the non-Federal negotiators. This negotiator was concerned that PLUS loan borrowers, particularly student PLUS loan borrowers, who have both PLUS loans first disbursed before July 1, 2008 and PLUS loans first disbursed on or after July 1, 2008 may believe that all of their PLUS loans are eligible for the new 6-month post-enrollment deferment period. However, this deferment is only available on PLUS loans first disbursed on or after July 1, 2008. Because the 6-month post-enrollment deferment for student PLUS loans first disbursed on or after July 1, 2008 may be granted automatically as an extension of the borrower's in-school deferment period, a student PLUS borrower who also has pre-July 1, 2008 PLUS loans may not understand that the loans first disbursed before July 1, 2008 do not qualify for the post-enrollment deferment, and the in-school deferment period on such loans will end when the student ceases to be enrolled on at least a half-time basis. The non-Federal negotiator asked the Department to consider amending the regulations to provide for the alignment of repayment of a borrower's PLUS loans first disbursed before July 1, 2008 with a borrower's PLUS loans first disbursed on or after July 1, 2008, and with a borrower's Stafford Loans that have a grace period, so that the borrower would begin making payments on all of the loans at the same time. The Department agreed.

Applicability of the Servicemembers Civil Relief Act (SCRA) to FFEL and Direct Loan Program Loans (§§ 682.202, 682.302, and 685.202)

Statute: The HEOA amended section 428(d) of the HEA to provide that FFEL and Direct Loan program loans are subject to the provision in section 207 of the Servicemembers Civil Relief Act (50 U.S.C. 527) (SCRA) that limits the interest rate on a borrower's loan to six percent during periods of active duty military service. The limitation applies to loans incurred by the servicemember, or by the servicemember and the servicemember's spouse jointly, before the servicemember entered military service. Section 438 of the HEA was also amended to specify that, for any FFEL program loan first disbursed on or after July 1, 2008 that is subject to the six percent interest rate limit of the SCRA, the interest rate used to calculate the lender's special allowance payment is the rate that is determined in accordance with the SCRA.

Proposed Regulations: The proposed regulations would revise §§ 682.202 and 685.202 to provide that, effective August 14, 2008, upon a loan holder's receipt of a written request from a borrower and a copy of the borrower's military orders, the maximum interest rate (as defined in 50 U.S.C. 527, App, section 207(d)) that may be charged on FFEL or Direct Loan program loans made prior to the borrower entering active duty status is six percent while the borrower is on active duty status. The proposed regulations would also revise § 682.302 of the FFEL regulations by adding a new paragraph (h) that specifies that for FFEL loans first disbursed on or after July 1, 2008, that are subject to the SCRA interest rate cap, a FFEL lender's special allowance payment is calculated as it otherwise would be under program requirements, except that the applicable interest rate used is six percent.

Reasons: The proposed regulations are necessary to reflect statutory requirements.

During the negotiations, the Department clarified that for determining compliance with this provision, interest under the SCRA includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability. The Department also noted that a lender is prohibited from assessing a borrower who is subject to the SCRA interest rate cap an additional charge after the borrower's period of active duty military service that is equal to the difference between the otherwise applicable interest rate on the FFEL loan and the six percent cap.

In response to questions from the negotiators, the Department also clarified that the SCRA interest rate cap applies to the loan, not to the borrower. As long as the debt was incurred before the borrower's military service began, the interest rate cap applies to any joint consolidation loan or other co-borrowed loan, and applies to a PLUS loan made to a borrower with an endorser even if only one of the individuals is performing active duty military service. For purposes of this restriction, a loan is considered incurred by an endorser when the Endorser Addendum to the PLUS Loan Master Promissory Note is signed, and the requirement that the debt be incurred before military service is based on that date. The debt-before-service date on a consolidation loan is the date the consolidation loan was made as a new debt, not the disbursement date of the loans repaid by the consolidation loan.

In-School Deferment (§§ 682.210(a), 682.210(c)(1), and 685.204(b)(1))

Statute: Section 428(b)(1)(Y) of the HEA was amended by the HEOA to include an additional method for granting an in-school deferment on a FFEL or Direct Loan. A loan holder may grant an in-school deferment based on the lender's confirmation of the borrower's half-time enrollment status through the use of NSLDS, if the confirmation is requested by the institution of higher education. A new provision was also added to the HEA to require a lender, at the time the lender grants a deferment to a borrower with an unsubsidized Stafford Loan, to provide the borrower with information to assist the borrower in understanding the impact of capitalization of interest on the borrower's loan principal and on the total amount of interest to be paid during the life of the loan.

Current Regulations: Section 682.210(c)(1) of the current FFEL regulations specifies that a lender must grant an in-school deferment when a borrower requests and submits supporting documentation for the deferment or when the lender receives information from the school on a borrower's eligibility for an in-school deferment in connection with the borrower's receipt of a new loan, or when the lender receives student status information, directly or indirectly, from the borrower's school indicating the borrower's eligibility for the deferment. Section 685.204(b)(1) of the Direct Loan program regulations contains comparable provisions.

Section 682.210(c)(2) of the FFEL regulations requires the lender, when granting an in-school deferment on a FFEL program loan based on information provided by the school, to notify the borrower that the deferment has been granted and that the borrower has the option to pay the accruing interest on an unsubsidized loan or to cancel the deferment and continue paying on the loan. The lender is also required to include in the notice an explanation of the consequences of those options. Under § 685.204(b)(1)(iii)(B) of the Direct Loan regulations, the Secretary notifies the borrower after granting an in-school deferment based on information provided by the school that the borrower has the option to continue paying on the loan, and that if the borrower elects to cancel the deferment, the borrower may pay the principal and interest payments that were deferred. If the borrower fails to do so, the Secretary applies a deferment and capitalizes the interest that accrued during the period in which payments were not made.

Proposed Regulations: The proposed regulations would revise §§ 682.210(c)(1) and 685.204(b)(1)(iii)(A) to reflect the additional statutory method a lender or the Secretary may use to grant an in-school deferment, based on confirmation of the borrower's half-time enrollment status through the use of NSLDS if requested by the borrower's school. The proposed regulations would also revise § 682.210(a)(3) of the FFEL regulations to provide that if a borrower is responsible for the interest on a loan during a deferment period, the lender, at or before the time the deferment is granted, must notify the borrower that he or she has the option to pay the accruing interest or cancel the deferment and continue paying on the loan. The lender would also be required to provide information, including an example, on the impact on a borrower's loan debt of capitalization of accrued unpaid interest and on the total amount of interest to be paid over the life of the loan. A similar notification provision that applied only to the granting of in-school deferments would be removed from § 682.210(c)(2) of the FFEL regulations. A comparable change would be made in § 685.204(b)(1)(iii)(B) of the Direct Loan regulations to provide that borrowers will be notified of their option to cancel a deferment and continue paying on the loan and will be provided with information on the impact of capitalization, including an example.

Reasons: The proposed changes are necessary to reflect the statutory changes made by the HEOA that affect the process for granting in-school deferments in the FFEL and Direct Loan programs and that require that additional information be provided so that borrowers better understand the impact of the capitalization of interest on the total cost of the loan. At the request of the negotiators, the Department clarified that the use of NSLDS, at the request of a borrower's school, to confirm a borrower's enrollment status is an additional method for granting in-school deferments and does not replace other pre-existing methods. In-school deferments may continue to be granted by a lender consistent with the requirements of § 682.210(s)(1)(iii) and based on student status information provided directly or indirectly by a school, including status information reported to NSLDS, without a specific request from the school.

The Department also clarified that the information provided to borrowers on the impact of capitalization of accruing unpaid interest during deferment periods, including the example, may be general in nature rather than borrower-specific. The Department also agreed with a proposal from some non-Federal negotiators that it would be helpful to borrowers to provide the required information on capitalization when the borrower applies for the deferment, by including it in standardized deferment forms, rather than only providing the information when the borrower is granted the deferment.

Income-Based Repayment (IBR) Plan (§§ 682.215 and 685.221)

Definition of Partial Financial Hardship (§§ 682.215(a)(4) and 685.221(a)(4))

Statute: Section 493C(a)(3) of the HEA provides that a borrower has a partial financial hardship, for the purpose of establishing eligibility for the income-based repayment (IBR) plan, if the amount due on all of the borrower's eligible FFEL and Direct Loans (as calculated under a standard repayment plan based on a 10-year repayment period) exceeds 15 percent of the difference between the borrower's (and, if applicable, the borrower's spouse's) adjusted gross income (AGI) and 150 percent of the poverty guideline for the borrower's family size. If a married borrower files a separate Federal income tax return, section 493C(d) of the HEA provides that only the borrower's income and eligible student loan debt are used in determining the amount of the borrower's payment under the IBR plan. An eligible loan under section 493C(a)(3) is any loan made, insured, or guaranteed under the FFEL and Direct Loan programs other than parent PLUS loans made under the FFEL and Direct Loan programs and consolidation loans under both programs that repaid parent PLUS loans.

Current Regulations: The current regulations reflect the statutory definition of the term partial financial hardship and define the terms ''AGI,'' ''family size,'' and ''poverty guideline'' consistent with the use of those terms in § 682.210 for purposes of determining a borrower's eligibility for an economic hardship deferment. AGI means the income reported by the borrower to the Internal Revenue Service (IRS). For a married borrower filing jointly, AGI includes both the borrower's and spouse's income. If a married borrower files a separate Federal tax return, AGI includes only the borrower's income. A borrower's family size includes the borrower, the borrower's spouse and the borrower's children (including unborn children who will be born during the year the borrower certifies family size), if the children receive more than half their support from the borrower for the year the borrower certifies family size. Other individuals are included in family size if, at the time the borrower certifies family size, those other individuals live with the borrower and receive more than half their support for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs. The poverty guideline is the income categorized by State and family size in the poverty guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If the borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States. The term eligible loan reflects the statutory definition.

Proposed Regulations: The proposed regulations would specify that the annual amount due on a borrower's eligible loans for purposes of determining whether the borrower has a partial financial hardship is the greater of the amount due on the eligible loans as calculated under a standard repayment plan with a 10-year repayment period when the borrower initially entered repayment on those loans, or the annual amount due on those loans as calculated under a standard repayment plan with a 10-year repayment period when the borrower elects the IBR plan. The proposed regulations would also provide that when a married borrower and his or her spouse file a joint tax return with the IRS and both the borrower and the spouse have eligible loans, the joint AGI and the total amount of the borrower's and spouse's eligible loans will be used in determining whether each borrower has a partial financial hardship.

Reasons: In the regulations governing the IBR Plan, the Department provided that, when determining a borrower's partial financial hardship for purposes of IBR, the loan holder should compare the annual amount the borrower would pay on the borrower's eligible loans at the time the borrower initially entered repayment on the total outstanding balance of those loans, based on a standard repayment over a 10-year repayment period, to the annual amount a borrower would pay under the provisions of the IBR plan. During the negotiations, a non-Federal negotiator pointed out that always using the annual amount the borrower would pay based on the outstanding balance of the loans when the borrower initially entered repayment disadvantages those borrowers whose outstanding balance has increased from the date the borrower initially entered repayment until the date the borrower requests IBR. This is particularly true for borrowers who have experienced significant difficulty repaying the loans, particularly unsubsidized loans, and who have used deferments and forbearances to avoid delinquency, with the result that their outstanding loan principal balance has increased due to capitalized interest. The Department and the other negotiators agreed that a borrower whose outstanding balance has increased rather than decreased during the repayment period prior to the borrower's request for IBR should be given the benefit of having partial financial hardship determined based on the annual amount due, as calculated under a standard repayment plan with a 10-year repayment period, on the borrower's increased outstanding loan principal balance.

The Department also proposed a change related to how eligibility for partial financial hardship is determined for married borrowers who file a joint Federal tax return and who both have eligible loans. The proposed change would ensure that if both borrowers qualify for IBR, their combined payment amounts will not exceed the 15 percent threshold under the IBR plan. The Department initially proposed the use of each individual borrower's portion of the joint AGI and eligible loan amount to determine eligibility for IBR. After additional discussion, however, the Department and the negotiators agreed that this approach would impose a significant burden on borrowers, who would be required to submit additional documentation to identify their individual portion of any joint income, and would also require the loan holder to determine each borrower's eligibility using a manual (instead of an automated) process. The Department and the negotiators agreed to adopt a suggestion by one of the non-Federal negotiators to use the joint AGI and the annual amount due on both the borrower's and the spouse's eligible loans to determine eligibility for IBR and the partial financial hardship payment amount. That payment amount would then be adjusted based on the percentage of the combined total eligible loan debt attributable to each individual borrower, with a further adjustment if the borrower has multiple loan holders.

Income-Based Payment Amount (§§ 682.215(b)(1) and 685.221(b)(2))

Statute: Under section 493C(b)(1) of the HEA, the monthly payment amount for a borrower who has a partial financial hardship is determined by calculating 15 percent of the amount obtained by subtracting 150 percent of the poverty guideline amount for the borrower's family size from the borrower's AGI, and then dividing this amount by 12.

Current Regulations: Sections 682.215(b) and 685.221(b) provide that if a borrower's eligible loans are held by more than one holder, the loan holder must adjust the amount of a borrower's calculated monthly payment. The borrower's adjusted monthly payment is determined by multiplying the calculated monthly payment amount by the percentage of the total outstanding principal amount of eligible loans that are held by that holder.

Proposed Regulations: Under the proposed regulations, if a borrower and a borrower's spouse both have eligible loans and filed a joint Federal tax return, each borrower's percentage of the couple's total eligible loan debt would be determined, and the calculated partial financial hardship payment amount for each borrower would be adjusted by multiplying the payment by the applicable borrower's percentage. As with other borrowers, each borrower's adjusted payment amount would be further adjusted if the borrower's loans are held by multiple holders. In this case, the adjusted payment amount would be multiplied by the percentage of the borrower's total outstanding principal amount of eligible loans that are held by the loan holder.

Reasons: Without the proposed payment adjustment based on the borrower's percentage of the combined eligible loan debt of the borrower and his or her spouse that is used to calculate the partial financial hardship of both borrowers, the borrower's monthly payment amount could exceed the statutory maximum amount the borrower can be required to pay.

FFEL and Direct Loan Program Teacher Loan Forgiveness (§§ 682.216 and 685.217)

Statute: The HEOA amended the FFEL and Direct Loan teacher loan forgiveness provisions in sections 428J and 460 of the HEA to specify that an otherwise eligible borrower may qualify for teacher loan forgiveness based on teaching service performed at a location operated by an educational service agency if the educational service agency meets the eligibility criteria that apply to elementary or secondary schools for teacher loan forgiveness purposes. In the case of a teacher who is employed by an educational service agency, the HEA provides that the chief administrative officer of the educational service agency must certify the borrower's qualifying teaching service.

The HEOA also amended the teacher loan forgiveness provisions to prohibit a borrower from receiving double benefits for the same teaching service. The HEA now prohibits a borrower from receiving loan forgiveness under both the FFEL and Direct Loan teacher loan forgiveness programs for the same qualifying teaching service. In addition, a borrower may not receive loan forgiveness benefits for the same teaching service under either the FFEL or Direct Loan teacher loan forgiveness programs and the Direct Loan public service loan forgiveness program (§ 685.219), subtitle D of title I of the National and Community Service Act of 1990 (the AmeriCorps program), or the Loan Forgiveness for Service in Areas of National Need program authorized by section 428K of the HEA.

Current Regulations: Under current regulations, an otherwise eligible FFEL or Direct Loan borrower may qualify for teacher loan forgiveness only by performing qualifying teaching service in an eligible elementary or secondary school that serves low-income families. Borrowers who teach at a location operated by an educational service agency are not eligible for loan forgiveness.

Current regulations prohibit a borrower from receiving loan forgiveness for the same teaching service under either the FFEL or Direct Loan teacher loan forgiveness programs and under subtitle D of title I of the National and Community Service Act of 1990. A borrower who has both FFEL and Direct Loan program loans may not receive more than the maximum loan forgiveness amount on the borrower's combined outstanding FFEL and Direct Loan balance, but is not otherwise prohibited from receiving forgiveness under both the FFEL and Direct Loan teacher loan forgiveness programs for the same qualifying teaching service.

Proposed Regulations: The proposed regulations would allow a borrower who otherwise meets the eligibility requirements for teacher loan forgiveness to receive forgiveness based on teaching service performed at one or more locations of an eligible educational service agency that serves low-income families. A borrower could also qualify based on teaching service performed at a combination of eligible elementary or secondary schools and eligible educational service agencies. To be considered eligible service for teacher loan forgiveness purposes, an educational service agency would have to meet the same eligibility requirements that apply to elementary and secondary schools under current regulations. For a borrower employed at an eligible educational service agency, the borrower's qualifying teaching service would have to be certified by the chief administrative officer of the educational service agency.

Under the proposed regulations, qualifying teaching service performed at an eligible educational service agency could be counted toward the required five consecutive complete years of full-time teaching only if the consecutive five-year period includes qualifying teaching service performed at an eligible educational service agency after the 2007–2008 academic year.

The proposed regulations would define the term ''educational service agency'' as a regional multiservice agency authorized by State law to develop, manage, and provide services or programs to local educational agencies, as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

Finally, the proposed regulations would prohibit a borrower from receiving loan forgiveness under both the FFEL and Direct Loan teacher loan forgiveness programs for the same teaching service, or from receiving loan forgiveness for the same teaching service under either the FFEL or Direct Loan teacher loan forgiveness programs and: (1) The Direct Loan public service loan forgiveness program in § 685.219; (2) subtitle D of title I of the National and Community Service Act of 1990; or (3) the Loan Forgiveness for Service in Areas of National Need program authorized by section 428K of the HEA.

Reasons: The proposed changes reflect statutory requirements.

One of the non-Federal negotiators noted that some teachers do not have a fixed location of employment but instead perform qualifying teaching service at multiple eligible elementary or secondary schools, or at multiple eligible educational service agencies. This negotiator requested clarification that such ''traveling'' teachers, if otherwise eligible, would qualify for loan forgiveness if they are not actually employed by the individual schools or educational service agencies where they teach. The Department agreed that such teachers, if otherwise eligible, would qualify for teacher loan forgiveness. The current and proposed regulations provide that a borrower's qualifying teaching service must be performed ''in'' or ''at'' an eligible elementary or secondary school or eligible educational service agency and do not rely on the identity of the employer.

The Department's initial proposed regulations allowed qualifying teaching service performed at an eligible educational service agency to be counted toward a borrower's required five complete consecutive years of teaching service only if the service was performed after August 14, 2008, the date of enactment of the HEOA. One of the non-Federal negotiators argued that the amendments to the teacher loan forgiveness provisions of the HEA were intended to apply retroactively to October 1, 1998, the date of enactment of the FFEL and Direct Loan teacher loan forgiveness provisions. However, the Department does not agree with this interpretation of the law. The Department noted that Congress has specifically made other changes to the HEA retroactive, but chose not to do so in this case. However, the Department agreed to revise the proposed regulations to provide that the required five complete consecutive years of teaching may include any combination of qualifying teaching service at an eligible elementary or secondary school or at an eligible educational service agency, but teaching at an educational service agency may be counted toward the five years only if the consecutive five-year period includes qualifying teaching at an eligible educational service agency performed after the 2007–2008 academic year.

Eligibility for Rehabilitation of Defaulted FFEL and Direct Loans (§§ 682.405(a) and (b)(1)(iii) and 685.211(f))

Statute: Section 428F(a) of the HEA was amended by the HEOA to prohibit a borrower from rehabilitating a defaulted loan more than once.

Current Regulations: The regulations in §§ 682.405 and 685.211 provide for the rehabilitation of defaulted FFEL and Direct Loan program loans after a borrower makes nine voluntary, reasonable and affordable payments to the guaranty agency holding the defaulted loan, or to the Secretary in the case of a defaulted Direct Loan. After the borrower meets the payment requirements to reestablish a successful repayment pattern, a defaulted FFEL loan is rehabilitated upon resale of the loan to an eligible FFEL lender, at which time the borrower returns to normal repayment servicing. In the Direct Loan Program, after the borrower meets the payment requirements, the loan is transferred from a default collection status to a normal repayment servicing status. Current regulations do not include a limit on the number of times a borrower may rehabilitate a defaulted loan.

Proposed Regulations: The proposed regulations would amend §§ 682.405(a)(3) and 685.211(f)(3) to provide that for any loan that is rehabilitated on or after August 14, 2008, the borrower may not rehabilitate the loan again if the loan returns to a default status following the rehabilitation.

The proposed regulations would also amend § 682.405(b)(1)(iii) to clarify that the guaranty agency and its agents must comply with the requirements of that section when determining a borrower's ''reasonable and affordable'' payment amount for loan rehabilitation purposes.

Reasons: The proposed regulations are necessary to reflect the change in section 428F(a) of the HEA that prohibits a borrower from rehabilitating a defaulted loan more than once, and to clarify that guaranty agencies and their agents must comply with current regulatory requirements for determining reasonable and affordable payments.

The Department's original proposed regulations specified only that a borrower is prohibited from rehabilitating a defaulted loan more than once. Several non-Federal negotiators expressed the view that the Department's interpretation of the statutory effective date of August 14, 2008 for this provision should be included in the regulations or discussed in the preamble to the proposed regulations. The non-Federal negotiators also requested that the Department identify in the regulations the triggering event that results in a borrower's inability to rehabilitate the loan again. The Department agreed and revised the proposed regulations to specify that the one-time limit on rehabilitation applies only to a defaulted loan that was rehabilitated on or after August 14, 2008. A borrower who rehabilitated a defaulted loan before that date, and later defaults again on the loan, could rehabilitate that loan again. However, if the borrower rehabilitates the loan a second time, the loan would become subject to the limit. The Department also revised the proposed regulations to specify that the triggering event for the application of the one-time rehabilitation limit on a loan is the borrower's return to a default status on that previously rehabilitated loan.

Another non-Federal negotiator expressed concern about the process for determining payment amounts for rehabilitation. The negotiator stated that there was no consistent, standardized approach to determining ''reasonable and affordable'' borrower payments for purposes of loan rehabilitation across the guaranty agencies and their agents. The negotiator stated that some agencies and agents demanded a specified percentage or payment amount without apparent regard to the borrower's financial circumstances, in violation of the HEA, and expressed the view that this perhaps represented a program compliance issue. The Department stated its belief that the requirements for determining reasonable and affordable borrower payments were already sufficiently detailed and explicit in § 682.405(b)(1)(iii). However, the Department agreed to revise the lead-in language to this regulation to make it clear that a guaranty agency and all of its agents are subject to the requirements of § 682.405(b)(1)(iii) when determining a borrower's reasonable and affordable payment amount for purposes of loan rehabilitation. This clarifying change is intended to ensure compliance with this requirement by a guaranty agency and all of the agency's agents, particularly collection agents that may be working with defaulted borrowers.

Guaranty Agency and Lender Prohibited Inducements (§§ 682.200(b) and 682.401(e))

Statute: Section 435(d)(5) of the HEA provides that, after notice and an opportunity for a hearing, the Secretary may disqualify a FFEL lender from participation in the FFEL Program if it is determined that the lender engaged in certain prohibited activities to secure applicants for FFEL loans. These prohibited activities include offering, directly or indirectly, points, premiums, payments, prizes, stock or other securities, travel, entertainment expenses, tuition payment or reimbursement, providing information technology at below-market value, and providing additional financial aid funds to any institution of higher education or its employees. Lenders are prohibited from entering into any type of consulting arrangement or other type of contract to provide services to a lender with an employee who is employed in an institution's financial aid office or who otherwise has responsibility over student loans or other student aid. The HEA also prohibits lenders from performing any function for an institution of higher education that is a required function for that institution under title IV of the HEA, other than exit counseling.

Similarly, section 428(b)(3) of the HEA restricts guaranty agencies from offering inducements or engaging in certain prohibited activities to secure applicants for FFEL loans or to secure the designation as the insurer of loans. Guaranty agencies are prohibited from offering, directly or indirectly, premiums, payments, stock or other securities, prizes, travel, entertainment expenses, tuition payments or reimbursements to any institution of higher education or to any employee of the institution to secure FFEL loan applications; or to lenders or their agents or employees, or to an independent contractor of any lender or guaranty agency to administer or market FFEL loans for the purpose of securing the designation of insurer of the loans. In addition, a guaranty agency may not conduct fraudulent or misleading advertising concerning loan availability, terms or conditions and, like lenders, guaranty agencies may not perform for an institution of higher education any function the institution is required to perform under title IV, other than exit counseling. The statute allows both lenders and guarantors to provide technical assistance to an institution of higher education comparable to the technical assistance provided by the Department to schools participating in the Direct Loan Program.

Current Regulations: Prohibited activities by lenders and guaranty agencies are specified in current regulations in §§ 682.200(b) and 682.401(e), respectively. These regulations were amended in 2007 and provide lists of prohibited and permissible activities by lenders and guaranty agencies. The regulations governing the activities of lenders and guaranty agencies are different, most specifically in the area of training for schools (a guaranty agency may pay for travel and lodging for school personnel to attend training programs). The current regulations also permit guaranty agencies to pay school officials to participate on governing boards or advisory committees.

Proposed Regulations: The proposed regulations would incorporate all of the new prohibited and permitted activities for lenders and guaranty agencies as specified in the HEA. Section 682.200(b)(5) of the proposed regulations specifically addresses the prohibition on lenders providing processing, referral or finder fees and expands the prohibition of such payments to institutions, employees of the institutions or to any other party, including a school-affiliated organization or its employees, to secure FFEL loans. The payment of stock, securities or tuition reimbursements is also a prohibited inducement. The proposed regulations prohibit a lender from providing compensation for service on a lender advisory board, commission or other group to an employee who is employed in an institution's financial aid office or to an institutional employee with responsibility for student loans or other financial aid, but would permit the lender to reimburse the employee for reasonable expenses related to service on the board, commission or group. The proposed regulations also specifically prohibit a lender from performing any function for a school that is a requirement of the school except for exit counseling.

Section 682.401(e) of the proposed regulations, which governs guaranty agency prohibited inducements, generally mirrors the proposed regulations for lenders. The proposed regulations would prohibit guaranty agencies from performing any function required by a school under title IV except for exit counseling. Guaranty agencies would be prohibited from providing any payments of stock, securities or tuition reimbursement to any institution of higher education or its employees to secure applicants for FFEL loans, or to any lender, agent, or independent contractor of any lender or guaranty agency to administer or market FFEL loans for the purpose of securing designation as the insurer of the loans. A guaranty agency would not be permitted to pay travel and lodging costs of school employees to attend training conducted by the agency. The proposed regulations would allow for the reimbursement of reasonable expenses incurred by school employees to participate in an agency's advisory committee or governing board activity.

The proposed regulations would prohibit lenders or guaranty agencies from providing staffing services to schools under any conditions. Finally, the proposed regulations would revise the provision that allows a lender or guaranty agency to provide assistance to schools comparable to the assistance that the Secretary provides to schools under the Direct Loan Program by clarifying that the assistance to schools that may be provided is ''technical'' assistance comparable to the technical assistance that the Secretary provides to Direct Loan schools.

Reasons: The proposed changes to the prohibited inducement regulations for both lenders and guaranty agencies reflect statutory changes made by the HEOA.

During the negotiated rulemaking discussions, non-Federal negotiators raised a concern about the prohibition on lenders and guaranty agencies paying processing fees. Some negotiators asked the Department to clarify the term ''processing fees.'' The negotiators were concerned that a broad definition could include permissible borrower benefits on FFEL loans. The Department clarified that, in this context, processing fees do not include permissible borrower benefit programs for student and parent borrowers that may be provided by lenders and guarantors to reduce the cost of borrowing for students and parents.

Another non-Federal negotiator raised a concern that standard commercial practices may be affected by the prohibition on inducements with regard to the payment of processing fees. The Department made it clear that these regulations are not intended to thwart standard business practices unless there is a quid-pro-quo under which a lender pays the processing fees to secure loan applications or volume. The Department believes that these proposed regulations appropriately implement the statute and will not interfere with standard commercial business practices.

Another negotiator raised a concern about what would be deemed ''reasonable'' with regard to the payment of reasonable costs in association with lenders and guaranty agencies paying for items such as meals or refreshments. The Department believes that the regulations are clear in their intent and that the determination of reasonable costs should be considered carefully by FFEL participants and viewed in light of what was deemed by the negotiators the ''prudent person test.''

Disclosure Requirements for Lenders (§ 682.205)

Statute: Section 433 of the HEA requires lenders to provide borrowers a series of informational disclosures throughout the life of a loan. Specific types of disclosures are required based on the borrower's status within the borrowing process, *i.e.,* at or before disbursement, at or before repayment, during repayment, during delinquency, at a time the borrower may be having difficulty making payments, and when the borrower considers taking out a Consolidation loan. Lenders are required to make these required disclosures simple and understandable for the borrower.

The information the lender must disclose to the borrower at or before disbursement of the loan includes: Contact information for the lender; the amount of any charges on the loan, including origination fees and the Federal default fee; the interest rate on the loan; the annual and aggregate maximum amount that may be borrowed, when repayment is required and when interest must be paid, as well as the borrower's right to prepay all or part of the loan at any time without penalty; a statement summarizing the circumstances in which a borrower may obtain a deferment or forbearance; and the options for and requirements for forgiveness of the loan. For borrowers of unsubsidized Stafford loans or borrowers of student PLUS loans, the lender must also provide information about the borrower's right to pay the interest on the loan while the borrower is in school and, if interest is not paid, when and how often the lender will capitalize the interest. For parent PLUS loan borrowers, the lender must provide information about how the parent may defer payment on the loan while the student on whose behalf the parent borrowed is in school at least half-time.

The disclosure information that the lender must provide to the borrower at or before the borrower begins repayment includes: The scheduled date repayment is to begin; the estimated balance, including the amount of interest to be capitalized as of the date on which repayment is to begin; the borrower's repayment schedule; special loan repayment benefits offered on the loan, including those contingent on repayment behavior; any limitations on a repayment benefit provided by the lender; information on how a borrower may lose eligibility for the repayment benefit and whether and how the borrower can regain eligibility for the benefit; a description of how the borrower can avoid or be removed from default; and any additional resources available to the borrower to assist in loan repayment.

While the borrower is in repayment on the loan, the lender must periodically provide additional disclosure information to the borrower. The lender must provide the borrower with a bill or statement that corresponds to each payment installment time period in which a payment is due. That bill or statement must also include: The borrower's original principal loan amount; the borrower's current balance, as of the time of the bill or statement; the interest rate on the loan; the aggregate amount the borrower has paid on the loan, including the amount of interest and fees and the amount paid against the balance; a description of any fees charged on the loan; the date by which the borrower must make a payment to avoid additional fees; and a reminder that the borrower has the option to change repayment plans as well as a list of available repayment plans.

The HEA also requires lenders to make certain disclosures to borrowers who are having difficulty making payments, including: A description of the repayment plans available to the borrower and information as to how the borrower may request a change in his or her repayment plan; the requirements for obtaining forbearance including any cost or fees associated with forbearance; and a description of the options for the borrower to avoid default and any fees or costs associated with each option.

If a borrower is 60 or more days delinquent in making payments, the lender must provide the borrower with information including: The date on which the loan will default if no payments are made; the minimum payment the borrower must make to avoid default; a description of the options available to the borrower to avoid default and any fees or costs associated with each option; discharge options to which the borrower may be entitled; and information about any additional resources available to the borrower, including the Department's Ombudsman's Office, to assist the borrower in loan repayment.

Finally, the HEA requires lenders to provide a separate disclosure for borrowers applying for Consolidation loans. When a lender provides a borrower with an application for a Consolidation loan, the lender must disclose information about the loan including: Whether or not consolidation will result in a loss of loan benefits for the borrower, including loan forgiveness, cancellation, deferment or a reduced interest rate; and if the borrower is consolidating a Perkins Loan, that the borrower will lose interest free periods available on the Perkins Loan while the borrower is enrolled in school at least half-time, in the grace period or in deferment, and that the borrower will lose cancellation benefits available in the Perkins Loan Program. The lender must also provide the borrower with: A list of the Perkins Loan cancellation benefits that would no longer, upon consolidation, be available to the borrower; information about repayment plans available; information about the borrower's option to prepay the Consolidation loan or pay on a shorter repayment schedule; and a notice that applying for the Consolidation loan does not obligate the borrower to agree to take the loan.

Current Regulations: Section 682.205 of the current regulations reflects the pre-HEOA requirements for lender disclosures. Lenders are required to provide information to borrowers at or before the time of loan disbursement, and at or prior to the beginning of repayment. Information that must be disclosed at or prior to disbursement includes: The lender's name and contact information; the principal amount of the loan; the amount of charges to be collected by the lender, including the origination fee and if those charges will be deducted from the loan; the minimum and maximum number of years for repayment; deferment options; collection costs; and the possible effects of accepting the loan on the borrower's eligibility for other aid. The regulations also require borrowers to be made aware that information concerning the loan, including the date of disbursement and the amount of the loan, will be reported to a national credit bureau.

Information that must be disclosed at or prior to repayment includes: The scheduled date repayment is to begin; the estimated balance on the loan, including estimated interest to be capitalized; the interest rate on the loan; an explanation of fees that may accrue or be charged during the repayment period; and an explanation of special options the borrower may have for consolidating or refinancing the loans and the terms of those options.

Proposed Regulations: Section 682.205 of the proposed regulations would retain the current regulatory language as to required disclosures, but would reorganize this section to accommodate the new disclosure requirements added by the HEOA. The HEOA added additional disclosures by lenders before disbursement and provided for new requirements at differing points in the repayment cycle of the borrower. The HEOA also added a separate set of disclosures specifically for Consolidation loan borrowers.

The proposed regulations would incorporate the requirement for new disclosures by the lender at or prior to disbursement of the loan. In regard to unsubsidized loans, these disclosures must include: An explanation that the borrower may pay accruing interest while in school and, if the interest is not paid, when and how often it will be capitalized; for parent PLUS borrowers, an explanation that the payment may be deferred while the student on whose behalf the parent borrowed is in school as well as, if the interest is capitalized, when and how often it will be capitalized; information on forbearances; and a description of loan forgiveness options and the requirements to receive forgiveness.

The HEOA also changed the numerous references to ''credit bureaus'' to refer to ''consumer reporting agencies'' and the proposed regulations reflect that change.

To incorporate the many new disclosures required during the repayment period of a loan for a borrower, the proposed regulations reorganize § 682.205(c) to better separate and distinguish the different disclosures.

Under proposed § 682.205(c)(2), the lender must disclose to the borrower: Information on any special loan repayment benefits available, the requirements to maintain the benefit, and the impact on the borrower's overall repayment; and any limitations associated with the benefit and the circumstances that would cause the borrower to lose the benefit, as well as how the borrower may be able to regain the benefit. The lender must also provide a borrower with the list of repayment plans available and remind the borrower that he or she may change plans at least once a year. The borrower must be informed about how to avoid default and, if the borrower is in default, how to get out of default. The lender must also provide the borrower with information about additional resources available to assist in loan repayment, including nonprofit organizations, advocates and counselors, and the Department's Ombudsman.

Proposed § 682.205(c)(3) requires lenders to provide specific repayment information to the borrower with a bill or statement that corresponds to each payment installment time period in which a payment is due. That information must include: The original principal amount of the borrower's loan; the current balance as of the time of the bill or statement; the interest rate on the loan; the interest paid by the borrower since the last statement or bill; aggregate totals paid; and a description of each fee the borrower has been charged for the most recent period. The borrower must be told the date by which payments must be made to avoid additional fees and the amount of that payment and the fees. Finally, the lender must remind the borrower of the option to change repayment plans and what plans are available with a link to the Department's Web site for that repayment plan information.

Proposed § 682.205(c)(4) adds a new section of required disclosures for borrowers who contact the lender and inform the lender that they are having difficulty making their required payments. Lenders must inform these borrowers of the repayment plans available, the requirements for forbearance and the options available to avoid default as well as any fees or costs associated with those options.

Proposed § 682.205(c)(5) adds a new section on the required disclosures for borrowers who are 60-days delinquent on repayment of their loans. Lenders must provide borrowers who are 60-days delinquent with information regarding the date on which the loan will default if no payment is made, the minimum payment to avoid default, and the payment amount that would bring the loan to a current status or pay the loan in full. Lenders must inform borrowers about: The options for avoiding default, including deferments and forbearance; any costs associated with those options; and any opportunity for loan discharge the borrower may have. The notice required by § 682.205(c)(5) must be sent to the borrower within five days of the borrower becoming 60-days delinquent, unless the lender has sent the notice within the previous 120 days.

Reasons: The proposed regulations implement statutory requirements.

Negotiators discussed how these disclosures could best be managed in a way that will be most beneficial to borrowers. Negotiators asked if the information required under § 682.205(c)(2)(xiii) needed to be specific to the individual borrower's circumstances, or if the information could be general and outline the options for any borrower to avoid default or to bring a loan out of default. In discussions with the negotiators, the Department agreed it would be permissible for this information, *i.e.,* how a borrower can avoid or remove a default status, to be general, since other required disclosures will provide the borrower with specific information pertaining to their individual circumstances and account information.

Negotiators raised questions about the disclosures required in § 682.205(c)(2)(xiv) and what information would need to be included. The Department believes that these disclosures should provide borrowers with information about an additional set of tools that are available to help them manage their student loan debt. In doing so, lenders need to ensure that borrowers are aware of any appropriate Web sites, organizations, and counseling services of which the lender is aware and that can be of assistance to borrowers when managing the repayment of their debt. The Department agreed to provide lenders a Web link to its Ombudsman's Office. Lenders may provide borrowers seeking to reach the Department's Ombudsman's Office with the following link: *http://www.ombudsman.ed.gov/*.

Some non-Federal negotiators also asked for clarification of when a lender must send the disclosure that is required at or prior to repayment, in accordance with § 685.205(c)(1), in the case of a PLUS loan that immediately enters an in-school deferment status upon the start of the repayment period. Specifically, the negotiators asked if the lender should wait until the end of the in-school deferment period (and any post-enrollment deferment period, if applicable) before sending the disclosure, or if the lender would be required to send the disclosure when the loan has been fully disbursed. The Department noted that a PLUS loan enters the repayment period on the date that the final disbursement of the loan is made. Therefore, the disclosure that is required at or prior to repayment must be sent at or before the time of the final loan disbursement rather than at the end of the deferment period.

A non-Federal negotiator raised a concern about flexibility in the distribution of the disclosures required in this section of the regulations in light of the regulatory authority in 34 CFR 682.205(f) that allows a lender to provide disclosures through written or electronic means. The negotiator wanted to ensure that lenders may provide the disclosures using the method best suited to the borrower's repayment method. The negotiator asked the Department to clarify that a lender would be able to provide the required disclosures through secure e-mail or electronic links to the borrower's account-specific information.

The Department is concerned that the purpose of the statute would not be served if a lender simply provides a general electronic source for a borrower to retrieve the required disclosure information. Lenders may use appropriate electronic methods to provide the required disclosure information directly to the borrower. For example, if the lender sends an e-mail to the borrower containing the required general disclosures as well as a secure link to allow the borrower to obtain specific account information, the lender will have met the requirement. However, if the lender receives information that the e-mail address used is no longer valid or not the borrower's, the lender must take appropriate action as it would in situations when a mailing address used to communicate with the borrower is determined to be incorrect. Similarly, a lender may mail the required general disclosures to a borrower with information about a secure Web site for the borrower to access specific personal account information. If no return mail or evidence of a bad address is received by the lender, the lender may assume the mail has been received. Thus, we are proposing to treat these electronic disclosures similarly to mailed disclosures.

Many non-Federal negotiators assured the Department that the required disclosure information, particularly the borrower-specific account information, could be provided through secure means and could provide confirmation that the borrower has accessed the information. The Department is not requiring lenders to document that the borrower has accessed the information, but would encourage lenders to do so to help identify borrowers who may need additional contact.

The Department does not agree with the suggestion that it would be sufficient for a lender to provide general instructions on a statement, bill, coupon or other form (electronically or by mail) to a borrower that directs the borrower to a particular Web site for disclosure information. This approach would not fulfill the intent of the statute or serve the borrower. The Department fully supports the appropriate use of electronic communication with a borrower, but the Department must also ensure the statute is properly implemented and that borrowers are provided the required information in a manner that best serves both statutory intent and the needs of the borrower.

Negotiators representing the student loan industry raised a concern about the impact of the distribution of the disclosures required by proposed § 682.205(c)(3), those that are required during repayment, on their current loan servicing systems. The Department expects that the disclosures required by § 682.205(c)(3) will be provided in accordance with the lender's or servicer's current account organizational practices. The disclosures may be provided by account or by borrower. The Department understands that lenders and servicers have developed systems to comply with disclosure requirements during repayment and does not intend to require lenders and servicers to unnecessarily alter those systems. Therefore, lenders and servicers may make the disclosures pursuant to § 682.205(c)(3) by loan, by account, or by borrower.

Information to Borrowers Upon Transfer, Sale or Assignment of a FFEL Program Loan (§ 682.208(e))

Statute: Section 428(b)(2)(F)(i) of the HEA was amended by the HEOA to require that a borrower be provided with additional information when the transfer, sale, or assignment of the borrower's FFEL loan results in a change in the identity of the party to whom payments and communications must be sent. The borrower must now be notified of the effective date of the assignment or transfer of the loan, the date that the current loan servicer will stop accepting the borrower's payments, and the date the new loan servicer will begin accepting those payments.

Current Regulations: Current FFEL Program regulations require that if the assignment of a FFEL Program loan results in a change in the identity of the party to whom the borrower must send subsequent payments, the assignor and the assignee of the loan must, within 45 days from the date the assignee acquires the legally enforceable right to receive payment from the borrower on the assigned loan, provide the borrower with a notice, either jointly or separately, that informs the borrower of the assignment, the identity of the party to which the loan is assigned, the name and address of the party to whom the borrower must send subsequent payments or communications, and the telephone numbers of both the assignor and assignee. If a separate notice is sent by each party, each notice must indicate that a corresponding notice will be sent by the other party. The current regulations define assignment for this purpose to mean any kind of transfer of an interest in the loan, including a pledge of such an interest as security. The notification requirements apply if the borrower is in the grace period or has entered repayment on the loan. The assignee, or the assignor on the assignee's behalf, must also notify the guaranty agency of the assignment, and the name, address, and telephone number of the assignee within 45 days of the date the assignee acquires a legally enforceable right to receive payment on the loan.

Proposed Regulations: The proposed regulations incorporate the additional information specified in the HEA that must be provided to a borrower if the assignment or transfer of ownership interest on a FFEL Program loan results in a change in the identity of the party to whom subsequent payments must be sent. The date on which the current servicer will stop accepting payments is required only if that is applicable.

Reasons: The proposed regulations reflect the HEOA changes to the HEA. Notification of the date on which the current servicer will stop accepting payments is not required if the servicer continues to accept payments throughout the assignment process and forwards them on to the assignee. Non-Federal negotiators with knowledge of loan servicing practices indicated that loan servicers do not stop accepting borrower payments during sales, transfers, and assignment.

Forbearance (§ 682.211)

Statute: Section 428(c)(3)(C) of the HEA outlines what disclosures the lender must make to the borrower upon granting forbearance and during a forbearance period. The HEA requires lenders to provide a borrower with information regarding the impact that capitalizing interest will have on the loan and the total balance to be repaid. It requires lenders to provide additional disclosures to borrowers during a forbearance period, including the amount of interest that will be capitalized, the date on which capitalization will occur and the option of the borrower to pay the interest that has accrued before the interest is capitalized.

Current Regulations: Current § 682.211(e) requires the lender to contact a borrower at least once every six months during a period of forbearance only when the forbearance involves the cessation of all payments. The lender must provide the borrower with a reminder of the obligation to repay the loan, the amount of principal and interest on the loan, the fact that interest will continue to accrue and the borrower's or endorser's option to cancel the forbearance at any time.

Proposed Regulations: Section 682.211(e) of the proposed regulations would require the lender, at the time the borrower is granted a forbearance, to give the borrower information about the impact of capitalization of interest on the loan and the total amount to be repaid over the life of the loan. The proposed regulations would also require the lender to contact the borrower at least once every 180 days during any period of forbearance and to give the borrower or endorser more specific information, in conjunction with that required under previous regulations, as to the impact of forbearance on the loan. This information includes the amount of interest that will be capitalized and when that capitalization will take place and the option of the borrower or endorser to pay the interest that has accrued before it is capitalized.

Reasons: The proposed regulations implement statutory requirements.

Some negotiators asked the Department to clarify the new forbearance disclosure requirement as they relate to administrative forbearances. Some negotiators were concerned that lenders will not be able to satisfy the disclosure requirements if an administrative forbearance is granted to provide a borrower assistance with a situation occurring in the past. The Department agreed with the other negotiators that if an administrative forbearance is granted retroactively, the lender need not go back in time to provide the required information retroactively. Lenders must, however, contact the borrower as required going forward from the date the lender applied the forbearance.

Audit Requirement for a FFEL School Lender or an Eligible Lender Trustee (ELT) That Originates FFEL Loans for a School or School-Affiliated Organization (§§ 682.305(c) and 682.601(a)(7))

Statute: The HEOA added section 435(d)(8) to the HEA which requires any school that serves as a FFEL lender or any eligible lender that serves as an Eligible Lender Trustee (ELT) for a school or school-affiliated organization for the purpose of making FFEL loans to complete and submit annually to the Secretary a compliance audit. The compliance audit must determine that the school or lender: Used all proceeds from special allowance payments, borrower interest payments, interest subsidy payments received from the Department and any proceeds from the sale or other disposition of the loans originated for need-based grants; that no more than a reasonable portion of the proceeds were used for direct administrative expenses; and that the need-based grants made from the proceeds supplemented and did not supplant Federal and non-Federal funds that would otherwise have been used by the school for need-based grant programs.

Current Regulations: Section 682.305(c) of the FFEL Program regulations requires all FFEL lenders that originate or hold at least $5 million in FFEL loans during the lender's fiscal year to complete and submit to the Department an independent annual compliance audit for that year. The audit must be completed by a qualified, independent organization or person. Section 682.601(a)(7) requires a school that makes or originates FFEL loans, regardless of the dollar volume, to submit an annual compliance audit to the Department. For a school that is not a governmental entity or a nonprofit organization, the audit must examine the school lender's compliance with the HEA and applicable regulations, examine the school lender's financial management of its FFEL Program activities, and be conducted in accordance with the standards for audits issued by the United States Government Accountability Office's *Government Auditing Standard* using the procedures outlined in an audit guide produced by the Department's Office of Inspector General. For a school lender that is a governmental entity or a nonprofit organization, the audit must meet the same standards as audits for other school lenders and be conducted in accordance with chapter 75 of title 31 of the United States Code. In addition, in years in which student financial aid is not audited as a ''Major Program,'' as defined under 31 U.S.C. 7501, the school's lending activities, regardless of dollar amount, must be included in the audit as a Major Program.

Proposed Regulations: The proposed regulations would revise § 682.305(c) to require that a FFEL school lender, or a lender serving as a trustee on behalf of a school or school-affiliated organization for the purpose of originating loans, submit an annual compliance audit to the Department regardless of the dollar volume of loans originated. The proposed regulations also require that the audit be conducted by a qualified, independent organization or person. A new proposed § 682.305(c)(2)(vii) would govern the compliance audit of a school or school-affiliated organization's lender trustee. The proposed regulations require that the trustee's audit include a determination that the school for whom the lender serves as trustee used all the proceeds from special allowance payments, interest subsidies received from the Department, and any proceeds from the sale or other disposition of the loans originated through the lender for need-based grants, and that those funds supplemented, but did not supplant, other Federal or non-Federal funds otherwise available to the school to make need-based grants to its students. The proposed regulations also require that the audit must determine that no more than a reasonable portion of the payments and proceeds from the loans were used for direct administrative expenses in accordance with § 682.601(b) of the current regulations. These same requirements with regard to annual compliance audit determinations were also added to the FFEL school lender audit requirements in § 682.601(a)(7) of the regulations.

Reasons: The proposed regulations reflect the HEOA changes made to the HEA provisions governing the compliance audit of a FFEL school lender or an eligible FFEL lender in its capacity as trustee for a school or school-affiliated organization for the purpose of making FFEL loans. The audit determination will ensure that funds received by a school as a lender or through an ELT arrangement with an eligible FFEL lender will be used to benefit students enrolled at the school as intended by the HEA.

Consumer Education Information Provided by Guaranty Agencies (§ 682.401(g))

Statute: The HEOA added a new section 433A to the HEA that requires a guaranty agency to work with the schools that it serves to develop and make available high-quality educational materials and programs that provide training for students and their families in budgeting and financial management, including debt management and other aspects of financial literacy, such as the cost of using high-interest loans to pay for postsecondary education, and how budgeting and financial management relate to the title IV student loan programs. The HEA requires these programs and materials to be in formats that are simple and understandable to students and their families, and specifies that they must be provided before, during, and after a student's enrollment at an institution of higher education. A guaranty agency's activities under section 433A are considered default reduction activities for the purposes of section 422 of the HEA.

A guaranty agency is not prohibited from using existing activities, programs, and materials to meet the requirements of section 433A, and may provide programs or materials similar to the programs and materials required by section 433A to schools that participate only in the Direct Loan Program.

A lender or loan servicer may also provide outreach or financial aid literacy information in accordance with the requirements of section 433A.

Proposed Regulations: The proposed regulations would reflect the requirements of section 433A of the HEA as described above.

Reasons: The proposed changes are necessary to reflect a statutory requirement.

Financial and Economic Literacy for Rehabilitated Borrowers (§ 682.405)

Statute: The HEOA amended section 428F of the HEA to require a guaranty agency to make available financial and economic education materials for a borrower who has rehabilitated a defaulted loan.

Proposed Regulations: The proposed regulations would revise § 682.405, regarding loan rehabilitation agreements, by adding a provision requiring guaranty agencies to make available financial and economic education materials, including debt management information, to any borrower who has rehabilitated a defaulted loan.

Reasons: The proposed change is necessary to implement a statutory requirement. Some of the non-Federal negotiators requested clarification of the methods by which a guaranty agency may make the required information available to borrowers who have rehabilitated a defaulted loan. One non-Federal negotiator representing students asked for clarification that the required information must be provided to individual borrowers who have rehabilitated defaulted loans, and not simply made available on a guaranty agency's Web site or in other general materials.

The Department confirmed that a guaranty agency must provide the required financial and economic education materials to each individual borrower who has rehabilitated a defaulted loan. A guaranty agency may provide the required information to individual borrowers by mailing written materials or through electronic means. The materials may provide general financial and economic education information that would be applicable to any borrower, including information on debt management, and need not be specific to the individual borrower's circumstances.

Consumer Credit Reporting Following Loan Rehabilitation (§ 682.405(b)(1)(iii) and (b)(3))

Statute: Section 428F(a)(1)(A) of the HEA was amended by the HEOA to require that, upon sale of a rehabilitated loan to an eligible lender, the guaranty agency or other holder of the loan must request any consumer reporting agency to which the guaranty agency or holder had reported the default of the loan to remove the record of default from the borrower's credit history.

Current Regulations: Section 682.405(b)(3) of the FFEL regulations states that the guaranty agency must report to all national credit bureaus within 90 days of the date the loan was rehabilitated that the loan is no longer in a default status and that the default is to be removed from the borrower's credit history.

Proposed Regulations: The proposed regulations would require the prior holder of the loan, in addition to the guaranty agency, to request that a consumer reporting agency to which the default was reported remove the default from the borrower's credit history. The proposed regulations would also provide more detailed reporting deadlines for the guaranty agency and the prior loan holder to request removal of the report of the default from the borrower's credit history, and would reduce the overall period for this activity from 90 to 75 days. Under the proposed regulations, the guaranty agency must, within 45 days of the sale of the rehabilitated loan to an eligible lender, request that the consumer reporting agency remove the record of default from the borrower's credit history and notify the prior holder of the loan rehabilitation. The proposed regulations would require the prior holder of the loan, within 30 days of the guaranty agency's notification of the loan's rehabilitation, to request that the consumer reporting agency remove the loan holder's default claim record or its equivalent from the borrower's credit history.

Reasons: The proposed regulations incorporate the HEOA changes to the HEA provisions governing default rehabilitation-related reporting to consumer reporting agencies. Establishing specific deadlines for a guaranty agency's notice to the prior holder and for the guaranty agency and loan holder to make their requests to consumer reporting agencies will ensure that affected borrowers receive the primary loan rehabilitation benefit in a timely and efficient manner.

The Department initially proposed reducing the overall timeframe for reporting to the consumer reporting organizations from the current 90 days to 45 days without separate reporting deadlines for the guaranty agency and loan holder. Several non-Federal negotiators expressed concern that 45 days did not provide sufficient time for both parties to report to consumer reporting agencies and noted that the prior loan holder would not be aware that it was required to initiate such a request unless it was informed by the guaranty agency of the sale. These negotiators also recommended that separate deadlines be established for the guaranty agency and the loan holder so that one party's failure to meet the deadline would not result in a compliance failure for both parties. A non-Federal negotiator familiar with guaranty agency requirements also requested that the Department clarify a guaranty agency's responsibilities when the prior loan holder that reported the default was no longer in existence. The negotiators discussed consumer credit reporting in greater detail, with the Federal negotiator providing an overview of the process and information on the Department's consumer credit reporting process for rehabilitated Direct Loans. In both the FFEL and Direct Loan programs a record of the default, or an equivalent reporting code, is reported by the loan holder (in FFEL) or the Direct Loan servicer and by the guaranty agency (in FFEL) or the Department's debt collection unit (in Direct Loans) and that neither the Department nor a guaranty agency has the authority to request deletion by the consumer reporting organization of another creditor's reported ''trade line.'' If the loan holder that reported a default insurance claim no longer exists, the borrower's recourse is to directly request that the consumer reporting organization remove the defunct loan holder's reported record of default or its equivalent from the borrower's credit history. The Department expects guaranty agencies to assist borrowers to the extent possible under these circumstances by informing the borrower of the identity of the prior holder and of the borrower's right to directly request removal of the default by the consumer reporting agency. However, the Department understands that a guaranty agency's ability to assist borrowers is limited in this area.

Notifications to Borrowers in Default and Definition of Nationwide Consumer Reporting Agency (§§ 682.410(b) and 682.200(b))

Statute: The HEOA amended section 428(k) of the HEA by adding a requirement for guaranty agencies that have received a default claim from a lender to provide the defaulted borrower with at least two separate notices, using simple and understandable terms, that explain, at a minimum, the borrower's options for removing the loan from default, and the fees and conditions associated with each option.

The HEOA also changed all current references to ''credit bureaus'' in the HEA to ''consumer reporting agencies.''

Current Regulations: Section 682.410(b)(5)(ii) requires a guaranty agency, after it pays a default claim on a loan but before it reports the default to a credit bureau or assesses collection costs against the borrower, to provide the borrower, within a specified timeframe, with a notice that advises the borrower of the actions that will be taken with regard to the default claim and explains the borrower's rights in connection with the claim. Section 682.410(b)(6) specifies the collection efforts that a guaranty agency must take on a defaulted loan.

Proposed Regulations: The proposed regulations would expand the information that must be provided in the notice required under § 682.410(b)(5)(ii) to include information on the options that are available to the borrower to remove the loan from default, including an explanation of the fees and conditions associated with each option. The proposed regulations would also require a guaranty agency to provide this same information to a defaulted borrower in a second notice that the guaranty agency must send as part of its required collection efforts on a defaulted loan under § 682.410(b)(6). The second notice would have to be sent within a reasonable time after the end of the period during which the borrower may request an administrative review as specified in § 682.410(b)(5)(iv)(B) or, if the borrower has requested an administrative review, within a reasonable time following the conclusion of the administrative review.

The proposed regulations would also remove the definition of *National credit bureau* from § 682.200(b) and replace it with a definition of *Nationwide consumer reporting agency,* and would replace all references to ''credit bureau'' with ''consumer reporting agency'' throughout § 682.410(b)(5) and (b)(6). The proposed regulations would specify that a nationwide consumer reporting agency is a consumer reporting agency as defined in 15 U.S.C. 1681a.

Reasons: The proposed changes in § 682.410(b) reflect statutory requirements. The proposed definition of *nationwide consumer reporting agency* refers to the definition of this term in the Fair Credit Reporting Act.

Executive Order 12866

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect 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 (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

Pursuant to the terms of the Executive order, it has been determined this proposed regulatory action will not have an annual effect on the economy of more than $100 million. Therefore, this action is not ''economically significant'' and subject to OMB review under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, the Secretary has assessed the potential costs and benefits of this regulatory action and has determined that the benefits justify the costs.

Need for Federal Regulatory Action

These proposed regulations are needed to implement provisions of the HEA, as amended by the HEOA, particularly related to changes related to loan discharge, deferment, consolidation, rehabilitation, and repayment plan provisions, and the addition of a new Part E to title I of the HEA which establishes extensive new disclosure requirements for lenders and institutions participating in Federal and private student loan programs.

In general, these proposed regulations simply restate specific HEOA requirements, in many cases using language drawn directly from the statute. In the following areas, the Secretary has exercised limited discretion in implementing the HEOA provisions through proposed regulations:

Total and permanent disability discharges: The Secretary determined that the monitoring period after a borrower receives a discharge due to total and permanent disability would be three years; that interest would not accrue during this period for loans that are ultimately reinstated; that the employment earnings standard would be based on the poverty guideline amount for a family of two; that, for student loan and TEACH grant disbursements received during the monitoring period, a borrower's obligation to repay a discharged loan will not be reinstated if funds are returned to the holder within 120 days of the disbursement date; and that the Secretary will provide certain information to a borrower as part of a notification to the borrower that his or her obligation to repay a previously discharged loan has been reinstated.

Opportunity to cancel a consolidation loan: The Secretary would require lenders to provide a Consolidation loan borrower a period of not less than 10 days, from the date the borrower is notified the lender is ready to make the Consolidation loan, to cancel the loan.

PLUS loan deferment: The Secretary aligned the repayment of a borrower's PLUS loans first disbursed before July 1, 2008, with a borrower's PLUS loans first disbursed on or after July 1, 2008, and with a borrower's Stafford Loans that have a grace period, so that the borrower would begin making payments on all of the loans at the same time.

Income-based repayment: The Secretary determined that a borrower whose outstanding balance has increased rather than decreased throughout the repayment period prior to the borrower's request for IBR should be given the benefit of determining partial financial hardship based on the borrower's increased outstanding loan principal balance.

The Secretary would require that, for married borrowers, joint AGI and the annual amount due on both the borrower's and the spouse's eligible loans be used to determine eligibility for IBR and the partial financial hardship payment amount. That payment amount would then be adjusted based on the percentage of the combined total eligible loan debt attributable to each individual borrower, with a further adjustment if the borrower has multiple loan holders.

Teacher loan forgiveness: The Secretary determined that the five complete consecutive years of teaching required to qualify for loan forgiveness may include any combination of qualifying teaching service at an eligible elementary or secondary school or at an eligible educational service agency, but teaching at an educational service agency may be counted toward the five years only if the consecutive five-year period includes qualifying teaching at an eligible educational service agency performed after the 2007–2008 academic year.

Forbearance: The Secretary determined that, if an administrative forbearance is granted retroactively, the lender need not go back in time to provide the required information retroactively. Lenders must, however, contact the borrower as required going forward from the date the lender applied the forbearance.

Consumer credit reporting after loan rehabilitation: The Secretary determined that guaranty agencies must, within 45 days of the sale of the rehabilitated loan to an eligible lender, request that the consumer reporting agency remove the record of default from the borrower's credit history and notify the prior holder of the loan rehabilitation. The Secretary also determined that the prior holder of the loan, within 30 days of the guaranty agency's notification of the loan's rehabilitation, must request that the consumer reporting agency remove the loan holder's default claim record or its equivalent from the borrower's credit history.

The following section addresses the alternatives that the Secretary considered in implementing these discretionary portions of the HEOA provisions. These alternatives are also discussed in more detail in the *Reasons* sections of this preamble related to the specific regulatory provisions.

Regulatory Alternatives Considered

Total and permanent disability discharges: The Department's initial proposals included a 5-year post-discharge monitoring period and interest charges for the period from the date of discharge to the reinstatement date when a borrower's obligation to repay a previously discharged loan is reinstated for failure to meet one of the post-discharge requirements. Non-Federal negotiators did not support these proposals, questioning the rationale for changing the current policies—under which the conditional discharge period is three years and interest is not charged for reinstated loans during the conditional period—in the absence of a specific statutory requirement to do so. After considering the negotiators' concerns, the Department revised the proposed regulations by changing the post-discharge monitoring period from five years to three years, and by removing the provision that would have required a borrower to pay interest from the date of discharge if the borrower's repayment obligation is reinstated.

Under the Department's initial proposal, a borrower's obligation to repay a previously discharged loan would be reinstated if the borrower's annual earnings from employment during the monitoring period exceeded the poverty guideline amount for the borrower's family size. Non-Federal negotiators raised concerns about this proposal, noting that while the proposed approach could be seen as more equitable than the current regulatory approach—under which the criteria for the reinstatement of a loan is tied to poverty guideline amount for a family of two, regardless of the borrower's actual family size—it also could be confusing to borrowers, since a borrower's family size could change during the post-discharge monitoring period. These negotiators argued that the current standard based on a family size of two would be preferable, as it would eliminate the need for borrowers to monitor changes in the employment earnings limit during the post-discharge monitoring period. The Department agreed.

Non-Federal negotiators also raised concerns about the treatment of a title IV loan disbursement made during the post-discharge monitoring period for a loan the borrower received prior to the physician's certification date. The Department initially did address this issue in the proposed regulations because the current regulatory provision, under which a borrower is ineligible for a final discharge unless the borrower ensures that such a disbursement is returned to the loan holder within 120 days of the disbursement date, is tied to the conditional discharge period, which would be eliminated under the proposed regulations. After considering the concerns of the non-Federal negotiators, the Department agreed to change the proposed regulations to provide that a borrower's obligation to repay a discharged loan will not be reinstated if the borrower ensures that a title IV loan or TEACH Grant disbursement made during the post-discharge monitoring period for a loan or TEACH Grant received prior to the discharge date is returned to the loan holder within 120 days of the disbursement date. The Department also agreed to revise the proposed regulations to provide that if a disbursement of a title IV loan or TEACH Grant is made during the period between the physician's certification date and the discharge date, the processing of the borrower's loan discharge request will be suspended until the borrower ensures the disbursement is returned to the loan holder or the Secretary, as applicable.

Lastly, the Department's initial proposal did not explicitly provide that the Secretary would notify a borrower who fails to meet one of the eligibility requirements during the post-discharge monitoring period that the borrower's obligation to repay the discharged loan has been reinstated. In response to serious concerns from non-Federal negotiators, the Department agreed to add a provision to the proposed regulations stating the Secretary will notify a borrower that his or her obligation to repay a previously discharged loan has been reinstated, and that the notification of reinstatement will explain why the obligation was reinstated, that the first payment due date following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement, and how the borrower may contact the Department if he or she has questions or believes the obligation to repay was reinstated based on incorrect information.

Opportunity to cancel a consolidation loan: A number of non-Federal negotiators raised concerns about the requirement that lenders provide Consolidation loan borrowers an explicit period of time to cancel the loan after the date the borrower is notified that the lender is ready to make the Consolidation loan. These negotiators argued that the Department's original proposal to provide a five-day period for a borrower to cancel the loan with the lender lacked clarity and did not fully recognize the highly automated consolidation process in which some loans could be fully processed in as little as 24–48 hours. One negotiator suggested that the Department provide borrowers with the opportunity to expedite processing by waiving their right to cancel the loan. After considering these concerns and suggestions, the Department proposed revised language establishing a timeframe for a borrower to cancel a Consolidation loan that would be similar to the operational timeframe used in the Direct Loan Program, which would be clear and understandable to all participants. This revised proposal is reflected in the proposed regulations.

PLUS loan deferment: A non-Federal negotiator raised concerns that, under the Department's original proposal, borrowers with PLUS loans first disbursed before July 1, 2008, and PLUS loans first disbursed on or after July 1, 2008, could erroneously believe that all their PLUS loans are eligible for the new 6-month post-enrollment deferment period, which is actually only available on PLUS loans first disbursed on or after July 1, 2008. This negotiator suggested, and the Department agreed, that the proposed regulations be revised to provide an administrative forbearance that would allow a lender to align repayment of a borrower's PLUS loans first disbursed before July 1, 2008 with a borrower's PLUS loans first disbursed on or after July 1, 2008, and with a borrower's Stafford Loans that have a grace period.

Income-based repayment: A non-Federal negotiator noted that borrowers whose outstanding loan balance increased after they initially entered repayment and before they request IBR would be disadvantaged under the Department's original proposal to always base a borrower's annual payment amount on the outstanding balance when the borrower initially entered repayment. The negotiator argued that borrowers who have had difficulty repaying the loan and who have taken advantage of deferments and forbearances to avoid delinquency would be particularly disadvantaged as their outstanding loan principal balance would have increased due to capitalized interest. After considering these factors, the Department agreed that, for a borrower whose outstanding balance has increased during the repayment period prior to the borrower's request for IBR, the determination of partial financial hardship should be based on the borrower's increased outstanding loan principal balance.

The Department also considered alternative approaches for determining eligibility for partial financial hardship for married borrowers who file a joint Federal tax return and who both have eligible loans. The Department initially proposed using each individual borrower's portion of the joint AGI and eligible loan amount to determine eligibility for IBR. Following discussions with non-Federal negotiators, the Department determined that this approach would impose significant burdens both on borrowers, who would be required to submit additional documentation to identify the individual portion of any joint income, and loan holders, who would need to determine each borrower's eligibility using a manual process (rather than automated process). As an alternative, the Department agreed to adopt a non-Federal negotiator's suggestion to determine eligibility for IBR using married borrowers' joint AGI and the annual amount due on both the borrower's and the spouse's eligible loans, with the payment amount adjusted based on the percentage of the combined total eligible loan debt attributable to each individual borrower and with a further adjustment for borrowers with multiple loan holders.

The alternatives adopted would increase Federal costs for fiscal years 2009 through 2019 related to the IBR program by an estimated $101 million compared with baseline estimated costs for the original authorizing legislation. (These costs include the impact of the proposed changes on loans made prior to FY 2009.) The Department does not forecast any new borrowers will choose the IBR repayment schedule beyond those assumed in the baseline because the alternatives adopted were relatively minor and, therefore, not likely to change borrowers' repayment choices. Projected costs were determined based on those borrowers from the 1994 through 2019 cohorts already assumed to choose the IBR repayment schedule. Estimates were derived using data from the Department's Direct Loan servicing system on borrowers who have chosen income-contingent repayment, merged with a statistically significant sample of National Student Loan Data System data. Current Population Survey data from the Census Bureau was used to project borrower incomes. Estimated loan volume associated with borrowers affected by the alternatives adopted is $93 billion over 1994 through 2019.

While the cost of these provisions would normally need to be offset, the Department requested and the Office of Management and Budget granted an exception to budget neutrality requirements. This exception reflects the relatively small cost of the provisions and the fact that in their absence borrowers would be harmed by having unduly high payment amounts or being denied access to IBR entirely. This harm would be most significant to married borrowers with significant student loan debt, including those engaged in public service careers, which often pay less than comparable jobs in the private sector.

Teacher loan forgiveness: The Department's initial proposal allowed only qualifying teaching service performed at an eligible educational service agency after August 14, 2008, the date of enactment of the HEOA, to be counted toward a borrower's required five complete consecutive years of teaching service. A non-Federal negotiator argued that this approach was too restrictive, and that the HEOA's provisions in this area were intended to apply retroactively to October 1, 1998, the date of enactment of the original FFEL and Direct Loan teacher loan forgiveness provisions. While the Department did not agree with this interpretation of the HEOA, the proposed regulations were revised to provide that the required five complete consecutive years of teaching may include any combination of qualifying teaching service at an eligible elementary or secondary school or at an eligible educational service agency, provided the consecutive five-year period includes qualifying teaching at an eligible educational service agency performed after the 2007–2008 academic year.

Forbearance: Some non-Federal negotiators raised concerns that lenders will not be able to satisfy disclosure requirements if an administrative forbearance is granted to assist a borrower with a situation occurring in the past. The Department, after discussions with other negotiators, agreed that if an administrative forbearance is granted retroactively, the lender need not go back in time to provide the required information retroactively. The lender must, however, contact the borrower as required going forward from the date the lender applied the forbearance.

Consumer credit reporting after loan rehabilitation: The Department initially proposed reducing the overall timeframe for both guaranty agency and loan holder reporting to the consumer reporting organizations from the current 90 days to 45 days. Non-Federal negotiators argued that 45 days was not enough time for both parties to report to consumer reporting agencies, noting that the prior loan holder would be unaware of the requirement until informed by the guaranty agency of the sale. These negotiators recommended separate deadlines for the guaranty agency and the loan holder to ensure that one party's failure to comply with the deadline would not result in a compliance failure for both parties. After consideration of these concerns, the Department agreed to an alternative approach that would reduce the overall period for this activity from 90 to 75 days. Under this alternative approach, the guaranty agency must, within 45 days of the sale of the rehabilitated loan to an eligible lender, request that the consumer reporting agency remove the record of default from the borrower's credit history and notify the prior holder of the loan rehabilitation. The proposed regulations would require the prior holder of the loan, within 30 days of the guaranty agency's notification of the loan's rehabilitation, to request that the consumer reporting agency remove the loan holder's default claim record or its equivalent from the borrower's credit history.

Benefits

Benefits provided in these proposed regulations include greater transparency for borrowers participating in the Federal and private student loan programs; clearer guidelines on acceptable behavior by and relationships among institutions participating in the student loan programs; improvements to the IBR plan, particularly for married borrowers; a simpler process for obtaining loan discharges due to total and permanent disability; and expanded eligibility for Teacher Loan forgiveness benefits. It is difficult to quantify benefits related to the new institutional and lender requirements, as there is little specific data available on either the extent of improper or questionable relationships between institutions and lenders prior to the HEOA or of the harm such relationships actually caused for either borrowers, institutions, or the Federal taxpayer. The extent these relationships prevented borrowers from accessing the most favorable loan terms, however, is likely to have changed in any case since recent shifts in economic conditions and lender net revenues have greatly reduced the availability of borrower benefits in the FFEL program. The Department is interested in receiving comments or data that would support a more rigorous analysis of the impact of these provisions.

These benefits all flow directly from statutory changes included in the HEOA; they are not materially affected by discretionary choices exercised by the Department in developing these regulations. As discussed in greater detail under *Net Budget Impacts,* these proposed provisions result in net costs to the government of $192.7 million over 2009–2013.

Costs

Many of the statutory provisions implemented though this NPRM will require regulated entities to develop new disclosures and other materials, as well as accompanying dissemination processes. Other proposed regulations generally would require discrete changes in specific parameters associated with existing guidance—such as changes to the process for loan discharges, IBR, and various deferment and forbearance benefits—rather than wholly new requirements. In total, these changes are estimated to increase burden on entities participating in the FFEL program by 1,313,964 hours. Of this increased burden, 1,184,115 hours are associated with lenders, 110,360 hours with guaranty agencies, and 7,200 hours with institutions. An additional 12,289 hours are associated with borrowers, generally reflecting the time required to read new disclosures or submit required information. The monetized cost of this additional burden, using loaded wage data developed by the Bureau of Labor Statistics, is $24,334,225.

While there is additional burden associated with a range of proposed provisions in this NPRM, nearly 95 percent of the burden hours associated with this package result from six provisions, all with a burden greater than 20,000 hours. In estimating the cost of these provisions, the Department used wage information from the Bureau of Labor Statistics. For lenders, institutions, and guaranty agencies, the May 2009 total private non-agricultural average hourly earnings of $18.54 was used as the hourly rate to monetize the burden of these provisions. For borrowers, the first quarter 2009 median weekly earnings for full-time wage and salary workers by age range were used. This was weighted to reflect the age profile of the student loan portfolio, with 50 percent of the portfolio assigned to the 20-to-24 age category and 50 percent to the 25-to-34 age category. Using median weekly earnings of $472 for workers in the 20-to-24 age category and $674 for workers in the 25-to-34 age category and assuming a 35-hour work week, the Department calculated an hourly rate of $16.37 to use in monetizing the burden on borrowers. The following discussion provides additional detail on the impact of these provisions.

The greatest number of burden hours is associated with proposed § 682.205, which implements new statutory requirements for lenders to disclose specified information to borrowers throughout the life-cycle of the loan. These required disclosures include information about a 10-day cancellation period for consolidation loans, the availability of forbearance and its effects, discharge options, repayment plans, and resources available to borrowers, among others. The Department determined that the lenders will have increased burden due to the additional disclosures for two groups of borrowers: Borrowers that are having difficulty making payments, and borrowers that are 60-days delinquent. There is no additional burden associated with the disclosures that loan holders are already required to make to borrowers prior to and during repayment. An estimated 4,692,126 borrowers fall within these two categories with additional burden, and the burden of developing and distributing the new disclosures is estimated to be .17 hours per borrower, for a total burden of 797,661 hours for this provision. Using the lender rate of $18.54 per hour, the cost associated with this provision is $14.8 million.

The next highest number of burden hours is associated with proposed § 682.211, which specifies lender disclosure requirements related to forbearance and creates a new administrative forbearance to align repayment of PLUS loans. Lenders must disclose the effect of interest capitalization and the total to be repaid during the life of a loan under this provision. An estimated 215,734 borrowers are affected by this provision, and the hour burden on lenders is estimated to be .03 hours per borrower, for a total of 215,734 hours. Therefore, the cost associated with this provision is approximately $4.0 million.

An estimated 90,286 burden hours are associated with § 682.215 and § 685.221, the provisions related to the definition of partial financial hardship and the calculation of the borrower's payment under income-based repayment plans. The change in the method of calculating an income-based repayment will increase burden to loan holders by .08 hours per borrower. The number of borrowers expected to qualify for IBR is 1,128,579, generating a total burden of 90,286. Using the lender rate, the cost associated with this provision is $1.7 million.

Another provision that has an estimated burden greater than 20,000 hours is § 682.206, which requires lenders to offer consolidation borrowers a 10-day cancellation period. The burden of this provision falls on borrowers, who have to read the disclosure about cancellations and act if they want to pursue that option, and lenders, who have to provide the disclosure about cancellation and delay loan processing to allow cancellations. An estimated 10,032 FFEL consolidation borrowers are affected by this provision, with an estimated burden of one hour for a total of 10,032 hours. For lenders, the burden of providing application disclosures to approximately 670,753 potential consolidation loan applicants and information about cancellations to approximately 11,147 consolidated borrowers, calculated at a rate of .08 hours per borrower, totals 54,552 hours. Applying the appropriate rates for borrowers and lenders, the total cost associated with this provision is $1.2 million.

An estimated 58,793 burden hours are associated with § 682.410, the provision requiring guaranty agencies to provide certain notifications to borrowers who are in default. Guaranty agency default notices must include information on the options that are available to the borrower to remove the loan from default, including an explanation of the fees and conditions associated with each option. Approximately 734,918 borrowers in default are affected by this provision, with a burden of .08 hours per borrower. At the guaranty agency rate of $18.54 per hour, the cost associated with this provision totals $1.1 million.

The final provision estimated to result in over 20,000 burden hours is § 682.405, which requires guaranty agencies to provide certain information to borrowers who have rehabilitated defaulted loans. Guaranty agencies are required to provide financial and economic educational materials to borrowers who have rehabilitated loans. Given an estimated 143,687 rehabilitated loans and an increase in burden of .17 hours per loan, the burden hours associated with this provision total 24,427. Applying the guaranty agency rate, the cost associated with this provision totals $0.5 million.

The other provisions that increase burden and associated costs are relatively minor, especially when looked at for an individual entity rather than in total. In general, entities wishing to continue to participate in the student aid programs have already absorbed most of the administrative costs related to implementing these provisions. Marginal costs over this baseline are primarily related to one-time system changes that, while possibly significant for some entities, are an unavoidable—and in most cases minor—cost of continued program participation. Additional workload would normally be expected to result in estimated costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities.

Given the limited data available, the Department is interested in comments and supporting information related to possible burden stemming from the proposed regulations. In particular, we ask institutions to provide detailed data on actual staffing and system costs associated with implementing these proposed regulations; data on the implementation of proposed regulations regarding the adoption and distribution of required disclosures would be especially helpful. Estimates included in this notice will be reevaluated based on any information received during the public comment period.

Net Budget Impacts

HEOA provisions implemented by these regulations are estimated to have a net budget impact of $34.7 million in 2009 and $192.7 million over FY 2009–2013. (The estimated impact for 2009 does not include $144.2 million in costs related to loans originated in prior fiscal years.) Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. (A cohort reflects all loans originated in a given fiscal year.)

These estimates were developed using the Office of Management and Budget's (OMB's) Credit Subsidy Calculator. (This calculator will also be used for re-estimates of prior-year costs, which will be performed each year beginning in FY 2009). The OMB calculator takes projected future cash flows from the Department's student loan cost estimation model and produces discounted subsidy rates reflecting the net present value of all future Federal costs associated with awards made in a given fiscal year. Values are calculated using a ''basket of zeros'' methodology under which each cash flow is discounted using the interest rate of a zero-coupon Treasury bond with the same maturity as that cash flow. To ensure comparability across programs, this methodology is incorporated into the calculator and used government-wide to develop estimates of the Federal cost of credit programs. Accordingly, the Department believes it is the appropriate methodology to use in developing estimates for these regulations. That said, however, in developing the Accounting Statement included below, the Department consulted with OMB on how to integrate our discounting methodology with the discounting methodology traditionally used in developing regulatory impact analyses.

Absent evidence on the impact of these regulations on student behavior, budget cost estimates were based on behavior as reflected in various Department data sets and longitudinal surveys listed under *Assumptions, Limitations, and Data Sources.* Program cost estimates were generated by running projected cash flows related to each provision through the Department's student loan cost estimation model. Student loan cost estimates are developed across five risk categories: Proprietary schools, two-year schools, freshmen/sophomores at four-year schools, juniors/seniors at four-year schools, and graduate students. Risk categories have separate assumptions based on the historical pattern of behavior—for example, the likelihood of default or the likelihood to use statutory deferment or discharge benefits—of borrowers in each category.

The budgetary impact of the proposed regulations is largely driven by statutory changes involving teacher loan forgiveness, loan discharges, and IBR. The Department estimates no budgetary impact for other proposed regulations included in this NPRM; there is no data indicating that the new requirements related to improper inducements and additional loan disclosures will have any impact on the volume or composition of Federal student loans.

Assumptions, Limitations, and Data Sources

Because these proposed regulations would largely restate statutory requirements that would be self-implementing in the absence of regulatory action, impact estimates provided in the preceding section reflect a pre-statutory baseline in which the HEOA changes implemented in these proposed regulations do not exist. Costs have been quantified for five years. In general, these estimates should be considered preliminary; they will be reevaluated in light of any comments or information received by the Department prior to the publication of the final regulations. The final regulations will incorporate this information in a revised analysis.

In developing these estimates, a wide range of data sources was used, including data from the NSLDS; operational and financial data from Department systems; and data from a range of surveys conducted by the National Center for Education Statistics, such as the 2004 National Postsecondary Student Aid Survey, the 1994 National Education Longitudinal Study, and the 1996 Beginning Postsecondary Student Survey. Data from other sources, such as the Census Bureau, were also used. Data on administrative burden at participating schools, lenders, guaranty agencies, and third-party servicers are extremely limited; accordingly, as noted above, the Department is particularly interested in comments in this area.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading *Paperwork Reduction Act of 1995.*

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in Table 2 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these proposed regulations. Expenditures are classified as transfers from the Federal government to student loan borrowers (for expanded loan discharges, teacher loan forgiveness payments).

TABLE 2—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Transfers
Annualized Monetized Transfers	$57.
From Whom To Whom?	Federal Government to Student Loan Borrowers.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, § 682.209 Repayment of a loan.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, *see* the instructions in the **ADDRESSES** section of this preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect institutions of higher education, lenders, and guaranty agencies that participate in Title IV, HEA programs and individual students and loan borrowers. The U.S. Small Business Administration Size Standards define institutions and lenders as ''small entities'' if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by small governmental jurisdictions, which are comprised of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.

Based on data from the Integrated Postsecondary Education Data System (IPEDS), roughly 1,200 institutions participating in the FFEL program meet the definition of ''small entities.'' More than half of these institutions are short-term, for-profit schools focusing on vocational training. Other affected small institutions include small community colleges and Tribally controlled schools. Burden on institutions associated with these proposed regulations is associated with audit requirements for schools serving as lenders. Institutions meeting the definition of small entities are extremely unlikely to act as lenders in the FFEL program. Accordingly, new requirements imposed under the proposed regulations are not expected to impose significant new costs on these institutions.

The Department believes few if any lenders participating in the FFEL program have revenues of less than $5 million. FFEL program activity is highly concentrated among the largest lenders; should an extremely small number of lenders that meet the threshold participate in the program, they likely are making loans as a service to current clients rather than soliciting new business. This type of lender, with a tangential relationship to Federal student loans, is extremely unlikely to engage in the type of activities—inducements, *etc.*—governed by these regulations. Accordingly, the Department has determined that the regulations would not represent a significant burden on small lenders.

Guaranty agencies are State and private nonprofit entities that act as agents of the Federal government, and as such are not considered ''small entities'' under the Regulatory Flexibility Act. The impact of the proposed regulations on individuals is not subject to the Regulatory Flexibility Act.

The Secretary invites comments from small institutions and lenders as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requests evidence to support that belief.

Paperwork Reduction Act of 1995

Proposed 674.61, 682.202, 682.205, 682.206, 682.208, 682.210, 682.211, 682.216, 682.302, 682.305, 682.401, 682.402, 682.410, 682.601, 685.202, 685.204, 685.205, 685.213, and 685.217 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Sections 674.61, 682.402, and 685.213—Total and Permanent Disability Loan Discharges

The proposed regulations would revise the loan discharge process for borrowers seeking to have their title IV loans discharged based on a total and permanent disability. The proposed changes to the loan discharge process affect borrowers, loan holders (and their servicers), and guaranty agencies.

The burden hour estimate associated with the current total and permanent disability loan discharge provisions is reported under OMB Control Number 1845–0065 (Discharge Application: Total and Permanent Disability). The Department does not expect the proposed changes to increase the burden for this collection. However, the Department will need to revise the Discharge Application: Total and Permanent Disability currently approved under 1845–0065 to reflect the final regulations that will be published by November 1, 2009. The Department will submit a revised form for clearance after the final regulations have been published. The revised form will not be needed until July 1, 2010, the effective date of the final regulations.

Section 682.206—Consolidation Loans

The proposed regulations would revise § 682.206(f) to incorporate a new requirement that is needed to fully implement proposed § 682.205(i)(7), which requires lenders to inform borrowers that, by applying for the Consolidation loan, the borrower is not obligated to take the loan. Specifically, § 682.206(f) would be revised to include a requirement that the lender provide a Consolidation loan borrower a period of not less than 10 days, from the date the borrower is notified by the lender that it is ready to make the Consolidation loan, to cancel the loan. The proposed regulations would require the lender to send the notice of the option to cancel the loan to the borrower before making any payments to pay off a loan with the proceeds of a Consolidation loan.

We estimate that the proposed changes will increase burden for borrowers by 10,032 hours and for loan holders (and their servicers) by 54,552 hours for a total increase in burden of 64,584 hours in OMB Control Number 1845–0020.

Sections 682.210, 682.211, 685.204 and 685.205—In-School Deferments and Administrative Forbearance for PLUS Loans

The proposed regulations would revise §§ 682.210 and 685.204 to reflect statutory deferment provisions for FFEL and Direct PLUS loan borrowers with loans first disbursed on or after July 1, 2008. Upon the request of the borrower, a parent PLUS borrower must be granted a deferment on a PLUS loan first disbursed on or after July 1, 2008, during the period when the student on whose behalf the loan was obtained is enrolled on at least a half-time basis at an eligible institution, and during the 6-month period that begins on the later of the day after the student ceases to be enrolled on at least a half-time basis or, if the parent borrower is also a student, the day after the parent ceases to be enrolled on at least a half-time basis.

For graduate and professional student PLUS borrowers, the proposed regulations would provide that a borrower may be granted a deferment on a PLUS loan first disbursed on or after July 1, 2008 during the 6-month period that begins on the day after the student ceases to be enrolled on at least a half-time basis at an eligible institution. If a lender or the Secretary grants an in-school deferment on a student PLUS loan based on information from the borrower's school about the borrower's eligibility for a new loan, student status information from the school or information from NSLDS confirming the borrower's half-time enrollment status, the in-school deferment period for a student PLUS loan first disbursed on or after July 1, 2008 would include the 6-month period that begins on the day after the student PLUS borrower ceases to be enrolled on at least a half-time basis.

The proposed regulations would also add a new administrative forbearance provision to § 682.211(f) allowing a lender to grant a forbearance, upon notice to the borrower, on a borrower's PLUS loans first disbursed before July 1, 2008 to align repayment of the loans with a borrower's PLUS loans first disbursed on or after July 1, 2008, or with a borrower's Stafford loans that are subject to a grace period. The lender would be required to notify the borrower that he or she has the option to cancel the forbearance and to continue paying on the loan. A corresponding administrative forbearance provision would be added to § 685.205(b) in the Direct Loan Program regulations.

The proposed changes to §§ 682.210 and 685.204 affect borrowers and loan holders (and their servicers). The new deferment provisions for certain PLUS borrowers are expected to increase the number of borrowers who apply for deferments. Because these statutory provisions could be implemented without regulations, the FFEL and Direct Loan deferment request forms were previously revised to include the new deferments for PLUS borrowers and have been approved under OMB Control Numbers 1845–0005 (FFEL Program Deferment Request Forms) and 1845–0011 (Direct Loan Program Deferment Request Forms). The increased burden associated with the proposed regulatory changes is reflected in the burden estimates reported under those control numbers.

We estimate that the proposed regulations in § 682.211(e) related to administrative forbearances will increase burden for loan holders by 14,440 hours in OMB Control Number 1845–0020.

Sections 682.215 and 685.221—Income-Based Repayment (IBR) Plan

The proposed regulations would revise the definition of partial financial hardship in § 682.215(a)(4) and 685.221(a)(4) to specify that the annual amount due on a borrower's eligible loans for purposes of determining whether the borrower has a partial financial hardship is the greater of the amount due on the eligible loans when the borrower initially entered repayment on those loans, or the amount due on those loans when the borrower elects the IBR plan. The proposed regulations would also provide that when a married borrower and his or her spouse file a joint Federal tax return with the IRS and both the borrower and the spouse have eligible loans, the joint AGI and the total amount of the borrower's and spouse's eligible loans will be used in determining whether each borrower has a partial financial hardship.

The proposed regulations would revise §§ 682.215(b)(1)and 685.221(b)(2) to provide that if a borrower and a borrower's spouse both have eligible loans and filed a joint Federal tax return, each borrower's percentage of the couple's total eligible loan debt would be determined, and the calculated partial financial hardship payment amount for each borrower would be adjusted by multiplying the payment by the applicable borrower's percentage. As with all other borrowers, each borrower's adjusted payment amount would be further adjusted if the borrower's loans are held by multiple holders.

We estimate that the proposed regulations will increase burden for loan holders by 90,286 hours in OMB Control Number 1845–0020.

Sections 682.202, 682.302, and 685.202—Applicability of the Servicemembers Civil Relief Act (SCRA) to FFEL and Direct Loan Program Loans

The proposed regulations would revise §§ 682.202 and 685.202 to provide that, effective August 14, 2008, upon a loan holder's receipt of a written request from a borrower and a copy of the borrower's military orders, the maximum interest rate (as defined in 50 U.S.C. 527, App, section 207(d)) that may be charged on FFEL or Direct Loan program loans made prior to the borrower entering active duty status is six percent while the borrower is on active duty status. The proposed regulations would also revise § 682.302 of the FFEL regulations by adding a new paragraph (h) that specifies that, for FFEL loans first disbursed on or after July 1, 2008, that are subject to the SCRA interest rate cap, the FFEL lender's special allowance payment is calculated as it otherwise would be under program requirements, except that the applicable interest rate used is six percent.

We estimate that the proposed regulations will increase burden for borrowers by 1,694 hours and for loan holders by 542 hours in new OMB Control Number 1845–XXX1. We estimate that the proposed regulations will increase burden for borrowers by 563 hours in new OMB Control Number 1845–XXX2.

Sections 682.210 and 685.204—In-School Deferment

The proposed regulations would revise § 682.210(a)(3) of the FFEL regulations to provide that if a borrower is responsible for the interest on a loan during a deferment period, the lender, at or before the time the deferment is granted, must notify the borrower that he or she has the option to pay the accruing interest or cancel the deferment and continue paying on the loan. The lender would also be required to provide information, including an example, on the impact on a borrower's loan debt of capitalization of accrued unpaid interest and on the total amount of interest to be paid over the life of the loan. A similar notification provision that applied only to the granting of in-school deferments would be removed from § 682.210(c)(2) of the FFEL regulations. A comparable change would be made in § 685.204(b)(1)(iii)(B) of the Direct Loan regulations to provide that borrowers will be notified of their option to cancel a deferment and continue paying on the loan and will be provided with information on the impact of capitalization, including an example.

The proposed changes to §§ 682.210 and 685.204 affect borrowers and loan holders (and their servicers). The FFEL and Direct Loan deferment request forms currently approved under OMB Control Numbers 1845–0005 and 1845–0011 already include the information that a loan holder must provide to a borrower at or before the time a deferment is granted, as described above. Therefore, there is no increase in burden associated with the proposed regulations.

Sections 682.216 and 685.217—FFEL and Direct Loan Program Teacher Loan Forgiveness

The proposed regulations would allow a borrower who otherwise meets the eligibility requirements for teacher loan forgiveness to receive forgiveness based on teaching service performed at one or more eligible elementary or secondary schools that serve low-income families, or one or more eligible educational service agencies that serve low-income families. A borrower could also qualify based on teaching service performed at a combination of eligible elementary or secondary schools and eligible educational service agencies. To be considered eligible for teacher loan forgiveness purposes, an educational service agency would have to meet the same eligibility requirements that apply to elementary and secondary schools.

The proposed changes will increase the number of borrowers who are eligible for teacher loan forgiveness, and will require a revision of the FFEL and Direct Loan Program Teacher Loan Forgiveness Application that is currently approved under OMB Control Number 1845–0059. The Department will submit a change request for 1845–0059 (including an adjustment to the burden hours associated with this collection) after the final regulations have been published.

Section 682.205—Disclosure Requirements for Lenders

The proposed regulations would reorganize and expand § 682.205 to reflect new disclosure requirements added by the HEOA. The HEOA added additional disclosures by lenders before disbursement and requires new disclosures at differing points in the borrower's repayment cycle. The HEOA also added a separate set of disclosures specifically for Consolidation loan borrowers.

We estimate that the proposed regulations will increase burden for loan holders (and their servicers) by 797,661 hours in OMB Control Number 1845–0020.

Section 682.208—Information to Borrowers Upon Transfer, Sale or Assignment of a FFEL Program Loan

The proposed regulations incorporate three additional information items specified in the HEA that must be provided to a borrower if the assignment or transfer of an ownership interest in a FFEL program loan results in a change in the identity of the party to whom subsequent payments must be sent. The three additional data items are: (1) The effective date of the assignment or transfer of the loan; (2) the date on which the current loan servicer will cease accepting payments; and (3) the date on which the new loan servicer will begin accepting payments. The date on which the current servicer will stop accepting payments is required only if that is applicable.

Loan holders are already required, under current regulations, to provide certain information to a borrower if the assignment of a FFEL Program loan results in a change in the identity of the party to whom the borrower must send payments. The proposed regulations merely add three additional items to the notice that a loan holder is already required to provide. Therefore, the Department believes that the proposed regulations will not significantly increase burden for loan holders (and their servicers) in OMB Control Number 1845–0020.

Section 682.211—Forbearance

Section 682.211(e) of the proposed regulations would require the lender, at the time the borrower is granted a forbearance, to give the borrower information about the impact of capitalization of interest on the loan and the total amount to be repaid over the life of the loan. The proposed regulations would also require the lender to contact the borrower at least once every 180 days during any period of forbearance and to give the borrower or endorser more specific information, in conjunction with that required under existing regulations, as to the impact of forbearance on the loan. This information includes the amount of interest that will be capitalized and when that capitalization will take place and the option of the borrower or endorser to pay the interest that has accrued before it is capitalized.

We estimate that the proposed regulations will increase burden for loan holders (and their servicers) by 215,734 hours in OMB Control Number 1845–0020.

Sections 682.305 and 682.601—Audit Requirements for a FFEL School Lender or an Eligible Lender Trustee (ELT)

The proposed regulations would revise § 682.305(c) to require that a FFEL school lender, or a lender serving as a trustee on behalf of a school or school-affiliated organization for the purpose of originating loans, submit an annual compliance audit to the Department regardless of the dollar volume of loans originated. The proposed regulations also require that the audit be conducted by a qualified, independent organization or person. A new proposed § 682.305(c)(2)(vii) would govern the compliance audit of a school or school-affiliated organization lender trustee. The proposed regulations require that the trustee's audit include a determination that the school for whom the lender serves as trustee used all the proceeds from special allowance payments, interest subsidies received from the Department, and any proceeds from the sale or other disposition of the loans originated through the lender for need-based grants, and that those funds supplemented, but did not supplant, other Federal or non-Federal funds otherwise available to the school to make need-based grants to its students. The proposed regulations also require that the audit determine that no more than a reasonable portion of the payments and proceeds from the loans were used for direct administrative expenses in accordance with § 682.601(b) of the current regulations. These same requirements with regard to annual compliance audit determinations were also added to the FFEL school lender audit requirements in § 682.601(a)(7) of the regulations.

We estimate that the proposed regulations will increase burden for institutions by 7,200 hours and for loan holders (and their servicers) by 10,900 hours for a total increase in burden of 18,100 hours in OMB Control Number 1845–0020.

Section 682.401—Consumer Education Information Provided by Guaranty Agencies

The proposed regulations require guaranty agencies to work with the schools that it serves to develop and make available high-quality educational materials and programs that provide training for students and their families in budgeting and financial management, including debt management and other aspects of financial literacy, such as the cost of using high-interest loans to pay for postsecondary education, and how budgeting and financial management relate to the title IV student loan programs.

We estimate that the proposed regulations will increase burden for institutions and guaranty agencies by 8,748 hours in OMB Control Number 1845–0020.

Section 682.405—Financial and Economic Literacy for Rehabilitated Borrowers

The proposed regulations would revise § 682.405, regarding loan rehabilitation agreements, by adding a provision requiring guaranty agencies to make available financial and economic education materials, including debt management information, to any borrower who has rehabilitated a defaulted loan.

We estimate that the proposed regulations will increase burden for guaranty agencies by 24,427 hours in OMB Control Number 1845–0020.

Section 682.405—Consumer Credit Reporting Following Loan Rehabilitation

If a borrower successfully rehabilitates a previously defaulted loan, the proposed regulations would require the prior holder of the loan, in addition to the guaranty agency, to request that a consumer reporting agency to which the default was reported remove the default from the borrower's credit history. The proposed regulations would also provide more detailed reporting deadlines for the guaranty agency and prior loan holder to request removal of the report of the default from the borrower's credit history, and would reduce the overall period for this activity from 90 to 75 days.

We estimate that the proposed regulations will increase burden for guaranty agencies by 18,392 hours in OMB Control Number 1845–0020.

Section 682.410—Notifications to Borrowers in Default

The proposed regulations would expand the information that must be provided in the notice required under § 682.410(b)(5)(ii) to include information on the options that are available to the borrower to remove the loan from default, including an explanation of the fees and conditions associated with each option. The proposed regulations would also require a guaranty agency to provide this same information to a defaulted borrower in a second notice that the guaranty agency must send as part of its required collection efforts on a defaulted loan under § 682.410(b)(6). The second notice would have to be sent within a reasonable time after the end of the period during which the borrower may request an administrative review as specified in § 682.410(b)(5)(iv)(B) or, if the borrower has requested an administrative review, within a reasonable time following the conclusion of the administrative review.

We estimate that the proposed regulations will increase burden for guaranty agencies by 58,793 hours in OMB Control Number 1845–0020.

Consistent with the discussion above, the following chart describes the sections of the proposed regulations involving information collections, the information being collected, and the collections that the Department will submit to the Office of Management and Budget for approval and public comment under the Paperwork Reduction Act.

Regulatory section	Information collection	Collection
674.61, 682.402, and 685.213.	The proposed regulations would revise the loan discharge process for borrowers seeking to have their title IV loans discharged based on total and permanent disability. Borrowers who apply for a total and permanent disability discharge must complete a discharge application that collects the information needed to determine their eligibility for discharge.	OMB 1845–0065. The Discharge Application: Total and Permanent Disability that is currently approved under 1845–0065 will be revised to reflect the final regulations that will be published by November 1, 2009. The Department will submit a revised form for clearance after the final regulations have been published. The revised form will not be needed until July 1, 2010, the effective date of the final regulations.
682.206	§ 682.206(f) would be amended to include a requirement that the lender provide a Consolidation loan borrower a period of not less than 10 days, from the date the borrower is notified by the lender that it is ready to make the Consolidation loan, to cancel the loan.	OMB 1845–0020.
682.210, 682.211, 685.204 and 685.205.	The proposed regulations implement new deferment provisions for FFEL and Direct PLUS loan borrowers with loans first disbursed on or after July 1, 2008 that were added to the HEA by the HEOA. A loan holder must collect the information needed to determine that a borrower is eligible for a deferment.	OMB 1845–0005, 1845–0011 and 1845–0020. The FFEL and Direct Loan deferment request forms were previously revised to include the new deferments for PLUS borrowers and have been approved under OMB Control Numbers 1845–0005 (FFEL) and 1845–0011 (Direct Loan).

Regulatory section	Information collection	Collection
682.202, 682.302, and 685.202.	The proposed regulations provide that, effective August 14, 2008, upon a loan holder's receipt of a written request from a borrower and a copy of the borrower's military orders, the maximum interest rate that may be charged on FFEL or Direct Loan program loans made prior to the borrower entering active duty status is six percent while the borrower is on active duty status.	OMB 1845–XXX1 and 1845–XXX2. These will be new collections. A separate 60-day **Federal Register** Notice will be published to solicit comments.
682.210 and 685.204	The proposed regulations would require a loan holder to provide information about interest capitalization to a borrower prior to or at the time of granting a deferment on an unsubsidized loan.	OMB 1845–0005 and 1845–0011. These collections (FFEL and Direct Loan Program deferment request forms) were previously revised to include the required information about interest capitalization and have been approved by OMB.
682.215 and 685.221	The proposed regulations would revise the definition of partial financial hardship for purposes of determining a borrower's eligibility for the income-based repayment plan and would also revise the provisions governing a loan holder's calculation of a borrower's income-based payment amount.	OMB 1845–0020.
682.216 and 685.217	The proposed regulations would expand eligibility for teacher loan forgiveness to allow a borrower who otherwise meets the loan forgiveness eligibility requirements to receive forgiveness based on teaching service performed at one or more eligible educational service agencies that serve low-income families.	OMB 1845–0059. The proposed changes will require a revision of the FFEL and Direct Loan Program Teacher Loan Forgiveness Application currently approved under OMB Control Number 1845–0059. The Department will submit a change request for 1845–0059 (including an adjustment to the burden hours associated with this collection) after the final regulations have been published.
682.205	The proposed regulations implement new statutory requirements for lenders to disclosure certain information to borrowers at various points during the lifecycle of a borrower's loan. The proposed regulations also add new lender disclosure requirements for consolidation loan borrowers.	OMB 1845–0020.
682.208	The proposed regulations incorporate three additional information items that must be provided to a borrower if the assignment or transfer of an ownership interest in a FFEL program loan results in a change in the identity of the party to whom subsequent payments must be sent.	OMB 1845–0020.
682.211	The proposed regulations would require the lender, at the time the borrower is granted a forbearance, to give the borrower information about the impact of capitalization of interest on the loan and the total to be repaid over the life of the loan.	OMB 1845–0020.
682.305 and 682.601	The proposed regulations would amend § 682.305(c) to require that a FFEL school lender, or a lender serving as a trustee on behalf of a school or school-affiliated organization for the purpose of originating loans, submit an annual compliance audit to the Department regardless of the dollar volume of loans originated.	OMB 1845–0020.
682.401	The proposed regulations require guaranty agencies to work with the schools that it serves to develop and make available high-quality educational materials and programs to provide training for students and their families in budgeting and financial management, including debt management and other aspects of financial literacy, such as the cost of using high-interest loans to pay for postsecondary education, and how budgeting and financial management relate to the title IV student loan programs.	OMB 1845–0020.
682.405	The proposed regulations would require guaranty agencies to provide certain information to borrowers who have rehabilitated defaulted loans.	OMB 1845–0020.
682.405	The proposed regulations would require the prior holder of a previously defaulted loan, in addition to the guaranty agency, to request that consumer reporting agencies remove the record of the default from the borrower's credit history after the borrower has successfully rehabilitated the loan.	OMB 1845–0020.
682.410	The proposed regulations require guaranty agencies to provide certain additional notifications to borrowers who are in default.	OMB 1845–0020.

If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by e-mail to *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

• Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;

• Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;

• Enhancing the quality, usefulness, and clarity of the information we collect; and

• Minimizing the burden on those who must respond. This includes exploring 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.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

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(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Family Education Loan Program; 84.038 Federal Perkins Loan Program; 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR 674, 682 and 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: July 13, 2009.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend 34 CFR chapter VI as follows:

PART 674—FEDERAL PERKINS LOAN PROGRAM

1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429 unless otherwise noted.

2. Section 674.9 is amended by:

A. Revising paragraph (g).

B. In the introductory text of paragraph (h), removing the words ‘‘based on’’ and adding, in their place, the word ‘‘after’’, and adding the words ‘‘based on a discharge request received prior to July 1, 2010’’ immediately after the word ‘‘disabled’’.

C. In paragraph (h)(1), removing the words ‘‘paragraphs (h)(1) and (h)(2)’’ and adding, in their place, the words ‘‘paragraphs (g)(1) and (g)(2)’’.

D. In paragraph (h)(2)(ii), removing the words ‘‘, as described in § 674.61(b)(9)’’ immediately after the word ‘‘period’’.

E. In the second sentence of paragraph (i), removing the words ‘‘described in §§ 674.61(b), 682.402(e), or 685.213(a)’’ immediately after the word ‘‘period’’.

The revision reads as follows:

§ 674.9 Student eligibility.

* * * * *

(g) In the case of a borrower whose prior loan under title IV of the Act was discharged after a final determination of total and permanent disability—

(1) Obtains a certification from a physician that the borrower is able to engage in substantial gainful activity;

(2) Signs a statement acknowledging that any new Federal Perkins Loan the borrower receives cannot be discharged in the future on the basis of any present impairment, unless that condition substantially deteriorates; and

(3) If the borrower receives a new Federal Perkins Loan within three years of the date that any previous title IV loan or TEACH Grant service obligation was discharged due to a total and permanent disability in accordance with § 674.61(b)(3)(i), 34 CFR 682.402(c), 34 CFR 685.213, or 34 CFR 686.42(b) based on a discharge request received on or after July 1, 2010, resumes repayment on the previously discharged loan in accordance with § 674.61(b)(5), 34 CFR 682.402(c)(5), or 34 CFR 685.213(b)(4), or acknowledges that he or she is once again subject to the terms of the TEACH Grant agreement to serve before receiving the new loan.

* * * * *

3. Section 674.51 is amended by:

A. Revising paragraph (d).

B. Redesignating paragraphs (e) through (s) as follows:

Old paragraph	New paragraph
674.51(e)	674.51(f)
674.51(f)	674.51(h)
674.51(g)	674.51(l)
674.51(h)	674.51(m)
674.51(i)	674.51(n)
674.51(j)	674.51(p)
674.51(k)	674.51(q)
674.51(l)	674.51(r)
674.51(m)	674.51(s)
674.51(n)	674.51(t)
674.51(o)	674.51(u)
674.51(p)	674.51(w)
674.51(q)	674.51(y)
674.51(r)	674.51(z)
674.51(s)	674.51(aa)

C. Adding new paragraphs (e), (g), (i), (j), (k), (o), (v), (x), and (bb).

D. In newly redesignated paragraph (f), removing the number ‘‘672(2)’’, and adding, in its place, the number ‘‘632(4)’’.

E. Revising newly redesignated paragraph (n).

F. In newly redesignated paragraph (t), by removing the number ‘‘672(2)’’, and adding, in its place, the number ‘‘632’’.

G. Revising newly redesignated paragraph (aa).

H. Revising the authority citation that appears at the end of the section.

The revisions and additions read as follows:

§ 674.51 Special definitions.

* * * * *

(d) *Child with a disability:* A child or youth from ages 3 through 21, inclusive, who requires special education and related services because he or she has one or more disabilities as defined in section 602(3) of the Individuals with Disabilities Education Act.

(e) *Community defender organizations:* A defender organization established in accordance with section

3006A(g)(2)(B) of title 18, United States Code.

* * * * *

(g) *Educational service agency:* A regional public multi-service agency authorized by State law to develop, manage, and provide services or programs to local educational agencies as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

* * * * *

(i) *Faculty member at a Tribal College or University:* An educator or tenured individual who is employed by a Tribal College or University, as that term is defined in section 316 of the HEA, to teach, research, or perform administrative functions. For purposes of this definition an educator may be an instructor, lecturer, lab faculty, assistant professor, associate professor, or full professor, dean or academic department head.

(j) *Federal public defender organization:* A defender organization established in accordance with section 3006A(g)(2)(A) of title 18, United States Code.

(k) *Firefighter:* A firefighter is an individual who is employed by a Federal, State, or local firefighting agency to extinguish destructive fires; or provide firefighting related services such as—

(1) Providing community disaster support and, as a first responder, providing emergency medical services;

(2) Conducting search and rescue; or

(3) Providing hazardous materials mitigation (HAZMAT).

* * * * *

(n) *Infant or toddler with a disability:* An infant or toddler from birth to age 2, inclusive, who needs early intervention services for specified reasons, as defined in section 632(5)(A) of the Individuals with Disabilities Education Act.

(o) *Librarian with a master's degree:* A librarian with a master's degree is an information professional trained in library or information science who has obtained a postgraduate academic degree in library science awarded after the completion of an academic program of up to six years in duration, excluding a doctorate or professional degree.

* * * * *

(v) *Speech language pathologist with a master's degree:* An individual who evaluates or treats disorders that affect a person's speech, language, cognition, voice, swallowing and the rehabilitative or corrective treatment of physical or cognitive deficits/disorders resulting in difficulty with communication, swallowing, or both.

* * * * *

(x) *Substantial gainful activity:* A level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both.

* * * * *

(aa) *Total and permanent disability:* The condition of an individual who—

(1) Is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that—

(i) Can be expected to result in death;

(ii) Has lasted for a continuous period of not less than 60 months; or

(iii) Can be expected to last for a continuous period of not less than 60 months; or

(2) Has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability.

(bb) *Tribal College or University:* An institution that—

(1) Qualifies for funding under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*) or the Navajo Community College Assistance Act of 1978 (25 U.S.C. 640a note); or

(2) Is cited in section 532 of the Equity in Education Land Grant Status Act of 1994 (7 U.S.C. 301 note).

* * * * *

4. Section 674.61 is amended by:

A. Revising paragraph (b).

B. Redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively.

C. Adding a new paragraph (c).

The revision and addition read as follows:

§ 674.61 Discharge for death or disability.

* * * * *

(b) *Total and permanent disability as defined in § 674.51(aa)(1)*—

(1) *General.* A borrower's Defense, NDSL, or Perkins loan is discharged if the borrower becomes totally and permanently disabled, as defined in § 674.51(aa)(1), and satisfies the additional eligibility requirements contained in this section.

(2) *Discharge application process for borrowers who have a total and permanent disability as defined in § 674.51(aa)(1).* (i) To qualify for discharge of a Defense, NDSL, or Perkins loan based on a total and permanent disability as defined in § 674.51(aa)(1), a borrower must submit a discharge application approved by the Secretary to the institution that holds the loan.

(ii) The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1).

(iii) The borrower must submit the application to the institution within 90 days of the date the physician certifies the application.

(iv) Upon receiving the borrower's complete application, the institution must suspend collection activity on the loan and inform the borrower that—

(A) The institution will review the application and assign the loan to the Secretary for an eligibility determination if the institution determines that the certification supports the conclusion that the borrower is totally and permanently disabled, as defined in § 674.51(aa)(1);

(B) The institution will resume collection on the loan if the institution determines that the certification does not support the conclusion that the borrower is totally and permanently disabled; and

(C) If the Secretary discharges the loan based on a determination that the borrower is totally and permanently disabled, as defined in § 674.51(aa)(1), the Secretary will reinstate the borrower's obligation to repay the loan if, within three years after the date the Secretary granted the discharge, the borrower—

(*1*) Has annual earnings from employment that exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act;

(*2*) Receives a new TEACH Grant or a new loan under the Perkins, FFEL, or Direct Loan programs, except for an FFEL or Direct Consolidation Loan that includes loans that were not discharged; or

(*3*) Fails to ensure that the full amount of any disbursement of a Title IV loan or TEACH Grant received prior to the discharge date that is made during the three-year period following the discharge date is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(v) If, after reviewing the borrower's application, the institution determines that the application is complete and supports the conclusion that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the institution must assign the loan to the Secretary.

(vi) At the time the loan is assigned to the Secretary, the institution must notify the borrower that the loan has been assigned to the Secretary for determination of eligibility for a total and permanent disability discharge and that no payments are due on the loan.

(3) *Secretary's eligibility determination.* (i) If the Secretary determines that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower that the loan has been discharged. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (b)(5) of this section.

(ii) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note.

(iii) The Secretary reserves the right to require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1). As part of the Secretary's review of the borrower's discharge application, the Secretary may arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

(4) *Treatment of disbursements made during the period from the date of the physician's certification until the date of discharge.* If a borrower received a Title IV loan or TEACH Grant prior to the date the physician certified the borrower's discharge application and a disbursement of that loan or grant is made during the period from the date of the physician's certification until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(5) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates a borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(3)(i) of this section if, within three years after the date the Secretary granted the discharge, the borrower—

(A) Has annual earnings from employment that exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act;

(B) Receives a new TEACH Grant or a new loan under the Perkins, FFEL or Direct Loan programs, except for an FFEL or Direct Consolidation Loan that includes loans that were not discharged; or

(C) Fails to ensure that the full amount of any disbursement of a Title IV loan or TEACH Grant received prior to the discharge date that is made during the three-year period following the discharge date is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(ii) If a borrower's obligation to repay a loan is reinstated, the Secretary—

(A) Notifies the borrower that the loan has been reinstated; and

(B) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the loan was reinstated.

(iii) The Secretary's notification under paragraph (b)(5)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(6) *Borrower's responsibilities after a total and permanent disability discharge.* During the three-year period described in paragraph (b)(5)(i) of this section, the borrower or, if applicable, the borrower's representative—

(i) Must promptly notify the Secretary of any changes in address or phone number;

(ii) Must promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(5)(i)(A) of this section; and

(iii) Must provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment.

(7) *Payments received after the physician's certification of total and permanent disability.* (i) If, after the date the physician certifies the borrower's loan discharge application, the institution receives any payments from or on behalf of the borrower on or attributable to a loan that was assigned to the Secretary for determination of eligibility for a total and permanent disability discharge, the institution must forward those payments to the Secretary for crediting to the borrower's account.

(ii) At the same time that the institution forwards the payment, it must notify the borrower that there is no obligation to make payments on the loan prior to the Secretary's determination of eligibility for a total and permanent disability discharge, unless the Secretary directs the borrower otherwise.

(iii) When the Secretary makes a determination to discharge the loan, the Secretary returns any payments received on the loan after the date the physician certified the borrower's loan discharge application to the person who made the payments on the loan.

(c) *Total and permanent disability discharges for veterans*—(1) *General.* A veteran's Defense, NDSL, or Perkins loan will be discharged if the veteran is totally and permanently disabled, as defined in § 674.51(aa)(2).

(2) *Discharge application process for veterans who have a total and permanent disability as defined in § 674.51(aa)(2).* (i) To qualify for discharge of a Defense, NDSL, or Perkins loan based on a total and permanent disability as defined in § 674.51(aa)(2), a veteran must submit a discharge application approved by the Secretary to the institution that holds the loan.

(ii) With the application, the veteran must submit documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The veteran will not be required to provide any additional documentation related to the veteran's disability.

(iii) Upon receiving the veteran's completed application and the required documentation from the Department of Veterans Affairs, the institution must suspend collection activity on the loan and inform the veteran that—

(A) The institution will review the application and submit the application and supporting documentation to the Secretary for an eligibility determination if the documentation from the Department of Veterans Affairs indicates that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2);

(B) The institution will resume collection on the loan if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2); and

(C) If the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2), but the documentation indicates that the veteran may be totally and permanently disabled as defined in § 674.51(aa)(1), the veteran may reapply for a total and permanent disability discharge in accordance with the procedures described in § 674.61(b).

(iv) If the documentation from the Department of Veterans Affairs indicates that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2), the institution must submit a copy of the veteran's application and the documentation from the Department of Veterans Affairs to the Secretary. At the time the application and documentation are submitted to the Secretary, the institution must notify the veteran that the veteran's discharge request has been referred to the Secretary for determination of discharge eligibility and that no payments are due on the loan.

(v) If the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2), the institution must resume collection on the loan.

(4) *Secretary's determination of eligibility.* (i) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2), the Secretary notifies the institution of this determination, and the institution must—

(A) Discharge the veteran's obligation to make further payments on the loan; and

(B) Return to the person who made the payments on the loan any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability.

(ii) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as defined in § 674.51(aa)(2), the Secretary notifies the institution of this determination, and the institution must resume collection on the loan.

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

5. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071–1087–2 unless otherwise noted.

6. Section 682.200(b) is amended by:

A. Revising paragraph (5) of the definition of "Lender."

B. Removing the definition of "National credit bureau."

C. Adding a definition of "Nationwide consumer reporting agency."

D. Adding a definition of "Substantial gainful activity."

E. Revising the definition of "Totally and permanently disabled."

The revisions and additions read as follows:

§ 682.200 Definitions.

* * * * *

(b) * * *

Lender. * * *

(5)(i) The term *eligible lender* does not include any lender that the Secretary determines, after notice and opportunity for a hearing before a designated Department official, has, directly or through an agent or contractor—

(A) Except as provided in paragraph (5)(ii) of this definition, offered, directly or indirectly, points, premiums, payments (including payments for referrals, finder fees or processing fees), or other inducements to any school, any employee of a school, or any other party to secure applications for FFEL loans or to secure FFEL loan volume. This includes but is not limited to—

(*1*) Payments or offerings of other benefits, including prizes or additional financial aid funds, to a prospective borrower or to a school or school employee in exchange for applying for or accepting a FFEL loan from the lender;

(*2*) Payments or other benefits, including payments of stock or other securities, tuition payments or reimbursements, to a school, a school employee, any school-affiliated organization, or to any other individual in exchange for FFEL loan applications, application referrals, or a specified volume or dollar amount of loans made, or placement on a school's list of recommended or suggested lenders;

(*3*) Payments or other benefits provided to a student at a school who acts as the lender's representative to secure FFEL loan applications from individual prospective borrowers, unless the student is also employed by the lender for other purposes and discloses that employment to school administrators and to prospective borrowers;

(*4*) Payments or other benefits to a loan solicitor or sales representative of a lender who visits schools to solicit individual prospective borrowers to apply for FFEL loans from the lender;

(*5*) Payment to another lender or any other party, including a school, a school employee, or a school-affiliated organization or its employees, of referral fees, finder fees or processing fees, except those processing fees necessary to comply with Federal or State law;

(*6*) Compensation to an employee of a school's financial aid office or other employee who has responsibilities with respect to student loans or other financial aid provided by the school or compensation to a school-affiliated organization or its employees, to serve on a lender's advisory board, commission or other group established by the lender, except that the lender may reimburse the employee for reasonable expenses incurred in providing the service;

(*7*) Payment of conference or training registration, travel, and lodging costs for an employee of a school or school-affiliated organization;

(*8*) Payment of entertainment expenses, including expenses for private hospitality suites, tickets to shows or sporting events, meals, alcoholic beverages, and any lodging, rental, transportation, and other gratuities related to lender-sponsored activities for employees of a school or a school-affiliated organization;

(*9*) Philanthropic activities, including providing scholarships, grants, restricted gifts, or financial contributions in exchange for FFEL loan applications or application referrals, or a specified volume or dollar amount of FFEL loans made, or placement on a school's list of recommended or suggested lenders;

(*10*) Performance of, or payment to another third party to perform, any school function required under title IV, except that the lender may perform exit counseling as provided in § 682.604(g), and may provide services to participating foreign schools at the direction of the Secretary, as a third-party servicer; and

(*11*) Any type of consulting arrangement or other contract with an employee of a financial aid office at a school, or an employee of a school who otherwise has responsibilities with respect to student loans or other financial aid provided by the school under which the employee would provide services to the lender.

(B) Conducted unsolicited mailings, by postal or electronic means, of student loan application forms to students enrolled in secondary schools or postsecondary institutions or to family members of such students, except to a student or borrower who previously has received a FFEL loan from the lender;

(C) Offered, directly or indirectly, a FFEL loan to a prospective borrower to induce the purchase of a policy of insurance or other product or service by the borrower or other person; or

(D) Engaged in fraudulent or misleading advertising with respect to its FFEL loan activities.

(ii) Notwithstanding paragraph (5)(i) of this definition, a lender, in carrying out its role in the FFEL program and in attempting to provide better service, may provide—

(A) Technical assistance to a school that is comparable to the kinds of technical assistance provided to a school by the Secretary under the Direct Loan program, as identified by the Secretary in a public announcement, such as a notice in the **Federal Register**;

(B) Support of and participation in a school's or a guaranty agency's student aid and financial literacy-related outreach activities, excluding in-person entrance counseling, as long as the name of the entity that developed and paid for any materials is provided to the participants and the lender does not promote its student loan or other products;

(C) Meals, refreshments, and receptions that are reasonable in cost and scheduled in conjunction with training, meeting, or conference events if those meals, refreshments, or receptions are open to all training, meeting, or conference attendees;

(D) Toll-free telephone numbers for use by schools or others to obtain information about FFEL loans and free data transmission service for use by schools to electronically submit applicant loan processing information or student status confirmation data;

(E) A reduced origination fee in accordance with § 682.202(c);

(F) A reduced interest rate as provided under the Act;

(G) Payment of Federal default fees in accordance with the Act;

(H) Purchase of a loan made by another lender at a premium;

(I) Other benefits to a borrower under a repayment incentive program that requires, at a minimum, one or more scheduled payments to receive or retain the benefit or under a loan forgiveness program for public service or other targeted purposes approved by the Secretary, provided these benefits are not marketed to secure loan applications or loan guarantees;

(J) Items of nominal value to schools, school-affiliated organizations, and borrowers that are offered as a form of generalized marketing or advertising, or to create good will; and

(K) Other services as identified and approved by the Secretary through a public announcement, such as a notice in the **Federal Register**.

(iii) For the purposes of this paragraph (5)—

(A) The term ''school-affiliated organization'' is defined in § 682.200.

(B) The term ''applications'' includes the Free Application for Federal Student Aid (FAFSA), FFEL loan master promissory notes, and FFEL Consolidation loan application and promissory notes.

(C) The term ''other benefits'' includes, but is not limited to, preferential rates for or access to the lender's other financial products, information technology equipment, or non-loan processing or non-financial aid-related computer software at below market rental or purchase cost, and printing and distribution of college catalogs and other materials at reduced or no cost.

* * * * *

Nationwide consumer reporting agency. A consumer reporting agency as defined in 15 U.S.C. 1681a.

* * * * *

Substantial gainful activity. A level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both.

* * * * *

Totally and permanently disabled. The condition of an individual who—

(1) Is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that—

(i) Can be expected to result in death;

(ii) Has lasted for a continuous period of not less than 60 months; or

(iii) Can be expected to last for a continuous period of not less than 60 months; or

(2) Has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability.

* * * * *

7. Section 682.201 is amended by:

A. In paragraph (a)(4)(i), removing the words ''legal costs, and late charges'' and adding, in their place, the words ''court costs, attorney fees, and late charges''.

B. In paragraph (a)(5), removing the words ''under § 682.402(c)''.

C. Revising paragraph (a)(6)(iii).

D. In the introductory text of paragraph (a)(7), removing the words ''based on'' and adding, in their place, the word ''after'', and adding the words ''based on a discharge request received prior to July 1, 2010'' immediately after the word ''disabled''.

E. In paragraph (a)(7)(ii)(B), removing the words '', as described in paragraph 682.402(c)(16)''.

F. In paragraph (e)(4), adding the words ''is in default or'' immediately after the first appearance of the words ''consolidation loan'' and adding the words ''or an income-based repayment plan'' immediately after the words ''income contingent repayment plan''.

G. In paragraph (e)(5), adding the words '', or the no accrual of interest benefit for active duty service'' immediately after the words ''Public Service Loan Forgiveness Program''.

The revision reads as follows:

§ 682.201 Eligible borrowers.

(a) * * *

(6) * * *

(iii) If a borrower receives a new FFEL loan within three years of the date that any previous title IV loan or TEACH Grant service obligation was discharged due to a total and permanent disability in accordance with § 682.402(c)(3)(ii), 34 CFR 674.61(b)(3)(i), 34 CFR 685.213, or 34 CFR 686.42(b) based on a discharge request received on or after July 1, 2010, resume repayment on the previously discharged loan in accordance with § 682.402(c)(5), 34 CFR 674.61(b)(5), or 34 CFR 685.213(b)(4), or acknowledge that he or she is once again subject to the terms of the TEACH Grant agreement to serve before receiving the new loan.

* * * * *

8. Section 682.202 is amended by:

A. In the introductory text of paragraph (a), adding the words ''and (a)(8)'' after the reference ''(a)(4)''.

B. Adding a new paragraph (a)(8).

C. In paragraph (b)(2)(i), adding the words ''or, for a PLUS loan, for the period from the date the first disbursement was made to the date the repayment period begins'' immediately before the semicolon.

The addition reads as follows:

§ 682.202 Permissible charges by lenders to borrowers.

* * * * *

(a) * * *

(8) *Applicability of the Servicemembers Civil Relief Act (50 U.S.C. 527, App. sec. 207).* Notwithstanding paragraphs (a)(1) through (a)(4) of this section, effective August 14, 2008, upon the loan holder's receipt of the borrower's written request and a copy of the borrower's military orders, the maximum interest rate, as defined in 50 U.S.C. 527, App. section 207(d), on FFEL Program loans made

prior to the borrower entering active duty status is 6 percent while the borrower is on active duty military service.

* * * * *

9. Section 682.205 is amended by:

A. In paragraph (a)(2)(vi), removing the words ''insurance premium'' and adding, in their place, the words ''Federal default fee'', and adding, immediately before the semicolon, the words ''or paid by the lender''.

B. In paragraph (a)(2)(ix), removing the words ''a national credit bureau'' and adding, in their place, the words ''each nationwide consumer reporting agency''.

C. In paragraph (a)(2)(x), adding, immediately before the semicolon, the words '', and a description of the types of repayment plans available''.

D. In paragraph (a)(2)(xvi), removing the words ''a national credit bureau'' and adding, in their place, the words ''each nationwide consumer reporting agency''.

E. In paragraph (a)(2)(xviii), removing the words ''in the making or'' and adding, in their place, the words ''during repayment or in the''; adding the words ''including any fees the borrower may be charged'' immediately after the words ''the loan,''; and removing the words ''; and'' at the end of the paragraph and adding, in their place, the punctuation '';''.

F. In paragraph (a)(2)(xx), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the punctuation '';''.

G. Adding new paragraphs (a)(2)(xxi), (a)(2)(xxii), (a)(2)(xxiii), and (a)(2)(xxiv).

H. In paragraph (b), in the second sentence, adding the words '', and that the default will be reported to each nationwide consumer reporting agency'' immediately after the word ''loan''.

I. In paragraph (c), in the heading, removing the words ''Disclosure of repayment'' and adding, in their place, the word ''Repayment''.

J. In paragraph (c)(1), adding the heading ''Disclosures at or prior to repayment.'' immediately after the paragraph designation ''(1)''; removing the words ''Federal SLS'' and adding, in their place, the words ''Federal PLUS''; and removing the words ''240 days'' and adding, in their place, the words ''150 days''.

K. In paragraph (c)(2)(ii), adding the words '', or a deferment under § 682.210(v), if applicable, is to end'' immediately after the word ''begin'' at the end of the sentence.

L. In paragraph (c)(2)(iii), adding the words ''a deferment under § 682.210(v), if applicable, is to end,'' immediately after the word ''begin''.

M. In paragraph (c)(2)(vi), adding the words ''based on the repayment schedule selected by the borrower'' immediately after the word ''payments''.

N. In paragraph (c)(2)(viii), adding the words ''if interest has been paid, the amount of interest paid'' immediately after the words ''; and''.

O. In paragraph (c)(2)(ix), removing the punctuation ''.'' at the end of the sentence and adding, in its place, the punctuation '';''.

P. Adding new paragraphs (c)(2)(x), (c)(2)(xi), (c)(2)(xii), (c)(2)(xiii) and (c)(2)(xiv).

Q. Adding new paragraphs (c)(3), (c)(4) and (c)(5).

R. In paragraph (d), adding the words ''Federal Unsubsidized Stafford loan or a'' immediately after the words ''In the case of a'' at the beginning of the first sentence and removing the words ''the student'' in the first sentence and adding, in their place, the words ''the borrower or student on whose behalf the loan is made''.

S. Adding new paragraph (i).

T. Adding new paragraph (j).

The additions read as follows:

§ 682.205 Disclosure requirements for lenders.

(a) * * *

(1) * * *

(2) * * *

(xxi) For unsubsidized Stafford or student PLUS borrowers, an explanation that the borrower may pay the interest while in school and, if the interest is not paid by the borrower while in school, when and how often the interest will be capitalized;

(xxii) For parent PLUS borrowers, an explanation that the parent may defer payment on the loan while the student on whose behalf the parent borrowed is enrolled at least half-time and, if the parent does not pay interest while the student is in school, when and how often interest will be capitalized, and that the parent may be eligible for a deferment on the loan if the parent is enrolled at least half-time;

(xxiii) A statement summarizing the circumstances in which a borrower may obtain forbearance on the loan; and

(xxiv) A description of the options available for forgiveness of the loan and the requirements to obtain that forgiveness.

* * * * *

(c) * * *

(2) * * *

(x) Information on any special loan repayment benefits offered on the loan, including benefits that are contingent on repayment behavior, and any other special loan repayment benefits for which the borrower may be eligible that would reduce the amount or length of repayment; and at the request of the borrower, an explanation of the effect of a reduced interest rate on the borrower's total payoff amount and time for repayment;

(xi) If the lender provides a repayment benefit, any limitations on that benefit, any circumstances in which the borrower could lose that benefit, and whether and how the borrower may regain eligibility for the repayment benefit;

(xii) A description of all the repayment plans available to the borrower and a statement that the borrower may change plans during the repayment period at least annually;

(xiii) A description of the options available to the borrower to avoid or be removed from default, as well as any fees associated with those options; and

(xiv) Any additional resources, including nonprofit organizations, advocates and counselors, including the Department of Education's Student Loan Ombudsman, the lender is aware of where the borrower may obtain additional advice and assistance on loan repayment.

(3) *Required disclosures during repayment.* In addition to the disclosures required in paragraph (c)(1) of this section, the lender must provide the borrower of an FFEL loan with a bill or statement that corresponds to each payment installment time period in which a payment is due that includes in simple and understandable terms—

(i) The original principal amount of the borrower's loan;

(ii) The borrower's current balance, as of the time of the bill or statement;

(iii) The interest rate on the loan;

(iv) The total amount of interest for the preceding installment paid by the borrower;

(v) The aggregate amount paid by the borrower on the loan, and separately identifying the amount the borrower has paid in interest on the loan, the amount of fees the borrower has paid on the loan, and the amount paid against the balance in principal;

(vi) A description of each fee the borrower has been charged for the most recent preceding installment time period;

(vii) The date by which a payment must be made to avoid additional fees and the amount of that payment and the fees;

(viii) The lender's or servicer's address and toll-free telephone number for repayment options, payments and billing error purposes; and

(ix) A reminder that the borrower may change repayment plans, a list of all of the repayment plans that are available to the borrower, a link to the Department of Education's Web site for repayment plan information, and directions on how the borrower may request a change in repayment plans from the lender.

(4) *Required disclosures for borrowers having difficulty making payments.* The lender shall provide a borrower who has notified the lender that he or she is having difficulty making payments with—

(i) A description of the repayment plans available to the borrower, and how the borrower may request a change in repayment plan;

(ii) A description of the requirements for obtaining forbearance on the loan and any costs associated with forbearance; and

(iii) A description of the options available to the borrower to avoid default and any fees or costs associated with those options.

(5) *Required disclosures for borrowers who are 60-days delinquent in making payments on a loan.* (i) The lender shall provide to a borrower who is 60 days delinquent in making required payments a notice of—

(A) The date on which the loan will default if no payment is made;

(B) The minimum payment the borrower must make, as of the date of the notice, to avoid default, including the payment amount needed to bring the loan current or payment in full;

(C) A description of the options available to the borrower to avoid default, including deferment and forbearance and any fees and costs associated with those options;

(D) Any options for discharging the loan that may be available to the borrower; and

(E) Any additional resources, including nonprofit organizations, advocates and counselors, including the Department of Education's Student Loan Ombudsman, the lender is aware of where the borrower may obtain additional advice and assistance on loan repayment.

(ii) The notice must be sent within five days of the date the borrower becomes 60 days delinquent, unless the lender has sent such a notice within the previous 120 days.

* * * * *

(i) *Separate disclosure for Consolidation loans.* At the time the lender provides a Consolidation loan application to a prospective borrower, it must disclose to the prospective borrower, in simple and understandable terms—

(1) Whether consolidation will result in a loss of loan benefits, including, but not limited to, loan forgiveness, cancellation, deferment, or a reduced interest rate on FFEL or Direct Loans repaid through consolidation;

(2) If a borrower is repaying a Federal Perkins Loan with the Consolidation loan, that the borrower will lose—

(i) The interest-free periods available on the Perkins Loan while the borrower is enrolled in-school at least half-time, in the grace period, or in a deferment period; and

(ii) The cancellation benefits on the Perkins Loan. The lender must provide to the borrower a list of the Perkins Loan cancellation benefits that would not be available on the Consolidation loan.

(3) The repayment plans available to the borrower;

(4) The borrower's options to prepay the Consolidation loan, to pay the loan on a shorter repayment schedule, and to change repayment plans;

(5) That the borrower benefit programs for a Consolidation loan vary among lenders;

(6) The consequences of default on the Consolidation loan; and

(7) That applying for the Consolidation loan does not obligate the borrower to agree to take the Consolidation loan, and the process and deadline by which the borrower may cancel the Consolidation loan.

(j) *Disclosure procedures when a borrower's address is not available.* If a lender receives information indicating it does not know the borrower's current address, the lender is excused from providing disclosure information under this section unless it receives communication indicating a valid borrower address before the 241st day of delinquency, at which point the lender must resume providing the installment bill or statement, and any other disclosure information required under this section not previously provided.

10. Section 682.206 is amended by revising paragraph (f) to read as follows:

§ 682.206 Due diligence in making a loan.

* * * * *

(f) *Additional requirements for Consolidation loans.* (1) Prior to making any payments to pay off a loan with the proceeds of a Consolidation loan, the lender shall—

(i) Obtain from the holder of each loan to be consolidated a certification with respect to the loan held by the holder that—

(A) The loan is a legal, valid, and binding obligation of the borrower;

(B) The loan was made and serviced in compliance with applicable laws and regulations; and

(C) In the case of a FFEL loan, that the guarantee on the loan is in full force and effect; and

(ii) Consistent with the requirements of § 682.205(i)(7), notify the borrower, upon receipt of all information necessary to make the Consolidation loan, of the borrower's option to cancel the Consolidation loan, and the deadline by which the borrower must notify the lender that he or she wishes to cancel the loan. The lender must allow the borrower no less than 10 days from the date of the notice to cancel the loan.

(2) The Consolidation loan lender may rely in good faith on the certification provided under paragraph (f)(1)(i) of this section by the holder of a loan to be consolidated.

11. Section 682.208 is amended by:

A. In paragraph (e)(1) introductory text, adding the words ''or transfer of ownership interest'' immediately after the word ''assignment''.

B. In paragraph (e)(1)(iii), removing the word ''and'' after the semicolon.

C. In paragraph (e)(1)(iv), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the punctuation '';''.

D. Adding new paragraphs (e)(1)(v), (vi), and (vii).

The additions read as follows:

§ 682.208 Due diligence in servicing a loan.

* * * * *

(e) * * *

(1) * * *

(v) The effective date of the assignment or transfer of the loan;

(vi) The date, if applicable, on which the current loan servicer will stop accepting payments; and

(vii) The date on which the new loan servicer will begin accepting payments.

* * * * *

§ 682.209 [Amended]

12. Section 682.209 is amended in paragraph (a)(2)(v) by removing the reference ''(a)(2)(ii)'' and adding, in its place, the reference ''(a)(2)(i)''.

13. Section 682.210 is amended by:

A. In paragraph (a)(1)(i), adding the words ''and paragraphs (s) through (v)'' after the words ''paragraph (b)''.

B. Revising paragraph (a)(3).

C. In paragraph (c)(1)(ii), removing the word ''or'' at the end of the paragraph.

D. In paragraph (c)(1)(iii), removing the punctuation ''.'' and adding, in its place, ''; or'' at the end of the paragraph.

E. Adding a new paragraph (c)(1)(iv).

F. Revising paragraph (c)(2).

G. In paragraph (c)(3), removing the word ''SSCR'' and adding, in its place, the words ''Student Status Confirmation Report''.

H. Adding a new paragraph (v).

The revisions and additions read as follows:

§ 682.210 Deferment.

(a) * * *

(3)(i) Interest accrues and is paid by—

(A) The Secretary during the deferment period for a subsidized Stafford loan and for all or a portion of a Consolidation loan that qualifies for interest benefits under § 682.301; or

(B) The borrower during the deferment period and, as applicable, the post-deferment grace period, on all other loans.

(ii) A borrower who is responsible for payment of interest during a deferment period must be notified by the lender, at or before the time the deferment is granted, that the borrower has the option to pay the accruing interest or cancel the deferment and continue paying on the loan. The lender must also provide information, including an example, on the impact of capitalization of accrued, unpaid interest on loan principal, and on the total amount of interest to be paid over the life of the loan.

* * * * *

(c) * * *

(1) * * *

(iv) The lender confirms a borrower's half-time enrollment status through the use of the National Student Loan Data System if requested to do so by the school the borrower is attending.

(2) The lender must notify the borrower that a deferment has been granted based on paragraphs (c)(1)(ii), (iii), or (iv) of this section and that the borrower has the option to cancel the deferment and continue paying on the loan.

* * * * *

(v) *In-school deferments for PLUS loan borrowers with loans first disbursed on or after July 1, 2008.* (1)(i) A student PLUS borrower is entitled to a deferment on a PLUS loan first disbursed on or after July 1, 2008 during the 6-month period that begins on the day after the student ceases to be enrolled on at least a half-time basis at an eligible institution.

(ii) If a lender grants an in-school deferment to a student PLUS borrower based on § 682.210(c)(1)(ii), (iii), or (iv), the deferment period for a PLUS loan first disbursed on or after July 1, 2008 includes the 6-month post-enrollment period described in paragraph (v)(1)(i) of this section. The notice required by § 682.210(c)(2) must inform the borrower that the in-school deferment on a PLUS loan first disbursed on or after July 1, 2008 will end six months after the day the borrower ceases to be enrolled on at least a half-time basis.

(2) Upon the request of the borrower, an eligible parent PLUS borrower must be granted a deferment on a PLUS loan first disbursed on or after July 1, 2008—

(i) During the period when the student on whose behalf the loan was obtained is enrolled at an eligible institution on at least a half-time basis; and

(ii) During the 6-month period that begins on the later of the day after the student on whose behalf the loan was obtained ceases to be enrolled on at least a half-time basis or, if the parent borrower is also a student, the day after the parent borrower ceases to be enrolled on at least a half-time basis.

14. Section 682.211 is amended by:

A. Revising paragraph (e).

B. In paragraph (f)(11), removing the word ''or'' at the end of the paragraph.

C. In paragraph (f)(12), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the punctuation '';''.

D. In paragraph (f)(13), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the punctuation '';''.

E. In paragraph (f)(14), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, ''; or''.

F. Adding new paragraph (f)(15).

The revisions and additions read as follows:

§ 682.211 Forbearance.

* * * * *

(e)(1) At the time of granting a borrower or endorser a forbearance, the lender must provide the borrower or endorser with information to assist the borrower or endorser in understanding the impact of capitalization of interest on the loan principal and total interest to be paid over the life of the loan; and

(2) At least once every 180 days during the period of forbearance, the lender must contact the borrower or endorser to inform the borrower or endorser of—

(i) The outstanding obligation to repay;

(ii) The amount of the unpaid principal balance and any unpaid interest that has accrued on the loan since the last notice provided to the borrower or endorser under this paragraph;

(iii) The fact that interest will accrue on the loan for the full term of the forbearance;

(iv) The amount of interest that will be capitalized, as of the date of the notice, and the date capitalization will occur;

(v) The option of the borrower or endorser to pay the interest that has accrued before the interest is capitalized; and

(vi) The borrower's or endorser's option to discontinue the forbearance at any time.

(f) * * *

(15) For PLUS loans first disbursed before July 1, 2008, to align repayment with a borrower's PLUS loans that were first disbursed on or after July 1, 2008, or with Stafford Loans that are subject to a grace period under § 682.209(a)(3). The notice specified in paragraph (f) introductory text must inform the borrower that the borrower has the option to cancel the forbearance and continue paying on the loan.

* * * * *

15. Section 682.215 is amended by:

A. Revising paragraph (a)(4).

B. In paragraph (b)(1), removing the words ''Except as provided under paragraph (b)(1)(i), (b)(1)(ii), and (b)(1)(iii) of this section, the'' in the second sentence and adding, in their place, the word ''The''.

C. In paragraph (b)(1)(i), removing the word ''The'' at the beginning of the paragraph and adding, in its place, the words ''Except for borrowers provided for in paragraph (b)(1)(ii) of this section, the''.

D. Redesignating paragraphs (b)(1)(ii) and (b)(1)(iii) as paragraphs (b)(1)(iii) and (b)(1)(iv), respectively.

E. Adding a new paragraph (b)(1)(ii).

F. In newly redesignated paragraph (b)(1)(iii), removing the words ''or (b)(1)(i)'' and adding, in their place, the words '', (b)(1)(i), or (b)(1)(ii)''.

G. In newly redesignated paragraph (b)(1)(iv), removing the words ''or (b)(1)(i)'' and adding, in their place, the words '', (b)(1)(i), or (b)(1)(ii)''.

H. In paragraph (b)(2), removing the words ''(b)(1)(ii) and (iii)'' in the second sentence and adding, in their place, the words ''(b)(1)(iii) and (iv)''.

The revision and addition reads as follows:

§ 682.215 Income-based repayment plan.

(a) * * *

(4) *Partial financial hardship* means a circumstance in which—

(i) For an unmarried borrower or a married borrower who files an individual Federal tax return, the annual amount due on all of the borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the borrower initially entered repayment or at the time the borrower elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size; or

(ii) For a married borrower who files a joint Federal tax return with his or her spouse, the annual amount due on all of the borrower's eligible loans and, if applicable, the spouse's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the loans initially entered repayment or at the time the borrower or spouse elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower's and spouse's AGI, and 150 percent of the poverty guideline for the borrower's family size.

* * * * *

(b) * * *

(1) * * *

(ii) Both the borrower and the borrower's spouse have eligible loans and filed a joint Federal tax return, in which case the loan holder determines—

(A) Each borrower's percentage of the couple's total eligible loan debt;

(B) The adjusted monthly payment for each borrower by multiplying the calculated payment by the percentage determined in paragraph (b)(1)(ii)(A) of this section; and

(C) If the borrower's loans are held by multiple holders, the borrower's adjusted monthly payment by multiplying the payment determined in paragraph (b)(1)(ii)(B) of this section by the percentage of the total outstanding principal amount of eligible loans that are held by the loan holder;

* * * * *

16. Section 682.216 is amended by:

A. Revising paragraph (a).

B. In paragraph (b), adding, in alphabetical order, a definition of *Educational service agency.*

C. Revising the introductory text of paragraph (c)(1).

D. In paragraph (c)(1)(ii), adding the words ''or educational service agency's'' immediately after the words ''the school's''.

E. In paragraph (c)(1)(iii), removing the words ''Bureau of Indian Affairs (BIA)'' and adding, in their place, the words ''Bureau of Indian Education (BIE)'', and removing the words ''the BIA'' and adding, in their place, the words ''the BIE''.

F. In paragraph (c)(2), adding the words ''or educational service agency'' immediately after the words ''If the school'' at the beginning of the paragraph, and removing the words ''the school'' immediately after the words ''teaching and''.

G. In paragraph (c)(3)(i)(A), removing the words ''in which'' and adding, in their place, the words ''or educational service agency where''.

H. In paragraph (c)(3)(i)(B), removing the words ''in which'' and adding, in their place, the words ''or educational service agency where''.

I. In paragraph (c)(3)(ii)(A), removing the word ''in'' and adding, in its place, the word ''at'', and adding the words '', or taught mathematics or science to secondary school students on a full-time basis at an eligible educational service agency,'' immediately after the words ''secondary school''.

J. In paragraph (c)(3)(ii)(B), removing the word ''in'' the first time it appears and adding, in its place, the word ''at'', and adding the words ''or educational service agency'' immediately after the words ''secondary school'' the first time they appear.

K. Adding a new paragraph (c)(3)(iii).

L. In paragraph (c)(4)(i), removing the word ''in'' and adding, in its place, the word ''at'', and adding the words ''or educational service agency'' immediately after the words ''secondary school'' the first time they appear.

M. In paragraph (c)(4)(ii)(A), removing the word ''in'' and adding, in its place, the word ''at'', and adding the words '', or taught mathematics or science on a full-time basis to secondary school students at an eligible educational service agency,'' immediately after the words ''secondary school''.

N. In paragraph (c)(4)(ii)(B), removing the word ''in'' the first time it appears and adding, in its place, the word ''at'', and by adding the words ''or educational service agency'' immediately after the words ''secondary school'' the first time they appear.

O. Adding a new paragraph (c)(4)(iii).

P. Revising paragraph (c)(9).

Q. Revising paragraph (c)(11).

The revisions and additions read as follows:

§ 682.216 Teacher loan forgiveness program.

(a) *General.* (1) The teacher loan forgiveness program is intended to encourage individuals to enter and continue in the teaching profession. For new borrowers, the Secretary repays the amount specified in this paragraph on the borrower's subsidized and unsubsidized Federal Stafford Loans, Direct Subsidized Loans, Direct Unsubsidized Loans, and in certain cases, Federal Consolidation Loans or Direct Consolidation Loans. The forgiveness program is only available to a borrower who has no outstanding loan balance under the FFEL Program or the Direct Loan Program on October 1, 1998 or who has no outstanding loan balance on the date he or she obtains a loan after October 1, 1998.

(2) The borrower must have been employed at an eligible elementary or secondary school that serves low-income families or by an educational service agency that serves low-income families as a full-time teacher for five consecutive complete academic years. For teaching service performed at an eligible elementary or secondary school, at least one of the academic years must have been after the 1997–1998 academic year. For teaching service performed by an employee of an eligible educational service agency, at least one of the five consecutive complete academic years must have been after the 2007–2008 academic year.

(3) All borrowers eligible for teacher loan forgiveness may receive loan forgiveness of up to a combined total of $5,000 on the borrower's eligible FFEL and Direct Loan Program loans.

(4) A borrower may receive loan forgiveness of up to a combined total of $17,500 on the borrower's eligible FFEL and Direct Loan Program loans if the borrower was employed for five consecutive years—

(i) At an eligible secondary school as a highly qualified mathematics or science teacher, or at an eligible educational service agency as a highly qualified teacher of mathematics or science to secondary school students; or

(ii) At an eligible elementary or secondary school or educational service agency as a special education teacher.

(5) The loan for which the borrower is seeking forgiveness must have been made prior to the end of the borrower's fifth year of qualifying teaching service.

(b) * * *

Educational service agency means a regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to local educational agencies, as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

* * * * *

(c) * * *

(1) A borrower who has been employed at an elementary or secondary school or at an educational service agency as a full-time teacher for five consecutive complete academic years may obtain loan forgiveness under this program if the elementary or secondary school or educational service agency—

* * *

(3) * * *

(iii) For teaching service performed by an employee of an eligible educational service agency, at least one of the five consecutive complete academic years must have been after the 2007–2008 academic year.

(4) * * *

(iii) For teaching service performed by an employee of an eligible educational service agency, at least one of the five consecutive complete academic years must have been the 2008–2009 academic year or a subsequent academic year.

* * * * *

(9) A borrower who was employed as a teacher at more than one qualifying school, at more than one qualifying educational service agency, or at a combination of both during an academic year and demonstrates that the combined teaching was the equivalent of full-time, as supported by the certification of one or more of the chief administrative officers of the schools or educational service agencies involved, is considered to have completed one academic year of qualifying teaching.

* * * * *

(11) A borrower may not receive loan forgiveness for the same qualifying teaching service under this section if the borrower receives a benefit for the same teaching service under—

(i) 34 CFR 685.217;

(ii) Subtitle D of title I of the National and Community Service Act of 1990;

(iii) 34 CFR 685.219; or

(iv) Section 428K of the Act.

* * * * *

17. Section 682.302 is amended by adding a new paragraph (h) to read as follows:

§ 682.302 Payment of special allowance on FFEL loans.

* * * * *

(h) *Calculation of special allowance payments for loans subject to the Servicemembers Civil Relief Act (50 U.S.C. 527, App. sec. 207).* For FFEL Program loans first disbursed on or after July 1, 2008 that are subject to the interest rate limit under the Servicemembers Civil Relief Act, special allowance is calculated in accordance with paragraphs (c) and (f) of this section, except the applicable interest rate for this purpose shall be 6 percent.

18. Section 682.305 is amended by:

A. Revising paragraph (c)(1).

B. In paragraph (c)(2)(v), removing the word ''and'' immediately after the semicolon

C. In paragraph (c)(2)(vi), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the words ''; and''.

D. Redesignating paragraph (c)(2)(vii) as paragraph (c)(3).

E. Adding a new paragraph (c)(2)(vii).

The revision and addition read as follows:

§ 682.305 Procedures for payment of interest benefits and special allowance and collection of origination and loan fees.

* * * * *

(c) *Independent audits.* (1)(i) A lender originating or holding more than $5 million in FFEL loans during its fiscal year must submit an independent annual compliance audit for that year, conducted by a qualified independent organization or person.

(ii) Notwithstanding the dollar volume of loans originated or held, a school lender under § 682.601 or a lender serving as trustee on behalf of a school or a school-affiliated organization for the purpose of originating loans must submit an independent annual compliance audit for that year, conducted by a qualified independent organization or person.

(iii) The Secretary may, following written notice, suspend the payment of interest benefits and special allowance to a lender that does not submit its audit within the time period prescribed in paragraph (c)(2) of this section.

(2) * * *

(vii) With regard to a lender serving as a trustee for the purpose of originating loans for a school or school-affiliated organization, the audit must include a determination that—

(A) Except as provided in paragraph (c)(2)(vii)(B) of this section, the school used all proceeds from special allowance payments, interest subsidies received from the Department, and any proceeds from the sale or other disposition of the loans originated through the lender for need-based grant programs and that those funds supplemented, but did not supplant, other Federal or non-Federal funds otherwise available to be used to make need-based grants to its students; and

(B) The lender used no more than a reasonable portion of payments and proceeds from the loans for direct administrative expenses in accordance with § 682.601(b), with all references to eligible school lender understood to mean a lender in its capacity as trustee on behalf of a school or school-affiliated organization for the purpose of originating loans.

* * * * *

19. Section 682.401 is amended by:

A. In paragraph (e)(1)(i), adding the words ''stock or other securities, tuition payment or reimbursement'' immediately after the word ''payment''.

B. In paragraph (e)(1)(i)(D), adding the words ''travel or'' immediately after the words ''Payment of''.

C. Revising paragraph (e)(1)(i)(F).

D. In paragraph (e)(1)(iii)(C), removing the word ''and'' immediately after the semicolon.

E. In paragraph (e)(1)(iii)(D), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the punctuation '';''.

F. Adding new paragraphs (e)(1)(iii)(E), (F), and (G).

G. In paragraph (e)(1)(v), adding the words '', terms or conditions'' immediately after the word ''availability''.

H. In paragraph (e)(2)(i), removing the word ''Assistance'' at the beginning of the paragraph and adding, in its place, the words ''Technical assistance'', and removing the words ''that provided'' and adding, in their place, the words ''the technical assistance provided''.

I. In paragraph (e)(2)(ii), adding the words ''and 433A'' immediately after the reference to ''422(h)(4)(B)''.

J. In paragraph (e)(2)(iii), removing the words ''initial and exit'' and adding, in their place, the word ''entrance''.

K. Revising paragraph (e)(2)(vi).

L. In paragraph (e)(3)(iii), removing the words ''The terms'' and adding, in their place, the words ''The term'', and removing the words ''computer hardware'' and adding, in their place, the words ''information technology equipment''.

M. Removing paragraph (e)(3)(v).

N. Adding a new paragraph (g).

The revision and additions read as follows:

§ 682.401 Basic Program Agreement.

* * * * *

(e) * * *

(1) * * *

(i) * * *

(F) Performance of, or payment to a third party to perform, any school function required under title IV, except that the guaranty agency may provide exit counseling as provided in § 682.604(g), and may provide services to participating foreign schools at the direction of the Secretary, as a third-party servicer.

* * * * *

(iii) * * *

(E) Providing or reimbursing travel or entertainment expenses;

(F) Providing or reimbursing tuition payments or expenses; and

(G) Offering prizes, or providing payments of stocks or other securities.

* * * * *

(g)(1) A guaranty agency must work with schools that participate in its program to develop and make available high-quality educational materials and programs that provide training to students and their families in budgeting and financial management, including debt management and other aspects of financial literacy, such as the cost of using high-interest loans to pay for postsecondary education, and how budgeting and financial management relate to the title IV student loan programs.

(2) The materials and programs described in paragraph (g)(1) of this section must be in formats that are simple and understandable to students and their families, and must be made available to students and their families by the guaranty agency before, during, and after a student's enrollment at an institution of higher education.

(3) A guaranty agency may provide similar programs and materials to an institution that participates only in the William D. Ford Federal Direct Loan Program.

(4) A lender or loan servicer may also provide an institution with outreach and financial literacy information consistent with the requirements of paragraphs (g)(1) and (2) of this section.

20. Section 682.402 is amended by revising paragraph (c) to read as follows:

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

* * * * *

(c)(1) *Total and permanent disability*. (i) A borrower's loan is discharged if the borrower becomes totally and permanently disabled, as defined in § 682.200(b), and satisfies the eligibility requirements in this section.

(ii) For a borrower who becomes totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the borrower's loan discharge application is processed in accordance with paragraphs (c)(2) through (7) of this section.

(iii) For a veteran who is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the veteran's loan discharge application is processed in accordance with paragraph (c)(8) of this section.

(2) *Discharge application process for a borrower who is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b).* After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender promptly requests that the borrower or the borrower's representative submit a discharge application to the lender on a form approved by the Secretary. The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b). The borrower must submit the application to the lender within 90 days of the date the physician certifies the application. If the lender and guaranty agency approve the discharge claim under the procedures described in paragraph (c)(7) of this section, the guaranty agency must assign the loan to the Secretary.

(3) *Secretary's eligibility determination.* (i) If, after reviewing the borrower's application, the Secretary determines that the certification provided by the borrower supports the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in § 682.200(b), the borrower is considered totally and permanently disabled as of the date the physician certifies the borrower's application.

(ii) Upon making a determination that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower that the loan has been discharged. Any payments received after the date the physician certified the borrower's loan discharge application are returned to the person who made the payments on the loan. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (c)(5)(i) of this section.

(iii) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the Secretary notifies the borrower that the application for a disability discharge has been denied and that the loan is due and payable to the Secretary under the terms of the promissory note.

(iv) The Secretary reserves the right to require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b). As part of the Secretary's review of the borrower's discharge application, the Secretary may arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

(4) *Treatment of disbursements made during the period from the date of the physician's certification until the date of discharge.* If a borrower received a Title IV loan or TEACH Grant prior to the date the physician certified the borrower's discharge application and a disbursement of that loan or grant is made during the period from the date of the physician's certification until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(5) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates the borrower's obligation to repay a loan that was discharged in accordance with paragraph (c)(3)(ii) of this section if, within three years after the date the Secretary granted the discharge, the borrower—

(A) Has annual earnings from employment that exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act;

(B) Receives a new TEACH Grant or a new loan under the Perkins, FFEL, or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that includes loans that were not discharged; or

(C) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made during the three-year period following the discharge date is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(ii) If a borrower's obligation to repay a loan is reinstated, the Secretary—

(A) Notifies the borrower that the loan has been reinstated; and

(B) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the loan was reinstated.

(iii) The Secretary's notification under paragraph (c)(5)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(6) *Borrower's responsibilities after a total and permanent disability discharge.* During the three-year period

described in paragraph (c)(5)(i) of this section, the borrower or, if applicable, the borrower's representative must—

(i) Promptly notify the Secretary of any changes in address or phone number;

(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (c)(5)(i)(A) of this section; and

(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment.

(7) *Lender and guaranty agency actions.* (i) After being notified by a borrower or a borrower's representative that the borrower claims to be totally and permanently disabled, the lender must continue collection activities until it receives either the certification of total and permanent disability from a physician or a letter from a physician stating that the certification has been requested and that additional time is needed to determine if the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b). Except as provided in paragraph (c)(7)(iii) of this section, after receiving the physician's certification or letter the lender may not attempt to collect from the borrower or any endorser.

(ii) The lender must submit a disability claim to the guaranty agency if the borrower submits a certification by a physician and the lender makes a determination that the certification supports the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b).

(iii) If the lender determines that a borrower who claims to be totally and permanently disabled is not totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), or if the lender does not receive the physician's certification of total and permanent disability within 60 days of the receipt of the physician's letter requesting additional time, as described in paragraph (c)(7)(i) of this section, the lender must resume collection of the loan and is deemed to have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(iv) The guaranty agency must pay a claim submitted by the lender if the guaranty agency has reviewed the application and determined that it is complete and that it supports the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b).

(v) If the guaranty agency does not pay the disability claim, the guaranty agency must return the claim to the lender with an explanation of the basis for the agency's denial of the claim. Upon receipt of the returned claim, the lender must notify the borrower that the application for a disability discharge has been denied, provide the basis for the denial, and inform the borrower that the lender will resume collection on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date collection activity was suspended until the first payment due date. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(vi) If the guaranty agency pays the disability claim, the lender must notify the borrower that—

(A) The loan will be assigned to the Secretary for determination of eligibility for a total and permanent disability discharge and that no payments are due on the loan; and

(B) If the Secretary discharges the loan based on a determination that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the Secretary will reinstate the borrower's obligation to repay the loan if, within three years after the date the Secretary granted the discharge, the borrower—

(*1*) Receives annual earnings from employment that exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Services Block Grant;

(*2*) Receives a new TEACH Grant or a new title IV loan, except for a FFEL or Direct Consolidation Loan that includes loans that were not discharged; or

(*3*) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made during the three-year period following the discharge date is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(vii) After receiving a claim payment from the guaranty agency, the lender must forward to the guaranty agency any payments subsequently received from or on behalf of the borrower.

(viii) The Secretary reimburses the guaranty agency for a disability claim paid to the lender after the agency pays the claim to the lender.

(ix) The guaranty agency must assign the loan to the Secretary after the guaranty agency pays the disability claim.

(8) *Discharge application process for veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b)—(i) General.* After being notified by the veteran or the veteran's representative that the veteran claims to be totally and permanently disabled, the lender promptly requests that the veteran or the veteran's representative submit a discharge application to the lender, on a form approved by the Secretary. The application must be accompanied by documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The veteran will not be required to provide any additional documentation related to the veteran's disability.

(ii) *Lender and guaranty agency actions.* (A) After being notified by a veteran or a veteran's representative that the veteran claims to be totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the lender must continue collection activities until it receives the veteran's completed loan discharge application with the required documentation from the Department of Veterans Affairs, as described in paragraph (8)(i) of this section. Except as provided in paragraph (c)(8)(ii)(C) of this section, the lender will not attempt to collect from the veteran or any endorser after receiving the veteran's discharge application and documentation from the Department of Veterans Affairs.

(B) If the veteran submits a completed loan discharge application and the required documentation from the Department of Veterans Affairs, and the documentation indicates that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the lender must submit a disability claim to the guaranty agency.

(C) If the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the lender—

(*1*) Must resume collection and is deemed to have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(*2*) Must inform the veteran that he or she may reapply for a total and permanent disability discharge in accordance with the procedures described in § 682.402(c)(2) through (c)(7), if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), but indicates that the veteran may be totally and permanently disabled as described in paragraph (1) of the definition of that term.

(D) If the documentation from the Department of Veterans Affairs indicates that the borrower is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the guaranty agency must submit a copy of the veteran's discharge application and supporting documentation to the Secretary, and must notify the veteran that the veteran's loan discharge request has been referred to the Secretary for a determination of discharge eligibility.

(E) If the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the guaranty agency does not pay the disability claim and must return the claim to the lender with an explanation of the basis for the agency's denial of the claim. Upon receipt of the returned claim, the lender must notify the veteran that the application for a disability discharge has been denied, provide the basis for the denial, and inform the veteran that the lender will resume collection on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date collection activity was suspended until the first payment due date. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(F) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the Secretary notifies the guaranty agency that the veteran is eligible for a total and permanent disability discharge. Upon notification by the Secretary that the veteran is eligible for a discharge, the guaranty agency pays the disability discharge claim and notifies the veteran that the veteran's obligation to make any further payments on the loan has been discharged. Upon receipt of the claim payment from the guaranty agency, the lender returns to the person who made the payments on the loan any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability.

(G) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the Secretary notifies the guaranty agency of this determination. Upon notification by the Secretary that the veteran is not eligible for a discharge, the guaranty agency and the lender must follow the procedures described in paragraph (c)(8)(ii)(E) of this section.

(H) The Secretary reimburses the guaranty agency for a disability claim paid to the lender after the agency pays the claim to the lender.

* * * * *

21. Section 682.405 is amended by:

A. In paragraph (a)(3), adding the sentence ''Effective for any loan that is rehabilitated on or after August 14, 2008, the borrower cannot rehabilitate the loan again if the loan returns to default status following the rehabilitation.'' at the end of the paragraph.

B. In paragraph (b)(1)(iii), adding the words ''by the guaranty agency or its agents'' immediately after the word ''affordable''.

C. Revising paragraph (b)(3).

D. Adding a new paragraph (c).

The revision and addition read as follows:

§ 682.405 Loan rehabilitation agreement.

* * * * *

(b) * * *

(3) (3) Upon the sale of a rehabilitated loan to an eligible lender—

(i) The guaranty agency must, within 45 days of the sale—

(A) Provide notice to the prior holder of such sale, and

(B) Request that any consumer reporting agency to which the default was reported remove the record of default from the borrower's credit history.

(ii) The prior holder of the loan must, within 30 days of receiving the notification from the guaranty agency, request that any consumer reporting agency to which the default claim payment or other equivalent record was reported remove such record from the borrower's credit history.

* * * * *

(c) A guaranty agency must make available financial and economic education materials, including debt management information, to any borrower who has rehabilitated a defaulted loan in accordance with paragraph (a)(2) of this section.

22. Section 682.410 is amended by:

A. In paragraph (b)(5), removing the heading *''Credit bureau reports''* and adding, in its place, the heading *''Reports to consumer reporting agencies''*.

B. In paragraph (b)(5)(i), removing the words ''national credit bureaus'' at the end of the paragraph and adding, in their place, the words ''nationwide consumer reporting agencies''.

C. In paragraph (b)(5)(ii), removing the words ''credit bureau'' and adding, in their place, the words ''consumer reporting agency'', and removing the reference ''(b)(6)(v)'' and adding, in its place, the reference ''(b)(6)(ii)''.

D. In paragraph (b)(5)(iv)(A), removing the words ''credit bureaus'' and adding, in their place, the words ''consumer reporting agencies''.

E. In paragraph (b)(5)(vi)(F), removing the words ''national credit bureaus'' and adding, in their place, the words ''nationwide consumer reporting agencies''.

F. In paragraph (b)(5)(vi)(G), removing the words ''credit bureaus'' and adding, in their place, the words ''consumer reporting agencies''.

G. In paragraph (b)(5)(vi)(K), removing the word ''and'' at the end of the paragraph.

H. In paragraph (b)(5)(vi)(L), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the words ''; and''.

I. Adding a new paragraph (b)(5)(vi)(M).

J. Redesignating paragraph (b)(6)(ii) as paragraph (b)(6)(v).

K. Redesignating paragraph (b)(6)(iii) as paragraph (b)(6)(vi).

L. Redesignating paragraph (b)(6)(iv) as paragraph (b)(6)(vii).

M. Redesignating paragraph (b)(6)(v) as paragraph (b)(6)(ii).

N. Redesignating paragraph (b)(6)(vi) as paragraph (b)(6)(iii).

O. In newly redesignated paragraph (b)(6)(iii), removing the reference ''(b)(6)(v)'' and adding, in its place, the reference ''(b)(6)(ii)'', and removing the words ''national credit bureaus (if that is the case)'' and adding, in their place, the words ''nationwide consumer reporting agencies''.

P. Adding a new paragraph (b)(6)(iv).

Q. In newly redesignated paragraph (b)(6)(vi), removing the reference ''(b)(6)(iv)'' and adding, in its place, the reference ''(b)(6)(vii)''.

The additions read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

* * * * *

(b) * * *

(5) * * *

(vi) * * *

(M) Inform the borrower of the options that are available to the borrower to remove the loan from default, including an explanation of the fees and conditions associated with each option.

(vii) * * *

(6) * * *

(iv) The agency must send a notice informing the borrower of the options that are available to remove the loan from default, including an explanation of the fees and conditions associated with each option. This notice must be sent within a reasonable time after the end of the period for requesting an administrative review as specified in paragraph (b)(5)(iv)(B) of this section or, if the borrower has requested an administrative review, within a reasonable time following the conclusion of the administrative review.

* * * * *

23. Section 682.601 is amended by adding a new paragraph (a)(7)(iii) to read as follows:

§ 682.601 Rules for a school that makes or originates loans.

(a) * * *

(7) * * *

(iii) With regard to any school, the audit must include a determination that—

(A) Except as provided in paragraphs (a)(8) and (b) of this section, the school used all payments and proceeds from the loans for need-based grant programs;

(B) The school met the requirements of paragraph (c) of this section in making the need-based grants; and

(C) The school used no more than a reasonable portion of payments and proceeds from the loans for direct administrative expenses.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

24. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*, unless otherwise noted.

25. Section 685.200 is amended by:

A. In paragraph (a)(1)(iv)(A)(*1*), removing the word ''and'' at the end of the paragraph.

B. In paragraph (a)(1)(iv)(A)(*2*), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the words ''; and''.

C. Adding a new paragraph (a)(1)(iv)(A)(*3*).

D. Removing paragraph (a)(1)(iv)(B).

E. Redesignating paragraph (a)(1)(iv)(C) as paragraph (a)(1)(iv)(B).

F. In newly redesignated paragraph (a)(1)(iv)(B), removing the words ''based on'' and adding, in their place, the word ''after'', and adding the words ''based on a discharge request received prior to July 1, 2010'' immediately after the word ''disabled''.

The addition reads as follows:

§ 685.200 Borrower eligibility.

(a) * * *

(1) * * *

(iv) * * *

(A) * * *

(*3*) If the borrower receives a new Direct Subsidized Loan or Direct Unsubsidized Loan within three years of the date that any previous title IV loan or TEACH Grant service obligation was discharged due to a total and permanent disability in accordance with § 685.213(b)(4), 34 CFR 674.61(b)(3)(i), 34 CFR 682.402(c), or 34 CFR 686.42(b) based on a discharge request received on or after July 1, 2010, resumes repayment on the previously discharged loan in accordance with § 685.213(b)(3)(ii)(A), 34 CFR 674.61(b)(5), or 34 CFR 682.402(c)(5), or acknowledges that he or she is once again subject to the terms of the TEACH Grant agreement to serve before receiving the new loan.

* * * * *

26. Section 685.202 is amended by:

A. Adding a new paragraph (a)(4).

B. In paragraph (b)(2), removing the words ''the Secretary capitalizes'' and adding, in their place, the words ''or for a Direct PLUS Loan, the Secretary may capitalize''.

The addition reads as follows:

§ 685.202 Charges for which Direct Loan Program borrowers are responsible.

(a) * * *

(4) *Applicability of the Servicemembers Civil Relief Act (50 U.S.C. 527, App. sec. 207).* Notwithstanding paragraphs (a)(1) through (3) of this section, effective August 14, 2008, upon the Secretary's receipt of a borrower's written request and a copy of the borrower's military orders, the maximum interest rate, as defined in 50 U.S.C. 527, App. section 207(d), on Direct Loan Program loans made prior to the borrower entering active duty status is 6 percent while the borrower is on active duty military service.

* * * * *

27. Section 685.204 is amended by:

A. In paragraph (b)(1)(iii)(A)(*2*), removing the word ''or'' at the end of the paragraph.

B. In paragraph (b)(1)(iii)(A)(*3*), removing the punctuation ''.'' and adding, in its place, ''; or'' at the end of the paragraph.

C. Adding a new paragraph (b)(1)(iii)(A)(*4*).

D. Revising paragraph (b)(1)(iii)(B).

E. Redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively.

F. In newly redesignated paragraph (i)(3), removing the words ''paragraph (h)(2)'' each time they appear and adding, in their place, the words ''paragraph (i)(2)''.

G. In newly redesignated paragraph (i)(4), removing the words ''paragraph (h)(2)'' and adding, in their place, the words ''paragraph (i)(2)''.

H. Adding a new paragraph (g).

The revisions and additions read as follows:

§ 685.204 Deferment.

* * * * *

(b) * * *

(1)(i) * * *

(iii)(A) * * *

(*4*) The Secretary confirms a borrower's half-time enrollment status through the use of the National Student Loan Data System if requested to do so by the school the borrower is attending.

(B)(*1*) Upon notification by the Secretary that a deferment has been granted based on paragraph (b)(1)(iii)(A)(*2*), (*3*), or (*4*) of this section, the borrower has the option to cancel the deferment and continue paying on the loan.

(*2*) If the borrower elects to cancel the deferment and continue paying on the loan, the borrower has the option to make the principal and interest payments that were deferred. If the borrower does not make the payments, the Secretary applies a deferment for the period in which payments were not made and capitalizes the interest. The Secretary will provide information, including an example, to assist the borrower in understanding the impact of capitalization of accrued, unpaid interest on the borrower's loan principal and on the total amount of interest to be paid over the life of the loan.

* * * * *

(g) *In-school deferments for Direct PLUS Loan borrowers with loans first disbursed on or after July 1, 2008.* (1)(i) A student Direct PLUS Loan borrower is entitled to a deferment on a Direct PLUS Loan first disbursed on or after July 1, 2008 during the 6-month period that begins on the day after the student ceases to be enrolled on at least a half-time basis at an eligible institution.

(ii) If the Secretary grants an in-school deferment to a student Direct PLUS Loan borrower based on § 682.204(b)(1)(iii)(A)(*2*), (3), or (*4*), the deferment period for a Direct PLUS Loan first disbursed on or after July 1, 2008 includes the 6-month post-enrollment period described in paragraph (g)(1)(i) of this section.

(2) Upon the request of the borrower, an eligible parent Direct PLUS Loan borrower will receive a deferment on a Direct PLUS Loan first disbursed on or after July 1, 2008—

(i) During the period when the student on whose behalf the loan was obtained is enrolled at an eligible institution on at least a half-time basis; and

(ii) During the 6-month period that begins on the later of the day after the student on whose behalf the loan was obtained ceases to be enrolled on at least a half-time basis or, if the parent borrower is also a student, the day after the parent borrower ceases to be enrolled on at least a half-time basis.

* * * * *

28. Section 685.205 is amended by:

A. In paragraph (b)(8), removing the word ''or'' at the end of the paragraph.

B. In paragraph (b)(9), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, ''; or''.

C. Adding a new paragraph (b)(10) to read as follows:

§ 685.205 Forbearance.

* * * * *

(b) * * *

(10) For Direct PLUS Loans first disbursed before July 1, 2008, to align repayment with a borrower's Direct PLUS Loans that were first disbursed on or after July 1, 2008, or with Direct Subsidized Loans or Direct Unsubsidized Loans that have a grace period in accordance with § 685.207(b) or (c). The Secretary notifies the borrower that the borrower has the option to cancel the forbearance and continue paying on the loan.

* * * * *

29. Section 685.211 is amended by:

A. In paragraph (f)(1), removing the words ''credit bureau'' in the third sentence and adding, in their place, the words ''consumer reporting agency''.

B. Adding a new paragraph (f)(4).

The addition reads as follows:

§ 685.211 Miscellaneous repayment provisions.

* * * * *

(f) * * *

(4) Effective for any defaulted Direct Loan that is rehabilitated on or after August 14, 2008, the borrower cannot rehabilitate the loan again if the loan returns to default status following the rehabilitation.

30. Section 685.213 is revised to read as follows:

§ 685.213 Total and permanent disability discharge.

(a) *General.* (1) A borrower's Direct Loan is discharged if the borrower becomes totally and permanently disabled, as defined in 34 CFR 682.200(b), and satisfies the eligibility requirements in this section.

(2) For a borrower who becomes totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b), the borrower's loan discharge application is processed in accordance with paragraph (b) of this section.

(3) For veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b), the veteran's loan discharge application is processed in accordance with paragraph (c) of this section.

(b) *Discharge application process for a borrower who is totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b).* (1) *Borrower application for discharge.* To qualify for a discharge of a Direct Loan based on a total and permanent disability, a borrower must submit a discharge application to the Secretary on a form approved by the Secretary. The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b). The borrower must submit the application to the Secretary within 90 days of the date the physician certifies the application. Upon receipt of the borrower's application, the Secretary notifies the borrower that no payments are due on the loan while the Secretary determines the borrower's eligibility for discharge.

(2) *Determination of eligibility.* (i) If, after reviewing the borrower's application, the Secretary determines that the certification provided by the borrower supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b), the borrower is considered totally and permanently disabled as of the date the physician certifies the borrower's application.

(ii) Upon making a determination that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b), the Secretary discharges the borrower's obligation to make any further payments on the loan, notifies the borrower that the loan has been discharged, and returns to the person who made the payments on the loan any payments received after the date the physician certified the borrower's loan discharge application. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (b)(4)(i) of this section.

(iii) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b), the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note.

(iv) The Secretary reserves the right to require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b). As part of the Secretary's review of the borrower's discharge application, the Secretary may arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

(3) *Treatment of disbursements made during the period from the date of the physician's certification until the date of discharge.* If a borrower received a title IV loan or TEACH Grant prior to the date the physician certified the borrower's discharge application and a disbursement of that loan or grant is made during the period from the date of the physician's certification until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(4) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates a borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(2)(ii) of this section if, within three years after the date the Secretary granted the discharge, the borrower—

(A) Has annual earnings from employment that exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act;

(B) Receives a new TEACH Grant or a new loan under the Perkins, FFEL or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that includes loans that were not discharged; or

(C) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made during the three-year period following the discharge date is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(ii) If the borrower's obligation to repay the loan is reinstated, the Secretary—

(A) Notifies the borrower that the loan has been reinstated; and

(B) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the loan was reinstated.

(iii) The Secretary's notification under paragraph (b)(4)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(5) *Borrower's responsibilities after a total and permanent disability discharge.* During the three-year period described in paragraph (b)(4)(i) of this section, the borrower or, if applicable, the borrower's representative must—

(i) Promptly notify the Secretary of any changes in address or phone number;

(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(4)(i)(A) of this section; and

(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment.

(c) *Discharge application process for veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b).*

(1) *Veteran's application for discharge.* To qualify for a discharge of a Direct Loan based on a total and permanent disability as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b), a veteran must submit a discharge application to the Secretary on a form approved by the Secretary. The application must be accompanied by documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The Secretary does not require the veteran to provide any additional documentation related to the veteran's disability. Upon receipt of the veteran's application, the Secretary notifies the veteran that no payments are due on the loan while the Secretary determines the veteran's eligibility for discharge.

(2) *Determination of eligibility.* (i) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the Secretary discharges the veteran's obligation to make any further payments on the loan and returns to the person who made the payments on the loan any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability.

(ii)(A) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b), the Secretary notifies the veteran that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note.

(B) The Secretary notifies the veteran that he or she may reapply for a total and permanent disability discharge in accordance with the procedures described in paragraph (b) of this section if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b), but indicates that the veteran may be totally and permanently disabled as described in paragraph (1) of the definition of that term.

31. Section 685.217 is amended by:

A. Revising paragraph (a).

B. In paragraph (b), adding a definition of *Educational service agency.*

C. Revising the introductory text of paragraph (c)(1).

D. In paragraph (c)(1)(ii), adding the words ''or educational service agency's'' immediately after the words ''the school's''.

E. In paragraph (c)(1)(iii), removing the words ''Bureau of Indian Affairs (BIA)'' and adding, in their place, the words ''Bureau of Indian Education (BIE)'', and removing the words ''the BIA'' and adding, in their place, the words ''the BIE''.

F. In paragraph (c)(2), adding the words ''or educational service agency'' immediately after the words ''If the school'' at the beginning of the paragraph, and removing the words ''the school failed'' and adding, in their place, the word ''fails''.

G. In paragraph (c)(3)(i)(A), removing the words ''in which'' and adding, in their place, the words ''or educational service agency where''.

H. In paragraph (c)(3)(i)(B), removing the words ''in which'' and adding, in their place, the words ''or educational service agency where''.

I. In paragraph (c)(3)(ii)(A), removing the word ''in'' and adding, in its place, the word ''at'', and adding the words '', or taught mathematics or science to secondary school students on a full-time basis at an eligible educational service agency,'' immediately after the words ''secondary school''.

J. In paragraph (c)(3)(ii)(B), removing the word ''in'' the first time it appears and adding, in its place, the word ''at'', and adding the words ''or educational service agency'' immediately after the words ''secondary school'' the first time they appear.

K. Adding a new paragraph (c)(3)(iii).

L. In paragraph (c)(4)(i), removing the word ''in'' and adding, in its place, the word ''at'', and adding the words ''or educational service agency'' immediately after the words ''secondary school'' the first time they appear.

M. In paragraph (c)(4)(ii)(A), removing the word ''in'' and adding, in its place, the word ''at'', and adding the words '', or taught mathematics or science on a full-time basis to secondary school students at an eligible educational service agency,'' immediately after the words ''secondary school''.

N. In paragraph (c)(4)(ii)(B), removing the word ''in'' the first time it appears and adding, in its place, the word ''at'', and by adding the words ''or educational service agency'' immediately after the words ''secondary school'' the first time they appear.

O. Adding a new paragraph (c)(4)(iii).

P. Revising paragraph (c)(9).

Q. Revising paragraph (c)(11).

The revisions and additions read as follows:

§ 685.217 Teacher loan forgiveness program.

(a) *General.* (1) The teacher loan forgiveness program is intended to encourage individuals to enter and continue in the teaching profession. For new borrowers, the Secretary repays the amount specified in this paragraph on the borrower's subsidized and unsubsidized Federal Stafford Loans, Direct Subsidized Loans, Direct Unsubsidized Loans, and in certain cases, Federal Consolidation Loans or Direct Consolidation Loans. The forgiveness program is only available to a borrower who has no outstanding loan balance under the FFEL Program or the Direct Loan Program on October 1, 1998 or who has no outstanding loan balance on the date he or she obtains a loan after October 1, 1998.

(2) The borrower must have been employed at an eligible elementary or secondary school that serves low-income families or by an educational service agency that serves low-income families as a full-time teacher for five consecutive complete academic years. For teaching service performed at an eligible elementary or secondary school, at least one of the academic years must have been after the 1997–1998 academic year. For teaching service performed by an employee of an eligible educational service agency, at least one of the five consecutive complete academic years must have been after the 2007–2008 academic year.

(3) All borrowers eligible for teacher loan forgiveness may receive loan forgiveness of up to a combined total of $5,000 on the borrower's eligible FFEL and Direct Loan Program loans.

(4) A borrower may receive loan forgiveness of up to a combined total of $17,500 on the borrower's eligible FFEL and Direct Loan Program loans if the borrower was employed for five consecutive years—

(i) At an eligible secondary school as a highly qualified mathematics or science teacher, or at an eligible educational service agency as a highly qualified teacher of mathematics or science to secondary school students; or

(ii) At an eligible elementary or secondary school or educational service agency as a highly qualified special education teacher.

(5) The loan for which the borrower is seeking forgiveness must have been made prior to the end of the borrower's fifth year of qualifying teaching service.

(b) * * *

Educational service agency means a regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to local educational agencies, as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

* * * * *

(c) * * *

(1) A borrower who has been employed at an elementary or secondary school or an educational service agency as a full-time teacher for five consecutive complete academic years may obtain loan forgiveness under this program if the elementary or secondary school or educational service agency—

* * *

(3) * * *

(iii) For teaching service performed by an employee of an eligible educational service agency, at least one of the five consecutive complete academic years must have been after the 2007–2008 academic year.

(4) * * *

(iii) For teaching service performed by an employee of an eligible educational service agency, at least one of the five consecutive complete academic years must have been after the 2007–2008 academic year.

* * * * *

(9) A borrower who was employed as a teacher at more than one qualifying school, at more than one qualifying educational service agency, or at a combination of both during an academic year and demonstrates that the combined teaching was the equivalent of full-time, as supported by the certification of one or more of the chief administrative officers of the schools or educational service agencies involved, is considered to have completed one academic year of qualifying teaching.

* * * * *

(11) A borrower may not receive loan forgiveness for the same qualifying teaching service under this section if the borrower receives a benefit for the same teaching service under—

(i) 34 CFR 682.216;

(ii) Subtitle D of title I of the National and Community Service Act of 1990;

(iii) 34 CFR 685.219; or

(iv) Section 428K of the Act.

* * * * *

§ 685.220 [Amended]

32. Section 685.220 is amended by:

A. In paragraph (d)(1)(i)(B)(*3*), adding the words ''or the no accrual of interest benefit for active duty service'' immediately after the word ''Program''.

B. In paragraph (d)(1)(i)(B)(*4*), adding the words ''or an income-based repayment plan'' immediately after the words ''income contingent repayment plan''.

C. In paragraph (d)(1)(i)(B)(*5*), adding the words ''or the no accrual of interest benefit for active duty service'' immediately after the word ''Program''.

33. Section 685.221 is amended by:

A. Revising paragraph (a)(4).

B. In paragraph (b)(1), removing the words ''Except as provided under paragraph (b)(2) of this section, the'' in the second sentence and adding, in their place, the word ''The''.

C. In paragraph (b)(2)(i), removing the word ''The'' at the beginning of the sentence and adding, in its place, the words ''Except for borrowers provided for in paragraph (b)(2)(ii) of this section, the''.

D. Redesignating paragraphs (b)(2)(ii) and (b)(2)(iii) as paragraphs (b)(2)(iii) and (b)(2)(iv), respectively.

E. Adding a new paragraph (b)(2)(ii).

F. In newly redesignated paragraph (b)(2)(iii), removing the words ''or (b)(2)(i)'' and adding, in their place, the words '', (b)(2)(i), or (b)(2)(ii)''.

G. In newly redesignated paragraph (b)(2)(iv), removing the words ''or (b)(2)(i)'' and adding, in their place, the words '', (b)(2)(i), or (b)(2)(ii)''.

The revision and addition read as follows:

§ 685.221 Income-based repayment plan.

(a) * * *

(4) *Partial financial hardship* means a circumstance in which—

(i) For an unmarried borrower or a married borrower who files an individual Federal tax return, the annual amount due on all of the borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the borrower initially entered repayment or at the time the borrower elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size; or

(ii) For a married borrower who files a joint Federal tax return with his or her spouse, the annual amount due on all of the borrower's eligible loans and, if applicable, the spouse's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the loans initially entered repayment or at the time the borrower or spouse elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower's and spouse's AGI, and 150 percent of the poverty guideline for the borrower's family size.

(b) * * *

(2) * * *

(ii) Both the borrower and borrower's spouse have eligible loans and filed a joint Federal tax return, in which case the Secretary determines—

(A) Each borrower's percentage of the couple's total eligible loan debt;

(B) The adjusted monthly payment for each borrower by multiplying the calculated payment by the percentage determined in paragraph (b)(2)(ii)(A) of this section; and

(C) If the borrower's loans are held by multiple holders, the borrower's adjusted monthly Direct Loan payment by multiplying the payment determined in paragraph (b)(2)(ii)(B) of this section by the percentage of the outstanding principal amount of eligible loans that are Direct Loans;

* * * * *

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H.R. 1777/P.L. 111–39

To make technical corrections to the Higher Education Act of 1965, and for other purposes. (July 1, 2009; 123 Stat. 1934)

S. 614/P.L. 111–40

To award a Congressional Gold Medal to the Women Airforce Service Pilots ("WASP"). (July 1, 2009; 123 Stat. 1958)

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