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

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FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2009–19]

Procedural Rules for Audit Hearings

AGENCY: Federal Election Commission.

ACTION: Agency procedure; correction.

SUMMARY: On July 10, 2009, the Federal Election Commission published a Procedural Rule (''Commission'') instituting a program that provides committees that are audited pursuant to the Federal Election Campaign Act of 1971, as amended (''FECA'') with the opportunity to have a hearing before the Commission prior to the Commission's adoption of a Final Audit Report. Procedural Rules for Audit Hearings, 74 FR 33140 (July 10, 2009). The Commission is now adding a further statement at the end of that procedural rule to conform this statement to other agency procedural rules.

DATES: Effective August 7, 2009.

FOR FURTHER INFORMATION CONTACT: Joseph F. Stoltz, Assistant Staff Director, Audit Division, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On July 10, 2009, the Commission published a Procedural Rule instituting a program that provides committees that are audited pursuant to the Federal Election Campaign Act of 1971, as amended (''FECA'') with the opportunity to have a hearing before the Commission prior to the Commission's adoption of a Final Audit Report. Procedural Rules for Audit Hearings, The Commission is now adding a statement to that procedural rule to conform the rule to other agency procedural rules and policy statements.

On page 33143, in the first column, at the end of paragraph E, insert the following:

The above provides general guidance concerning notice to those being audited and announces the general course of action that the Commission intends to follow. This notice sets forth the Commission's intentions concerning the exercise of its discretion in its audit program. However, the Commission retains that discretion and will exercise it as appropriate with respect to the facts and circumstances of each audit it considers. Consequently, this notice does not bind the Commission or any member of the general public.

Dated: July 29, 2009.

On behalf of the Commission.

Steven T. Walther,

Chairman, Federal Election Commission.

[FR Doc. E9–18541 Filed 8–6–09; 8:45 am]

BILLING CODE 6715–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Children's Products Containing Lead; Interpretative Rule on Inaccessible Component Parts

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission (''Commission'') is issuing a final rule providing guidance as to what product components or classes of components will be considered to be ''inaccessible.'' Section 101(b)(2)(A) of the Consumer Product Safety Improvement Act (''CPSIA'') provides that the lead limits shall not apply to any component part of a children's product that is not accessible to a child through normal and reasonably foreseeable use and abuse. Section 101(b)(2)(B) of the CPSIA requires the Commission to issue, by August 14, 2009, a rule providing guidance with respect to what product components, or classes of components, will be considered to be inaccessible. This final rule satisfies the Commission's statutory obligation.

DATES: *Effective Date:* This interpretative rule is effective on August 14, 2009.

FOR FURTHER INFORMATION CONTACT: Kristina Hatlelid, PhD, M.P.H., Directorate for Health Sciences, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail *khatlelid@cpsc.gov*; telephone 301–504–7254.

SUPPLEMENTARY INFORMATION:

A. Background

The CPSIA establishes specific lead limits in children's products. Section 101(a) of the CPSIA provides that, as of February 10, 2009, products designed or intended primarily for children 12 and younger may not contain more than 600 parts per million (ppm) of lead. After August 14, 2009, products designed or intended primarily for children 12 and younger cannot contain more than 300 ppm of lead. On August 14, 2011, the limit may be further reduced to 100 ppm, unless the Commission determines that it is not technologically feasible to meet this lower limit. Section 3(a)(16) of the Consumer Product Safety Act, as amended by section 235(a) of the CPSIA, defines ''children's product'' as a ''consumer product designed or intended primarily for children 12 years of age or younger.''

B. Statutory Authority

Section 101(b)(2) of the CPSIA provides that the lead limits do not apply to component parts of a product that are not accessible to a child. This section specifies that a component part is not accessible if it is not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product including swallowing, mouthing, breaking, or other children's activities, and the aging of the product, as determined by the Commission. Paint, coatings, or electroplating may not be considered to be a barrier that would render lead in the substrate to be inaccessible to a child under section 101(b)(3) of the CPSIA.

C. Notice of Proposed Rulemaking

In the **Federal Register** of January 15, 2009 (74 FR 2439), the Commission published a proposed interpretative rule providing guidance with respect to what product components or classes of components will be considered to be inaccessible. As stated in the preamble to the proposed interpretative rule (74 FR at 2440), the Commission preliminarily determined that:

- An accessible component part of a children's product is one that a child may touch;

• An inaccessible component part is one that is located inside the product and not capable of being touched or mouthed by a child, whether or not such part is visible to a user of the product;

• An inaccessible part is one that may be enclosed in any type of material, *e.g.*, hard or soft plastic, rubber or metal. However, the Commission requested comments specifically on the use of fabric as a barrier, and the impact of aging on a children's product;

• To assess whether a part is inaccessible, the accessibility probes defined in the Commission's existing regulations for evaluating accessibility of sharp points or sharp metal or glass edges (16 CFR 1500.48 and 1500.49) could be used. An accessible lead-containing component part would be defined as one that contacts any portion of the specified segment of the accessibility probe. An inaccessible lead-containing component part would be defined as one that cannot be contacted by any portion of the specified segment of the accessibility probe; and

• Use and abuse tests are appropriate for evaluating whether lead-containing component parts of a product become accessible to a child during normal and reasonably foreseeable use and abuse of the product by a child. The purpose of the tests is to simulate use and damage or abuse of a product by children and to expose potential hazards that might result from use and abuse. 16 CFR 1500.50–1500.53.

D. Discussion of Comments to the Proposed Rule and CPSC's Responses

The Commission received comments from trade associations, testing services, consumer groups, electronic products associations, youth recreational vehicle companies, and textile groups. In general, most comments, particularly those from consumer groups, agreed with most of the proposed interpretative rule, whereas other comments, particularly those from industry, sought a narrower or different interpretation of ''accessibility.''

1. Summary of the Law—Section 1500.87(a)

Proposed § 1500.87(a), in essence, summarized the lead limits in section 101 of the CPSIA and how, over time, the limits decrease from 600 ppm to 100 ppm by August 14, 2011 unless the Commission determines that it is not technologically feasible to meet this lower limit. Proposed § 1500.87(a) also stated that, ''Paint, coatings or electroplating may not be considered a barrier that would make the lead content of a product inaccessible to a child.''

We did not receive any comment on this provision. However, on our own initiative, we deleted the sentence regarding paint, coatings, and electroplating because the identical sentence appears in § 1500.87(b).

2. Physical Accessibility—Section 1500.87(b)

Proposed § 1500.87(b) explained that the lead limits do not apply to component parts of a product that are not accessible to a child. The proposal explained that a component part is not accessible if it is not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product including swallowing, mouthing, breaking, or other children's activities, and the aging of the product, as determined by the Commission. It added that paint, coatings, or electroplating may not be considered to be a barrier that would render lead in the substrate to be inaccessible to a child.

Some commenters agreed with the Commission's determination that accessibility is defined in the statute as physical access and stressed that exposure to lead such as through leaching is not what was intended.

However, other commenters said the Commission should explore other inaccessibility scenarios, not just physical inaccessibility, including considering whether children using the product could be exposed to the lead that is present. Similarly, other commenters stated that the physical contact is only an example of accessibility and said that evaluations of accessibility focus on whether parts are ingestible or mouthable, or alternatively, consider whether a child will actually touch the part during foreseeable use or abuse of the product.

We decline to revise the rule as suggested by the comments. The statute refers to physical accessibility of component parts of products, and this reference is not simply an example of how accessibility might be defined. The proposed interpretative rule followed the statutory language for determining inaccessibility. Section 101(b)(2)(A) of the CPSIA provides that, ''[a] component part is not accessible under this subparagraph *if such component part is not physically exposed* by reason of a sealed covering or casing and *does not become physically exposed* through reasonably foreseeable use and abuse of the product'' (emphasis added). The statute goes on to state, ''[r]easonably foreseeable use and abuse shall include to, [sic] swallowing, mouthing, breaking, or other children's activities, and the aging of the product.'' *Id.* Swallowing and mouthing are examples of use and abuse actions to be considered, but the language of the statute does not limit consideration to ingestible or mouthable products. Courts have routinely found that use of the word ''including'' in a statute before a list of items demonstrates that the list is illustrative, and not meant to be exhaustive. *See*, *e.g.*, *West* v *Gibson*, 527 U.S. 212, 217 (1999) (holding that ''including'' in section 717(b) of Title VII of the Civil Rights Act which sets forth the EEOC's authority to enforce the antidiscrimination standard ''makes clear that the authorization is not limited to the specified remedies there mentioned * * *''); *Federal Land Bank of St. Paul* v *Bismarck Lumbar Co.*, 314 U.S. 95, 99–100 (1941) (holding that ''the term 'including' is not one of all-embracing definition, but connotes simply an illustrative application of the general principle.''); *Puerto Rico Maritime Shipping Auth.* v *ICC*, 645 F.2d 1102, 1112 n.26 (DC Cir. 1981) (''It is hornbook law that the use of the word 'including' indicates that the specified list * * * that follows is illustrative, not exclusive.'' (internal citation omitted)).

''Other children's activities'' could reasonably include touching, grasping, and handling that can lead to physical exposure to the lead containing parts. Accordingly, the final rule construes accessibility to be physical contact with lead-containing component parts, and mouthing and swallowing, along with touching, among the children's activities that can result in contact with the lead-containing parts.

3. Testing and Certification Requirements for Inaccessible Component Parts

Some commenters recommended that the rule explicitly state that inaccessible component parts are relieved of the testing requirement of section 102 of the CPSIA. One commenter said that the rule should state clearly that no certificate is required when no provision of CPSIA or any other rule or standard applies. In addition, the commenters requested that the rule provide that third-party testing is not required to demonstrate compliance with section 101 of the CPSIA when the lead in the product is deemed to be inaccessible.

In general, inaccessible component parts do not have to comply with the lead content limits or be tested and certified as to lead content. The accessible portions of a product, unless specifically excluded from lead content

requirements or the testing requirements, would require testing and certification to the lead content limits.

Currently, third-party testing and certification is required for toys and children's products under the small parts regulations (16 CFR Part 1501 and 1500.50–53 and 16 CFR 1500(18)(a)(9)), as well as under the toy safety standard, ASTM–F963. Accordingly, some of the tests proposed for evaluating accessibility are already being conducted by manufacturers for small parts evaluations. In addition, toys and games that are or contain small parts that are intended for use by children from 3 to 6 years old are subject to the labeling requirements of 16 CFR 1500.19. With respect to other children's products that do not fall within the scope of the small parts regulations, but that contain inaccessible parts, the manufacturer currently is not required to provide third-party testing to demonstrate inaccessibility. The Commission intends to address certification requirements and the establishment of protocols and standards for ensuring that children's products are tested for compliance with applicable children's products safety rules in a separate rulemaking.

4. Rulemaking Authority—Section 1500.87(c)

Proposed § 1500.87(c) cited section 101(b)(2)(B) of the CPSIA as the legal authority to promulgate the interpretative rule and stated that the rulemaking is to be conducted by August 14, 2009.

We received no comments on this provision and have finalized it without change.

5. Use of Accessibility Probes—Section 1500.87(d)

Proposed § 1500.87(d) stated that:

> The accessibility probes specified for sharp points or edges under the Commission's regulations at 16 CFR 1500.48–1500.49 will be used to assess the accessibility of lead-component parts of a children's product. A lead-containing component part would be considered accessible if it contacts any portion of the specified segment of the accessibility probe. A lead-containing component part would be considered inaccessible if it cannot be contacted by any portion of the specified segment of the accessibility probe.

In general, most commenters agree with the proposed approach of using accessibility probes to evaluate whether certain parts of a product might be accessible to a child. However, one commenter stated that probes should be unnecessary for products that are sealed and have no accessible cavities.

The Commission agrees that, for products that are effectively sealed so that there is no point of entry to any internal parts that contain lead, use of the probes would not be necessary to demonstrate that the parts are not accessible. However, it would be necessary to test the material which encases or encloses the inaccessible lead-containing part, unless it is a material that the Commission has specifically determined falls below the lead content limits of the CPSIA. The Commission established procedures for a Commission determination that a specific material or product does not exceed the lead content limits specified under section 101(a) of the CPSIA (74 FR 10475 (March 11, 2009)). In addition, the Commission has issued a notice of proposed rulemaking regarding lead content limits on certain materials or products which have been preliminarily determined to fall below the lead content limits of the CPSIA (74 FR 2433 (January 15, 2009)).

Some commenters stated that accessibility probes could be used to evaluate products, but they questioned whether existing test fixtures are appropriate for the entire age range of children's products. The commenters argued that older children have developed their motor skills and have increased agility compared to younger children for which the probes were designed.

In considering reasonably foreseeable use and abuse, the Commission finds that the accessibility probes are appropriate for testing the wider range of products for children through age twelve years. The probes are used to evaluate possible gaps or holes in a product through which a young child's finger might physically contact a lead-containing component part. Because older children's larger fingers generally would have more limited access to gaps that would be accessible to smaller children, the Commission believes that, in most cases, the probes will indicate whether access is possible.

Some commenters claimed that the use of accessibility probes for evaluating accessibility is inappropriate; these commenters said that the proper method for determining inaccessibility would evaluate mouthing and swallowing behaviors. The commenters argued that the possibility of simple physical contact with a lead-containing component part does not necessarily lead to mouthing or swallowing, or that the lead-containing component parts are not touched during normal and reasonably foreseeable use and abuse of the component part.

We disagree with the comments. The statute provides for inaccessibility of component parts based on physical exposure to the part. Therefore, the Commission must assess accessibility based on whether a child may touch a component part that contains lead above the lead limits, not simply on whether a child might ingest or mouth a part of a product. In addition, we have deemed that, in the context of an exclusion request for all-terrain vehicles, the normal and reasonably foreseeable contact with lead-containing parts by children using motorized recreational vehicles would not be extensive but would occur. For example, in the regular use of the product, users will have to touch the brake and clutch levers and the throttle controls. It is reasonable to assume that children will not be washing their hands immediately after touching these parts. Average users (6–12 year olds) do not typically engage in hand-to-mouth behavior; however, it is not unreasonable to assume they may wipe their mouth or face with their hands while using or right after using the recreational vehicle. (*See* Human Factors Response to Request for Motorized Recreational Vehicles Group Request for Exclusion from Lead Limits under Section 101(b)(1) of the Consumer Product Safety Improvement Act dated April, 2009.) Accordingly, the Commission finds that the accessibility probes provide an objective means for evaluating accessibility based on such physical access.

Some commenters asked that we clarify that access to a component containing smaller components that may, themselves, contain lead-containing parts does not mean that a lead-containing component is accessible if the lead is fully enclosed within the larger component which can be touched by an accessibility probe.

The Commission interprets a lead-containing component part to mean the material used to construct the part includes lead in its formulation, not that the part contains smaller parts that contain lead. For example, assume that the product is a sealed ball made of plastic and that the sealed ball has a lead content that complies with the CPSIA lead limits. Inside the sealed ball are metal beads that contain lead. In this example, the metal beads are lead-containing component parts, but the ball is not. If the sealed ball does not provide access to the beads inside it, through a hole or a crevice, or after being subject to use and abuse testing, then the lead-containing parts would be deemed inaccessible. The Commission also notes that, for certain electronic devices that contain accessible lead-containing

parts, there is an interim final rule which provides exemptions for such parts for which it is not technologically feasible to comply with the lead content limits (74 FR 6990 (February 12, 2009)).

6. Use of Use and Abuse Tests—Section 1500.87(e) and (f)

Proposed § 1500.87(e) explained that the use and abuse tests at 16 CFR 1500.50–1500.53 (excluding the bite tests of 1500.51(c) and 1500.52(c)) will be used to evaluate accessibility of lead-containing component parts of a children's product as a result of normal and reasonably foreseeable use and abuse of the product by children that are 18 months of age or less, over 18 months but not over 36 months of age, and over 36 months but not over 96 months of age.

Proposed § 1500.87(f) was similar to proposed § 1500.87(e), except that it referred to use and abuse tests at 16 CFR 1500.50–1500.53 (excluding the bite tests of 1500.51(c) and 1500.52(c)) intended for children aged 37–96 months being used to evaluate accessibility of lead-containing component parts of a children's product as a result of normal and reasonably foreseeable use and abuse of the product by a child through 12 years of age.

In general, most commenters agreed with the proposed approach of using existing use and abuse tests to evaluate the normal use of toys and other articles intended for use by children as well as the reasonably foreseeable damage or abuse to which the articles may be subjected.

Some commenters agreed that the use and abuse tests are appropriate for evaluating whether ingestible or mouthable parts might come loose from a product, but said that intentional disassembly or destruction by older children, including use of tools, should not be considered in evaluating accessibility. Other commenters questioned whether the tests are appropriate for older children given their increased strength and dexterity.

We acknowledge that older children have advanced motor skills compared to younger children. However, older children also have advanced cognitive skills and the ability to properly care for their belongings. For the purposes of evaluating product integrity, the Commission believes that the existing use and abuse tests are appropriate for revealing inherent characteristics or possible defects in products that could result in accessibility of components and will expose potential hazards that might result from use and abuse for most children's products.

The test methods in 16 CFR 1500.50–1500.53 are used to simulate the normal and reasonably foreseeable use, damage, or abuse of toys and other articles intended for children in three separate age groups. Accordingly, revised §§ 1500.87(e),(f), and (g) make clear that the use and abuse tests at 16 CFR 1500.50–1500.53 will be used to evaluate accessibility of lead-containing component parts of a children's product for the specific age group the product is intended. In addition, § 1500.87(h) is revised to make clear that the test under § 1500.87(g) will apply to products intended for children that are over 96 months through 12 years of age. Accordingly, we have revised §§ 1500.87(e) through (h) to read as follows:

(e) For products intended for children that are 18 months of age or less, the use and abuse tests set forth under the Commission's regulations at 16 CFR 1500.50 and 16 CFR 1500.51 (excluding the bite test of 1500.51(c)), will be used to evaluate accessibility of lead-containing component parts of a children's product as a result of normal and reasonably foreseeable use and abuse of the product.

(f) For products intended for children that are over 18 months but not over 36 months of age, the use and abuse tests set forth under the Commission's regulations at 16 CFR 1500.50 and 16 CFR 1500.52 (excluding the bite test of 1500.52(c)), will be used to evaluate accessibility of lead-containing component parts of a children's product as a result of normal and reasonably foreseeable use and abuse of the product.

(g) For products intended for children that are over 36 months but not over 96 months of age, the use and abuse tests set forth under the Commission's regulations at 16 CFR 1500.50 and 16 CFR 1500.53 (excluding the bite test of 1500.53(c)), will be used to evaluate accessibility of lead-containing component parts of a children's product as a result of normal and reasonably foreseeable use and abuse of the product.

(h) For products intended for children over 96 months through 12 years of age, the use and abuse tests set forth under the Commission's regulations at 16 CFR 1500.50 and 16 CFR 1500.53 (excluding the bite test of 1500.53(c)) intended for children aged 37–96 months will be used to evaluate accessibility of lead-containing component parts of a children's product as a result of normal and reasonably foreseeable use and abuse of the product by a child through 12 years of age.

7. The Exclusion of the Bite Test From Use and Abuse Testing

Proposed § 1500.87(e) and (f) referred to the ''bite tests of 1500.51(c) and 1500.52(c).''

Some commenters requested an explanation for the exclusion of the bite test. One commenter pointed out that the proposed rule excludes the bite test from 16 CFR 1500.51 and 1500.52, but not § 1500.53, and stated that the bite test from all three sections should be excluded.

Currently, the Commission does not use the bite test specified in the three CFR sections, as a result of a court case (*Clever Idea Co., Inc.* v *Consumer Products Safety Commission*, 385 F. Supp. 688 (E.D. N.Y. 1974)) that questioned the appropriateness of this test. This requirement may be modified in a future proceeding.

Because the bite test currently is not applied as part of use and abuse testing in general, it will not be applied for the purposes of evaluating whether lead-containing component parts are accessible. Nevertheless, the inclusion of the bite test in 16 CFR 1500.53 was inadvertent in the proposed rule, and we have revised §§ 1500.87(g) and (h) to exclude the bite test of 16 CFR 1500.53(c).

8. Fabric Coverings Used as Barrier—Section 1500.87(g)

Several commenters claimed that fabric coverings are appropriate barriers. Some commenters gave examples of a fabric-covered button or base of a zipper that would form a barrier to a lead-containing part, such as a metal button or zipper base, thus rendering it inaccessible to a child. The commenters said that such use of fabric must withstand wear and tear and remain intact through the life of a garment. In addition, the commenters noted that fabrics in footwear applications must be durable and able to withstand abrasion and other abuse and must not wear out over the expected life of a shoe. They asserted that fabrics are barriers especially given that the use of tools is not to be considered in an accessibility evaluation. Another commenter said that fabric coverings surrounding the inner parts of mattresses and foundations are barriers for which there is no point of entry and which must withstand normal use of these products.

Conversely, other commenters stated that the Commission must evaluate the possibility that lead could leach from components that are fabric-covered and must evaluate the ability of fabric barriers to hold up to use and abuse.

Although test data was not submitted that specifically address the possibility

of leaching of lead through fabric coverings, leaching involves a liquid dissolving a portion of a material or otherwise extracting a chemical from the material. Because fabrics, in general, cannot be considered to be impervious to liquids such as saliva and stomach acid, we believe that leaching of lead from an underlying material is possible. However, unlike other children's products that have lead-containing components that are accessible, children will not touch the lead-containing component with the hands or fingers if the component is enclosed or encased in fabric. Thus, leaching of lead from such a product is not likely to occur except in the case of mouthing or swallowing an item that is completely encased or enclosed in fabric. Whether a fabric-covered product or a fabric-covered component part of a product can be mouthed or swallowed should be determined through appropriate testing.

The Commission has reviewed section 108 of the CPSIA, which addresses phthalate content of certain products, for a definition for toys that can be placed in a child's mouth. Section 108(e)(2)(B) of the CPSIA provides that ''if a toy or part of toy in one dimension is smaller than 5 centimeters, it can be placed in the mouth.'' Although the CPSIA provisions for lead apply to all children's products, not just toys, the definition in section 108 of the CPSIA is helpful in assessing whether a part of any children's product can be placed in a child's mouth. Accordingly, fabric-covered components that are used in children's products, including toys, should be evaluated for the potential to be placed in the mouth according to this definition to assess whether the fabric-covered part is accessible.

The Commission believes that, in general, fabric coverings may be considered barriers to physical contact with underlying materials for products such as mattresses because they cannot be mouthed or swallowed. However, the appropriate use and abuse tests, such as for the integrity of seams, should be used to evaluate the coverings. Smaller items or small components of children's products should be evaluated for the potential for mouthing or swallowing using the small parts test. For fabric-covered children's products, an additional test to determine whether any part in one dimension is smaller than 5 centimeters should be performed to see if it can be placed in the mouth. If mouthing or swallowing of a component part could occur, the material beneath the fabric covering is considered to be accessible to a child. Therefore, the Commission has revised the final interpretative rule by adding a new § 1500.87(i) to explain that a children's product that is or contains a lead-containing part which is enclosed, encased, or covered by fabric and passes the appropriate use and abuse tests on such covers, is inaccessible to a child unless the product or part of the product in one dimension is smaller than 5 centimeters. The Commission also has renumbered proposed § 1500.87(g), which pertained to the intentional disassembly or destruction of products by children, as § 1500.87(j).

9. Intentional Disassembly and Destruction—Section 1500.87(j) (Formerly Section 1500.87(g))

Proposed § 1500.87(g) (now renumbered as § 1500.87(j)), explained that the intentional disassembly or destruction of products by children older than age 8 years by means or knowledge not generally available to younger children, including use of tools, will not be considered in evaluating products for accessibility of lead-containing components.

For the reasons stated in section D.6 of this preamble, we have retained the text for this provision without change, but have renumbered the provision as § 1500.87(j).

10. Miscellaneous Comments

Some commenters said that, if aging and wear and tear exposes lead-containing parts, the components should be considered accessible.

Conversely, other commenters said that, with respect to textile products, the necessary durability of such products already incorporates consideration of aging and wear and tear. Another commenter claimed that additional testing to account for aging for their type of products does not need to be done, because the product lifespan of children's electronics is shorter than for other children's products, and aging leads to products becoming unusable.

Section 101(b)(2)(A) of the CPSIA provides that aging of the product may be considered in the evaluation of the accessibility of component parts. However, because of the wide range of products and product types subject to the lead content requirements of the CPSIA, the Commission believes that such evaluations are necessarily specific to individual products or product types and may not be generalized. Currently, the Commission does not have specific requirements on the effects of aging on children's products. Testing for aging on children's products is similar to normal use testing. Section 8.5 of ASTM–F963 provides that normal use testing would entail tests intended to simulate normal use conditions so as to ensure that hazards are not generated through normal wear and deterioration of the product. Such tests would be used to uncover hazards rather than to demonstrate the reliability of the toy. However, ASTM–F963 does not specify requirements because it would not be possible to define such requirements in view of the wide range of children's products in the marketplace. Since any evaluation on the effects of aging on the integrity of product must be conducted on product by product basis, the Commission will continue to review the effects of aging of the integrity of the children's products and will issue further guidance on this issue in the future if it deems such guidance is necessary.

11. Compact Disks and DVDs

One commenter specifically requested that the final interpretive rule address compact disks and DVDs. These products are composed of acrylic polymer layers that encase the data part of the product. Because the law does not allow for coatings to be used as a barrier that would render lead in the substrate inaccessible to a child, this commenter asked that the rule state that the acrylic part of a disk is not a ''coating.'' The commenter was concerned that if the acrylic polymer layer is not clearly determined to not be a coating, then manufacturers would have to test the layer of material within the polymer part of the product.

Acrylic polymer layers of a compact disk or DVD are not considered to be a coating within the definition of section 1303 because the acrylic polymer layers are not a surface coating that is separable from the substrate through scraping. If the internal metallic layer of a disk is not accessible to a child, testing and certification would not be required. The Commission notes that the issue of whether there is any lead in compact disks or DVDs has been raised in various proceedings. However, we have not received any test data or information regarding lead content in CDs or DVDs and would require further information before we can evaluate these products properly. Moreover, given the very large numbers of children's products in the market, an interpretative rule on accessibility is not the appropriate forum for the Commission to address such product-specific issues. Rather, the interpretative rule is intended to provide guidance to allow manufacturers of children's products to assess whether their own products or component parts of their products are inaccessible for purposes of section 101(b)(2) of the CPSIA. Product-specific requests should be made under the rule

on procedures and requirements for a Commission determination or exclusion (74 FR 10475 (March 11, 2009)).

E. Effective Date

The CPSIA requires the Commission to promulgate a rule providing guidance on inaccessible component parts by August 14, 2009. Although interpretative rules do not require a particular effective date under the Administrative Procedure Act, 5 U.S.C. 553(d)(2), the Commission recognizes the need for providing the guidance expeditiously. Accordingly, the interpretative rule will take effect on August 14, 2009.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, and Toys.

F. Conclusion

■ For the reasons stated above, the Commission amends 16 CFR chapter II as follows:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES: ADMINISTRATION AND ENFORCEMENT REGULATIONS

■ 1. The authority citation for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1278, 122 Stat. 3016.

■ 2. Add a new § 1500.87 to read as follows:

§ 1500.87 Children's products containing lead: inaccessible component parts.

(a) The Consumer Product Safety Improvement Act (CPSIA) provides for specific lead limits in children's products. Section 101(a) of the CPSIA provides that by February 10, 2009, products designed or intended primarily for children 12 and younger may not contain more than 600 ppm of lead. After August 14, 2009, products designed or intended primarily for children 12 and younger cannot contain more than 300 ppm of lead. On August 14, 2011, the limit may be further reduced to 100 ppm after three years, unless the Commission determines that it is not technologically feasible to have this lower limit.

(b) Section 101 (b)(2) of the CPSIA provides that the lead limits do not apply to component parts of a product that are not accessible to a child. This section specifies that a component part is not accessible if it is not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product including swallowing, mouthing, breaking, or other children's activities, and the aging of the product, as determined by the Commission. Paint, coatings, or electroplating may not be considered to be a barrier that would render lead in the substrate to be inaccessible to a child.

(c) Section 101(b)(2)(B) of the CPSIA directs the Commission to promulgate by August 14, 2009, this interpretative rule to provide guidance with respect to what product components or classes of components will be considered to be inaccessible.

(d) The accessibility probes specified for sharp points or edges under the Commissions' regulations at 16 CFR 1500.48–1500.49 will be used to assess the accessibility of lead-component parts of a children's product. A lead-containing component part would be considered accessible if it can be contacted by any portion of the specified segment of the accessibility probe. A lead-containing component part would be considered inaccessible if it cannot be contacted by any portion of the specified segment of the accessibility probe.

(e) For products intended for children that are 18 months of age or less, the use and abuse tests set forth under the Commission's regulations at 16 CFR 1500.50 and 16 CFR 1500.51 (excluding the bite test of § 1500.51(c)), will be used to evaluate accessibility of lead-containing component parts of a children's product as a result of normal and reasonably foreseeable use and abuse of the product.

(f) For products intended for children that are over 18 months but not over 36 months of age, the use and abuse tests set forth under the Commission's regulations at 16 CFR 1500.50 and 16 CFR 1500.52 (excluding the bite test of § 1500.52(c)), will be used to evaluate accessibility of lead-containing component parts of a children's product as a result of normal and reasonably foreseeable use and abuse of the product.

(g) For products intended for children that are over 36 months but not over 96 months of age, the use and abuse tests set forth under the Commission's regulations at 16 CFR 1500.50 and 16 CFR 1500.53 (excluding the bite test of § 1500.53(c)), will be used to evaluate accessibility of lead-containing component parts of a children's product as a result of normal and reasonably foreseeable use and abuse of the product.

(h) For products intended for children over 96 months through 12 years of age, the use and abuse tests set forth under the Commission's regulations at 16 CFR 1500.50 and 16 CFR 1500.53 (excluding the bite test of § 1500.53(c)) intended for children aged 37–96 months will be used to evaluate accessibility of lead-containing component parts of a children's product as a result of normal and reasonably foreseeable use and abuse of the product.

(i) A children's product that is or contains a lead-containing part which is enclosed, encased, or covered by fabric and passes the appropriate use and abuse tests on such covers, is inaccessible to a child unless the product or part of the product in one dimension is smaller than 5 centimeters.

(j) The intentional disassembly or destruction of products by children older than age 8 years by means or knowledge not generally available to younger children, including use of tools, will not be considered in evaluating products for accessibility of lead-containing components.

Dated: July 31, 2009.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E9–18852 Filed 8–6–09; 8:45 am]

BILLING CODE 6335–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[EPA–HQ–OPP–2009–0101; FRL–8428–7]

Bacillus thuringiensis Cry1A.105 Protein; Time Limited Exemption From the Requirement of a Tolerance; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule, correction.

SUMMARY: On May 20, 2009 EPA published a Final Rule that established an 18–month, time-limited exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis* Cry1A.105 protein in or on the food and feed commodities cotton seed, cotton seed oil, cotton seed meal, cotton hay, cotton hulls, cotton forage and cotton gin byproducts when used as a plant-incorporated protectant. Subsequent to the publication of the May 20, 2009 Final Rule, the Agency identified an error in the Analytical Methods section of that Rule's preamble. Through this action, EPA is republishing the tolerance exemption with a new effective date and opportunity to request a hearing, and a corrected Analytical Methods section. The conditions of the

time-limited tolerance exemption as established on May 20, 2009 are unchanged: the time-limited tolerance exemption expires and is revoked on November 22, 2010.

DATES: This regulation is effective August 7, 2009. Objections and requests for hearings must be received on or before October 6, 2009 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0101. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Denise Greenway, Biopesticides and Pollution Prevention Division (7511P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–308–8263; e-mail address: *greenway.denise@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. How Can I Access Electronic Copies of this Document?

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 174 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0101 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 6, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2009–0101, by one of the following methods.

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

II. Background and Statutory Findings

In the **Federal Register** of March 4, 2009 (74 FR 9395) (FRL–8403–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 9F7521) by Monsanto Company, 800 North Lindbergh Blvd., St. Louis, MO 63167. The petition requested that 40 CFR part 174 be amended by establishing a time-limited exemption from the requirement of a tolerance for residues of the plant-incorporated protectant *Bacillus thuringiensis* Cry1A.105 protein, in or on the food and feed commodities cotton seed, cotton seed oil, cotton seed meal, cotton hay, cotton hulls, cotton forage and cotton gin byproducts. This notice included a summary of the petition prepared by the petitioner Monsanto Company. This petition was submitted to deal with a small amount — less than an acre — of an unauthorized, genetically-engineered cotton variety containing an unregistered plant-incorporated protectant – the Cry1A.105 protein — that was inadvertently harvested along with 54 acres of a commercially-available, genetically-engineered cotton variety. *(http://www.epa.gov/pesticides/biopesticides/pips/btcotton_statement.html).* In response to EPA's notice announcing the filing of pesticide petition 9F7521, one comment was received and was addressed in the May 20, 2009, Final Rule, in which EPA presented its rationale for establishing an 18–month time-limited exemption from the requirement of a tolerance.

Subsequent to the publication of the May 20, 2009 regulation, the Agency identified an error in the Analytical Methods section of the Rule's preamble (Unit VII.B.). Specifically, the text in the Analytical Methods section of the preamble to the May 20, 2009 Final Rule erroneously stated that the Polymerase Chain Reaction (PCR) method analyzed for *Bacillus thuringiensis* Cry1A.105 protein. In fact, the PCR method analyzes for *Bacillus thuringiensis*

Cry1A.105 DNA. This action corrects that error. This action also establishes a new effective date and opportunity to request a hearing. The conditions of the time-limited tolerance exemption as established on May 20, 2009 are unchanged: it still expires and is revoked on November 22, 2010. See Section VII.B., below, for the subject correction to the Analytical Methods section.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.... '' Additionally, section 408(b)(2)(D) of FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues '' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

For a more extensive discussion, see the Final Rule of May 20, 2009 (74 FR 23635, FRL–8417–3).

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

Food. See the Final Rule of May 20, 2009 (74 FR 23635, FRL–8417–3).

B. Other Non-Occupational Exposure

Dermal and inhalation exposure. See the Final Rule of May 20, 2009 (74 FR 23635), (FRL–8417–3).

V. Cumulative Effects

See the Final Rule of May 20, 2009 (74 FR 23635), (FRL–8417–3).

VI. Determination of Safety for U.S. Population, Infants and Children

See the Final Rule of May 20, 2009 (74 FR 23635), (FRL–8417–3).

VII. Other Considerations

A. Endocrine Disruptors

See the Final Rule of May 20, 2009 (74 FR 23635), (FRL–8417–3).

B. Analytical Method

A Polymerase Chain Reaction (PCR) method for the detection and (in the context of a tolerance exemption) measurement of the *Bacillus thuringiensis* Cry1A.105 DNA in cotton has been submitted (MRID 477497–01).

C. Codex Maximum Residue Level

See the Final Rule of May 20, 2009 (74 FR 23635, FRL–8417–3).

VIII. Conclusions

See the Final Rule of May 20, 2009 (74 FR 23635, FRL–8417–3).

IX. Statutory and Executive Order Reviews

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

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

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

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995

(NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

X. Congressional Review Act

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

List of Subjects in 40 CFR Part 174

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

Dated: July 27, 2009.

W. Michael McDavit,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

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

PART 174—[AMENDED]

■ 1. The authority citation for part 174 continues to read as follows:

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

■ 2. Section 174.502 is revised to read as follows:

§ 174.502 Bacillus thuringiensis Cry1A.105 protein; exemption from the requirement of a tolerance.

(a) Residues of *Bacillus thuringiensis* Cry1A.105 protein in or on the food and feed commodities of corn; corn, field, flour; corn, field, forage; corn, field, grain; corn, field, grits; corn, field, meal; corn, field, refined oil; corn, field, stover; corn, sweet, forage; corn, sweet, kernel plus cob with husk removed; corn, sweet, stover; and corn, pop, grain and corn, pop, stover are exempt from the requirement of a tolerance when the *Bacillus thuringiensis* Cry1A.105 protein is used as a plant-incorporated protectant in these food and feed corn commodities.

(b) A time-limited exemption from the requirement of a tolerance is established for residues of *Bacillus thuringiensis* Cry1A.105 protein in or on the food and feed commodities of cotton; cotton, forage; cotton, gin byproducts; cotton, hay; cotton, hulls; cotton, meal; cotton, refined oil; and cotton, undelinted seed when the *Bacillus thuringiensis* Cry1A.105 protein is used as a plant-incorporated protectant in these food and feed cotton commodities. The exemption from the requirement of a tolerance expires and is revoked on November 22, 2010.

[FR Doc. E9–18860 Filed 8–6–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0601; FRL–8431–8]

Inert Ingredients; Extension of Effective Date of Revocation of Certain Tolerance Exemptions with Insufficient Data for Reassessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This document moves the effective date of the revocation of six inert ingredient tolerance exemptions with insufficient data for reassessment as set forth in the **Federal Register** on August 4, 2008 (73 FR 45312).

DATES: In the final rule published August 9, 2006 (71 FR 45415), and delayed on August 4, 2008 (73 FR 45312):

1. The effective date is delayed from August 9, 2009, to October 9, 2009, for the following amendments to § 180.910: 2.m., n., and cc.

2. The effective date is delayed from August 9, 2009, to October 9, 2009, for the following amendments to § 180.930: 4.t., u., and v.

Objections and requests for hearings must be received on or before October 6, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0601. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Kerry Leifer, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8811; e-mail address: *leifer.kerry@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

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

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

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

II. Background and Statutory Findings

A. Background

In a final rule published in the **Federal Register** on August 9, 2006 (71 FR 45415) (FRL–8084–1), EPA revoked inert ingredient tolerance exemptions because insufficient data were available to the Agency to make the safety determination required by Federal Food, Drug, and Comestic Act (FFDCA) section 408(c)(2). In reassessing the safety of the tolerance exemptions, EPA considered the validity, completeness, and reliability of the data that are available to the Agency [FFDCA section 408 (b)(2)(D)] and the available information concerning the special susceptibility of infants and children (including developmental effects from *in utero* exposure) [FFDCA section 408

(b)(2)(C)]. EPA concluded it had insufficient data to make the safety finding of FFDCA section 408(c)(2) and revoked the inert ingredient tolerance exemptions identified in the final rule under 40 CFR 180.910, 180.920, 180.930, and 180.940, with the revocations effective on August 9, 2008.

In a subsequent direct final rule published in the **Federal Register** on August 4, 2008 (73 FR 45312) (FRL–8372–7), EPA moved the effective date of the revocation of certain inert ingredient tolerance exemptions from August 9, 2008, until August 9, 2009. This determination was made based on requests for an extension of the revocation date from pesticide registrants and inert ingredient manufacturers who had demonstrated their intent to support certain inert ingredient tolerance exemptions and who had provided data development plans and schedules for data submission to the Agency.

B. Moving the Effective Date of the Revocation for Six Tolerance Exemptions

In the case of six of the revoked tolerance exemptions, EPA has received petitions for the establishment of tolerance exemptions which included the submission of data for these inert ingredients. Notices of filing of these petitions (PP 8E7466 and PP 8E7478) were published in the **Federal Register** on March 25, 2009 (74 FR 12856) (FRL–8399–4). The Agency has not yet fully completed the risk assessments needed to evaluate these petitions and to make a safety finding. EPA, therefore, concludes that additional time is necessary to complete the safety determinations for these six tolerance exemptions and that the effective date of the revocation of the these tolerance exemptions should be moved by two months to October 9, 2009.

C. What is the Agency's Authority for Taking this Action?

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under FFDCA section 402(a), 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under FFDCA, but also must be registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States. Under FFDCA section 408(e)(1)(B), 21 U.S.C. 346a(e)(1)(B), EPA may take action establishing, modifying, suspending, or revoking a tolerance exemption.

III. Delayed Effective Date for Certain Tolerance Exemptions

The amendatory designations listed in this unit are reprinted from the final rule published in the **Federal Register** issue of August 4, 2008 (73 FR 45312) for the convenience of the user. The structure mirrors the amendatory designations in the original document. The amendatory designations shown are those with the effective date delayed until October 9, 2009.

Section 180.910

m. α-(p-Nonylphenyl)-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the nonyl group is a propylene trimer isomer and the poly (oxyethylene) content averages 4-14 moles or 30 moles.

n. α-(p-Nonylphenyl)-ω-hydroxypoly(oxyethylene) sulfate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4 moles.

cc. α-[p-(1,1,3,3-Tetramethylbutyl)phenyl]-ω-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of p-(1,1,3,3-tetramethylbutyl)phenol with a range of 1–14 or 30–70 moles of ethylene oxide: if a blend of products is used, the average range number of moles of ethylene oxide reacted to produce any product that is a component of the blend shall be in the range of 1–14 or 30–70.

Section 180.930

t. α-(p-Nonylphenyl)-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4–14 moles.

u. α-(p-Nonylphenyl)-ω-hydroxypoly(oxyethylene) sulfate, and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4 moles.

v. α-(p-Nonylphenyl)-ω-hydroxypoly(oxyethylene) sulfate, and its ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4–14 or 30–90 moles of ethyiene oxide.

IV. Statutory and Executive Order Reviews

This rule changes the effective date of the revocation of certain tolerance exemptions under section 408(d) of FFDCA. The Office of Management and Budget (OMB) has exempted tolerance exemption actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this action will not have a significant negative economic impact on a substantial number of small entities.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 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 rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000). Executive Order 13175 requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

List of Subjects in 40 CFR Part 180

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

Dated: August 4, 2009.

G. Jeffrey Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

§180.910 [Amended]

■ 2. In the final rule published August 9, 2006 (71 FR 45415), and delayed on August 4, 2008 (73 FR 45312), the effective date is delayed from August 9, 2009, to October 9, 2009, for the following amendments to § 180.910: 2.m., n., and cc.

§180.930 [Amended]

■ 3. In the final rule published August 9, 2006 (71 FR 45415), and delayed on August 4, 2008 (73 FR 45312), the effective date is delayed from August 9, 2009, to October 9, 2009, for the following amendments to § 180.930: 4.t., u., and v.

[FR Doc. E9–19057 Filed 8–6–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0806; FRL–8427–7]

Avermectin B_1 and its delta-8,9-isomer; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of avermectin B_1 and its delta-8,9-isomer in or on stone fruit crop group 12, tree nut crop group 14, pistachio, tuberous and corm vegetable crop subgroup 01C, goat fat, hog fat, horse fat, sheep fat, cattle fat, and cattle meat byproducts. Existing tolerances for cattle, fat and cattle, meat byproducts are revised. Existing individual crop tolerances on almond, plum, potato, and walnut are deleted and replaced by the establishment of new crop group tolerances. Existing tolerances on almond, hulls and plum, prune, dried are retained. This regulation also makes a technical correction to correctly express the existing tolerances for mint (replace term ''mint'' with the more specific terms ''peppermint, tops'' and ''spearmint, tops''). Syngenta Crop Protection, Inc. and Y-TEX Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 7, 2009. Objections and requests for hearings must be received on or before October 6, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0806. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Thomas C. Harris, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308-9423; e-mail address: *harris.thomas@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. How Can I Access Electronic Copies of this Document?

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0806 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before October 6, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2008–0806, by one of the following methods:

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

II. Petition for Tolerance

As listed below, EPA published notices pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions in the **Federal Register** requesting that 40 CFR 180.449 be amended by establishing a tolerance for combined residues of the insecticide/miticide avermectin B_1 (a mixture of avermectins containing greater than or equal to 80% avermectin B_{1a} (5-O-demethyl avermectin A_1) and less than or equal to 20% avermectin B_{1b} (5-O-demethyl-25-de (1-methylpropyl)-25-(1-methylethyl) avermectin A_1)), and its delta-8,9-isomer, as listed below. Avermectin B_1 is also referred to as abamectin. Each notice included a summary of the petition prepared by the registrant listed. There were no comments received in response to these notices of filing.

September 27, 2000, 65 FR 58080, FRL–6746–4, PP 0F6146. This petition was filed by Novartis Crop Protection, Inc. (now Syngenta Crop Protection, Inc.), P.O. Box 18300, Greensboro, NC 27419–8300 for tolerances of avermectin B_1 and its delta-8,9-isomer in or on grass forage at 0.001 ppm, grass hay at 0.001 ppm, stone fruit crop group 12 at 0.015 ppm, tree nut crop group 14 at 0.005 ppm, pistachio at 0.005 ppm, and the tuberous and corm vegetable crop subgroup 01C at 0.005 ppm. Tolerances for avocado and mint which were also requested in that notice were established earlier (see February 16, 2005, 70 FR 7876).

Based upon EPA review of the data supporting the petition, the petition was subsequently amended to request permanent tolerances for avermectin B_1 and its delta-8,9-isomer at the revised levels as follow: Stone fruit crop group 12 at 0.09 ppm, tree nut crop group 14 at 0.01 ppm, pistachios at 0.01 ppm, tuberous and corm vegetables crop subgroup 01C at 0.01 ppm, goat fat at 0.01 ppm, hog fat at 0.01 ppm, horse fat at 0.01 ppm, and sheep fat at 0.01 ppm. The tolerance requests for grass hay and grass forage were withdrawn pending development of further data on grass hay. Existing individual crop tolerances on almond, plum, potato, and walnut are deleted and replaced by the establishment of new crop group tolerances. Existing tolerances on almond, hulls and plum, prune, dried are retained. The proposed tolerance levels were raised based on EPA's analysis of the residue data, EPA's assessment of the limits of quantitation (LOQs) of the analytical methods, current livestock feed items (OPPTS Guideline 860.100, Table 1 Feedstuffs, June 2008), and/or to coordinate with Codex Maximum Residue Limits (MRLs) (see Unit IV.B.).

December 3, 2008, 73 FR 73648, FRL–8391–3, PP 8F7454. This petition was filed by Y-TEX Corporation, 1825 Big Horn Avenue, P.O. Box 1450, Cody, WY 82414, and proposes to amend the tolerances in 40 CFR 180.449 by increasing the tolerances of avermectin B_1 and its delta-8,9-isomer in or on cattle fat from 0.015 ppm to 0.03 ppm and cattle meat byproducts from 0.02 ppm to 0.06 ppm. These tolerances support use of avermectin in cattle ear tags.

This regulation also makes a technical amendment to correctly express the existing tolerances for mint which were established in the final rule published on February 16, 2005 (70 FR 7876) (FRL-7695-7). That rule listed the tolerance as ''mint'' at 0.010 ppm. The correct terminology is ''peppermint, tops'' at 0.010 ppm and ''spearmint, tops'' at 0.010 ppm.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is

reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for combined residues of avermectin B_1 and its delta-8,9-isomer on stone fruit crop group 12 at 0.09 ppm, tree nut crop group 14 at 0.01 ppm, pistachios at 0.01 ppm, tuberous and corm vegetables crop subgroup 01C at 0.01 ppm, goat fat at 0.01 ppm, hog fat at 0.01 ppm, horse fat at 0.01 ppm, sheep fat at 0.01 ppm, cattle fat at 0.03 ppm, and cattle meat byproducts at 0.06 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

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

Avermection B_1 (also known as abamectin) has high to moderate acute toxicity by the oral route, high acute toxicity by the inhalation route, and low acute toxicity by the dermal route. It is slightly irritating to the skin, but is not an ocular irritant or a dermal sensitizer. In general, the results of available toxicity studies with single or repeated dosing indicate that the main target organ for avermection B_1 is the nervous system, and that decreased body weight is also one of the most frequent findings. There was no observed estrogen, androgen, or thyroid mediated toxicity. Neurotoxicity and developmental effects are detected in multiple studies and species of test animals. The dose/response curve is very steep in several studies, with severe effects (including death and morbid sacrifice) seen at dose levels as low as 0.4 milligrams/kilogram/day (mg/kg/day) and 0.1 mg/kg/day in rats and mice, respectively, following repeated exposures. Increased susceptibility (qualitative and/or quantitative) was seen in prenatal developmental toxicity studies in mice and rabbits, and an increase in quantitative and qualitative susceptibility was also seen in the rat reproductive toxicity studies. Review of acceptable oncogenicity and mutagenicity studies provide no indication that avermection B_1 is carcinogenic or mutagenic.

Specific information on the studies received and the nature of the adverse effects caused by avermectin B_1 and its delta-8,9-isomer as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document the ''Abamectin, Revised Human Health Risk Assessment for Proposed Uses on Pasture and Rangeland Grass, Stone Fruit Crop Group 12, Tree Nut Crop Group 14, Pistachio, Tuberous and Corm Vegetables Subgroup 01C, and Request for Cattle Ear Tag Use,'' at page 18 in docket ID number EPA–HQ–OPP–2008–0806.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for avermectin B_1 and its delta-8,9-isomer used for human risk assessment can be found at *http://www.regulations.gov* in the document ''Abamectin, Revised Human Health Risk Assessment for Proposed Uses on Pasture and Rangeland Grass, Stone Fruit Crop Group 12, Tree Nut Crop Group 14, Pistachio, Tuberous and Corm Vegetables Subgroup 01C, and Request for Cattle Ear Tag Use,'' at page 25 in docket ID number EPA–HQ–OPP–2008–0806.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to avermectin B_1 and its delta-8,9-isomer, EPA considered exposure under the petitioned-for tolerances as well as all existing avermectin B_1 and its delta-8,9-isomer tolerances in (40 CFR 180.449). EPA assessed dietary exposures from avermectin B_1 and its delta-8,9-isomer in food as follows:

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

In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA used a probabilistic distribution of anticipated residues derived from field trial data for all commodities. Default processing factors and maximum surveyed percent crop treated (PCT) were used as available. See Unit C.1.iv. below for full listing of PCTs.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA

used point estimates of anticipated residues derived from field trial data for all commodities. Default processing factors and average surveyed percent crop treated (PCT) were used as available. Also, residues of avermectin B_1 and its delta-8,9-isomer in foods exposed in a food-handling establishment were assumed to be 0.0002 ppm which is one-half the Limit of Detection (LOD). See Unit C.1.iv. below for full listing of PCTs.

iii. *Cancer*. Based on the absence of a significant increase in tumor incidence in two rodent studies, EPA classified avermectin B_1 as ''not likely to be carcinogenic to humans'' and, thus, an exposure assessment for evaluating cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows (average and maximum, respectively):

Commodity	Percent Crop Treated (PCT)	
	Average	Maximum
Almond	50	75
Apple	5	10
Avocado	40	60
Cantaloupe	15	30
Celery	40	65
Cottonseed oil	5	5
Cucumber	5	10
Grape	5	15
Grape, raisin	5	15
Grapefruit	60	80
Honeydew	15	30
Hop	85	100
Lemon	30	50
Lettuce	10	15
Orange	20	40
Pear	65	80
Pepper	25	100
Potato	1	2.5
Pumpkin	2.5	5
Spinach	20	45
Squash	5	10
Strawberry	35	45
Tangerine	40	45
Tomato	15	100
Walnut	5	20
Watermelon	5	10

EPA assumed 100 PCT (both average and maximum) for other crops not listed above, and for all livestock commodities. Maximum PCT was used for analysis of acute exposure while average PCT was used for analysis of chronic exposure.

In most cases, EPA uses available data from the U.S. Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is <1. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which avermectin B_1 may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for avermectin B_1 and its major soil degradate (a mixture of an 8-alpha-hydroxy and a ring opened aldehyde derivative) in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of avermectin B_1 and its major soil degradate (a mixture of an 8-alpha-hydroxy and a ring opened aldehyde derivative). Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) for surface water and Screening Concentration in

Ground Water (SCI-GROW) models for ground water, the estimated drinking water concentrations (EDWCs) of avermectin B_1 and its major soil degradate (a mixture of an 8-alpha-hydroxy and a ring opened aldehyde derivative) for acute exposures are estimated to be 0.464 parts per billion (ppb) for surface water and 0.00184 ppb for ground water; and for chronic exposures for non-cancer assessments are estimated to be 0.211 ppb for surface water and 0.00184 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 0.464 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 0.211 ppb was used to assess the contribution to drinking water.

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

Avermectin B_1 is currently registered for the following uses that could result in residential exposures: Residential lawn application for fire ant control, and residential indoor crack and crevice application for cockroaches and ants. EPA assessed residential exposure as follows. Exposure and risk estimates for homeowners applying crack and crevice baits were estimated using the Standard Operating Procedure (SOP) for Residential Exposure Assessments. The unit exposure from the wettable powder, open mixing and loading scenario listed in the SOP for Residential Exposure Assessments was used as a surrogate for estimating dermal and inhalation exposure for an activity that involves the use of a small syringe-type duster to make bait placements along the baseboards and into cracks and crevices. The method used for estimating residential applicator exposure is believed to produce a high-end estimate of exposure.

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

EPA has not found avermectin B_1 to share a common mechanism of toxicity with any other substances, and avermectin B_1 does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that avermectin B_1 does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity*. Increased susceptibility was seen in prenatal developmental toxicity studies in mice and rabbits following *in utero* exposure to avermectin B_1. There was also an increase in susceptibility in the rat reproductive toxicity study and the rat developmental neurotoxicity study.

3. *Conclusion*. EPA has retained an additional FQPA SF for chronic/long-term and short/intermediate-term assessments due to the steepness of the dose-response curve and severity of effects (death) at the LOAEL. For all risk assessments involving repeat exposures, the selected toxicity endpoint is based on the decrease in pup body weight seen in the developmental neurotoxicity study and three reproduction studies in the rat. Although the study identified a NOAEL for the effects observed in the pups, the data clearly indicate that the decrease in pup body weight seen at 0.2 mg/kg/day rapidly progresses to death at the next higher tested dose level (0.4 mg/kg/day) in both reproduction and developmental neurotoxicity studies. The combined data from several reproduction toxicity and developmental neurotoxicity studies have documented a very narrow dose range from NOAEL (0.12 mg/kg/day) to adverse effect (0.2 mg/kg/day) to severe adverse effect (0.4 mg/kg/day). Dose spacing is commonly greater than the 2x between NOAEL and LOAEL here, and the 3x difference between the NOAEL and the dose that induced mortality in the pups in the developmental neurotoxicity study provides little margin of safety for such a severe effect.

Nonetheless, EPA has determined that reliable data show the safety of infants and children would be adequately protected if the 10X FQPA safety (SF) were reduced to 3X for chronic/long term and short/intermediate-term assessments and reduced to 1X for acute assessments. This conclusion is based on the following findings:

i. Retaining an additional 3x FQPA safety factor effectively provides a 10x margin between the dose which causes death (0.4 mg/kg/day) and the NOAEL adjusted by the additional safety factor (0.12 mg/kg/day/3x = 0.04 mg/kg/day). A dose spacing of 10x between a NOAEL and LOAEL is as broad, if not broader, than the dose spacing generally used in animal testing and thus removes the residual concern with the steepness of the dose response curve and the severe effects seen here.

ii. This adjusted point of departure (0.04 mg/kg/day) would also address the concerns for the increased susceptibility seen at higher doses in the two-generation reproduction study in rats (LOAEL = 0.4 mg/kg/day), prenatal developmental study in CD-1 mice (LOAEL = 0.75 mg/kg/day), the prenatal developmental toxicity study in rabbits (LOAEL = 2 mg/kg/day), and the one-generation reproduction study (LOAEL = 0.2 mg/kg/day).

iii. The toxicity database for avermectin B_1 is complete, except for immunotoxicity studies. EPA began requiring functional immunotoxicity testing of all food and non-food use pesticides on December 26, 2007. To address the issue of an immunotoxicity data gap and the associated database uncertainty factor, the Agency examined the entire database of avermectin B_1 and determined that an additional uncertainty factor is not needed to account for potential immunotoxicity. Avermectin B_1 has not been found to induce effects associated with immunotoxicity and avermectin B_1 does not belong to a class of chemicals that would be expected to be immunotoxic. Therefore, based on the above considerations, EPA does not believe that conducting a special Harmonized Guideline series 870.7800 immunotoxicity study will result in a NOAEL less than the NOAELs of 0.5 and 0.12 mg/kg/day already set for avermectin B_1 acute and repeated

exposures, respectively. An additional uncertainty factor (UF_{DB}) for database uncertainties associated with immunotoxicity does not need to be applied at this time.

iv. With respect to acute dietary exposure, the endpoint selected for risk assessment is based on mydriasis observed in dogs. The additional 3x factor applied to chronic and other exposure scenarios is not applicable to acute exposure because steepness of the dose and severity of effects were not seen in the studies where mydriasis occurred. In addition, reduced body weight is not considered a single dose effect and would not be appropriate as a toxicity endpoint for acute exposure scenarios.

v. There are no residual concerns with respect to the exposure databases. The chronic and acute dietary food exposure assessment utilizes reliable data on anticipated residues and percent crop treated as well as default processing factors. The dietary drinking water assessment utilized modeling results which included conservative assumptions for the parent and all degradates of concern. Conservative assumptions were used in the water models. Therefore, the water exposure assessment will not underestimate the potential risks for infants and children. Likewise, the use of maximum application rates and central-to-high end inputs results in calculated residential exposures that should not underestimate the risks to infants and children from these requested uses.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. The acute aggregate risk assessment takes into account exposure from dietary (food and water) consumption. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to avermectin B_1 and its delta-8,9-isomer will occupy 27% of the aPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to avermectin B_1 and its delta-8,9-isomer from food and water will utilize 47% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of avermectin B_1 and its delta-8,9-isomer is not expected.

3. *Short- and intermediate-term risk*. Short- and intermediate-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). High-end estimates of residential exposure were used, while average values were used for food and drinking water exposure. Avermectin B_1 is currently registered for uses that could result in short- and intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short- and intermediate-term residential exposures to avermectin B_1 and its delta-8,9-isomer. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short- and intermediate-term food, water, and residential exposures result in aggregate MOEs of 500 for children 1 to 2 years old, the population group receiving the greatest exposure.

4. *Aggregate cancer risk for U.S. population*. Based on the absence of a significant increase in tumor incidence in two rodent studies, EPA classified avermectin B_1 as ''not likely to be carcinogenic to humans'' and it is, therefore, not expected to pose a cancer risk.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to avermectin B_1 and its delta-8,9-isomer residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods for avermectin B_1 in plant and livestock commodities are available in PAM II. The methods have been validated for citrus and processed fractions (Method I), ginned cottonseed (Method IA), and bovine tissues and milk (Method II). These methods determine residues in plant and livestock commodities at limits of quantitation of 0.02 ppm for meat and meat byproducts and ≤0.01 ppm for other plant/livestock commodities. The limits of detection of the methods for plant and livestock commodities is 0.001 ppm for each analyte, equivalent to 0.002 ppm for two analyte peaks (i.e., avermectin B_{1a} and its delta-8,9-isomer in one peak and avermectin B_{1b} and its delta-8,9-isomer in the other peak).

The plant methods used for data collection adequately measure the residues of concern. The methods have been validated at 0.001, 0.002, or 0.005 ppm (depending on the commodity and the method) for each of two analyte peaks (avermectin B_{1a} and its delta-8,9-isomer in one peak and avermectin B_{1b} and its delta-8,9-isomer in the other peak), which means that the LOQs of the data collection methods would be 0.002, 0.004 or 0.01 ppm.

The 1990 Pestrak database indicates that avermectin B_1 and its metabolites are not recovered or not likely to be recovered by FDA multiresidue methods. Therefore, the multiresidue methods can not be used to determine residues for dietary exposure assessment and can not be used as the primary enforcement method.

B. International Residue Limits

The Codex tolerance expressions for plants are consistent with the U.S. tolerance expression.

C. Response to Comments

No comments were received to the Notices of Filing.

D. Revisions to Petitioned-For Tolerances

The correct commodity definitions are obtained from the ''Food and Feed Commodity Vocabulary'', which can be found at *http://www.epa.gov/pesticides/foodfeed*. Some proposed tolerance levels were raised based on EPA's analysis of the residue data, EPA's assessment of the limits of quantitation of the analytical methods, current livestock feed items (OPPTS Guideline 860.100, Table 1 Feedstuffs, June 2008), and/or to coordinate with Codex Maximum Residue Limits (MRLs).

V. Conclusion

Therefore, tolerances are established for combined residues of avermectin B_1 (a mixture of avermectins containing greater than or equal to 80% avermectin B_{1a} (5-O-demethyl avermectin A_1) and less than or equal to 20% avermectin B_{1b} (5-O-demethyl-25-de (1-

methylpropyl)-25-(1-methylethyl) avermectin A_1)), and its delta-8,9-isomer in/on cattle, fat at 0.03 ppm; cattle, meat byproducts at 0.06 ppm; fruit, stone, group 12 at 0.09 ppm; goat, fat at 0.01 ppm; hog, fat at 0.01 ppm; horse, fat at 0.01 ppm; nut, tree, group 14 at 0.01 ppm; pistachio at 0.01 ppm; sheep, fat at 0.01 ppm; and vegetable, tuberous and corm subgroup 01C at 0.01 ppm.

Existing tolerances for cattle, fat and cattle, meat byproducts are revised. Existing individual crop tolerances on almond, plum, potato, and walnut are deleted and replaced by the establishment of new crop group tolerances. Existing tolerances on almond, hulls and plum, prune, dried are retained. The expression for existing mint tolerances is corrected by deleting the term mint and replacing with peppermint, tops at 0.010 ppm and spearmint, tops at 0.010 ppm.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: July 28, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—AMENDED

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

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

■ 2. In § 180.449, the table to paragraph (a) is amended by revising the entries for cattle, fat and cattle, meat byproducts; by removing the entries for almond, plum, mint, potato and walnut; and by adding alphabetically, the remaining entries in the table to read as follows:

180.449 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Cattle, fat	0.03
Cattle, meat byproducts	0.06
* * * * *	
Fruit, stone, group 12	0.09
Goat, fat	0.01
* * * * *	
Hog, fat	0.01
* * * * *	
Horse, fat	0.01
* * * * *	
Nut, tree, group 14	0.01
* * * * *	
Peppermint, tops	0.010
Pistachio	0.01
* * * * *	
Sheep, fat	0.01
* * * * *	
Spearmint, tops	0.010
Vegetable, tuberous and corm, subgroup 01C	0.01

* * * * *

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[WC Docket No. 04–36; FCC 09–40]

IP-Enabled Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules so that providers of interconnected Voice over Internet Protocol (VoIP) service will be required to comply with the same discontinuance rules as domestic non-dominant telecommunications carriers. These rules protect consumers of interconnected VoIP service from the abrupt discontinuance, reduction or impairment of their service by requiring

prior notice to customers and the filing of an application with the Commission.

DATES: Effective September 8, 2009 except for §§ 63.60(a) and (f) which affect information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Interested parties may submit PRA comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- *E-mail:* Parties who choose to file by e-mail should submit their comments to *Rodney.McDonald@fcc.gov*. Please include WC Docket Number 04–36 and FCC No. 09–40 in the subject line of the message.
- *Mail:* Parties who choose to file by paper should submit their comments to Rodney McDonald, Federal Communications Commission, Wireline Competition Bureau, Room 6–A430, 445 12th Street, SW., Washington, DC 20554.

In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Rodney McDonald, Wireline Competition Bureau, (202) 418–1580. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at (202) 418–0214, or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (Order) in WC Docket No. 04–36; FCC 09–40, adopted and released May 13, 2009. In this Order, the Commission extends to providers of interconnected VoIP service the discontinuance obligations that apply to domestic non-dominant telecommunications carriers under section 214 of the Communications Act of 1934, as amended (the Act). Consequently, before an interconnected VoIP provider may discontinue, reduce, or impair service, it must comply with the streamlined discontinuance requirements under part 63 of the Commission's rules, including the requirements to provide written notice to all affected customers, notify relevant state authorities, and file an application for authorization of the planned action with the Commission.

The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *http://www.bcpiweb.com*. It is also available on the Commission's Web site at *http://www.fcc.gov*.

Final Paperwork Reduction Act of 1995 Analysis

This document contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this Order as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

In this present document, we have assessed the effects of extending the Commission's discontinuance obligations to interconnected VoIP providers and find these changes warranted. The reasons for this conclusion are explained in more detail below.

Report to Congress

The Commission will send a copy of the Order, including this FRFA, in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. [A copy of this present summarized Order and FRFA is also hereby published in the **Federal Register**.]

In this Order, the Commission extends to providers of interconnected VoIP service the discontinuance obligations that apply to domestic non-dominant telecommunications carriers under section 214 of the Communications Act of 1934, as amended (the Act). Consequently, before an interconnected VoIP provider may discontinue, reduce, or impair service, it must comply with the streamlined discontinuance requirements under part 63 of the Commission's rules, including the requirements to provide written notice to all affected customers, notify relevant state authorities, and file an application for authorization of the planned action with the Commission.

Synopsis of Order

1. On March 10, 2004, the Commission initiated a rulemaking proceeding to examine issues relating to IP-enabled services—services and applications making use of IP, including, but not limited to, VoIP services. In the *IP-Enabled Services Notice*, published at 69 FR 16193, March 29, 2004, the Commission sought comment on numerous issues, including whether to extend certain consumer protection obligations, such as the discontinuance obligations of section 214, to any class of IP-enabled service provider.

2. Consumers increasingly use interconnected VoIP service as a replacement for traditional voice service, and as interconnected VoIP service improves and proliferates, consumers' expectations for this type of service trend toward their expectations for other telephone services. Thus, in this Order, the Commission takes steps to protect consumers of interconnected VoIP service from the abrupt discontinuance, reduction, or impairment of their service without notice. Specifically, the Commission extends to providers of interconnected VoIP service the discontinuance obligations that apply to domestic non-dominant telecommunications carriers under section 214 of the Communications Act of 1934, as amended (the Act). Consequently, before an interconnected VoIP provider may discontinue service, it must comply with the streamlined discontinuance requirements under part 63 of the Commission's rules, including the requirements to provide written notice to all affected customers, notify relevant state authorities, and file an application

for authorization of the planned discontinuance with the Commission.

3. *Scope.* The exit certification requirements adopted in this Order apply to interconnected VoIP service and providers of such service. The Commission's rules in 47 CFR 9.3 define ''interconnected VoIP service'' as ''a service that: (1) Enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.'' To date, the Commission has not classified interconnected VoIP service as a telecommunications service or information service as those terms are defined in the Act, and does not make that determination with this Order. In general, providers of facilities-based interconnected VoIP services and ''over-the-top'' interconnected VoIP services are subject to the rules in this Order. However, section 214 requirements are not extended to providers of interconnected VoIP services that are ''mobile services'' under the Act. If anything, these services would be more akin to Commercial Mobile Radio Service (CMRS) than to traditional wireline services. Therefore, for purposes of the rules at issue here, it makes more sense to treat providers of interconnected VoIP services that are mobile in the same way as CMRS providers, which are not subject to the Commission's section 214 discontinuance obligations. The Commission may revisit this issue if circumstances warrant, and in other contexts may decline to exempt these services from rules that apply to interconnected VoIP services generally.

4. As the Commission has found before, unlike certain other IP-enabled services, interconnected VoIP service increasingly is used as a replacement for traditional voice service. Customers therefore reasonably expect their interconnected VoIP service to include the regulatory protections that they would receive with traditional voice services. The Commission believes it is critically important that all customers of interconnected VoIP service receive the protections of the section 214 discontinuance requirements. Importantly, if customers were to lose their telephone service without sufficient notice, they would also lose access to 911 service—possibly with disastrous consequences. This Order, therefore, is consistent with, and a necessary extension of, the Commission's prior exercises of authority to ensure public safety.

5. *Authority.* In this Order, the Commission concludes that it has authority under Title I of the Act to impose section 214 discontinuance obligations on providers of interconnected VoIP services. Ancillary jurisdiction may be employed, at the Commission's discretion, when Title I of the Act gives the Commission subject matter jurisdiction over the service to be regulated and the assertion of jurisdiction is ''reasonably ancillary to the effective performance of [its] various responsibilities.'' The Commission finds that both predicates for ancillary jurisdiction are satisfied here.

6. First, as the Commission previously has concluded, interconnected VoIP service falls within the subject matter jurisdiction granted to the Commission under the Act. Second, the Commission must evaluate whether imposing service discontinuance obligations on interconnected VoIP providers is reasonably ancillary to the effective performance of the Commission's responsibilities. As discussed further below, the Commission finds that sections 1 and 214 of the Act provide the requisite nexus, with additional support from section 706. Specifically, the Commission finds that extending the section 214 discontinuance procedures to interconnected VoIP service providers is ''reasonably ancillary to the effective performance of [our] responsibilities'' under these statutory provisions, and ''will 'further the achievement of long-established regulatory goals' '' to ensure that the public is not adversely affected by the discontinuance, reduction, or impairment of service.

7. The Commission finds that extending domestic discontinuance requirements to interconnected VoIP providers is reasonably ancillary to the Commission's effective performance of its responsibility to promote safety of life and property through the use of wire and radio communication. Section 1 of the Act charges the Commission with responsibility for making available ''a rapid, efficient, Nation-wide, and world-wide wire and radio communication service * * * for the purpose of promoting safety of life and property through the use of wire and radio communication.'' By extending the section 214 discontinuance procedures to interconnected VoIP providers, the Commission protects American consumers from the unanticipated and harmful consequences that could follow the loss of telephone service without sufficient notice. Most notably, as mentioned above, if an interconnected VoIP provider discontinued service without notice, customers would lose the ability to call 911 through that service. In addition, extending the section 214 discontinuance rules to interconnected VoIP providers ensures customers' ability to transition to alternative service providers in an orderly fashion. The Commission thereby fosters ''rapid, efficient, Nation-wide, and world-wide wire and radio communication service'' by safeguarding the public interest in continuity of such services—irrespective of which provider makes those services available.

8. Section 214(a) of the Act states that ''[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby.'' The primary purpose of this requirement is to reduce the harm to consumers caused by discontinuances of service. The Commission finds that the extension of section 214 service discontinuance requirements to providers of interconnected VoIP service is reasonably ancillary to the effective performance of the Commission's duty to protect the public from the adverse effects of service discontinuances. The Commission already has found that interconnected VoIP service ''is increasingly used to replace analog voice service''—a trend that the Commission expects will continue. From the perspective of a customer making an ordinary telephone call, the Commission believes that interconnected VoIP service is functionally indistinguishable from traditional telephone service. It therefore is reasonable for American consumers to have similar expectations for these services. In particular, the Commission finds it reasonable for customers of interconnected VoIP service to expect some advance notice before the discontinuance of their voice service, and notes that customers receiving traditional telephone service from wireline carriers are already entitled to such notice under the Commission's discontinuance requirements. By extending the Commission's discontinuance requirements to interconnected VoIP services, the Commission advances the public interest by helping ensure that such notice is actually given to customers that are making and receiving calls regardless of whether they are receiving service from a traditional

carrier or an interconnected VoIP provider.

9. The Commission is also guided by section 706 of the 1996 Act, which, among other things, directs the Commission to encourage the deployment of advanced telecommunications capability to all Americans by using measures that ''promote competition in the local telecommunications market.'' The assurance that providers of interconnected VoIP services are subject to service-discontinuance procedures comparable to those that apply to non-dominant carriers may spur consumer demand for those services, in turn driving demand for broadband connections, and consequently encouraging more broadband investment and deployment consistent with the goals of section 706.

10. *Interconnected VoIP Provider Discontinuance Obligations.* To protect customers from an abrupt discontinuance, reduction, or impairment of service without adequate notice, the Commission requires providers of interconnected VoIP service to comply with the same service discontinuance obligations as domestic non-dominant carriers. The Commission disagrees with commenters who assert that such action is unnecessary in light of competitive market conditions. Service discontinuance can be disruptive to all customers, regardless of whether their provider has market power or utilizes new technology. As the Commission has previously concluded with respect to other competitive telephone services, even customers with competitive alternatives need fair notice and information to choose a substitute service. Therefore, in order to protect customers of interconnected VoIP service from interrupted service and its associated consequences, providers of interconnected VoIP service must notify all affected customers of their plans to discontinue, reduce, or impair service, and must provide affected customers with an opportunity to inform the Commission of resultant hardships.

11. The Commission's rules do not provide an exhaustive list of what constitutes the discontinuance, reduction, or impairment of service. In the context of interconnected VoIP service, the Commission finds that a discontinuance, reduction, or impairment of service would include, but is not limited to, the conversion of an interconnected VoIP service to one that permits only inbound, but not outbound, calls to the PSTN—or one that permits only outbound, but not inbound, calls to the PSTN.

12. By requiring interconnected VoIP providers to comply with the Commission's streamlined domestic discontinuance requirements applicable to non-dominant carriers, the Commission balances the need to protect consumers with the goal, set forth in section 230 of the Act, of minimizing the regulation of the Internet and other interactive computer services. As the Commission previously has found, § 63.71 of the Commission's rules strikes a good balance between the Commission's dual objectives of permitting ease of exit from competitive markets and ensuring that the public will be given a reasonable period of time to make other service arrangements. The Commission therefore disagrees with commenters who argue that applying section 214 exit regulations to interconnected VoIP service will unduly deter market entry, distort the market, or depress investment in new technologies. On the contrary, as the Commission has stated previously, disparate treatment of entities providing the same or similar services is not in the public interest as it creates distortions in the marketplace that may harm consumers.

13. It is important to note that the Commission does not impose any economic regulation on providers of interconnected VoIP service by this Order. Title II and the Commission's rules subject all common carriers to a variety of *non-economic* regulations designed to further important public policy goals and protect consumers, and the Commission has stated previously that it ''will not hesitate to adopt any non-economic regulatory obligations that are necessary to ensure consumer protection and network security and reliability in this dynamically changing broadband era.'' Included among these are the obligations the Commission imposes, with this Order, on providers of interconnected VoIP service, which serve as important consumer protection measures. The Commission acknowledges that section 230 of the Act provides that ''[i]t is the policy of the United States—to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.'' The Commission's discussion of section 230 in *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission,* WC Docket No. 03–211, Memorandum Opinion and Order, FCC 04–267, para. 35 (rel. Nov. 12, 2004) (*Vonage Order*) acknowledged this policy and cautioned against the imposition of undue regulation by multiple jurisdictions, but was directed at ''traditional common carrier economic regulations.'' The Commission finds this order consistent with its previous decisions, and does not believe that the congressional policy statement in section 230 of the Act precludes the Commission from extending consumer protection obligations, such as the section 214 discontinuance obligations, to interconnected VoIP providers. The Commission also notes that the extension of discontinuance obligations to providers of interconnected VoIP services has no effect on the Commission's preemption determinations in the *Vonage Order.*

14. The Commission amends the part 63 domestic discontinuance rules to encompass interconnected VoIP service. Accordingly, before an interconnected VoIP provider may discontinue, reduce, or impair service, it must provide all affected customers with written notice that includes the provider's name and address, typically by postal mail to the customer's billing address; the date of the planned service discontinuance, reduction, or impairment; the geographic areas where service will be affected; a brief description of the affected service; and the statement found in § 63.71(a)(5)(i) of the Commission's rules. The Commission recognizes that because of the potentially portable nature of some interconnected VoIP services, there may be additional and/or alternative means of providing effective notice to customers of interconnected VoIP providers. As such, upon request, the Commission may authorize in advance another form of notice for good cause shown.

15. On or after the date it provides notice to its customers as specified above, the interconnected VoIP provider must file with the Commission an application for authorization of the planned discontinuance. The application shall identify that the provider is an interconnected VoIP provider seeking to discontinue, reduce, or impair interconnected VoIP services and shall include, in addition to the information set forth in the notice provided to affected customers, a caption, a brief description of the dates and methods of notice to all affected customers, and any other information the Commission may require. An interconnected VoIP provider shall also submit a copy of its application to the public utility commission and to the Governor of the State(s) in which it proposes to discontinue, reduce, or impair service, as well as to the

Secretary of Defense. In addition to providing existing customers with direct notice of a proposed discontinuance, providers seeking to discontinue, reduce or impair service to a community should copy the state public utility commissions (PUC) and governors' offices in the states where they no longer plan to offer services regardless of whether customers are currently subscribing to their service at the time of the application. The Commission believes this requirement will serve the public interest by, among other things, better enabling states to play an active role in customer notification efforts where circumstances warrant such involvement. The Commission recognizes that interconnected VoIP providers that offer service nationwide will need to notify every state PUC and governor's office before discontinuing service altogether. However, the Commission does not find this requirement to be unduly burdensome. In particular, notice to the states pursuant to § 63.71(a) only requires providing state officials with a copy of the discontinuance application. This simple notice should adequately inform states of the impending loss of previously available services to their communities in a minimally burdensome manner—using the same procedures that apply to other non-dominant providers that plan to discontinue nationwide offerings.

16. The application to discontinue, reduce, or impair service shall be automatically granted on the 31st day after the Commission releases public notice of the application unless the Commission notifies the applicant that the grant will not be automatically effective. Thus the Commission believes that interconnected VoIP providers will be faced with discontinuance requirements that are no more burdensome than the reduced requirements that already apply to competitive carriers, and that their customers will be afforded a reasonable time to make alternative service arrangements in the event of a discontinuance, reduction, or impairment of service. The Commission expects that providers of wholesale inputs will coordinate and continue to work with interconnected VoIP providers in the event that a discontinuance of service becomes necessary so that the discontinuance of service can occur in an orderly fashion consistent with this Order, the Commission's rules, and the interest of customers.

Congressional Review Act

17. The Commission will send a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Final Paperwork Reduction Act of 1995 Analysis

18. This document contains new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this Order as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

19. In this present document, we have assessed the effects of imposing domestic non-dominant discontinuance rules on providers of interconnected VoIP service, and find that these requirements do not place a significant burden on businesses with fewer than 25 employees.

Final Regulatory Flexibility Analysis

20. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *IP-Enabled Services Notice* in WC Docket No. 04–36. The Commission sought written public comment on the proposals in the *IP-Enabled Services Notice,* including comment on the IRFA. The Commission received comments specifically directed toward the IRFA from three commenters in WC Docket No. 04–36. These comments are discussed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Rules

21. This Order takes a series of steps designed to ensure that consumers of interconnected VoIP are afforded appropriate consumer protection measures consistent with the Communications Act of 1934, as amended (the Act). Today's telecommunications marketplace is one of rapidly changing technology, capability, and services. Since the Commission first described IP-enabled services nearly five years ago, the American public has embraced them, resulting in the widespread adoption of mass market interconnected VoIP and broadband services by millions of consumers for voice, video, and Internet communications. Consumers increasingly use interconnected VoIP service as a replacement for traditional voice service, and as interconnected VoIP service improves and proliferates, consumers' expectations for this type of service trend toward their expectations for other telephone services.

22. This Order extends to providers of interconnected VoIP service the discontinuance obligations that apply to domestic non-dominant telecommunications carriers under section 214 of the Act. Consequently, before an interconnected VoIP provider may discontinue service, it must comply with the streamlined discontinuance requirements under part 63 of the Commission's rules, including the requirements to provide written notice to all affected customers, notify relevant state authorities, and file an application for authorization of the planned discontinuance with the Commission.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

23. In this section, the Commission responds to comments filed in response to the IRFA. To the extent the Commission received comments raising general small business concerns during these proceedings, those comments are discussed in the Order.

24. The Small Business Administration (SBA) comments that the Commission's *IP-Enabled Services Notice* does not contain concrete proposals and is more akin to an advance notice of proposed rulemaking or a notice of inquiry. The Commission disagrees with the SBA and Menard that the Commission should postpone acting in this proceeding, thereby postponing extending the application of the section 214 service discontinuance obligations to interconnected VoIP services. According to SBA and Menard, the Commission instead should reevaluate the economic impact and the compliance burdens on small entities and issue a further notice of proposed rulemaking in conjunction with a supplemental IRFA identifying and analyzing the economic impacts on small entities and less burdensome alternatives. The Commission believes these additional steps suggested by SBA and Menard are unnecessary because small entities already have received sufficient notice of the issues addressed in this Order, and because the Commission has considered the

economic impact on small entities and the feasibility of alternative approaches to minimize the burdens imposed on those entities.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

25. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

26. *Small Businesses.* Nationwide, there are a total of approximately 22.4 million small businesses according to SBA data.

27. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.

1. Telecommunications Service Entities

a. Wireline Carriers and Service Providers

28. The Commission includes small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees) and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

29. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent LECs. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,311 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by this action.

30. *Competitive LECs, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive LEC services. Of these 1,005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are ''Other Local Service Providers,'' and all 89 are estimated to have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities.

31. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 151 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 149 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by this action.

32. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 815 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 787 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by this action.

33. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 300 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by this action.

b. Satellite Telecommunications and All Other Telecommunications

34. *Satellite Telecommunications and All Other Telecommunications.* These two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules. The second has a size standard of $25 million or less in annual receipts. The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and the Commission will use those figures to gauge the prevalence of small businesses in these categories.

35. The category of Satellite Telecommunications ''comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by this action.

36. The second category of All Other Telecommunications comprises, *inter alia,* ''establishments primarily engaged in providing specialized

telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.'' For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 303 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by this action.

c. Wireless Telecommunications Carriers (Except Satellite)

37. Below, for those services subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

38. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, the Commission will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the category of Wireless Telecommunications Carriers (except Satellite), data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, the Commission estimates that the majority of wireless firms are small.

39. In the *Paging Third Report and Order*, published at 62 FR 15978, April 3, 1997, the Commission developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. The Commission also notes that, currently, there are approximately 74,000 Common Carrier Paging licenses.

40. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A ''small business'' is an entity with average gross revenues of $40 million or less for each of the three preceding years, and a ''very small business'' is an entity with average gross revenues of $15 million or less for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity.

41. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for ''Wireless Telecommunications Carriers (except Satellite)'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 434 carriers reported that they were engaged in the provision of wireless telephony. The Commission has estimated that 222 of these are small under the SBA small business size standard.

42. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

43. *Narrowband Personal Communications Services.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three

calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order, published at 65 FR 35843, June 6, 2000. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

44. *220 MHz Radio Service—Phase I Licensees*. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to ''Wireless Telecommunications Carriers (except Satellite)'' companies. This category provides that a small business is a wireless company employing no more than 1,500 persons. Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the majority of firms can be considered small.

45. *220 MHz Radio Service—Phase II Licensees*. The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, published at 62 FR 15978, April 3, 1997, the Commission adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: Three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses. A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.

46. *800 MHz and 900 MHz Specialized Mobile Radio Licenses*. The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years, respectively. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

47. *700 MHz Guard Band Licensees*. In the *700 MHz Guard Band Order*, the Commission adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses. Subsequently, in the *700 MHz Second Report and Order*, the Commission reorganized the licenses pursuant to an agreement among most of the licensees, resulting in a spectral relocation of the first set of paired spectrum block licenses, and an elimination of the second set of paired spectrum block licenses (many of which were already vacant, reclaimed by the Commission from Nextel). A single licensee that did not participate in the agreement was grandfathered in the initial spectral location for its two licenses in the second set of paired spectrum blocks. Accordingly, at this time there are 54 licenses in the 700 MHz Guard Bands and there is no auction data applicable to determine which are held by small businesses.

48. *39 GHz Service*. The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: An entity that, together with affiliates,

has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and polices adopted herein.

49. *Wireless Cable Systems*. Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service (BRS), formerly Multipoint Distribution Service (MDS), and the Educational Broadband Service (EBS), formerly Instructional Television Fixed Service (ITFS), to transmit video programming and provide broadband services to residential subscribers. These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services. The Commission estimates that the number of wireless cable subscribers is approximately 100,000, as of March 2005. Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. As described below, the SBA small business size standard for the broad census category of Cable and Other Program Distribution, which consists of such entities generating $13.5 million or less in annual receipts, appears applicable to MDS, ITFS and LMDS. Other standards also apply, as described.

50. The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities. MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Cable and Other Program Distribution. Information available to the Commission indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $13.5 million annually. Therefore, the Commission estimates that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

51. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS). The Commission estimates that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of the licenses are held by educational institutions. Thus, the Commission estimates that at least 1,932 ITFS licensees are small entities.

52. In the 1998 and 1999 LMDS auctions, the Commission defined a small business as an entity that has annual average gross revenues of less than $40 million in the previous three calendar years. Moreover, the Commission added an additional classification for a ''very small business,'' which was defined as an entity that had annual average gross revenues of less than $15 million in the previous three calendar years. These definitions of ''small business'' and ''very small business'' in the context of the LMDS auctions have been approved by the SBA. In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, the Commission believes that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

53. *Local Multipoint Distribution Service*. Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 1,030 LMDS licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licensees as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, the Commission concludes that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

54. *218–219 MHz Service*. The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, published at 64 FR 59656, November 3, 1999, the Commission established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. The Commission cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under its rules in future auctions of 218–219 MHz spectrum.

55. *24 GHz—Incumbent Licensees*. This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of ''Wireless Telecommunications Carriers (except Satellite)'' companies. This

category provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, the Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

56. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

2. Cable and OVS Operators

57. *Cable Television Distribution Services.* The ''Cable and Other Program Distribution'' census category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

58. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have fewer than 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

59. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. The Commission notes that it neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore the Commission is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

60. *Open Video Systems (OVS).* In 1996, Congress established the open video system (OVS) framework, one of four statutorily recognized options for the provision of video programming services by local exchange carriers (LECs). The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard of Cable and Other Program Distribution Services, which consists of such entities having $13.5 million or less in annual receipts. The Commission has certified 25 OVS operators, with some now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises. As of June, 2005, BSPs served approximately 1.4 million subscribers, representing 1.5 percent of all MVPD households. Affiliates of Residential Communications Network, Inc. (RCN), which serves about 371,000 subscribers as of June, 2005, is currently the largest BSP and 14th largest MVPD. RCN received approval to operate OVS systems in New York City, Boston, Washington, D.C. and other areas. The Commission does not have financial information regarding the entities authorized to provide OVS, some of which may not yet be operational. The Commission thus believes that at least some of the OVS operators may qualify as small entities.

61. *Satellite Carriers.* The term ''satellite carrier'' includes entities providing services as described in 17 U.S.C. 119(d)(6) using the facilities of a satellite or satellite service licensed under part 25 of the Commission's rules to operate in Direct Broadcast Satellite (DBS) or Fixed-Satellite Service (FSS) frequencies. As a general practice, not mandated by any regulation, DBS licensees usually own and operate their own satellite facilities as well as package the programming they offer to their subscribers. In contrast, satellite carriers using FSS facilities often lease capacity from another entity that is licensed to operate the satellite used to

provide service to subscribers. These entities package their own programming and may or may not be Commission licensees themselves. In addition, a third situation may include an entity using a non-U.S. licensed satellite to provide programming to subscribers in the United States pursuant to a blanket earth station license. Since 2007, the SBA has recognized satellite television distribution services within the broad economic census category of Wired Telecommunications Carriers. The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. The most current Census Bureau data, however, are from the last economic census of 2002, and the Commission will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under both prior categories, such a business was considered small if it had $13.5 million or less in average annual receipts.

62. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Wired Telecommunications Carriers. However, as discussed above, the Commission relies on the previous size standard, Cable and Other Subscription Programming, which provides that a small entity is one with $13.5 million or less in annual receipts. Currently, only two operators—DirecTV and EchoStar Communications Corporation (EchoStar)—hold licenses to provide DBS service, which requires a great investment of capital for operation. Both currently offer subscription services and report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, the Commission believes it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS licensee. Nevertheless, given the absence of specific data on this point, the Commission acknowledges the possibility that there are entrants in this field that may not yet have generated $13.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

63. *Fixed-Satellite Service (FSS).* The FSS is a radiocommunication service between earth stations at a specified fixed point or between any fixed point within specified areas and one or more satellites. The FSS, which utilizes many earth stations that communicate with one or more space stations, may be used to provide subscription video service. Therefore, to the extent FSS frequencies are used to provide subscription services, FSS falls within the SBA-recognized definition of Wired Telecommunications Carriers. However, as discussed above, the Commission relies on the previous size standard, Cable and Other Subscription Programming, which provides that a small entity is one with $13.5 million or less in annual receipts. Although a number of entities are licensed in the FSS, not all such licensees use FSS frequencies to provide subscription services. Both of the DBS licensees (EchoStar and DirecTV) have indicated interest in using FSS frequencies to broadcast signals to subscribers. It is possible that other entities could similarly use FSS frequencies, although the Commission is not aware of any entities that might do so.

3. Internet Service Providers

64. *Internet Service Providers.* The 2007 Economic Census places these providers, which include voice over Internet protocol (VoIP) providers, in the category of All Other Telecommunications. The SBA small business size standard for such firms is: those having annual average receipts of $25 million or less. The most current Census Bureau data on such entities, however, are the 2002 data for the previous census category called Internet Service Providers. The 2002 data show that there were 2,529 such firms that operated for the entire year. Of those, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24, 999,999. Consequently, the Commission estimates that the majority of ISP firms are small entities that may be affected by this action.

4. Other Internet-Related Entities

65. *Internet Publishing and Broadcasting and Web Search Portals.* The Census Bureau defines this category as including ''establishments primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals) * * *. Establishments known as Web search portals often provide additional Internet services, such as e-mail, connections to other Web sites, auctions, news, and other limited content, and serve as a home base for Internet users.'' The SBA small business size standard for such firms is: those having 500 or fewer employees. The most current Census Bureau data on such entities, however, are the 2002 data for the previous two separate categories of Internet Publishing and Broadcasting, and Web Search Portals entities. For the first previous category, the 2002 data show that there were 1,362 firms that operated for the entire year. Of these, 1,351 had employment of 499 or fewer employees, and 11 firms had employment of between 500 and 999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by this action. For the second previous census category of Web Search Portals, the SBA had developed a small business size standard of $6.5 million or less in average annual receipts. According to the data for 2002, there were 342 firms in this category that operated for the entire year. Of these, 303 had annual receipts of under $5 million, and an additional 15 firms had receipts of between $5 million and $9,999,999. Consequently, the Commission estimates that the majority of Web Search Portals firms are small entities that may be affected by this action.

66. *Data Processing, Hosting, and Related Services.* Entities in this category ''primarily * * * provid[e] infrastructure for hosting or data processing services.'' The SBA has developed a small business size standard for this category; that size standard is $23 million or less in average annual receipts. According to Census Bureau data for 2002, there were 6,877 firms in this category that operated for the entire year. Of these, 6,418 had annual receipts of under $10 million, and an additional 251 firms had receipts of between $10 million and $24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by this action.

67. *All Other Information Services.* ''This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).'' The Commission's action pertains to VoIP services, which could be provided by entities that provide other services such as e-mail, online gaming, Web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $6.5 million or less in

average annual receipts. According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year. Of these, 138 had annual receipts of under $5 million, and an additional four firms had receipts of between $5 million and $9,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by this action.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

68. In this Order, the Commission requires providers of interconnected VoIP service to take actions to comply with section 214 service discontinuance obligations. For example, to protect against abrupt termination of service, the Order requires providers of interconnected VoIP services to be subject to the same service discontinuance procedures as non-dominant carriers. Thus, the Commission requires that a provider of interconnected VoIP service seeking to discontinue service provide all affected customers with notice of the planned discontinuance of service. Specifically, the Order requires an interconnected VoIP provider to provide all affected customers with its name and address, the date of the planned service discontinuance, the geographic areas where service will be discontinued, a brief description of the service to be discontinued, and the statement found in § 63.71(a)(5)(i) of the Commission's rules. The Order requires written notice to be provided to each affected customer, but allows the Commission to authorize in advance another form of notice for good cause shown upon request.

69. The Order also requires an interconnected VoIP provider to file with the Commission an application for authorization of the planned discontinuance. The application shall identify that the provider is an interconnected VoIP provider with respect to the service to be discontinued and shall include, in addition to the information set forth in the notice provided to affected customers, a caption, a brief description of the dates and methods of notice to all affected customers, and any other information the Commission may require. The Order also requires an interconnected VoIP provider to submit a copy of its application to the public utility commission and to the Governor of the State(s) in which it proposes to discontinue, reduce, or impair service, as well as to the Secretary of Defense.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

70. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

71. The *IP-Enabled Services Notice* sought comment on whether to extend consumer protections afforded in the Act to subscribers of VoIP or other IP-enabled services, and invited comment on the effect on small entities. The Commission must assess the interests of small businesses in light of the overriding public interest in protecting consumers from interrupted voice service and its associated consequences.

72. In the Order, the Commission found that allowing customers of interconnected VoIP services to receive the benefits of section 214 discontinuance procedures is fundamentally important for the protection of consumers. Specifically, the Commission found that extending section 214 discontinuance procedures to interconnected VoIP service customers is necessary to protect consumers from abrupt and unexpected telecommunications service interruptions. As the Commission stated, even customers with competitive alternatives need fair notice and information to choose a substitute service. The Commission thus found that notice of proposed service discontinuances is important for the protection of all customers of interconnected VoIP providers, including those of small businesses. In considering whether to impose section 214 service discontinuance obligations on interconnected VoIP providers, the Commission considered several alternatives, including imposing streamlined obligations for dominant and non-dominant carriers and separate notice provisions. The Commission concluded that imposing the minimal streamlined obligations for non-dominant carriers on interconnected VoIP providers was appropriate, striking a good balance between the Commission's dual objectives of permitting ease of exit from competitive markets and ensuring that the public will be given a reasonable period of time to make other service arrangements. The Commission further concluded that given that these same minimal requirements were imposed on non-dominant carrier small entities and did not result in any hardship, imposing these requirements on all interconnected VoIP providers, including providers that may be small entities, would be appropriate.

Ordering Clauses

73. Accordingly, *it is ordered*, pursuant to sections 1, 4(i), 4(j), 214, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) through (j), 214, 303(r), that the Report and Order in WC Docket No. 04–36 *is adopted* and part 63 of the Commission's rules, 47 CFR part 63, *is amended* as set forth in Appendix B.

74. *It is further ordered* that, pursuant to §§ 1.103(a) and 1.427(a) of the Commission's rules, 47 CFR 1.103(a), 1.427(a), this Report and Order *shall be effective* September 8, 2009. However, the information collection requirements contained in the Report and Order will become effective following Office of Management and Budget (OMB) approval.

75. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 63

Cable television, Communications, Communications common carriers, Discontinuance of service, IP-enabled services, Radio, Reporting and recordkeeping requirements, Telecommunications, Telegraph, Telephone, Voice over Internet Protocol, VoIP.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 63 as follows:

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

■ 1. The authority citation for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

■ 2. Section 63.60 is amended by redesignating paragraph (d) as paragraph (g); redesignating paragraph (c) as paragraph (e); redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively; and adding paragraphs (a), (b)(3), (d), and (f) to read as follows:

§ 63.60 Definitions.

* * * * *

(a) For the purposes of §§ 63.60 through 63.90, the term ''carrier,'' when used to refer either to all telecommunications carriers or more specifically to non-dominant telecommunications carriers, shall include interconnected VoIP providers.

(b) * * *

(3) The conversion of an interconnected VoIP service to a service that permits users to receive calls that originate on the public switched telephone network but not terminate calls to the public switched telephone network, or the converse.

* * * * *

(d) The term ''interconnected VoIP provider'' is an entity that provides interconnected VoIP service as that term is defined in § 9.3 of this chapter.

* * * * *

(f) For the purposes of §§ 63.60 through 63.90, the term ''service,'' when used to refer to a real-time, two-way voice communications service, shall include interconnected VoIP service as that term is defined in § 9.3 of this chapter but shall not include any interconnected VoIP service that is a ''mobile service'' as defined in § 20.3 of this chapter.

* * * * *

[FR Doc. E9–18716 Filed 8–6–09; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 502

[GSAR Amendment 2009–10; GSAR Case 2008–G501 (Change 38) Docket 2009–0012; Sequence 1]

RIN 3090–AI90

General Services Administration Acquisition Regulation; GSAR Case 2008–0501, Rewrite of Part 502, Definitions of Words and Terms

AGENCIES: General Services Administration (GSA), Office of the Chief Acquisition Officer.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to revise sections of GSAR Part 502 that provide definitions for general words and terms. This section will only contain definitions for terms that are used in more than one place in the GSAR.

DATES: *Effective Date:* August 7, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Edward Loeb, Procurement Analyst, at (202) 501–0650. For information pertaining to status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4041, 1800 F Street, NW., Washington, DC 20405, (202) 501–4755. Please cite Amendment 2009–10, GSAR case 2008–G501 (Change 38).

SUPPLEMENTARY INFORMATION:

A. Background

The GSA is amending the GSAR to update the text addressing GSAR 502.101, Definition of Words and Terms. This rule is a result of the GSA Acquisition Manual (GSAM) Rewrite initiative undertaken by GSA to revise the GSAM to maintain consistency with the FAR, and to implement streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can use when entering into and administering contractual relationships. The GSAM incorporates the GSAR as well as internal agency acquisition policy.

The GSA will rewrite each part of the GSAR and GSAM, and as each part is rewritten, will publish it in the **Federal Register**.

This rule covers the rewrite of GSAR Part 502. The rule revises Part 502 to update the text addressing GSAR 502.101, Definition of Words and Terms. The section was changed to reflect the merger of the Federal Technology Service and Federal Supply Service; creation of the Federal Acquisition Service; and deletion of the title Deputy Associate Administrator of Acquisition Policy, and introduction of Deputy Chief Acquisition Officer. No additional definitions were added. The GSA is publishing this as a final rule. The changes are considered administrative.

Discussion of Comments

The GSA published an Advance Notice of Proposed Rulemaking (ANPR) with request for comments at 71 FR 7910 on February 15, 2006. The comments have been addressed in previous **Federal Register** Notices (FRN) based on the part to which the comment referred. Remaining comments that were not addressed in previous FRN are being addressed here. Following are five comments.

1. Comment

One comment was received from numerous small businesses stating that they believe the GSAR may unnecessarily impose an adverse significant economic impact on a substantial number of small entities and is concerned that any changes GSA might propose will fail to address the biggest problem affecting small business today. The commenter further states that GSA policies must address the major problems that continue to allow this to happen. The commenter's main concern is that there is not enough oversight at the Federal level and large businesses have been finding loopholes that result in small business contracts not getting their fair share of Federal Government small business contracts. The commenter further states that GSA policies must address the major problems that continue to allow this to happen and that GSA propose policies to ensure that 23 percent of Federal contracts go to legitimate small businesses, as the law requires.

Response

The GSA non-concurs. The comment is outside the scope of the GSAM. The U.S. Government Accountability Office has the primary oversight for fraud, abuse and loopholes. Further, the GSA is only one agency that contributes to the government-wide statutory 23 percent goal. GSA continually exceeds the 23 percent goal.

2. Comment

Another commenter recommended that the GSAR be revised to provide that contractors may apply general and administrative costs (G&A) to travel costs and other direct changes in

accordance with each vendor's approved cost accounting standards disclosure statement.

Response

The GSA non-concurs. Part 31 of the FAR does not prescribe the types of direct charges, such as travel, against which indirect costs may be applied. Rather, it provides broad discretion to an organization in selecting the bases for charging indirect costs. Travel is one of innumerable direct costs that can serve as a base for the application of indirect costs, provided that such indirect charges are in compliance with the organization's approved Cost Accounting Standards (CAS) disclosure statement. To the extent that travel is among a large number of potential bases for the charging of indirect costs, there is no compelling reason to single out travel in the FAR, much less the GSAR, as such a base.

3. Comment

Another commenter recommended that the GSAM clarify the requirement to establish and maintain Earned Value Management Systems in a manner consistent with current Department of Defense policy.

Response

The GSA non-concurs. Change 19 to the GSAM adds coverage to Part 534, Major Systems Acquisition, to provide guidance on the implementation of Earned Value Management Systems in GSA contracts.

4. Comment

Another commenter recommended revision of the GSAR to clarify the ability of agencies to enter into share-in-savings contracts.

Response

The GSA non-concurs. The statute governing share-in-savings contracts for information technology expired several years ago. Some agencies still have authority to enter into share-in-savings contracts for other purposes, such as energy savings performance contracting. Those agencies may provide guidance regarding share-in-savings contracts pertaining to their respective agencies.

5. Comment

Another commenter recommended revising the Assignment of Claims clause to facilitate contractor teaming arrangements. The commenter further stated that the clause should permit one teammate to be the lead and issue invoices and accept payment on behalf of the other teammate(s).

Response

The GSA non-concurs. This change is outside the scope of the GSAM rewrite. A change of this nature would require a change to the FAR, not the GSAM.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the revisions are not considered substantive. The revisions only update and clarify existing coverage. No new definitions were added.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 3090–0027.

List of Subjects in 48 CFR Part 502

Government procurement.

Dated: July 6, 2009.

Rodney P. Lantier,

Acting Senior Procurement Executive and Acting Deputy Chief Acquisition Officer, Office of the Chief Acquisition Officer, General Services Administration.

■ Therefore, GSA amends 48 CFR part 502 as set forth below:

PART 502—DEFINITIONS OF WORDS AND TERMS

■ 1. The authority citation for 48 CFR part 502 continues to read as follows:

Authority: 40 U.S.C. 486(c).

■ 2. Revise section 502.101 to read as follows:

502.101 Definitions.

Agency competition advocate means the GSA Competition Advocate in the Office of the Chief Acquisition Officer.

Assigned counsel means the attorney employed by the Office of General Counsel (including offices of Regional Counsel) assigned to provide legal review or assistance.

Contracting activity competition advocate means the individual designated in writing by the Head of the Contracting Activity (HCA). This authority may not be redelegated. The HCA must ensure that the designated competition advocate is not assigned any duty or responsibility that is inconsistent with the advocacy function. The identity of the designated official shall be communicated to procuring staff and the Senior Procurement Executive.

Contracting director means:

(a) Except in the Federal Acquisition Service (FAS), a director of a Central Office or Regional office Division responsible for performing contracting or contract administration functions.

(b) In FAS Central Office—

(1) The Assistant Commissioner for Assisted Acquisition Services or designee;

(2) The Assistant Commissioner for General Supplies and Services or designee;

(3) The Assistant Commissioner for Integrated Technology Services or designee;

(4) The Assistant Commissioner for Travel, Motor Vehicle and Card Services or designee; and

(5) The Assistant Commissioner for Acquisition Management or designee for support offices with contracting functions.

(c) In FAS Regions, the Assistant Regional Commissioner or designee.

Contracting officer's representative (COR), contracting officer's technical representative (COTR), or contract administrator means a Government employee designated in writing by the contracting officer to perform specific limited activities for the contracting officer, such as contract administration.

Debarring official or ''suspending official'' means the Senior Procurement Executive or a designee.

Head of the contracting activity means the Deputy Chief Acquisition Officer; Commissioners of the Federal Acquisition Service (FAS) or Public Buildings Service (PBS); or Regional Commissioners. The Deputy Chief Acquisition Officer serves as the HCA for Central Office contracting activities outside of FAS and PBS.

Senior procurement executive means the Deputy Chief Acquisition Officer.

Senior program official means a person reporting to, and designated by, the HCA to have overall program responsibility for determining how the agency will meet its needs. The official should have a position of authority over the participating offices. Examples include Assistant Regional Commissioners or Deputy Commissioners.

[FR Doc. E9–19001 Filed 8–6–09; 8:45 am]

BILLING CODE 6820–61–P

Proposed Rules

Federal Register
Vol. 74, No. 151
Friday, August 7, 2009

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

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 761 and 766

RIN 0560–AI05

Loan Servicing; Farm Loan Programs

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Farm Service Agency (FSA) is proposing to amend the Farm Loan Programs (FLP) direct loan servicing regulations primarily to implement provisions of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). FSA proposes four amendments to the rules. The first amendment would further emphasize transitioning borrowers to private sources of credit in the shortest timeframe practicable. The second amendment would amend the Homestead Protection lease regulations by extending the right to purchase the leased property to the lessee's immediate family when the lessee is a member of a socially disadvantaged group. The third amendment would amend the account liquidation regulations to suspend certain loan acceleration and foreclosure actions, including suspending interest accrual and offsets, if a borrower has filed a claim of program discrimination that has been accepted as valid by USDA and is at the point of acceleration or foreclosure. The fourth amendment would amend the supervised bank account regulations to be consistent with the recently amended Federal Deposit Insurance Act.

DATES: We will consider comments that we receive by October 6, 2009.

ADDRESSES: We invite you to submit written comments on this proposed rule. In your comment, include the volume, date, and page number of this issue of the **Federal Register.** You may submit comments by any of the following methods:

- *E-mail: mike.cumpton@wdc.usda.gov.*
- *Fax:* (202) 720–5804.
- *Mail:* Director, Loan Servicing and Property Management Division, Farm Service Agency, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 0523, Washington, DC 20250–0523.
- *Hand Delivery or Courier:* Deliver comments to Farm Service Agency, Loan Servicing and Property Management Division, 1250 Maryland Ave., SW., Suite 500, Washington, DC 20024.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Comments may be inspected in the Office of the Director, Loan Servicing and Property Management Division (LSPMD), Farm Service Agency, at 1250 Maryland Ave., SW., Suite 500, Washington, DC, between 8 a.m. and 4:30 p.m., except holidays.

FOR FURTHER INFORMATION CONTACT: Michael C. Cumpton, Assistant to the Director, LSPMD, Farm Service Agency; *telephone:* (202) 690–4014; *Facsimile:* (202) 720–5804; *E-mail: mike.cumpton@wdc.usda.gov.* Persons with disabilities or who require alternative means for communications should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

This proposed rule implements three provisions of the 2008 Farm Bill (Public Law 110–246; June 18, 2008) concerning loan servicing for FSA's direct loan program. This law repealed Public Law 110–234 dated May 22, 2008 that inadvertently omitted Title III (Trade of the 2008 Farm Bill.) FSA loans are a means of providing credit to farmers whose financial risk exceeds a level acceptable to commercial lenders. For two of these amendments, the one that would allow family members of lessees who are members of a socially disadvantaged group to purchase properties under Homestead Protection and the one setting a moratorium on foreclosure actions for borrowers with an accepted program discrimination claim, there is little to no discretion in how to implement the provisions of the 2008 Farm Bill. For the third amendment promoting the goal of transitioning borrowers to private credit, the 2008 Farm Bill provides general guidance. In addition, this proposed rule would implement a conforming amendment to comply with section 136 of the Emergency Economic Stabilization Act of 2008 (Pub. L. 110–343; October 3, 2008), which temporarily increased the standard maximum deposit insurance amount for Federal Deposit Insurance Corporation (FDIC)-insured accounts.

Transitioning Borrowers to Private Credit

Sections 302(a), 311(a), and 321(a) of the Consolidated Farm and Rural Development Act (the Con Act) establish the inability ''to obtain sufficient credit elsewhere'' as an eligibility requirement for FLP direct loans. Section 319 of the Con Act requires that FSA develop a plan ''to encourage each borrower * * * to graduate to private commercial or other sources of credit.''

Section 5304 of the 2008 Farm Bill requires that the Secretary ''establish a plan and promulgate regulations (including performance criteria) that promote the goal of transitioning borrowers to private commercial credit and other sources of credit in the shortest time practicable.'' Both section 319 of the Con Act and section 5304 of the 2008 Farm Bill require coordination with the following sections of the Con Act:

- Borrower training established under section 359;
- Loan assessment established under section 360;
- Supervised credit under section 361; and
- Market placement under section 362.

FSA has implemented the borrower training program in existing regulations in 7 CFR part 764, subpart J. The market placement program is addressed in 7 CFR 762.110(g). Requirements regarding a borrower's graduation to another source of credit are addressed in 7 CFR part 765, subpart C. None of these regulations would be changed by this proposed rule. The supervised credit requirement, which includes the loan assessment program, is specified in 7 CFR part 761, subpart C. This rule proposes to amend 7 CFR 761.103 pertaining to farm assessments, as well as 7 CFR 761.1, ''Introduction,'' to encourage the transitioning of borrowers

to commercial credit in the shortest period of time practicable and better establish the use of borrower training, supervised credit, including loan assessment, and market placement to plan for and evaluate a borrower's ability to graduate.

FSA is developing an internal plan that will include performance criteria to evaluate its success in transitioning borrowers to commercial credit. Performance criteria are not being established for borrowers in this proposed rule.

Extension of Right To Reacquire Homestead Property to Family Members

This rule proposes to amend section 766.154, ''Homestead Protection Leases.'' Section 766.154(c) currently addresses the right of a lessee to purchase leased property under Homestead Protection. This proposed amendment would expand that right to also allow an immediate family member of a lessee who is a member of a socially disadvantaged group (as currently defined in section 761.2) to exercise the option to purchase, as required by section 5305 of the 2008 Farm Bill. The lessee may designate a member of the lessee's immediate family (parent, sibling, or child) as having this right to purchase. This immediate family member also has the right under section 5305 to choose any independent appraiser from a list of three approved by FSA to establish the current market value of the property. This policy will be added to the FSA Handbook procedures.

Moratorium on Loan Acceleration and Foreclosure for Borrowers With an Accepted Discrimination Claim

Section 14002 of the 2008 Farm Bill requires a moratorium on certain acceleration and loan foreclosure proceedings against any farmer or rancher who has a claim of program discrimination accepted by the Department as valid or who files such a claim that is accepted. The statutory moratorium applies only with respect to Farm Loan Program loans made under subtitle A, B, or C, of the Con Act, which includes Farm Ownership (FO), Soil and Water (SW), Recreation loans, and Emergency (EM) loans. Section 343(a)(10) of the Con Act defines ''Farmer Program Loan'' to include FO loans under section 303, Operating Loans (OL) under section 312, SW loans under section 304, EM loans under section 321, Economic Emergency (EE) loans under section 202 of the Emergency Agricultural Credit Adjustment Act, Economic Opportunity (EO) loans under the Economic Opportunity Act of 1961, Softwood Timber (ST) loans under section 1254 of the Food Security Act of 1985, and Rural Housing loans for farm service buildings (RHF) under section 502 of the Housing Act of 1949. SW, EE, EO, ST, and RHF loans are no longer being made, but a few remain to be serviced. FSA regulation, 7 CFR 761.2, also includes Recreation loans formerly made under section 304 of the Con Act as a ''program loan.'' Loans made under statutory authorities other than the Con Act, such as the EE, EO, ST, and RHF loans, would not be covered by the section 14002 moratorium, but will continue to be covered by FSA's internal voluntary suspension of acceleration and foreclosure when the borrower has a program discrimination complaint accepted by the USDA Office of Adjudication and Compliance (OAC).

Non-program loans are not covered by the mandatory section 14002 moratorium, but will continue to be covered by the Agency's voluntary suspension policy on acceleration and foreclosure when the borrower has a program discrimination complaint accepted by OAC. Non-program loans are defined by section 761.2 as those loans made on more stringent terms for the convenience of FSA because the applicant or property does not qualify for a program loan under applicable statutes and regulations. For example, under FSA regulations a third party may assume a program loan on non-program terms if the transferee is not eligible for the program loan, and in some circumstances FSA might collect an unauthorized loan by permitting the borrower to continue making payments on non-program terms. Homestead Protection financing and financing of recapture under Shared Appreciation Agreements authorized by sections 352 and 353 of the Con Act, respectively, also are considered non-program loans. Non-program loans historically have not been considered eligible for the broad loan servicing options available for program loans. These servicing rights are commonly the subject of dispute in the program discrimination claims addressed by section 14002, so it is reasonable to limit the moratorium to the program loans specified in the statute. FSA has found no Congressional intent for this moratorium provision to cover non-program loans. In fact, Congress' specific reference to ''Farm Loan Program Loans'' indicates otherwise. Liquidation of non-program loans, therefore, may be delayed if a borrower's program loans are under moratorium. This rule proposes to amend section 766.351, ''Liquidation,'' to specify the provisions of the moratorium accordingly.

An ''accepted'' claim under section 14002 is a claim for which OAC has made the determination to accept on basic jurisdictional grounds. As explained in the Conference Report for the 2008 Farm Bill, ''accepted'' is a procedural term and not a statement as to the merits of the program discrimination claim. The acceptance of the claim is distinct from the person's filing of a program discrimination claim. The moratorium began on the effective date of the 2008 Farm Bill, which was May 22, 2008, if the borrower had a pending claim that was accepted and the borrower was at the point of acceleration and foreclosure on or prior to that date. Otherwise, it will begin when a program discrimination complaint has been accepted and the borrower is at the point of acceleration or foreclosure. In either case, moratorium begins after all available loan servicing and appeal rights have been offered to the borrower. If the borrower's account were accelerated and foreclosed prior to enactment of the statute or OAC's acceptance of the borrower's program discrimination claim, the moratorium would never be triggered. The moratorium will end on the earlier of the date the program discrimination claim is resolved by USDA OAC, or the date that a court of competent jurisdiction renders a final decision on the program discrimination claim if the farmer or rancher appeals the decision of USDA OAC.

In addition to the moratorium on acceleration and foreclosure, section 14002 provided that interest accrual and offset would be suspended on the farm program loans made under subtitle A, B, or C of the Con Act for the claimants during the moratorium period (at the point of acceleration or foreclosure after all servicing and appeal rights have been exhausted). These benefits were not provided under FSA's prior voluntary suspension policy and cannot be provided on any loans not made under subtitle A, B, or C of the Con Act. Interest accrual and Treasury offset generally are required by 31 U.S.C. sections 3717 and 3716, respectively. Interest accruals and offsets will resume on the covered loans when the moratorium terminates. If the borrower does not prevail on the program discrimination claim, the borrower will be liable for the interest that accrued during the moratorium under section 14002. In such case, the interest that would have accrued during the moratorium will be reinstated on the debt. Any debt that would have been

paid down through offset will remain when the moratorium terminates and will be collected through normal procedures. If the borrower does prevail on the program discrimination claim, the borrower will not be liable for the interest and offsets during the moratorium. FSA will implement any settlement agreement or court order, as appropriate.

Establishing a Supervised Bank Account

This rule proposes to amend existing regulations in 7 CFR 761.51(e) which currently require that a financial institution pledge acceptable collateral with the Federal Reserve Bank when the balance deposited into a supervised bank account will exceed $100,000. The Emergency Economic Stabilization Act of 2008, section 136, amended the Federal Deposit Insurance Corporation Act to temporarily increase the standard maximum deposit insurance amount from $100,000 to $250,000, effective October 3, 2008, and ending December 31, 2009. After that date, the standard maximum deposit insurance amount will return to $100,000. This rule, therefore, proposes to amend section 761.51, ''Establishing a Supervised Bank Account,'' to remove the reference to the $100,000 threshold for insured balances and replace it with a reference to ''the maximum amount insurable by the Federal Government.''

Executive Order 12866

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866 and, therefore, OMB was not required to review this proposed rule.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601), FSA is certifying that there would not be a significant economic impact on a substantial number of small entities. All FSA direct loan borrowers and all farm entities affected by this rule are small businesses according to the North American Industry Classification System and the U. S. Small Business Administration. There is no diversity in size of the entities affected by this rule, and the costs to comply with it are the same for all entities.

In this rule, FSA is proposing to revise regulations that affect loan servicing only.

In 2007, over 2,500 direct borrowers (about 3.7 percent of the portfolio) graduated to commercial credit. FSA believes graduation will continue in the 3 to 5 percent range and is dependent on the overall farm economy.

Currently, FSA has 38 inventory properties under a Homestead Protection lease. The extension of purchase rights to the immediate family of lessees who are a members of a socially disadvantaged group will affect very few of these cases.

Due to the acceleration and foreclosure moratorium FSA expects some Government losses due to the suspension of interest accrual (when the borrower prevails) and the loss of some offset payments. FSA does not expect these changes to impose any additional cost to the borrowers. Therefore, the costs of compliance from this rule are expected to be minimal. Therefore, FSA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799). The changes to the FLP direct loan servicing program, required by the 2008 Farm Bill that are identified in this proposed rule, are non-discretionary. Therefore, FSA has determined that NEPA does not apply to this rule, and no environmental assessment or environmental impact statement will be prepared.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with the executive order: (1) All State and local laws and regulations that are in conflict with this rule would be preempted; (2) no retroactive effect would be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Executive Order 12372

For reasons set forth in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This proposed rule contains no Federal mandates, as defined under title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

The policies contained in this rule would not have any substantial direct effect on States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor would this proposed rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Paperwork Reduction Act

The amendments proposed for 7 CFR parts 761 and 766 require no changes or new collection to the currently approved information collections by OMB under the control numbers of 0560–0233, 0560–0233 and 0560–0238.

E-Government Act Compliance

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Federal Assistance Programs

The title and number of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this proposed rule would apply are:

10.404 Emergency Loans;

10.406 Farm Operating Loans;

10.407 Farm Ownership Loans.

List of Subjects

7 CFR Part 761

Agriculture, Agricultural commodities, Credit, Livestock, Loan programs—Agriculture.

7 CFR Part 766

Agriculture, Agricultural commodities, Credit, Livestock, Loan programs—Agriculture.

For the reasons discussed in the preamble, the Farm Service Agency (USDA) proposes to amend 7 CFR chapter VII as follows:

PART 761—GENERAL PROGRAM ADMINISTRATION

1. The authority citation for part 761 continues to read as follows:

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

Subpart A—General Provisions

2. In § 761.1, paragraph (c) is amended by adding a new fourth sentence at the end to read as follows:

§ 761.1 Introduction.

* * * * *

(c) * * * The programs are designed to allow those who participate to transition to private commercial credit or other sources of credit in the shortest period of time practicable through the use of supervised credit, including farm assessments, borrower training, and market placement.

* * * * *

Subpart B—Supervised Bank Accounts

3. In § 761.51, paragraph (e) is revised to read as follows:

§ 761.51 Establishing a supervised bank account.

* * * * *

(e) If the funds to be deposited into the account cause the balance to exceed the maximum amount insurable by the Federal Government, the financial institution must agree to pledge acceptable collateral with the Federal Reserve Bank for the excess over the insured amount, before the deposit is made.

Subpart C—Supervised Credit

4. In § 761.103, paragraph (a) is revised to read as follows:

§ 761.103 Farm assessment.

(a) The Agency, in collaboration with the applicant, will assess the farming operation to:

(1) Determine the applicant's financial condition, organization structure, and management strengths and weaknesses;

(2) Identify and prioritize training and supervisory needs; and

(3) Develop a plan of supervision to assist the borrower in achieving financial viability and transitioning to private commercial credit or other sources of credit in the shortest time practicable.

* * * * *

PART 766—DIRECT LOAN SERVICING—SPECIAL

5. The authority citation for part 766 is revised to read as follows:

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

Subpart D—Homestead Protection Program

6. In § 766.154, paragraph (c) is revised to read as follows:

§ 766.154 Homestead Protection leases.

* * * * *

(c) *Lease-purchase options.* (1) The lessee may exercise in writing the purchase option and complete the homestead protection purchase at any time prior to the expiration of the lease provided all lease payments are current.

(2) If the lessee is a member of a socially disadvantaged group, the lessee may designate a member of the lessee's immediate family (that is, parent, sibling, or child) (designee) as having the right to exercise the option to purchase.

(3) The purchase price is the market value of the property when the option is exercised as determined by a current appraisal obtained by the Agency.

(4) The lessee or designee may purchase homestead protection property with cash or other credit source.

(5) The purchaser may receive Agency program or non-program financing provided:

(i) The purchaser has not received previous debt forgiveness;

(ii) The Agency has funds available to finance the purchase of homestead protection property;

(iii) The purchaser demonstrates an ability to repay such an FLP loan; and

(iv) The purchaser is otherwise eligible for the FLP loan.

* * * * *

Subpart H—Loan Liquidation

7. Section 766.358 is added to read as follows:

§ 766.358 Acceleration and Foreclosure Moratorium.

(a) Notwithstanding any other provisions of this subpart, borrowers who file or have filed a program discrimination complaint that is accepted by USDA Office of Adjudication and Compliance or successor office (USDA), and have been serviced to the point of acceleration or foreclosure on or after May 22, 2008, will not be accelerated or liquidated until such complaint has been resolved by USDA or closed by a court of competent jurisdiction. This moratorium applies only to program loans made under subtitle A, B, or C of the Act (for example, FO, OL, EM, SW, or RL). Interest will not accrue and no offsets will be taken on these loans during the moratorium. Interest accrual and offsets will continue on all other loans, including, but not limited to, non-program loans.

(1) If the Agency prevails on the program discrimination compliant, the interest that would have accrued during the moratorium will be reinstated on the account when the moratorium terminates, and all offsets and servicing actions will resume.

(2) If the borrower prevails on the program discrimination compliant, the interest that would have accrued during the moratorium will not be reinstated on the account unless specifically required by the settlement agreement or court order.

(b) The moratorium will begin on:

(1) May 22, 2008, if the borrower had a pending program discrimination claim that was accepted by USDA as valid and was at the point of acceleration or foreclosure on or before that date or

(2) The date after May 22, 2008, when the borrower has a program discrimination claim accepted by USDA as valid and the borrower is at the point of acceleration or foreclosure.

(c) The point of acceleration under this section is the earliest of the following:

(1) The day after all rights offered on the Agency notice of intent to accelerate expire if the borrower does not appeal;

(2) The day after all appeals resulting from an Agency notice of intent to accelerate are concluded if the borrower appeals and the Agency prevails on the appeal;

(3) The day after all appeal rights have been concluded relating to a failure to graduate and the Agency prevails on any appeal;

(4) Any other time when, because of litigation, third party action, or other unforeseen circumstance, acceleration is the next step for the Agency in servicing and liquidating the account.

(d) A borrower is considered to be in foreclosure status under this section anytime after acceleration of the account.

(e) The moratorium will end on the earlier of:

(1) The date the program discrimination claim is resolved by USDA or

(2) The date that a court of competent jurisdiction renders a final decision on the program discrimination claim if the farmer or rancher appeals the decision of USDA.

Signed in Washington, DC, on August 3, 2009.

Jonathan Coppess,

Administrator, Farm Service Agency.

[FR Doc. E9–18986 Filed 8–6–09; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF ENERGY

10 CFR Part 609

RIN 1901–AB21

Loan Guarantees for Projects That Employ Innovative Technologies

AGENCY: Office of the Chief Financial Officer, Department of Energy.

ACTION: Proposed rule.

SUMMARY: On October 23, 2007, the Department of Energy (DOE or the Department) published a final rule establishing regulations for the loan guarantee program authorized by Section 1703 of Title XVII of the Energy Policy Act of 2005 (Title XVII or the Act). Section 1703 of Title XVII authorizes the Secretary of Energy (Secretary) to make loan guarantees for projects that ''avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued.'' Section 1703 of Title XVII also identifies ten categories of technologies and projects that are potentially eligible for loan guarantees. The two principal goals of section 1703 of Title XVII are to encourage commercial use in the United States of new or significantly improved energy-related technologies and to achieve substantial environmental benefits. DOE believes that commercial use of these technologies will help sustain and promote economic growth, produce a more stable and secure energy supply and economy for the United States, and improve the environment.

Through experience gained implementing the loan guarantee program authorized by section 1703 of Title XVII, and information received from industry indicating the wide variety of ownership structures which participants would like to employ in implementing projects seeking loan guarantees, DOE believes it is appropriate to consider certain changes to the existing regulations to provide flexibility in the determination of an appropriate collateral package to secure guaranteed loan obligations, facilitate collateral sharing and related intercreditor arrangements with other project lenders, and to provide a more workable interpretation of certain statutory provisions regarding DOE's treatment of collateral.

DATES: Comments on this proposed rule must be postmarked no later than September 8, 2009.

ADDRESSES: Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: lgprogram@hq.doe.gov*.
- *Postal Mail:* David G. Frantz, Director, Loan Guarantee Program Office, Office of the Chief Financial Officer, 1000 Independence Avenue, SW., Washington, DC.20585–0121. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* David G. Frantz, Director, Loan Guarantee Program Office, Office of the Chief Financial Officer, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed original paper copy.

FOR FURTHER INFORMATION CONTACT: David G. Frantz, Director, Loan Guarantee Program Office, Office of the Chief Financial Officer, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–8336, e-mail: *lgprogram@hq.doe.gov*; or Susan S. Richardson, Chief Counsel for the Loan Guarantee Program, Office of the General Counsel, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9521, *e-mail: lgprogram@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Proposed Amendment

Today's proposed rule would amend the regulations implementing the loan guarantee program authorized by section 1703 of Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511–16514) (referred to as Title XVII). Section 1703 of Title XVII authorizes the Secretary of Energy (Secretary), after consultation with the Secretary of the Treasury, to make loan guarantees for projects that ''(1) avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and (2) employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued.'' (42 U.S.C. 16513(a))

Section 1702 of Title XVII outlines general terms and conditions for loan guarantee agreements and directs the Secretary to include in loan guarantee agreements ''such detailed terms and conditions as the Secretary determines appropriate to (i) protect the interests of the United States in case of a default; and (ii) have available all the patents and technology necessary for any person selected, including the Secretary, to complete and operate the project. (42 U.S.C. 16512(g)(2)(c)). Further, section 1702(d) addresses certain threshold requirements that must be met before the guaranty is made; and section 1702(g) addresses the Secretary's rights in the case of default of the loan. Specifically, section 1702(d) of Title XVII states, under the heading ''Repayment'' and addressing ''Subordination,'' that ''[t]he [guaranteed] obligation shall be subject to the condition that the obligation is not subordinate to other financing.'' Further, when addressing the situation of default, section 1702(g)(2) of Title XVII states, with respect to ''subrogation'' and ''superiority of rights,'' that ''[t]he rights of the Secretary, with respect to any property acquired pursuant to a guarantee or related agreements, shall be superior to the rights of any other person with respect to the property.''

In the October 23, 2007 final rule implementing Title XVII, DOE interpreted the interplay between these two provisions of section 1702 such that both describe the rights the Secretary must secure as a condition of making a guarantee. This understanding is reflected in the text of the regulations which requires that the Secretary receive a first lien security interest in all project assets as an incident to making a guarantee. Moreover, this

interpretation of the applicability of the superiority of rights provision as a required element of the Secretary's making a guarantee was embedded in the text of the rule and was made explicit in the preambles to the proposed and final rules implementing section 1703 of Title XVII.

The Department has critically reexamined the statute, particularly its text and structure, and now concludes, as described below, that the interpretation of the statute requiring receipt of a first lien on all project assets is not one that it was legally compelled to adopt, and was not correct. A first lien on all project assets is better understood as one element that the Secretary may require for a particular project, but is not compelled by the statute to require. This proposed rulemaking reflects what the Department has concluded is the correct interpretation of section 1702.

First, it should be borne in mind that nowhere does section 1702 itself require that the Secretary receive a first lien on all project assets as a condition of his ability to make a loan guarantee. Instead the statute requires only that the Secretary's guaranteed obligation ''not be subordinate to other financing.'' In fact, section 1702 does not require that the lender or the Secretary receive any collateral as a statutory requirement for making a loan guarantee.

Next, the ''first lien on all project assets'' requirement contained in the regulations seems traceable only to the ''superiority of rights'' provision contained in section 1702(g)(2)(B). The structure of the statute, however, is suggestive that section 1702(g)'s provisions are designed to govern post-default rights of the Secretary, rather than to impose conditions that must be met at the time the Secretary determines to make a loan guarantee. So understood, the ''property acquired'' as to which the Secretary's rights ''shall be superior to the rights of any other person'' relates to property ''acquired'' by the Secretary pursuant to his right of subrogation to the rights of the lender in any collateral or security interest.

As a structural matter, it is notable that the ''superiority of rights'' provision appears within and under the head ''subrogation'' contained in section 1702(g)(2). Consideration of the structure of the statute is aided by the various captions that introduce its various substantive provisions. In general, those captions—first ''repayment,'' then ''subordination,'' then ''defaults,'' ''payment by the Secretary,'' ''subrogation,'' and then ''superiority of rights,''—tend to reinforce the structural understanding of the statute as keying its particular provisions to the sequence of stages that are foreseeable in the loan guarantee relationship. So perceived, the topic of ''superiority of rights'' would become germane only as a subset of the sequence that begins with a ''default'' and after ''payment by the Secretary.''

Moreover, in reviewing applications for projects seeking a loan guarantee under section 1703 of Title XVII, DOE became aware that its original reading of the statute was in tension with the financing structure of many commercial transactions in the energy sector. In particular, the tenancy in common ownership structure proposed for the next generation of nuclear generating facilities, under which multiple entities own undivided interests in a single facility, does not lend itself to the unitary project ownership anticipated by the regulations. In fact, tenancy in common is the typical form of ownership of utility grade power plants that are jointly owned by public power agencies, cooperative power systems and investor-owned utilities. Approximately one-third of all currently operating nuclear power reactors, and approximately one-third of all planned nuclear power reactors for which applications are pending at the Nuclear Regulatory Commission are jointly owned through tenancies in common. As such, each owner holds an undivided interest in the physical project assets, and each owner typically finances its investment in the project separately. In this scenario, DOE would not be lending directly to a project company, and may be lending only to some but not all of the project owners. As a result, it may not be commercially feasible to obtain a lien on all project assets. Moreover, in certain circumstances, both in large infrastructure projects and in smaller projects, creditworthy sponsors may be willing to offer a corporate lending structure in which DOE would rely on the balance sheet of the sponsor. In such a case, the credit of the sponsor may be sufficient to support a more modest pledge of assets.

Additionally, in response to prior solicitations, DOE has received expressions of interest from Export Credit Agencies (ECAs) concerning their possible participation in eligible projects as co-lenders, co-guarantors or insurers of loans. ECAs are governmental, quasi-governmental, or private institutions supported by and acting on behalf of their host governments that facilitate financing for home country exporters doing business in other nations. In addition to ECAs, there is a variety of other potential sources of financing for power generation projects, including municipal bond financing. There also could be interest rate or commodity hedging agreements and, after completion, working capital facilities for project companies. The ECAs, and likely the other sources of financing, will expect to share, on a *pari passu* basis, in collateral pledged to secure the borrower's debt obligations.

Thus, the interpretation of the statute contained in the October 23, 2007, final rule effectively disqualifies from participation in Title XVII programs proposed energy production facilities that employ innovative technologies, particularly in the nuclear power industry, that are jointly owned through a tenants in common structure or where there are appropriate co-lenders or co-guarantors who require a *pari passu* structure. DOE does not believe that a statute intended to encourage commercial use in the United States of new or significantly improved energy-related technologies would be written in a way as to make ineligible such industry participants.

As stated and explained above, DOE has concluded that section 1702 of Title XVII does not mandate that DOE receive a first lien position on all projects assets. In light of this interpretation of section 1702 of Title XVII, DOE is proposing amendments to the existing regulations. Specifically, to ensure that the loan guarantee program has the ability to respond to the kinds of structuring issues discussed above, the proposed rule would delete the requirement of a first priority lien on all project assets (and other pledged collateral) and leave to the Secretary the determination of an appropriate collateral package, as well as intercreditor arrangements. Such a determination by the Secretary is contemplated by sections 1702(a) and 1702 (g)(2)(C), and remains subject to the requirement of section 1702(d)(3) that the guaranteed obligation not be subordinate to other financing. The Department believes that having the flexibility to determine on a project by project basis the scope of the collateral package and whether *pari passu* lending is in the best interests of the United States, will enable the Department to reduce its exposure on individual projects, diversify its portfolio and maximize the benefits of the resources available for the loan guarantee program.

II. Regulatory Review

A. Executive Order 12866

Today's proposed rule has been determined to be a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs at Office of Management and Budget (OMB).

B. National Environmental Policy Act of 1969

Through the issuance of this proposed rule, DOE is making no decision relative to the approval of a loan guarantee for a particular proposed project. DOE has, therefore, determined that publication of the proposed rule is covered under the Categorical Exclusion found at paragraph A.6 of Appendix A to Subpart D, 10 CFR part 1021, which applies to the establishment of procedural rulemakings. Accordingly, neither an environmental assessment nor an environmental impact statement is required at this time. However, appropriate NEPA project review will be conducted prior to execution of a Loan Guarantee Agreement.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://www.gc.doe.gov*.

DOE is not obliged to prepare a regulatory flexibility analysis for this rulemaking because there is no requirement to publish a general notice of proposed rulemaking for rules related to loans under the Administrative Procedure Act (5 U.S.C. 553(a)(2)).

D. Paperwork Reduction Act

This proposed rule involves a collection of information previously approved by OMB under Control Number [1910–5134]. The burden imposed by that collection is _____.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Act) (2 U.S.C. 1531 *et seq.*) requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in an agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials of State, tribal, or local governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments.

The term ''Federal mandate'' is defined in the Act to mean a Federal intergovernmental mandate or a Federal private sector mandate (2 U.S.C. 658(6)). Although the rule will impose certain requirements on non-Federal governmental and private sector applicants for loan guarantees, the Act's definitions of the terms ''Federal intergovernmental mandate'' and ''Federal private sector mandate'' exclude, among other things, any provision in legislation, statute, or regulation that is a condition of Federal assistance or a duty arising from participation in a voluntary program (2 U.S.C. 658(5) and (7), respectively). Today's proposed rule establishes requirements that persons voluntarily seeking loan guarantees for projects that would use certain new and improved energy technologies must satisfy as a condition of a Federal loan guarantee. Thus, the proposed rule falls under the exceptions in the definitions of ''Federal intergovernmental mandate'' and ''Federal private sector mandate'' for requirements that are a condition of Federal assistance or a duty arising from participation in a voluntary program. The Act does not apply to this rulemaking.

F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it would not preempt State law and 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. No further action is required by Executive Order 13132.

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is

unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Approval by the Office of the Secretary of Energy

The Secretary of Energy has approved the issuance of this proposed rule.

List of Subjects in 10 CFR Part 609

Administrative practice and procedure, Energy, Loan programs, and Reporting and recordkeeping requirements.

Issued in Washington, DC, on July 31, 2009.

Steve Isakowitz,

Chief Financial Officer.

For the reasons stated in the preamble, chapter II of title 10 of the Code of Federal Regulations is proposed to be amended to read as set forth below.

1. Part 609 is revised to read as follows:

PART 609—LOAN GUARANTEES FOR PROJECTS THAT EMPLOY INNOVATIVE TECHNOLOGIES

Sec.

Authority: 42 U.S.C. 7254, 16511–16514.

§ 609.1 Purpose and Scope.

(a) This part sets forth the policies and procedures that DOE uses for receiving, evaluating, and, after consultation with the Department of the Treasury, approving applications for loan guarantees to support Eligible Projects under Section 1703 of Title XVII of the Energy Policy Act of 2005, as amended.

(b) Except as set forth in paragraph (c) of this section, this part applies to all Pre-Applications, Applications, Conditional Commitments and Loan Guarantee Agreements to support Eligible Projects under Section 1703 of Title XVII of the Energy Policy Act of 2005, as amended.

(c) Sections 609.3, 609.4 and 609.5 of this part shall not apply to any Pre-Applications, Applications, Conditional Commitments or Loan Guarantee Agreements under the Guidelines issued by DOE on August 8, 2006, which were published in the **Federal Register** on August 14, 2006 (71 FR 46451) and the solicitation issued on August 8, 2006 under Title XVII of the Energy Policy Act of 2005, provided the Pre-Application is accepted under the Guidelines and an Application is invited pursuant to such Pre-Application no later than December 31, 2007.

(d) Part 1024 of chapter X of title 10 of the Code of Federal Regulations shall not apply to actions taken under this part.

§ 609.2 Definitions.

Act means Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511–16514), as amended.

Administrative Cost of Issuing a Loan Guarantee means the total of all administrative expenses that DOE incurs during:

(1) The evaluation of a Pre-Application, if a Pre-Application is requested in a solicitation, and an Application for a loan guarantee;

(2) The offering of a Term Sheet, executing the Conditional Commitment, negotiation, and closing of a Loan Guarantee Agreement; and

(3) The servicing and monitoring of a Loan Guarantee Agreement, including during the construction, startup, commissioning, shakedown, and operational phases of an Eligible Project.

Applicant means any person, firm, corporation, company, partnership, association, society, trust, joint venture, joint stock company, or other business entity or governmental non-Federal entity that has submitted an Application to DOE and has the authority to enter into a Loan Guarantee Agreement with DOE under the Act.

Application means a comprehensive written submission in response to a solicitation or a written invitation from DOE to apply for a loan guarantee pursuant to § 609.6 of this part.

Borrower means any Applicant who enters into a Loan Guarantee Agreement with DOE and issues Guaranteed Obligations.

Commercial Technology means a technology in general use in the commercial marketplace in the United States at the time the Term Sheet is issued by DOE. A technology is in general use if it has been installed in and is being used in three or more commercial projects in the United States in the same general application as in the proposed project, and has been in operation in each such commercial project for a period of at least five years. The five year period shall be measured, for each project, starting on the service date of the project or facility employing

that particular technology. For purposes of this section, commercial projects include projects that have been the recipients of a loan guarantee from DOE under this part.

Conditional Commitment means a Term Sheet offered by DOE and accepted by the Applicant, with the understanding of the parties that if the Applicant thereafter satisfies all specified and precedent funding obligations and all other contractual, statutory and regulatory requirements, or other requirements, DOE and the Applicant will execute a Loan Guarantee Agreement: Provided that the Secretary may terminate a Conditional Commitment for any reason at any time prior to the execution of the Loan Guarantee Agreement; and Provided further that the Secretary may not delegate this authority to terminate a Conditional Commitment.

Contracting Officer means the Secretary of Energy or a DOE official authorized by the Secretary to enter into, administer and/or terminate DOE Loan Guarantee Agreements and related contracts on behalf of DOE.

Credit Subsidy Cost has the same meaning as ''cost of a loan guarantee'' in section 502(5)(C) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)(C)), which is the net present value, at the time the Loan Guarantee Agreement is executed, of the following estimated cash flows, discounted to the point of disbursement:

(1) Payments by the Government to cover defaults and delinquencies, interest subsidies, or other payments; less

(2) Payments to the Government including origination and other fees, penalties, and recoveries; including the effects of changes in loan or debt terms resulting from the exercise by the Borrower, Eligible Lender or other Holder of an option included in the Loan Guarantee Agreement.

DOE means the United States Department of Energy.

Eligible Lender means:

(1) Any person or legal entity formed for the purpose of, or engaged in the business of, lending money, including, but not limited to, commercial banks, savings and loan institutions, insurance companies, factoring companies, investment banks, institutional investors, venture capital investment companies, trusts, or other entities designated as trustees or agents acting on behalf of bondholders or other lenders; and

(2) Any person or legal entity that meets the requirements of § 609.11 of this part, as determined by DOE; or

(3) The Federal Financing Bank.

Eligible Project means a project located in the United States that employs a New or Significantly Improved Technology that is not a Commercial Technology, and that meets all applicable requirements of section 1703 of the Act (42 U.S.C. 16513), the applicable solicitation and this part.

Equity means cash contributed by the Borrowers and other principals. Equity does not include proceeds from the non-guaranteed portion of Title XVII loans, proceeds from any other non-guaranteed loans, or the value of any form of government assistance or support.

Federal Financing Bank means an instrumentality of the United States government created by the Federal Financing Bank Act of 1973 (12 U.S.C. 2281 *et seq.*). The Bank is under the general supervision of the Secretary of the Treasury.

Guaranteed Obligation means any loan or other debt obligation of the Borrower for an Eligible Project for which DOE guarantees all or any part of the payment of principal and interest under a Loan Guarantee Agreement entered into pursuant to the Act.

Holder means any person or legal entity that owns a Guaranteed Obligation or has lawfully succeeded in due course to all or part of the rights, title, and interest in a Guaranteed Obligation, including any nominee or trustee empowered to act for the Holder or Holders.

Intercreditor Agreement means any agreement between or among DOE and one or more other persons providing financing for the benefit of an Eligible Project, entered into in connection with a Loan Guarantee upon a determination by DOE that such agreement is reasonable and necessary to protect the interests of the United States and addressing customary matters, such as priorities and voting rights among lenders, as such agreement may be amended or modified from time to time with the consent of DOE.

Loan Agreement means a written agreement between a Borrower and an Eligible Lender or other Holder containing the terms and conditions under which the Eligible Lender or other Holder will make loans to the Borrower to start and complete an Eligible Project.

Loan Guarantee Agreement means a written agreement that, when entered into by DOE and a Borrower, an Eligible Lender or other Holder, pursuant to the Act, establishes the obligation of DOE to guarantee the payment of all or a portion of the principal and interest on specified Guaranteed Obligations of a Borrower to Eligible Lenders or other Holders subject to the terms and conditions specified in the Loan Guarantee Agreement.

New or Significantly Improved Technology means a technology concerned with the production, consumption or transportation of energy and that is not a Commercial Technology, and that has either:

(1) Only recently been developed, discovered or learned; or

(2) Involves or constitutes one or more meaningful and important improvements in productivity or value, in comparison to Commercial Technologies in use in the United States at the time the Term Sheet is issued.

OMB means the Office of Management and Budget in the Executive Office of the President.

Pre-Application means a written submission in response to a DOE solicitation that broadly describes the project proposal, including the proposed role of a DOE loan guarantee in the project, and the eligibility of the project to receive a loan guarantee under the applicable solicitation, the Act and this part.

Project Costs means those costs, including escalation and contingencies, that are to be expended or accrued by Borrower and are necessary, reasonable, customary and directly related to the design, engineering, financing, construction, startup, commissioning and shakedown of an Eligible Project, as specified in § 609.12 of this part. Project costs do not include costs for the items set forth in § 609.12(c) of this part.

Project Sponsor means any person, firm, corporation, company, partnership, association, society, trust, joint venture, joint stock company or other business entity that assumes substantial responsibility for the development, financing, and structuring of a project eligible for a loan guarantee and, if not the Applicant, owns or controls, by itself and/or through individuals in common or affiliated business entities, a five percent or greater interest in the proposed Eligible Project, or the Applicant.

Secretary means the Secretary of Energy or a duly authorized designee or successor in interest.

Term Sheet means an offering document issued by DOE that specifies the detailed terms and conditions under which DOE may enter into a Conditional Commitment with the Applicant. A Term Sheet imposes no obligation on the Secretary to enter into a Conditional Commitment.

United States means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa

or any territory or possession of the United States of America.

§ 609.3 Solicitations.

(a) DOE may issue solicitations to invite the submission of Pre-Applications or Applications for loan guarantees for Eligible Projects. DOE must issue a solicitation before proceeding with other steps in the loan guarantee process including issuance of a loan guarantee. A Project Sponsor or Applicant may only submit one Pre-Application or Application for one project using a particular technology. A Project Sponsor or Applicant, in other words, may not submit a Pre-Application or Application for multiple projects using the same technology.

(b) Each solicitation must include, at a minimum, the following information:

(1) The dollar amount of loan guarantee authority potentially being made available by DOE in that solicitation;

(2) The place and time for response submission;

(3) The name and address of the DOE representative whom a potential Project Sponsor may contact to receive further information and a copy of the solicitation;

(4) The form, format, and page limits applicable to the response submission;

(5) The amount of the application fee (First Fee), if any, that will be required;

(6) The programmatic, technical, financial and other factors the Secretary will use to evaluate response submissions, including the loan guarantee percentage requested by the Applicant and the relative weightings that DOE will use when evaluating those factors; and

(7) Such other information as DOE may deem appropriate.

§ 609.4 Submission of Pre-Applications.

In response to a solicitation requesting the submission of Pre-Applications, either Project Sponsors or Applicants may submit Pre-Applications to DOE. Pre-Applications must meet all requirements specified in the solicitation and this part. At a minimum, each Pre-Application must contain all of the following:

(a) A cover page signed by an individual with full authority to bind the Project Sponsor or Applicant that attests to the accuracy of the information in the Pre-Application, and that binds the Project Sponsor(s) or Applicant to the commitments made in the Pre-Application. In addition, the information requested in paragraphs (b) and (c) should be submitted in a volume one and the information requested in paragraphs (d) through (h) of this section should be submitted in a volume two, to expedite the DOE review process.

(b) An executive summary briefly encapsulating the key project features and attributes of the proposed project;

(c) A business plan which includes an overview of the proposed project, including:

(1) A description of the Project Sponsor, including all entities involved, and its experience in project investment, development, construction, operation and maintenance;

(2) A description of the new or significantly improved technology to be employed in the project, including:

(i) A report detailing its successes and failures during the pilot and demonstration phases;

(ii) The technology's commercial applications;

(iii) The significance of the technology to energy use or emission control;

(iv) How and why the technology is ''new'' or ''significantly improved'' compared to technology already in general use in the commercial marketplace in the United States;

(v) Why the technology to be employed in the project is not in ''general use;''

(vi) The owners or controllers of the intellectual property incorporated in and utilized by such technologies; and

(vii) The manufacturer(s) and licensee(s), if any, authorized to make the technology available in the United States, the potential for replication of commercial use of the technology in the United States, and whether and how the technology is or will be made available in the United States for further commercial use;

(3) The estimated amount, in reasonable detail, of the total Project Costs;

(4) The timeframe required for construction and commissioning of the project;

(5) A description of any primary off-take or other revenue-generating agreements that will provide the primary sources of revenues for the project, including repayment of the debt obligations for which a guarantee is sought.

(6) An overview of how the project complies with the eligibility requirements in section 1703 of the Act (42 U.S.C. 16513);

(7) An outline of the potential environmental impacts of the project and how these impacts will be mitigated;

(8) A description of the anticipated air pollution and/or anthropogenic greenhouse gas reduction benefits and how these benefits will be measured and validated; and

(9) A list of all of the requirements contained in this part and the solicitation and where in the Pre-Application these requirements are addressed;

(d) A financing plan overview describing:

(1) The amount of equity to be invested and the sources of such equity;

(2) The amount of the total debt obligations to be incurred and the funding sources of all such debt if available;

(3) The amount of the Guaranteed Obligation as a percentage of total project debt; and as a percentage of total project cost; and

(4) A financial model detailing the investments in and the cash flows generated and anticipated from the project over the project's expected life-cycle, including a complete explanation of the facts, assumptions, and methodologies in the financial model;

(e) An explanation of what estimated impact the loan guarantee will have on the interest rate, debt term, and overall financial structure of the project;

(f) Where the Federal Financing Bank is not the lender, a copy of a letter from an Eligible Lender or other Holder(s) expressing its commitment to provide, or interest in providing, the required debt financing necessary to construct and fully commission the project;

(g) A copy of the equity commitment letter(s) from each of the Project Sponsors and a description of the sources for such equity; and

(h) A commitment to pay the Application fee (First Fee), if invited to submit an Application.

§ 609.5 Evaluation of Pre-Applications.

(a) Where Pre-Applications are requested in a solicitation, DOE will conduct an initial review of the Pre-Application to determine whether:

(1) The proposal is for an Eligible Project;

(2) The submission contains the information required by § 609.4 of this part; and

(3) The submission meets all other requirements of the applicable solicitation.

(b) If a Pre-Application fails to meet the requirements of paragraph (a) of this section, DOE may deem it non-responsive and eliminate it from further review.

(c) If DOE deems a Pre-Application responsive, DOE will evaluate:

(1) The commercial viability of the proposed project;

(2) The technology to be employed in the project;

(3) The relevant experience of the principal(s); and

(4) The financial capability of the Project Sponsor (including personal and/or business credit information of the principal(s)).

(d) After the evaluation described in paragraph (c) of this section, DOE will determine if there is sufficient information in the Pre-Application to assess the technical and commercial viability of the proposed project and/or the financial capability of the Project Sponsor and to assess other aspects of the Pre-Application. DOE may ask for additional information from the Project Sponsor during the review process and may request one or more meetings with the Project Sponsor.

(e) After reviewing a Pre-Application and other information acquired under paragraph (c) of this section, DOE may provide a written response to the Project Sponsor or Applicant either inviting the Applicant to submit an Application for a loan guarantee and specifying the amount of the Application filing fee (First Fee) or advising the Project Sponsor that the project proposal will not receive further consideration. Neither the Pre-Application nor any written or other feedback that DOE may provide in response to the Pre-Application eliminates the requirement for an Application.

(f) No response by DOE to, or communication by DOE with, a Project Sponsor, or an Applicant submitting a Pre-Application or subsequent Application shall impose any obligation on DOE to enter into a Loan Guarantee Agreement.

§ 609.6 Submission of Applications.

(a) In response to a solicitation or written invitation to submit an Application, an Applicant submitting an Application must meet all requirements and provide all information specified in the solicitation and/or invitation and this part.

(b) An Application must include, at a minimum, the following information and materials:

(1) A completed Application form signed by an individual with full authority to bind the Applicant and the Project Sponsors;

(2) Payment of the Application filing fee (First Fee) for the Pre-Application, if any, and Application phase;

(3) A detailed description of all material amendments, modifications, and additions made to the information and documentation provided in the Pre-Application, if a Pre-Application was requested in the solicitation, including any changes in the proposed project's financing structure or other terms;

(4) A description of how and to what measurable extent the project avoids, reduces, or sequesters air pollutants and/or anthropogenic emissions of greenhouse gases, including how to measure and verify those benefits;

(5) A description of the nature and scope of the proposed project, including:

(i) Key milestones;

(ii) Location of the project;

(iii) Identification and commercial feasibility of the new or significantly improved technology(ies) to be employed in the project;

(iv) How the Applicant intends to employ such technology(ies) in the project; and

(v) How the Applicant intends to assure, to the extent possible, the further commercial availability of the technology(ies) in the United States;

(6) A detailed explanation of how the proposed project qualifies as an Eligible Project;

(7) A detailed estimate of the total Project Costs together with a description of the methodology and assumptions used;

(8) A detailed description of the engineering and design contractor(s), construction contractor(s), equipment supplier(s), and construction schedules for the project, including major activity and cost milestones as well as the performance guarantees, performance bonds, liquidated damages provisions, and equipment warranties to be provided;

(9) A detailed description of the operations and maintenance provider(s), the plant operating plan, estimated staffing requirements, parts inventory, major maintenance schedule, estimated annual downtime, and performance guarantees and related liquidated damage provisions, if any;

(10) A description of the management plan of operations to be employed in carrying out the project, and information concerning the management experience of each officer or key person associated with the project;

(11) A detailed description of the project decommissioning, deconstruction, and disposal plan, and the anticipated costs associated therewith;

(12) An analysis of the market for any product to be produced by the project, including relevant economics justifying the analysis, and copies of any contractual agreements for the sale of these products or assurance of the revenues to be generated from sale of these products;

(13) A detailed description of the overall financial plan for the proposed project, including all sources and uses of funding, equity and debt, and the liability of parties associated with the project over the term of the Loan Guarantee Agreement;

(14) A copy of all material agreements, whether entered into or proposed, relevant to the investment, design, engineering, financing, construction, startup commissioning, shakedown, operations and maintenance of the project;

(15) A copy of the financial closing checklist for the equity and debt to the extent available;

(16) Applicant's business plan on which the project is based and Applicant's financial model presenting project *pro forma* statements for the proposed term of the Guaranteed Obligations including income statements, balance sheets, and cash flows. All such information and data must include assumptions made in their preparation and the range of revenue, operating cost, and credit assumptions considered;

(17) Financial statements for the past three years, or less if the Applicant has been in operation less than three years, that have been audited by an independent certified public accountant, including all associated notes, as well as interim financial statements and notes for the current fiscal year, of Applicant and parties providing Applicant's financial backing, together with business and financial interests of controlling or commonly controlled organizations or persons, including parent, subsidiary and other affiliated corporations or partners of the Applicant;

(18) A copy of all legal opinions, and other material reports, analyses, and reviews related to the project;

(19) An independent engineering report prepared by an engineer with experience in the industry and familiarity with similar projects. The report should address: The project's siting and permitting, engineering and design, contractual requirements, environmental compliance, testing and commissioning and operations and maintenance;

(20) Credit history of the Applicant and, if appropriate, any party who owns or controls, by itself and/or through individuals in common or affiliated business entities, a five percent or greater interest in the project or the Applicant;

(21) A preliminary credit assessment for the project without a loan guarantee from a nationally recognized rating agency for projects where the estimated total Project Costs exceed $25 million. For projects where the total estimated Project Costs are $25 million or less and

where conditions justify, in the sole discretion of the Secretary, DOE may require such an assessment;

(22) A list showing the status of and estimated completion date of Applicant's required project-related applications or approvals for Federal, State, and local permits and authorizations to site, construct, and operate the project;

(23) A report containing an analysis of the potential environmental impacts of the project that will enable DOE to assess whether the project will comply with all applicable environmental requirements, and that will enable DOE to undertake and complete any necessary reviews under the National Environmental Policy Act of 1969;

(24) A listing and description of assets associated, or to be associated, with the project and any other asset that will serve as collateral for the Guaranteed Obligations, including appropriate data as to the value of the assets and the useful life of any physical assets. With respect to real property assets listed, an appraisal that is consistent with the ''Uniform Standards of Professional Appraisal Practice,'' promulgated by the Appraisal Standards Board of the Appraisal Foundation, and performed by licensed or certified appraisers, is required;

(25) An analysis demonstrating that, at the time of the Application, there is a reasonable prospect that Borrower will be able to repay the Guaranteed Obligations (including interest) according to their terms, and a complete description of the operational and financial assumptions and methodologies on which this demonstration is based;

(26) Written affirmation from an officer of the Eligible Lender or other Holder confirming that it is in good standing with DOE's and other Federal agencies' loan guarantee programs;

(27) A list of all of the requirements contained in this part and the solicitation and where in the Application these requirements are addressed;

(28) A statement from the Applicant that it believes that there is ''reasonable prospect'' that the Guaranteed Obligations will be fully paid from project revenue; and

(29) Any other information requested in the invitation to submit an Application or requests from DOE in order to clarify an Application;

(c) DOE will not consider any Application complete unless the Applicant has paid the First Fee and the Application is signed by the appropriate entity or entities with the authority to bind the Applicant to the commitments and representations made in the Application.

§ 609.7 Programmatic, Technical and Financial Evaluation of Applications.

(a) In reviewing completed Applications, and in prioritizing and selecting those to whom a Term Sheet should be offered, DOE will apply the criteria set forth in the Act, the applicable solicitation, and this part. Applications will be considered in a competitive process, i.e. each Application will be evaluated against other Applications responsive to the Solicitation. Greater weight will be given to applications that rely upon a smaller guarantee percentage, all else being equal. Concurrent with its review process, DOE will consult with the Secretary of the Treasury regarding the terms and conditions of the potential loan guarantee. Applications will be denied if:

(1) The project will be built or operated outside the United States;

(2) The project is not ready to be employed commercially in the United States, cannot yield a commercially viable product or service in the use proposed in the project, does not have the potential to be employed in other commercial projects in the United States, and is not or will not be available for further commercial use in the United States;

(3) The entity or person issuing the loan or other debt obligations subject to the loan guarantee is not an Eligible Lender or other Holder, as defined in § 609.11 of this part;

(4) The project is for demonstration, research, or development;

(5) The project does not avoid, reduce or sequester air pollutants or anthropogenic emissions of greenhouse gases; or

(6) The Applicant will not provide an equity contribution.

(b) In evaluating Applications, DOE will consider the following factors:

(1) To what measurable extent the project avoids, reduces, or sequesters air pollutants or anthropogenic emissions of greenhouses gases;

(2) To what extent the new or significantly improved technology to be employed in the project, as compared to Commercial Technology in general use in the United States, is ready to be employed commercially in the United States, can be replicated, yields a commercially viable project or service in the use proposed in the project, has potential to be employed in other commercial projects in the United States, and is or will be available for further commercial use in the United States;

(3) To what extent the new or significantly improved technology used in the project constitutes an important improvement in technology, as compared to Commercial Technology, used to avoid, reduce or sequester air pollutants or anthropogenic emissions of greenhouse gases, and the Applicant has a plan to advance or assist in the advancement of that technology into the commercial marketplace;

(4) The extent to which the requested amount of the loan guarantee, and requested amount of Guaranteed Obligations are reasonable relative to the nature and scope of the project;

(5) The total amount and nature of the Eligible Project Costs and the extent to which Project Costs are funded by Guaranteed Obligations;

(6) The likelihood that the project will be ready for full commercial operations in the time frame stated in the Application;

(7) The amount of equity commitment to the project by the Applicant and other principals involved in the project;

(8) Whether there is sufficient evidence that the Applicant will diligently pursue the project, including initiating and completing the project in a timely manner;

(9) Whether and to what extent the Applicant will rely upon other Federal and non-Federal governmental assistance such as grants, tax credits, or other loan guarantees to support the financing, construction, and operation of the project and how such assistance will impact the project;

(10) The feasibility of the project and likelihood that the project will produce sufficient revenues to service the project's debt obligations over the life of the loan guarantee and assure timely repayment of Guaranteed Obligations;

(11) The levels of safeguards provided to the Federal government in the event of default through collateral, warranties, and other assurance of repayment described in the Application, including the nature of any anticipated intercreditor arrangements;

(12) The Applicant's capacity and expertise to successfully operate the project, based on factors such as financial soundness, management organization, and the nature and extent of corporate and personal experience;

(13) The ability of the applicant to ensure that the project will comply with all applicable laws and regulations, including all applicable environmental statutes and regulations;

(14) The levels of market, regulatory, legal, financial, technological, and other risks associated with the project and their appropriateness for a loan guarantee provided by DOE;

(15) Whether the Application contains sufficient information, including a detailed description of the nature and scope of the project and the nature, scope, and risk coverage of the loan guarantee sought to enable DOE to perform a thorough assessment of the project; and

(16) Such other criteria that DOE deems relevant in evaluating the merits of an Application.

(c) During the Application review process DOE may raise issues or concerns that were not raised during the Pre-Application review process where a Pre-Application was requested in the applicable solicitation.

(d) If DOE determines that a project may be suitable for a loan guarantee, DOE will notify the Applicant and Eligible Lender or other Holder in writing and provide them with a Term Sheet. If DOE reviews an Application and decides not to proceed further with the issuance of a Term Sheet, DOE will inform the Applicant in writing of the reason(s) for denial.

§ 609.8 Term Sheets and Conditional Commitments.

(a) DOE, after review and evaluation of the Application, additional information requested and received by DOE, potentially including a preliminary credit rating or credit assessment, and information obtained as the result of meeting with the Applicant and the Eligible Lender or other Holder, may offer to an Applicant and the Eligible Lender or other Holder detailed terms and conditions that must be met, including terms and conditions that must be met by the Applicant and the Eligible Lender or other Holder.

(b) The terms and conditions required by DOE will be expressed in a written Term Sheet signed by a Contracting Officer and addressed to the Applicant and the Eligible Lender or other Holder, where appropriate. The Term Sheet will request that the Project Sponsor and the Eligible Lender or other Holder express agreement with the terms and conditions contained in the Term Sheet by signing the Term Sheet in the designated place. Each person signing the Term Sheet must be a duly authorized official or officer of the Applicant and Eligible Lender or other Holder. The Term Sheet will include an expiration date on which the terms offered will expire unless the Contracting Officer agrees in writing to extend the expiration date.

(c) The Applicant and/or the Eligible Lender or other Holder may respond to the Term Sheet offer in writing or may request discussions or meetings on the terms and conditions contained in the Term Sheet, including requests for clarifications or revisions. When DOE, the Applicant, and the Eligible Lender or other Holder agree on all of the final terms and conditions and all parties sign the Term Sheet, the Term Sheet becomes a Conditional Commitment. When and if all of the terms and conditions specified in the Conditional Commitment have been met, DOE and the Applicant may enter into a Loan Guarantee Agreement.

(d) DOE's obligations under each Conditional Commitment are conditional upon statutory authority having been provided in advance of the execution of the Loan Guarantee Agreement sufficient under FCRA and Title XVII for DOE to execute the Loan Guarantee Agreement, and either an appropriation has been made or a borrower has paid into the Treasury sufficient funds to cover the full Credit Subsidy Cost for the loan guarantee that is the subject of the Conditional Commitment.

(e) The Applicant is required to pay fees to DOE to cover the Administrative Cost of Issuing a Loan Guarantee for the period of the Term Sheet through the closing of the Loan Guarantee Agreement (Second Fee).

§ 609.9 Closing on the Loan Guarantee Agreement.

(a) Subsequent to entering into a Conditional Commitment with an Applicant, DOE, after consultation with the Applicant, will set a closing date for execution of Loan Guarantee Agreement.

(b) By the closing date, the Applicant and the Eligible Lender or other Holder must have satisfied all of the detailed terms and conditions contained in the Conditional Commitment and other related documents and all other contractual, statutory, and regulatory requirements. If the Applicant and the Eligible Lender or other Holder has not satisfied all such terms and conditions by the closing date, the Secretary may, in his/her sole discretion, set a new closing date or terminate the Conditional Commitment.

(c) In order to enter into a Loan Guarantee Agreement at closing:

(1) DOE must have received authority in an appropriations act for the loan guarantee; and

(2) All other applicable statutory, regulatory, or other requirements must be fulfilled.

(d) Prior to, or on, the closing date, DOE will ensure that:

(1) Pursuant to section 1702(b) of the Act, DOE has received payment of the Credit Subsidy Cost of the loan guarantee, as defined in § 609.2 of this part from *either* (but not from a combination) of the following:

(i) A Congressional appropriation of funds; or

(ii) A payment from the Borrower.

(2) Pursuant to section 1702(h) of the Act, DOE has received from the Borrower the First and Second Fees and, if applicable, the Third fee, or portions thereof, for the Administrative Cost of Issuing the Loan Guarantee, as specified in the Loan Guarantee Agreement;

(3) OMB has reviewed and approved DOE's calculation of the Credit Subsidy Cost of the loan guarantee;

(4) The Department of the Treasury has been consulted as to the terms and conditions of the Loan Guarantee Agreement;

(5) The Loan Guarantee Agreement and related documents contain all terms and conditions DOE deems reasonable and necessary to protect the interest of the United States; and

(6) All conditions precedent specified in the Conditional Commitment are either satisfied or waived by a Contracting Officer and all other applicable contractual, statutory, and regulatory requirements are satisfied.

(e) Not later than the period approved in writing by the Contracting Officer, which may not be less than 30 days prior to the closing date, the Applicant must provide in writing updated project financing information if the terms and conditions of the financing arrangements changed between execution of the Conditional Commitment and that date. The Conditional Commitment must be updated to reflect the revised terms and conditions.

(f) Where the total Project Costs for an Eligible Project are projected to exceed $25 million, the Applicant must provide a credit rating from a nationally recognized rating agency reflecting the revised Conditional Commitment for the project without a Federal guarantee. Where total Project Costs are projected to be $25 million or less than $25 million, the Secretary may, on a case-by-case basis, require a credit rating. If a rating is required, an updated rating must be provided to the Secretary not later than 30 days prior to closing.

(g) Changes in the terms and conditions of the financing arrangements will affect the Credit Subsidy Cost for the Loan Guarantee Agreement. DOE may postpone the expected closing date pursuant to any changes submitted under paragraph (e) and (f) of this section. In addition, DOE may choose to terminate the Conditional Commitment.

§ 609.10 Loan Guarantee Agreement.

(a) Only a Loan Guarantee Agreement executed by a duly authorized DOE Contracting Officer can contractually obligate DOE to guarantee loans or other debt obligations.

(b) DOE is not bound by oral representations made during the Pre-Application stage, if Pre-Applications were solicited, or Application stage, or during any negotiation process.

(c) Except if explicitly authorized by an Act of Congress, no funds obtained from the Federal Government, or from a loan or other instrument guaranteed by the Federal Government, may be used to pay for Credit Subsidy Costs, administrative fees, or other fees charged by or paid to DOE relating to the Title XVII program or any loan guarantee there under.

(d) Prior to the execution by DOE of a Loan Guarantee Agreement, DOE must ensure that the following requirements and conditions, which must be specified in the Loan Guarantee Agreement, are satisfied:

(1) The project qualifies as an Eligible Project under the Act and is not a research, development, or demonstration project or a project that employs Commercial Technologies in service in the United States;

(2) The project will be constructed and operated in the United States, the employment of the new or significantly improved technology in the project has the potential to be replicated in other commercial projects in the United States, and this technology is or is likely to be available in the United States for further commercial application;

(3) The face value of the debt guaranteed by DOE is limited to no more than 80 percent of total Project Costs.

(4)(i) Where DOE guarantees 100 percent of the Guaranteed Obligation, the loan shall be funded by the Federal Financing Bank;

(ii) Where DOE guarantees more than 90 percent of the Guaranteed Obligation, the guaranteed portion cannot be separated from or ''stripped'' from the non-guaranteed portion of the Guaranteed Obligation if the loan is participated, syndicated or otherwise resold in the secondary market;

(iii) Where DOE guarantees 90 percent or less of the Guaranteed Obligation, the guaranteed portion may be separated from or ''stripped'' from the non-guaranteed portion of the Guaranteed Obligation, if the loan is participated, syndicated or otherwise resold in the secondary debt market;

(5) The Borrower and other principals involved in the project have made or will make a significant equity investment in the project;

(6) The Borrower is obligated to make full repayment of the principal and interest on the Guaranteed Obligations and other project debt over a period of up to the lesser of 30 years or 90 percent of the projected useful life of the project's major physical assets, as calculated in accordance with generally accepted accounting principles and practices. The non-guaranteed portion of any Guaranteed Obligation must be repaid on a pro-rata basis, and may not be repaid on a shorter amortization schedule than the guaranteed portion;

(7) The loan guarantee does not finance, either directly or indirectly, tax-exempt debt obligations, consistent with the requirements of section 149(b) of the Internal Revenue Code;

(8) The amount of the loan guaranteed, when combined with other funds committed to the project, will be sufficient to carry out the project, including adequate contingency funds;

(9) There is a reasonable prospect of repayment by Borrower of the principal of and interest on the Guaranteed Obligations and other project debt;

(10) The Borrower has pledged project assets and other collateral or surety, including non project-related assets, determined by DOE to be necessary to secure the repayment of the Guaranteed Obligations;

(11) The Loan Guarantee Agreement and related documents include detailed terms and conditions necessary and appropriate to protect the interest of the United States in the case of default, including ensuring availability of all the intellectual property rights, technical data including software, and physical assets necessary for any person or entity, including DOE, to complete, operate, convey, and dispose of the defaulted project;

(12) The interest rate on any Guaranteed Obligation is determined by DOE, after consultation with the Treasury Department, to be reasonable, taking into account the range of interest rates prevailing in the private sector for similar obligations of comparable risk guaranteed by the Federal Government;

(13) Any Guaranteed Obligation is not subordinate to any loan or other debt obligation;

(14) There is satisfactory evidence that Borrower and Eligible Lenders or other Holders are willing, competent, and capable of performing the terms and conditions of the Guaranteed Obligations and other debt obligation and the Loan Guarantee Agreement, and will diligently pursue the project;

(15) The Borrower has made the initial (or total) payment of fees for the Administrative Cost of Issuing a Loan Guarantee for the construction and operational phases of the project (Third Fee), as specified in the Conditional Commitment;

(16) The Eligible Lender, other Holder or servicer has taken and is obligated to continue to take those actions necessary to perfect and maintain liens on assets which are pledged as collateral for the Guaranteed Obligation;

(17) If Borrower is to make payment in full for the Credit Subsidy Cost of the loan guarantee pursuant to section 1702(b)(2) of the Act, such payment must be received by DOE prior to, or at the time of, closing;

(18) DOE or its representatives have access to the project site at all reasonable times in order to monitor the performance of the project;

(19) DOE, the Eligible Lender, or other Holder and Borrower have reached an agreement as to the information that will be made available to DOE and the information that will be made publicly available;

(20) The prospective Borrower has filed applications for or obtained any required regulatory approvals for the project and is in compliance, or promptly will be in compliance, where appropriate, with all Federal, State, and local regulatory requirements;

(21) Borrower has no delinquent Federal debt, including tax liabilities, unless the delinquency has been resolved with the appropriate Federal agency in accordance with the standards of the Debt Collection Improvement Act of 1996;

(22) The Loan Guarantee Agreement and related agreements contain such other terms and conditions as DOE deems reasonable and necessary to protect the interests of the United States, including without limitation provisions for—

(i) Such collateral and other credit support for the Guaranteed Obligation,

(ii) Such lien sharing and (subject always to Section 1702(d)(3) of Title XVII) priorities among lenders, and

(iii) Such intercreditor arrangements as, in each case, DOE deems reasonable and necessary to protect the interests of the United States; and

(23)(i) The Lender is an Eligible Lender, as defined in § 609.2 of this part, and meets DOE's lender eligibility and performance requirement contained in §§ 609.11 (a) and (b) of this part; and

(ii) The servicer meets the servicing performance requirements of § 609.11(c) of this part.

(e) The Loan Guarantee Agreement must provide that, in the event of a default by the Borrower:

(1) Interest accrues on the Guaranteed Obligations at the rate stated in the Loan Guarantee Agreement or Loan Agreement, until DOE makes full payment of the defaulted Guaranteed Obligations and, except when debt is funded through the Federal Financing Bank, DOE is not required to pay any premium, default penalties, or prepayment penalties;

(2) Upon payment of the Guaranteed Obligations by DOE, DOE is subrogated to the rights of the Holders of the debt, including all related liens, security, and collateral rights.

(3) The Eligible Lender or other servicer acting on DOE's behalf is obligated to take those actions necessary to perfect and maintain liens on assets which are pledged as collateral for the Guaranteed Obligations.

(4) The holder of pledged collateral is obligated to take such actions as DOE may reasonably require to provide for the care, preservation, protection, and maintenance of such collateral so as to enable the United States to achieve maximum recovery upon default by Borrower on the Guaranteed Obligations.

(f) The Loan Guarantee Agreement must contain audit provisions which provide, in substance, as follows:

(1) The Eligible Lender or other Holder or other party servicing the Guaranteed Obligations, as applicable, and the Borrower, must keep such records concerning the project as are necessary to facilitate an effective and accurate audit and performance evaluation of the project as required in § 609.17 of this part.

(2) DOE and the Comptroller General, or their duly authorized representatives, must have access, for the purpose of audit and examination, to any pertinent books, documents, papers, and records of the Borrower, Eligible Lender or other Holder, or other party servicing the Guaranteed Obligations, as applicable. Examination of records may be made during the regular business hours of the Borrower, Eligible Lender or other Holder, or other party servicing the Guaranteed Obligations, or at any other time mutually convenient as required in § 609.17 of this part.

(g)(1) An Eligible Lender or other Holder may sell, assign or transfer a Guaranteed Obligation to another Eligible Lender that meets the requirements of § 609.11 of this part. Such Eligible Lender to which a Guaranteed Obligation is assigned or transferred, is required to fulfill all servicing, monitoring, and reporting requirements contained in the Loan Guarantee Agreement and these regulations if the transferring Eligible Lender was forming these functions and transfer such functions to the new Eligible Lender. Any assignment or transfer, however, of the servicing, monitoring, and reporting functions must be approved by DOE in writing in advance of such assignment.

(2) The Secretary, or the Secretary's designee or contractual agent, for the purpose of identifying Holders with the right to receive payment under the guarantees shall include in the Loan Guarantee Agreement or related documents a procedure for tracking and identifying Holders of Guarantee Obligations. These duties usually will be performed by the servicer. Any contractual agent approved by the Secretary to perform this function cannot transfer or assign this responsibility without the prior written consent of the Secretary.

§ 609.11 Lender Eligibility and Servicing Requirements.

(a) An Eligible Lender shall meet the following requirements:

(1) Not be debarred or suspended from participation in a Federal Government contract (under 48 CFR subpart 9.4) or participation in a non-procurement activity (under a set of uniform regulations implemented for numerous agencies, such as DOE, at 2 CFR part 180);

(2) Not be delinquent on any Federal debt or loan;

(3) Be legally authorized to enter into loan guarantee transactions authorized by the Act and these regulations and is in good standing with DOE and other Federal agency loan guarantee programs;

(4) Be able to demonstrate, or has access to, experience in originating and servicing loans for commercial projects similar in size and scope to the project under consideration; and

(5) Be able to demonstrate experience or capability as the lead lender or underwriter by presenting evidence of its participation in large commercial projects or energy-related projects or other relevant experience; or

(6) Be the Federal Financing Bank.

(b) When performing its duties to review and evaluate a proposed Eligible Project prior to the submission of a Pre-Application or Application, as appropriate, by the Project Sponsor through the execution of a Loan Guarantee Agreement, the Eligible Lender or DOE if loans are funded by the Federal Financing Bank, shall exercise the level of care and diligence that a reasonable and prudent lender would exercise when reviewing, evaluating and disbursing a loan made by it without a Federal guarantee.

(c) The servicing duties shall be performed by the Eligible Lender, DOE or other servicer if approved by the Secretary. When performing the servicing duties the Eligible Lender, DOE or other servicer shall exercise the level of care and diligence that a reasonable and prudent lender would exercise when servicing a loan made without a Federal guarantee, including:

(1) During the construction period, enforcing all of the conditions precedent to all loan disbursements, as provided in the Loan Guarantee Agreement, Loan Agreement and related documents;

(2) During the operational phase, monitoring and servicing the Debt Obligations and collection of the outstanding principal and accrued interest as well as ensuring that the collateral package securing the Guaranteed Obligations remains uncompromised; and

(3) As specified by DOE, providing annual or more frequent financial and other reports on the status and condition of the Guaranteed Obligations and the Eligible Project, and promptly notifying DOE if it becomes aware of any problems or irregularities concerning the Eligible Project or the ability of the Borrower to make payment on the Guaranteed Obligations or other debt obligations.

(c) With regard to partial guarantees, even though DOE may in part rely on the Eligible Lender or other servicer to service and monitor the Guaranteed Obligation, DOE will also conduct its own independent monitoring and review of the Eligible Project.

§ 609.12 Project Costs.

(a) Before entering into a Loan Guarantee Agreement, DOE shall determine the estimated Project Costs for the project that is the subject of the agreement. To assist the Department in making that determination, the Applicant must estimate, calculate and record all such costs incurred in the design, engineering, financing, construction, startup, commissioning and shakedown of the project in accordance with generally accepted accounting principles and practices. Among other things, the Applicant must calculate the sum of necessary, reasonable and customary costs that it has paid and expects to pay, which are directly related to the project, including costs for escalation and contingencies, to estimate the total Project Costs.

(b) Project Costs include:

(1) Costs of acquisition, lease, or rental of real property, including engineering fees, surveys, title insurance, recording fees, and legal fees incurred in connection with land

acquisition, lease or rental, site improvements, site restoration, access roads, and fencing;

(2) Costs of engineering, architectural, legal and bond fees, and insurance paid in connection with construction of the facility; and materials, labor, services, travel and transportation for facility design, construction, startup, commissioning and shakedown;

(3) Costs of equipment purchases;

(4) Costs to provide equipment, facilities, and services related to safety and environmental protection;

(5) Financial and legal services costs, including other professional services and fees necessary to obtain required licenses and permits and to prepare environmental reports and data;

(6) The cost of issuing project debt, such as fees, transaction and legal costs and other normal charges imposed by Eligible Lenders and other Holders;

(7) Costs of necessary and appropriate insurance and bonds of all types;

(8) Costs of design, engineering, startup, commissioning and shakedown;

(9) Costs of obtaining licenses to intellectual property necessary to design, construct, and operate the project;

(10) A reasonable contingency reserve for cost overruns during construction; and

(11) Capitalized interest necessary to meet market requirements, reasonably required reserve funds and other carrying costs during construction; and

(12) Other necessary and reasonable costs.

(c) Project Costs do not include:

(1) Fees and commissions charged to Borrower, including finder's fees, for obtaining Federal or other funds;

(2) Parent corporation or other affiliated entity's general and administrative expenses, and non-project related parent corporation or affiliated entity assessments, including organizational expenses;

(3) Goodwill, franchise, trade, or brand name costs;

(4) Dividends and profit sharing to stockholders, employees, and officers;

(5) Research, development, and demonstration costs of readying the innovative energy or environmental technology for employment in a commercial project;

(6) Costs that are excessive or are not directly required to carry out the project, as determined by DOE, including but not limited to the cost of hedging instruments;

(7) Expenses incurred after startup, commissioning, and shakedown before the facility has been placed in service;

(8) Borrower-paid Credit Subsidy Costs and Administrative Costs of Issuing a Loan Guarantee; and

(9) Operating costs.

§ 609.13 Principal and Interest Assistance Contract.

With respect to the guaranteed portion of any Guaranteed Obligation, and subject to the availability of appropriations, DOE may enter into a contract to pay Holders, for and on behalf of Borrower, from funds appropriated for that purpose, the principal and interest charges that become due and payable on the unpaid balance of the guaranteed portion of the Guaranteed Obligation, if DOE finds that:

(a) The Borrower:

(1) Is unable to make the payments and is not in default; and

(2) Will, and is financially able to, continue to make the scheduled payments on the remaining portion of the principal and interest due under the non-guaranteed portion of the debt obligation, if any, and other debt obligations of the project, or an agreement, approved by DOE, has otherwise been reached in order to avoid a payment default on non-guaranteed debt.

(b) It is in the public interest to permit Borrower to continue to pursue the purposes of the project;

(c) In paying the principal and interest, the Federal Government expects a probable net benefit to the Government will be greater than that which would result in the event of a default;

(d) The payment authorized is no greater than the amount of principal and interest that Borrower is obligated to pay under the terms of the Loan Guarantee Agreement; and

(e) Borrower agrees to reimburse DOE for the payment (including interest) on terms and conditions that are satisfactory to DOE and executes all written contracts required by DOE for such purpose.

§ 609.14 Full Faith and Credit and Incontestability.

The full faith and credit of the United States is pledged to the payment of all Guaranteed Obligations issued in accordance with this part with respect to principal and interest. Such guarantee shall be conclusive evidence that it has been properly obtained; that the underlying loan qualified for such guarantee; and that, but for fraud or material misrepresentation by the Holder, such guarantee will be presumed to be valid, legal, and enforceable.

§ 609.15 Default, Demand, Payment, and Collateral Liquidation.

(a) In the event that the Borrower has defaulted in the making of required payments of principal or interest on any portion of a Guaranteed Obligation, and such default has not been cured within the period of grace provided in the Loan Guarantee Agreement and/or the Loan Agreement, the Eligible Lender or other Holder, or nominee or trustee empowered to act for the Eligible Lender or other Holder (referred to in this section collectively as ''Holder''), may make written demand upon the Secretary for payment pursuant to the provisions of the Loan Guarantee Agreement.

(b) In the event that the Borrower is in default as a result of a breach of one or more of the terms and conditions of the Loan Guarantee Agreement, note, mortgage, Loan Agreement, or other contractual obligations related to the transaction, other than the Borrower's obligation to pay principal or interest on the Guaranteed Obligation, as provided in paragraph (a) of this section, the Holder will not be entitled to make demand for payment pursuant to the Loan Guarantee Agreement, unless the Secretary agrees in writing that such default has materially affected the rights of the parties, and finds that the Holder should be entitled to receive payment pursuant to the Loan Guarantee Agreement.

(c) In the event that the Borrower has defaulted as described in paragraph (a) of this section and such default is not cured during the grace period provided in the Loan Guarantee Agreement, the Secretary shall notify the U.S. Attorney General and, subject to and in addition to the terms of any applicable Intercreditor Agreement, may cause the principal amount of all Guaranteed Obligations, together with accrued interest thereon, and all amounts owed to the United States by Borrower pursuant to the Loan Guarantee Agreement, to become immediately due and payable by giving the Borrower written notice to such effect (without the need for consent or other action on the part of the Holders of the Guaranteed Obligations). In the event the Borrower is in default as described in paragraph (b) of this section, where the Secretary determines in writing that such a default has materially affected the rights of the parties, the Borrower shall be given the period of grace provided in the Loan Guarantee Agreement to cure such default. If the default is not cured during the period of grace, the Secretary may, subject to and in addition to the terms of any applicable Intercreditor Agreement,

cause the principal amount of all Guaranteed Obligations, together with accrued interest thereon, and all amounts owed to the United States by Borrower pursuant to the Loan Guarantee Agreement, to become immediately due and payable by giving the Borrower written notice to such effect (without any need for consent or other action on the part of the Holders of the Guaranteed Obligations).

(d) No provision of this regulation shall be construed to preclude forbearance by any Holder with the consent of the Secretary for the benefit of the Borrower.

(e) Upon the making of demand for payment as provided in paragraph (a) or (b) of this section, the Holder shall provide, in conjunction with such demand or immediately thereafter, at the request of the Secretary, the supporting documentation specified in the Loan Guarantee Agreement and any other supporting documentation as may reasonably be required to justify such demand.

(f) Payment as required by the Loan Guarantee Agreement of the Guaranteed Obligation shall be made 60 days after receipt by the Secretary of written demand for payment, provided that the demand complies with the terms of the Loan Guarantee Agreement. The Loan Guarantee Agreement shall provide that interest shall accrue to the Holder at the rate stated in the Loan Guarantee Agreement until the Guaranteed Obligation has been fully paid by the Federal government.

(g) The Loan Guarantee Agreement shall provide that, upon payment of the Guaranteed Obligations, the Secretary shall be subrogated to the rights of the Holders. The Holder shall transfer and assign to the Secretary all rights held by the Holder of the Guaranteed Obligation. Such assignment shall include all related liens, security, and collateral rights to the extent held by the Holder.

(h) Where the Loan Guarantee Agreement or any applicable Intercreditor Agreement so provides, the Eligible Lender or other Holder, or other agent or servicer, as appropriate, and the Secretary may jointly agree to a work-out strategy, and/or a plan of liquidation of the assets pledged to secure the Guaranteed Obligation and other applicable debt.

(i) Where payment of the Guaranteed Obligation has been made and the Eligible Lender or other Holder or other agent or servicer has not undertaken a plan of liquidation (or at any such earlier time as may be permitted by applicable agreements), the Secretary, acting through the U.S. Attorney General, in accordance with the rights received through subrogation or other applicable agreements, subject to any applicable Intercreditor Agreement, may seek to foreclose on the collateral assets and/or take such other legal action as necessary for the protection of the Government.

(j) If the Secretary (or an agent acting for the benefit of the Secretary) is awarded title to collateral assets pursuant to a foreclosure proceeding, the Secretary may take action to complete, maintain, operate, or lease such assets, or otherwise dispose of any such assets or take any other necessary action which the Secretary deems appropriate (and consistent with any applicable Intercreditor Agreement), in order that the original goals and objectives of the project will, to the extent possible, be realized.

(k) In addition to foreclosure and sale of collateral pursuant thereto, the U.S. Attorney General shall take appropriate action in accordance with rights contained in the Loan Guarantee Agreement and any applicable Intercreditor Agreement to recover costs incurred by the Government as a result of the defaulted loan or other defaulted obligation. Any recovery so received by the U.S. Attorney General on behalf of the Government shall be applied in the following manner: First to the expenses incurred by the U.S. Attorney General, DOE and any agent acting for the benefit of DOE in effecting such recovery; second, to reimbursement of any amounts paid by DOE as a result of the defaulted obligation; third, to any amounts owed to DOE under related principal and interest assistance contracts; and fourth, to any other lawful claims held by the Government on such process. Any sums remaining after full payment of the foregoing shall be available for the benefit of other parties lawfully entitled to claim them.

(l) If there was a partial guarantee by DOE of the Guaranteed Obligation or if any other creditors are secured by a lien on collateral pledged to secure the Guaranteed Obligation, the proceeds received by the collateral agent or other responsible party as a result of any liquidation or sale of, collection from or other realization on any such collateral may, if so agreed in advance, be applied as follows (with any money distributed to the Federal Government to be further distributed according to § 609.15 (k)):

(1) First, to the payment of reasonable and customary fees and expenses incurred in the liquidation or sale, collection or other realization (including without limitation any fees and expenses that the Attorney General of the United States is lawfully entitled to claim in connection with such action);

(2) Second, distributed among the Holders of the Guaranteed Debt (including DOE, as subrogee) and the other creditors entitled to share in such proceeds on no greater than a pro rata share basis; and

(3) As otherwise provided in the applicable agreement or agreements.

(m) No action taken by the Eligible Lender or other Holder or other agent or servicer in respect of any pledged assets will affect the rights of any party, including the Secretary, having an interest in the loan or other debt obligations, to pursue, jointly or severally, to the extent provided in the Loan Guarantee Agreement or other applicable agreement, legal action against the Borrower or other liable parties, for any deficiencies owing on the balance of the Guaranteed Obligations or other debt obligations after application of the proceeds received upon liquidation.

(n) In the event that the Secretary considers it necessary or desirable to protect or further the interest of the United States in connection with the liquidation or sale of, collection from or other realization on the collateral or recovery of deficiencies due under the loan, the Secretary will take such action as may be appropriate under the circumstances.

(o) Nothing in this part precludes the Secretary from purchasing any Holder's or other person's interest in the project upon liquidation or sale of, collection from or other realization on the collateral.

§ 609.16 Perfection of Liens and Preservation of Collateral.

(a) The Loan Guarantee Agreement and other documents related thereto shall provide that:

(1) The Eligible Lender, or DOE in conjunction with the Federal Financing Bank where the loan is funded by the Federal Financing Bank, or other Holder or other agent or servicer will take those actions necessary to perfect and maintain liens, as applicable, on assets which are pledged as collateral for the Guaranteed Obligation; and

(2) Upon default by the Borrower, the holder of pledged collateral shall take such actions as the Secretary (subject to any applicable Intercreditor Agreement) may reasonably require to provide for the care, preservation, protection, and maintenance of such collateral so as to enable the United States to achieve maximum recovery from the pledged assets. The Secretary shall reimburse the holder of collateral for reasonable and appropriate expenses incurred in taking

actions required by the Secretary (unless otherwise provided in applicable agreements). Except as provided in § 609.15, no party may waive or relinquish, without the consent of the Secretary, any collateral securing the Guaranteed Obligation to which the United States would be subrogated upon payment under the Loan Guarantee Agreement.

(b) In the event of a default, the Secretary may enter into such contracts as the Secretary determines are required to preserve the collateral. The cost of such contracts may be charged to the Borrower.

§ 609.17 Audit and Access to Records.

(a) The Loan Guarantee Agreement and related documents shall provide that:

(1) The Eligible Lender, or DOE in conjunction with the Federal Financing Bank where loans are funded by the Federal Financing Bank or other Holder or other party servicing the Guaranteed Obligations, as applicable, and the Borrower, shall keep such records concerning the project as is necessary, including the Pre-Application, Application, Term Sheet, Conditional Commitment, Loan Guarantee Agreement, Credit Agreement, mortgage, note, disbursement requests and supporting documentation, financial statements, audit reports of independent accounting firms, lists of all project assets and non-project assets pledged as security for the Guaranteed Obligations, all off-take and other revenue producing agreements, documentation for all project indebtedness, income tax returns, technology agreements, documentation for all permits and regulatory approvals and all other documents and records relating to the Eligible Project, as determined by the Secretary, to facilitate an effective audit and performance evaluation of the project; and

(2) The Secretary and the Comptroller General, or their duly authorized representatives, shall have access, for the purpose of audit and examination, to any pertinent books, documents, papers and records of the Borrower, Eligible Lender or DOE or other Holder or other party servicing the Guaranteed Obligation, as applicable. Such inspection may be made during regular office hours of the Borrower, Eligible Lender or DOE or other Holder, or other party servicing the Eligible Project and the Guaranteed Obligations, as applicable, or at any other time mutually convenient.

(b) The Secretary may from time to time audit any or all items of costs included as Project Costs in statements or certificates submitted to the Secretary or the servicer or otherwise, and may exclude or reduce the amount of any item which the Secretary determines to be unnecessary or excessive, or otherwise not to be an item of Project Costs. The Borrower will make available to the Secretary all books and records and other data available to the Borrower in order to permit the Secretary to carry out such audits. The Borrower should represent that it has within its rights access to all financial and operational records and data relating to Project Costs, and agrees that it will, upon request by the Secretary, exercise such rights in order to make such financial and operational records and data available to the Secretary. In exercising its rights hereunder, the Secretary may utilize employees of other Federal agencies, independent accountants, or other persons.

§ 609.18 Deviations.

To the extent that such requirements are not specified by the Act or other applicable statutes, DOE may authorize deviations on an individual request basis from the requirements of this part upon a finding that such deviation is essential to program objectives and the special circumstances stated in the request make such deviation clearly in the best interest of the Government. DOE will consult with OMB and the Secretary of the Treasury before DOE grants any deviation that would constitute a substantial change in the financial terms of the Loan Guarantee Agreement and related documents. Any deviation, however, that was not captured in the Credit Subsidy Cost will require either additional fees or discretionary appropriations. A recommendation for any deviation shall be submitted in writing to DOE. Such recommendation must include a supporting statement, which indicates briefly the nature of the deviation requested and the reasons in support thereof.

[FR Doc. E9–18810 Filed 8–6–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0317; Directorate Identifier 79–ANE–18]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–7, –7A, –7B, –9, –9A, –11, –15, and –17 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for Pratt & Whitney JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, and –17 turbofan engines with 2nd stage fan blades, part number (P/N) 433802, 645902, 759902, 695932, 678102, or 746402 installed. That AD currently requires initial and repetitive ultrasonic inspection (UI) and fluorescent penetrant inspection (FPI) of those P/N 2nd stage fan blades. This proposed AD would replace the required FPI with eddy current inspection (ECI) on all affected 2nd stage fan blades and would maintain the requirement of ultrasonic inspection (UI) of the blade root attachment on some of the affected 2nd stage fan blades. This proposed AD would also introduce an optional terminating action to the repetitive blade inspections for certain engine models. This proposed AD results from reports of 10 fractures of 2nd stage fan blades since AD 87–14–01R1 became effective. We are proposing this AD to prevent uncontained failure of 2nd stage fan blades, which could result in damage to the airplane.

DATES: We must receive any comments on this proposed AD by October 6, 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.

FOR FURTHER INFORMATION CONTACT: Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: kevin.dickert@faa.gov*; telephone (781) 238–7117, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2009–0317; Directorate Identifier 79–ANE–18'' 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

The FAA proposes to amend 14 CFR part 39 by superseding AD 87–14–01 R1, Amendment 39–6359 (54 FR 43954, October 30, 1989). That AD requires initial and repetitive UI and FPI of P/N 433802, 645902, 759902, 695932, 678102, and 746402 2nd stage fan blades. That AD was the result of reports of on-going fractures of 2nd stage fan blades since 1980. That condition, if not corrected, could result in uncontained failure of 2nd stage fan blades, which could result in damage to the airplane.

Actions Since AD 87–14–01 R1 Was Issued

Since AD 87–14–01 R1 was issued, Pratt & Whitney has developed and published an ECI procedure for inspecting the 2nd stage fan blade pin-root holes. We have reviewed this procedure and determined that mandating this ECI procedure will result in an increased level of safety for the affected engines.

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. For that reason, we are proposing this AD, which would require, for 2nd stage fan blades P/Ns 678102 and 746402, an ECI of the blade pin-root holes for cracks, and for 2nd stage fan blades P/Ns 433802, 645902, 759902, and 695932, an ECI of the blade pin-root holes and UI the blade root attachment for cracks. This proposed AD would also eliminate the JT8D–1, –1A, and –1B engines from the applicability, because those engine models have either been converted to other affected engine models included in the proposed AD or retired from service.

Costs of Compliance

We estimate that this proposed AD would affect 1,380 engines installed on airplanes of U.S. registry. We also estimate that it would take about 25 work-hours per engine to perform one inspection cycle, and that the average labor rate is $80 per work-hour. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $2,760,000.

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. 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, 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 removing Amendment 39–6359 (54 FR 43954, October 30, 1989) and by adding a new airworthiness directive to read as follows:

Pratt & Whitney: Docket No. FAA–2009–0317; Directorate Identifier 79–ANE–18.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this

airworthiness directive (AD) action by October 6, 2009.

Affected ADs

(b) This AD supersedes AD 87–14–01 R1, Amendment 39–6359.

Applicability

(c) This AD applies to Pratt & Whitney JT8D–7, –7A, –7B, –9, –9A, –11, –15, and –17 turbofan engines, with 2nd stage fan blades, part number (P/N) 433802, 645902, 759902, 695932, 678102, or 746402, installed. These engines are installed on, but not limited to, Boeing 727, 737, and McDonnell Douglas DC–9 series airplanes.

Unsafe Condition

(d) This AD results from reports of 10 fractures of 2nd stage fan blades since AD 87–14–01R1 became effective. We are issuing this AD to prevent uncontained failure of 2nd stage fan blades, which could result in 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.

2nd Stage Fan Blade Inspections

(f) For 2nd stage fan blades, P/N 678102 and P/N 746402, perform an eddy current inspection (ECI) of the blade pin-root holes for cracks, and for 2nd stage fan blades, P/Ns 433802, 645902, 759902, and 695932, perform an ECI of the blade pin-root holes and perform an ultrasonic inspection (UI) of the blade root attachment for cracks, as follows:

(1) Perform an inspection at the first disassembly of the 2nd stage fan rotor from the low-pressure (LP) compressor after accumulation of 3,000 cycles-in-service (CIS) since the last inspection of the blade root attachment, not to exceed 10,000 CIS since last inspection.

(2) If the 2nd stage fan blades were new at their last installation onto the 2nd stage fan disk, inspect at the first disassembly of the 2nd stage fan rotor from the LP compressor after accumulating 3,000 cycles-since-new (CSN), not to exceed 10,000 CSN.

(3) Thereafter, inspect the 2nd stage fan blades at each disassembly of the 2nd stage fan rotor from the LP compressor after accumulating 3,000 CIS, not to exceed 10,000 CIS since the last inspection.

(4) Guidance on performing ECIs and UIs of the 2nd stage fan blade pin-root holes and blade root attachments can be found in Pratt & Whitney Maintenance Advisory Notice MAN–JT8D–1–08.

(5) Remove from service before further flight any 2nd stage fan blades that are found cracked.

Optional Terminating Action

(g) For JT8D–9, –9A, –11, –15, and –17 engines, as optional terminating action to the repetitive inspections required by this AD, replace the affected 2nd stage fan blades with redesigned 2nd stage fan blades using Pratt & Whitney Service Bulletin No. 5866, Revision 2, dated October 20, 1998.

Alternative Methods of Compliance

(h) The Manager, Engine Certification Office, FAA, 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

(i) Contact Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *kevin.dickert@faa.gov*; telephone (781) 238–7117, fax (781) 238–7199, for more information about this AD.

(j) Contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503, for a copy of the service information referenced in this AD.

Issued in Burlington, Massachusetts, on August 3, 2009.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E9–18941 Filed 8–6–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0277]

RIN 1625–AA00

Safety Zone; San Clemente Island, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a safety zone around San Clemente Island in support of potentially hazardous military training and testing exercises. The existing zones do not sufficiently overlap potential danger zones and testing areas used by the Navy during live-fire and ocean research operations resulting in a delay or cancellation of these operations. The proposed safety zone would protect the public from hazardous, live-fire and testing operations and ensure operations proceed as scheduled.

DATES: Comments and related material must be received by the Coast Guard on or before November 5, 2009. Requests for public meetings must be received by the Coast Guard on or before August 28, 2009.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0277 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. *See* the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

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

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0277), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand deliver, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can

contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2009–0277'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert USCG–2009–0277 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

The Coast Guard is proposing to establish this safety zone to conduct training essential to successful accomplishment of U.S. Navy missions relating to military operations and national security. Accordingly, this proposed safety zone falls within the military function exception to the Administrative Procedure Act (APA), 5 U.S.C. 553(a)(1). Notice and comment rulemaking under 5 U.S.C. 553(b) and an effective date of 30 days after publication under 5 U.S.C. 553(d) are not required for this rulemaking.

However, we have determined that it would be beneficial to accept public comments on this proposed rule. Therefore, we will be accepting comments until November 5, 2009. By issuing this notice of proposed rulemaking and accepting public comments, the Coast Guard does not waive its ability to claim the military function exception to notice and comment rulemaking.

Background and Purpose

As part of the Southern California Range Complex, San Clemente Island (SCI) and the surrounding littoral waters support the training requirements for the U.S. Pacific Fleet, Fleet Marine Forces Pacific, Naval Special Warfare Command, Naval Expeditionary Combat Command and other military training and research units. In 1934, Executive Order 6897 transferred ownership of SCI from the Department of Commerce to the Department of the Navy for ''naval purposes''. The San Clemente Island Range Complex (SCIRC) has the capability to support training in all warfare areas including Undersea Warfare, Surface Warfare, Mine Warfare, Strike Warfare, Air Warfare, Amphibious Warfare, Command and Control, and Naval Special Warfare. It is the only location in the United States that supports Naval Special Warfare full-mission training profiles. The Shore Bombardment Area (SHOBA) is the only range in the United States where expeditionary fire support exercises utilizing ship to shore naval gunfire can be conducted. SCI's unique coastal topography, proximity to the major Fleet and Marine concentration areas in San Diego County, supporting infrastructure, and exclusive Navy ownership make the island and surrounding waters vitally important for fleet training, weapon and electronic systems testing, and research and development activities.

The proposed safety zone is necessary to protect the public from hazardous, live-fire and testing operations and ensure operations proceed as scheduled.

Discussion of Proposed Rule

The Coast Guard proposes to establish a permanent safety zone around San Clemente Island for use by the U.S. Navy. The segmented safety zone would extend from the high tide line seaward 3 NM. The zone would be broken down into the following sections:

(a) Section A

Beginning at 33°02.05′ N, 118°35.85′ W; thence to 33°04.93′ N, 118°37.07′ W; thence running parallel to the shore at a distance of approximately 3 NM from the high tide line to 33°02.82′ N, 118°30.65′ W; thence to 33°17.28′ N, 118°33.88′ W; thence along the shoreline returning to 33°02.05′ N, 118°35.85′ W.

(b) Section B

Beginning at 32°57.30′ N, 118°30.88′ W; thence to 32°59.60′ N, 118°28.33′ W; thence running parallel to the shore at a distance of approximately 3 NM from the high tide line to 32°55.83′ N, 118°24.22′ W; thence to 32°53.53′ N, 118°26.52′ W; thence along the shoreline returning to 32°57.30′ N, 118°30.88′ W.

(c) Section C

Beginning at 32°53.53′ N, 118°26.52′ W; thence to 32°55.83′ N, 118°24.22′ W; thence running parallel to the shoreline at a distance of approximately 3 NM from the high tide line to 32°47.27′ N, 118°18.23′ W; thence to 32°49.10′ N, 118°21.05′ W; thence along the shoreline returning to 32°53.53′ N, 118°26.52′ W.

(d) Section D

Beginning at 32°49.10′ N, 118°21.05′ W; thence to 32°47.27′ N, 118°18.23′ W; thence running parallel to the shoreline at a distance of approximately 3 NM from the high tide line to 32°48.38′ N, 118°31.69′ W; thence to 32°50.70′ N, 118°29.37′ W; thence along the shoreline returning to 32°49.10′ N, 118°21.05′ W.

(e) Section E

Beginning at 32°50.70′ N, 118°29.37′ W; thence to 32°48.05′ N, 118°31.68′ W; thence running parallel to the shoreline at a distance of approximately 3 NM from the high tide line to 32°53.62′ N, 118°35.93′ W; thence to 32°56.13′ N, 118°32.95′ W; thence along the shoreline returning to 32°50.70′ N, 118°29.37′ W.

(f) Section F

Beginning at 32°56.13′ N, 118°32.95′ W; thence to 32°53.62′ N, 118°35.93′ W; thence running parallel to the shoreline at a distance of approximately 3 NM

from the high tide line to 32°59.95′ N, 118°39.77′ W; thence to 33°01.08′ N, 118°36.33′ W; thence along the shoreline returning to 32°56.13′ N, 118°32.95′ W.

(g) Section G

Beginning at 33°01.08′ N, 118°36.333′ W; thence to 32°59.95′ N, 118°39.77′ W; thence running parallel to the shoreline at a distance of approximately 3 NM from the high tide line to 33°04.93′ N, 118°37.07′ W; thence to 33°02.05′ N, 118°35.85′ W; thence along the shoreline returning to 33°01.08′ N, 118°36.33′ W.

(h) Wilson Cove

Beginning at 33°01.28′ N, 118°33.88′ W; thence to 33°02.82′ N, 118°30.65′ W; thence running parallel to the shoreline at a distance of approximately 3 NM from the high tide line to 32°59.60′ N, 118°28.33′ W; thence to 32°57.30′ N, 118°30.88′ W; thence along the shoreline returning to 33°01.28′ N, 118°33.88′ W.

All of the sections above would be continually enforced as a safety zone, thereby restricting public use of these offshore waters. Mariners desiring to transit through Section G or the Wilson Cove section would be required to request authorization to do so from the Fleet Area Control and Surveillance Facility (FACSFAC) San Diego. In the final rule, the Navy will provide a call sign to be used by mariners to request transfer to the appropriate FACSFAC point of contact for authorizing safe transit through these safety zone sections.

Mariners who wish to transit through any of the other six sections (A, B, C, D, E, and/or F) would also be required to request permission from FACSFAC San Diego, using the same procedure described above, except during periods when the Navy is not conducting potentially hazardous military training or testing activity. Mariners would be able to transit some or all of these sections without obtaining prior authorization from FACSFAC San Diego only when the Coast Guard notifies the public that enforcement of the zone in specified sections is temporarily suspended. Notice of suspended enforcement would be provided through broadcast notice to mariners and publication in the local notice to mariners; and the schedule of restricted access periods by date, location and duration would continue to be posted at *http://www.scisland.org*.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the fact that the majority of the proposed safety zone will be open a significant portion of the time.

Small Entities

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

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

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Pacific Ocean around San Clemente Island.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. Except for Section G and Wilson Cove, which will be continually enforced, the safety zone would be activated, and thus subject to enforcement, only during naval training and testing exercises. During periods when portions of the safety zone are enforced in sections A through F, vessel traffic could pass safely around the safety zone. When the safety zone is not enforced, vessel traffic would be allowed to use the offshore waters for commercial and recreational activities. Permission for safe vessel transit through the permanently restricted safety zones designated Section G and Wilson Cove may be requested of the Fleet Area Control and Surveillance Facility, San Diego.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its possible effects, if any, on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Kristen Beer (*see* **ADDRESSES**). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not 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 proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing a safety zone under figure 2–1, paragraph (34)(g), of the Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add a new § 165.1141:

§ 165.1141 Safety Zone; San Clemente Island, CA.

(a) *Location.* The following area is a safety zone: All waters of the Pacific Ocean surrounding San Clemente Island, from surface to bottom, extending from the high tide line on the island seaward 3 NM. The zone consists of the following sections (see Figure 1):

(1) Section A

Beginning at 33°02.05′ N, 118°35.85′ W; thence to 33°04.93′ N, 118°37.07′ W; thence running parallel to the shore at a distance of approximately 3 NM from the high tide line to 33°02.82′ N, 118°30.65′ W; thence to 33°17.28′ N, 118°33.88′ W; thence along the shoreline returning to 33°02.05′ N, 118°35.85′ W.

(2) Section B

Beginning at 32°57.30′ N, 118°30.88′ W; thence to 32°59.60′ N, 118°28.33′ W; thence running parallel to the shore at a distance of approximately 3 NM from the high tide line to 32°55.83′ N, 118°24.22′ W; thence to 32°53.53′ N, 118°26.52′ W; thence along the shoreline returning to 32°57.30′ N, 118°30.88′ W.

(3) Section C

Beginning at 32°53.53′ N, 118°26.52′ W; thence to 32°55.83′ N, 118°24.22′ W; thence running parallel to the shoreline at a distance of approximately 3 NM from the high tide line to 32°47.27′ N, 118°18.23′ W; thence to 32°49.10′ N, 118°21.05′ W; thence along the shoreline returning to 32°53.53′ N, 118°26.52′ W.

(4) Section D

Beginning at 32°49.10′ N, 118°21.05′ W; thence to 32°47.27′ N, 118°18.23′ W; thence running parallel to the shoreline at a distance of approximately 3 NM from the high tide line to 32°48.38′ N, 118°31.69′ W; thence to 32°50.70′ N, 118°29.37′ W; thence along the shoreline returning to 32°49.10′ N, 118°21.05′ W.

(5) Section E

Beginning at 32°50.70′ N, 118°29.37′ W; thence to 32°48.05′ N, 118°31.68′ W; thence running parallel to the shoreline at a distance of approximately 3 NM from the high tide line to 32°53.62′ N, 118°35.93′ W; thence to 32°56.13′ N, 118°32.95′ W; thence along the shoreline returning to 32°50.70′ N, 118°29.37′ W.

(6) Section F

Beginning at 32°56.13′ N, 118°32.95′ W; thence to 32°53.62′ N, 118°35.93′ W; thence running parallel to the shoreline at a distance of approximately 3 NM from the high tide line to 32°59.95′ N, 118°39.77′ W; thence to 33°01.08′ N, 118°36.33′ W; thence along the shoreline returning to 32°56.13′ N, 118°32.95′ W.

(7) Section G

Beginning at 33°01.08′ N, 118°36.333′ W; thence to 32°59.95′ N, 118°39.77′ W; thence running parallel to the shoreline at a distance of approximately 3 NM from the high tide line to 33°04.93′ N,

118°37.07′ W; thence to 33°02.05′ N, 118°35.85′ W; thence along the shoreline returning to 33°01.08′ N, 118°36.33′ W.

(8) Wilson Cove

Beginning at 33°01.28′ N, 118°33.88′ W; thence to 33°02.82′ N, 118°30.65′ W; thence running parallel to the shoreline at a distance of approximately 3 NM from the high tide line to 32°59.60′ N, 118°28.33′ W; thence to 32°57.30′ N, 118°30.88′ W; thence along the shoreline returning to 33°01.28′ N, 118°33.88′ W.

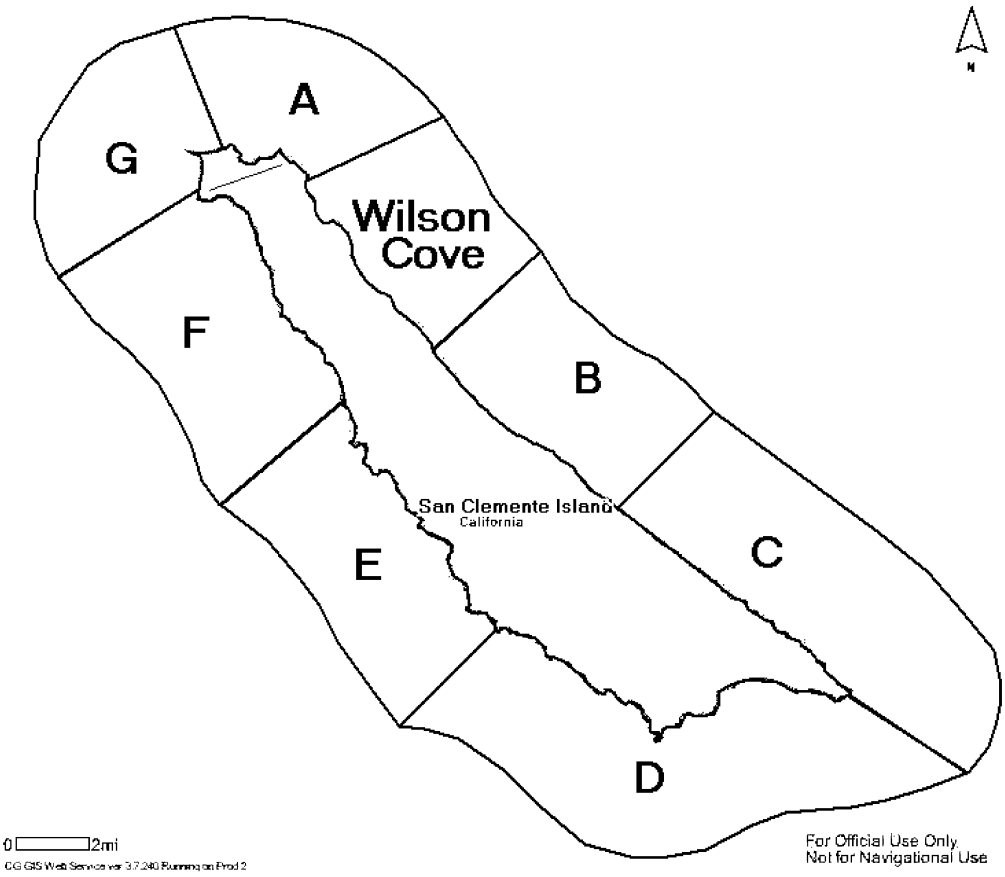

Figure 1. San Clemente Island Safety Zone Configuration

(b) *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.

(c) *Enforcement.* (1) This regulation will be enforced at all times in Section G and the Wilson Cove section of the safety zone described in paragraph (a). Mariners must obtain permission in accordance with the procedure described in paragraph (d)(2) before entering either of those sections.

(2) This regulation will be enforced in Sections A through F of the safety zone described in paragraph (a) except when the Coast Guard notifies the public that enforcement of the zone in specified sections is temporarily suspended. Mariners need not obtain permission in accordance with the procedure described in paragraph (d)(2) to enter a zone section in which enforcement is temporarily suspended. At all other times, mariners must obtain permission in accordance with the procedure described in paragraph (d)(2) before entering any of those sections.

(3) The COTP will provide notice of suspended enforcement by means appropriate to effect the widest publicity, including broadcast notice to mariners, publication in the local notice to mariners, and posting the schedule of restricted access periods by date, location and duration at *http://www.scisland.org.*

(d) *Regulations.* (1) The general regulations governing safety zones found in 33 CFR 165.23 apply to the safety zone described in paragraph (a) of this section.

(2) Mariners requesting permission to transit through any section of the zone may request authorization to do so from the Fleet Area Control and Surveillance Facility (FACSFAC) San Diego by either calling (619) 545–4742 or establishing a VHF bridge-to-bridge radio connection on Channel 16. Immediately upon completing transit, the vessel operator must promptly notify FACSFAC of safe passage through the safety zone. Failure to expeditiously notify FACSFAC of passage through the safety zone will result in a determination by the Navy that the vessel is still in the safety zone, thereby restricting the use of the area for naval operations. If the Navy determines that facilitating safe transit through the zone negatively impacts range operations, the Navy will cease this practice and enforce the safety zone without exception.

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

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

(5) The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone described in paragraph (a) of this section by the U.S. Navy and local law enforcement agencies.

Dated: June 15, 2009.

T.H. Farris,

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

[FR Doc. E9–18760 Filed 8–6–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AN14

Deceased Indebted Servicemembers and Veterans: Authority Concerning Certain Indebtedness

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend Department of Veterans Affairs (VA) regulations to implement certain provisions of the Combat Veterans Debt Elimination Act of 2008 and of the Veterans' Benefits Improvement Act of 2008. The proposed rule would implement the first statute's provisions granting limited authority to the Secretary of Veterans Affairs (Secretary) to terminate collection action on certain debts arising from a VA benefit program when the indebted individual is a member of the Armed Forces or a veteran who dies as a result of injury incurred or aggravated in the line of duty while serving in a theater of combat operations in a war or in combat against a hostile force during a period of hostilities after September 11, 2001, and to refund amounts collected after the individual's death. The proposed rule would also implement the second statute's provisions that similarly grants the Secretary discretionary authority to suspend or terminate collection of debts owed to VA by individuals who died while serving on active duty as a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard during a period when the Coast Guard is operating as a service in the Navy, and to refund amounts collected after the individual's death.

DATES: Comments must be received on or before October 6, 2009.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov*; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AN14 Deceased Indebted Servicemembers and Veterans.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Peter Mulhern, Office of Financial Policy (047G), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. *Telephone:* (202) 461–6487 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Prior to the enactment of section 1303 of the Combat Veterans Debt Elimination Act of 2008 (Pub. L. 110–252) and section 801 of the Veterans' Benefits Improvement Act of 2008 (Pub. L. 110–389), VA could terminate collection of an indebtedness owed by a deceased servicemember or veteran only after determining that the servicemember or veteran left no estate or an insufficient estate from which to collect the debt. VA would contact the decedent's family or next-of-kin regarding collection of the debt to obtain information needed to make a decision on terminating collection. No matter how compassionate the language of the demand for repayment, VA's attempt to collect a debt at such time and under such circumstances has a huge emotional impact on the decedent's family. The Government's attempt to collect such a debt in these cases is often viewed as a callous action, which demonstrates a complete disregard and lack of gratitude for the servicemember's sacrifice, and insensitivity to the family's loss of their loved one.

Section 1303 of Public Law 110–252 amends chapter 53 of title 38, United States Code, to add a new section (38 U.S.C. 5302A) granting limited authority to the Secretary to terminate collection action on certain debts arising from an individual's indebtedness from a VA benefit program. The individual must be a member of the Armed Forces or a veteran who dies as a result of injury incurred or aggravated in the line of duty while serving in a theater of combat operations, as determined by the Secretary in consultation with the Secretary of Defense, in a war or in combat against a hostile force during a period of hostilities after September 11, 2001. This authority may be exercised in the Secretary's discretion when determined to be in the best interest of the United States. This authority does not apply to any amounts owed the United States under any program carried out under the authority of 38 U.S.C. chapter 37 relating to housing and small business loans. This legislation eliminates the need to contact family members and avoids further hardship on them. Instead, it demonstrates appreciation for the decedent's sacrifice on behalf of a grateful Nation.

Section 1303 of Public Law 110–252 also states that in any case where all or any part of a debt of a covered individual, as described in 38 U.S.C. 5302A(a), was collected after September 11, 2001, but before the date of Public Law 110–252, enacted on June 30, 2008, the Secretary may refund the amount collected if, in the Secretary's determination, collection of the indebtedness would have been terminated had section 5302A been in effect at the time and the individual is equitably entitled to such a refund.

Noting the problems associated with contacting grieving survivors for purposes of collecting the debts owed to VA described above, *see* S. Rep. No. 110–449, at 43–44 (2008) (discussing the predecessor bill), Congress enacted section 801 of Public Law 110–389, which amended 31 U.S.C. 3711(f) and granted limited authority to the Secretary to suspend or terminate action to collect a claim against the estate of a person who died while serving on active duty as a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard during a period when the Coast Guard is operating as a service in the Navy. The Secretary must determine that, under circumstances applicable with respect to the deceased person, it is appropriate to do so. Section 801 of Public Law 110–389 also grants the Secretary the authority to refund to the estate of the deceased member any amount collected by the Secretary from a member who died while serving on active duty as a member of the Armed Forces if the Secretary determines that, under the circumstances applicable with respect to the deceased person, it is appropriate to do so, whether

collected before, on, or after October 10, 2008.

In preparing this proposed rule, we determined that the refund of any monies would be made to the estate of the decedent or, if there is no estate, to the decedent's next-of-kin. Public Law 110–252 does not specify how the refunded monies are to be distributed. Public Law 110–389 only describes a refund to the estate of the decedent. However, in many instances the servicemember or veteran may not have left an estate or, if he or she did leave an estate, it has been closed by the time a refund may be distributed. Without a rule to fill this gap left by Congress, there is a strong possibility that the family of a deceased servicemember or veteran may suffer further by having, for example, to reopen a closed estate to accommodate Congress' instruction to pay refunds to decedents' estates. Therefore, to implement the legislation consistent with our interpretation of its purpose, it is necessary to address the distribution of a refund when an estate does not exist.

We note that the refunds are for the express purpose of providing relief to the families of certain indebted servicemembers or veterans. *See* S. Rep. No. 110–449, at 43–44. Further, VA's authority under title 38, United States Code, is generally limited to providing benefits for veterans and their survivors. Accordingly, we interpret Congress' intent to be that VA should, in appropriate cases, refund previously collected funds to the decedent's estate or, if there is no estate, to the decedent's surviving family members in the order that VA would pay accrued benefits to survivors under 38 U.S.C. 5121(a)(2). Although refunds under this proposed rule would not be accrued benefits for purposes of section 5121, they would be VA funds owed to deceased individuals and paid to surviving family members in lieu of the decedent. Accordingly, section 5121(a)(2) is sufficiently analogous to be useful for implementing our interpretation of Congress' intent with respect to the refunds. We propose to refund previous debt collections to the decedent's estate or, absent an estate, to the decedent's next-of-kin in the following order: The decedent's spouse, the decedent's children (in equal shares), or the decedent's parents (in equal shares). We are specifically interested in comments concerning our proposed distribution of refunds in the absence of an estate.

In drafting this proposed rule, we have attempted to incorporate the provisions of both Public Laws 110–252 and 110–389 into a single, consistent rule. One obstacle is the fact that the termination and refund provisions of Public Law 110–252 apply to a servicemember or a veteran who dies as a result of injury incurred or aggravated in the line of duty after September 11, 2001. Public Law 110–389 applies to a person who died while serving on active duty and states only that money collected before, on, or after the date of enactment of that law may be refunded. In S. Rep. No. 110–449, at 44, the Senate Committee on Veterans' Affairs noted that the predecessor bill, S. 3023, includes a freestanding provision that would permit VA to provide an equitable refund to any estate from which it collected a debt that it would have otherwise waived had the provision been in effect at the time. The report goes on to state that VA would have discretion to determine in which cases, if any, the use of the discretionary authority would be appropriate. Based upon our interpretation of the authority granted by Congress, we propose to limit refunds to the estate or next-of-kin of servicemembers or veterans who served on active duty after September 11, 2001. This would ensure consistency in the refund of money under the proposed rule.

We also propose to add a new section, 38 CFR 1.945, in order to implement 38 U.S.C. 5302A and 31 U.S.C. 3711(f). The new section would provide that the authority exercised by the Secretary to suspend or terminate collection action and/or refund amounts previously collected on certain indebtedness will not be delegated. It would provide that requests for suspension, termination of collection action and/or for refund of amounts previously collected would be submitted by certain VA officials to the Office of the Secretary through the VA Office of the General Counsel.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action'' requiring review by the Office of Management and Budget (OMB) as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined and it has been determined not to be a significant regulatory action under the Executive Order.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Only individual survivors and estates of certain VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This proposed rule would have no such effect on State, local, or tribal governments, or the private sector.

Catalog of Federal Domestic Assistance

There is no Catalog of Federal Domestic Assistance program number applicable to this proposed rule.

List of Subjects in 38 CFR Part 1

Claims, Administrative practice and procedure, Veterans.

Approved: June 29, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans

Affairs proposes to amend 38 CFR part 1 as follows:

PART 1—GENERAL PROVISIONS

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

Authority: 38 U.S.C. 501(a), and as noted in specific sections.

2. The authority citation preceding § 1.900 is revised to read as follows:

Authority: Sections 1.900 through 1.953 are issued under the authority of 31 U.S.C. 3711 through 3720E; 38 U.S.C. 501, 5302, 5302A, 5314 and as noted in specific sections.

3. Amend § 1.940 by adding introductory text, to read as follows:

§ 1.940 Scope and application.

Except as otherwise provided in § 1.945:

* * * * *

4. Add § 1.945 to read as follows:

§ 1.945 Authority to suspend or terminate collection action on certain benefit indebtedness; authority for refunds.

(a) The Secretary of Veterans Affairs (Secretary) may suspend or terminate collection action on all or any part of an indebtedness owed to VA by a member of the Armed Forces who dies while on active duty, if the Secretary determines that such suspension or termination of collection is appropriate and in the best interest of the United States.

(b) The Secretary may terminate collection action on all or any part of an amount owed to the United States for an indebtedness resulting from an individual's participation in a benefits program administered by the Secretary, other than a program as described in paragraph (h) of this section, if the Secretary determines that such termination of collection is in the best interest of the United States. For purposes of this paragraph, an *individual* is any member of the Armed Forces or veteran who dies as a result of an injury incurred or aggravated in the line of duty while serving in a theater of combat operations in a war or in combat against a hostile force during a period of hostilities after September 11, 2001.

(c) For purposes of this section:

(1) *Theater of combat operations* means the geographic area of operations where the Secretary in consultation with the Secretary of Defense determines that combat occurred.

(2) *Period of hostilities* means an armed conflict in which members of the United States Armed Forces are subjected to danger comparable to danger to which members of the Armed Forces have been subjected in combat with enemy armed forces during a period of war, as determined by the Secretary in consultation with the Secretary of Defense.

(d) The Secretary may refund amounts collected after the death of a member of the Armed Forces or veteran in accordance with this paragraph and paragraph (e) of this section.

(1) In any case where all or any part of a debt of a member of the Armed Forces, as described under paragraph (a) of this section, was collected, the Secretary may refund the amount collected if, in the Secretary's determination, the indebtedness would have been suspended or terminated under authority of 31 U.S.C. 3711(f). The member of the Armed Services must have been serving on active duty after September 11, 2001. In any case where all or any part of a debt of a covered member of the Armed Forces was collected, the Secretary may refund the amount collected, but only if the Secretary determines that, under the circumstances applicable with respect to the deceased member of the Armed Forces, it is appropriate to do so.

(2) In any case where all or any part of a debt of a covered member of the Armed Forces or veteran, as described under paragraph (b) of this section, was collected after September 11, 2001, the Secretary may refund the amount collected if, in the Secretary's determination, the indebtedness would have been terminated under authority of 38 U.S.C. 5302A. In addition, the Secretary may refund the amount only if he or she determines that the deceased individual is equitably entitled to the refund.

(e) Refunds under paragraph (d) of this section will be made to the estate of the decedent or, in its absence, to the decedent's next-of-kin first listed below.

(1) The decedent's spouse.

(2) The decedent's children (in equal shares).

(3) The decedent's parents (in equal shares).

(f) The authority exercised by the Secretary to suspend or terminate collection action and/or refund amounts collected on certain indebtedness is reserved to the Secretary and will not be delegated.

(g) Requests for a determination to suspend or terminate collection action and/or refund amounts previously collected as described in this section will be submitted to the Office of the Secretary through the Office of the General Counsel. Such requests for suspension or termination and/or refund may be initiated by the head of the VA administration having responsibility for the program that gave rise to the indebtedness, or any concerned staff office, or by the Chairman of the Board of Veterans Appeals. When a recommendation for refund under this section is initiated by the head of a staff office, or by the Chairman, Board of Veterans Appeals, the views of the head of the administration that administers the program that gave rise to the indebtedness will be obtained and transmitted with the recommendation of the initiating office.

(h) The provisions of this section concerning suspension or termination of collection actions and the refunding of moneys previously collected do not apply to any amounts owed the United States under any program carried out under 38 U.S.C. chapter 37.

(Authority: 38 U.S.C. 501, 5302A; 31 U.S.C. 3711(f))

[FR Doc. E9–18939 Filed 8–6–09; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AM70

Grants to States for Construction or Acquisition of State Home Facilities—Update of Authorized Beds; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule; Correction.

SUMMARY: The Department of Veterans Affairs (VA) published a proposed rule in the **Federal Register** July 10, 2009, to amend its regulations regarding grants to States for construction or acquisition of State homes to update the maximum number of nursing home and domiciliary beds designated for each State and to amend the definition of ''State'' for purposes of these grants to include Guam, the Northern Mariana Islands, and American Samoa. In the preamble, the table showing the changes in the maximum number of beds for each State contained an error for the number of beds for Vermont. This document corrects that error.

DATES: Comments must be received on or before September 8, 2009.

ADDRESSES: Written comments may be submitted by: Mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or e-mail at *http://www.regulations.gov*. For further information concerning submission

addresses, please see the proposed rule published at 74 FR 33193, July 10, 2009.

FOR FURTHER INFORMATION CONTACT: James F. Burris, MD, Chief Consultant, Geriatrics and Extended Care State Home Construction Grant Program (114), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–6774 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: VA published a document in the **Federal Register** on July 10, 2009, at 74 FR 33192, amending its regulations regarding grants to States for construction or acquisition of State homes to update the maximum number of nursing home and domiciliary beds designated for each State, and to amend the definition of ''State.'' This document corrects an error in the preamble of the proposed rule in the maximum number of beds for the State of Vermont. However, in the regulatory text section of the proposed rule contains the correct number of 142 beds as shown in the table.

In FR Doc. E9–16341, published July 10, 2009, (74 FR 33192), make the following correction: On page 33194, in the third column of the table ''New max # of beds (based on 2020 projection)'' in the entry for Vermont, remove the number ''1312'' and add, in its place, ''142''.

William F. Russo,

Director, Regulations Management.

[FR Doc. E9–18683 Filed 8–6–09; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 96

[EPA–R04–OAR–2009–0454; FRL–8942–3]

Approval and Promulgation of Air Quality Implementation Plans; North Carolina; Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina through the North Carolina Department of Environment and Natural Resources on June 20, 2008. This revision addresses the requirements of EPA's Clean Air Interstate Rule (CAIR). Although the DC Circuit Court found CAIR to be flawed, the rule was remanded without vacatur and thus remains in place. Thus, EPA is continuing to approve CAIR provisions into SIPs as appropriate. CAIR, as promulgated, requires States to reduce emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X) that significantly contribute to, or interfere with maintenance of, the national ambient air quality standards (NAAQS) for fine particulates and/or ozone in any downwind state. CAIR establishes budgets for SO_2 and NO_X for States that contribute significantly to nonattainment in downwind States and requires the significantly contributing States to submit SIP revisions that implement these budgets. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participation in EPA-administered cap-and-trade programs addressing SO_2, NO_X annual, and NO_X ozone season emissions. In the full SIP revision that EPA is proposing to approve, North Carolina will meet CAIR requirements by participating in these cap-and-trade programs. EPA is proposing to approve the full SIP revision, as interpreted and clarified herein, as fully implementing the CAIR requirements for North Carolina. Consequently, this action will also cause the CAIR Federal Implementation Plans (CAIR FIPs) concerning SO_2, NO_X annual, and NO_X ozone season emissions by North Carolina sources to be automatically withdrawn.

DATES: Comments must be received on or before September 8, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2009–0454, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov*.
3. *Fax:* 404–562–9019.
4. *Mail:* EPA–R04–OAR–2009–0454, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2009–0454. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional

Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Steven Scofield, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9034. Mr. Scofield can also be reached via electronic mail at *scofield.steve@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. What Action Is EPA Proposing to Take?

EPA is proposing to approve, the full SIP revision, submitted by North Carolina on June 20, 2008, as interpreted and clarified herein [1] as meeting the applicable CAIR requirements by requiring certain electric generating units (EGUs) to participate in the EPA-administered CAIR cap-and-trade programs addressing SO_2, NO_X annual, and NO_X ozone season emissions. As a consequence of the SIP approval, the CAIR FIPs concerning SO_2, NO_X annual, and NO_X ozone season emissions for North Carolina are automatically withdrawn. If this proposal is finalized, the automatic withdrawal will be reflected in the rule text that will accompany the final rulemaking notice, and will delete and reserve the provisions in Part 52 that establish the CAIR FIPs for North Carolina sources.

II. What Is the Regulatory History of the CAIR and the CAIR FIPs?

EPA published CAIR on May 12, 2005 (70 FR 25162). In this rule, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the NAAQS for fine particles ($PM_{2.5}$) and/or 8-hour ozone in downwind States in the eastern part of the country. As a result, EPA required those upwind States to revise their SIPs to include control measures that reduce emissions of SO_2, which is a precursor to $PM_{2.5}$ formation, and/or NO_X, which is a precursor to both ozone and $PM_{2.5}$ formation. For jurisdictions that contribute significantly to downwind $PM_{2.5}$ nonattainment, CAIR sets annual State-wide emission reduction requirements (*i.e.*, budgets) for SO_2 and annual State-wide emission reduction requirements for NO_X. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets State-wide emission reduction requirements or budgets for NO_X for the ozone season (May 1 to September 30). Under CAIR, States may implement these reduction requirements by participating in the EPA-administered cap-and-trade programs or by adopting any other control measures.

CAIR explains to subject States what must be included in SIPs to address the requirements of section 110(a)(2)(D) of the Clean Air Act (CAA) with regard to interstate transport with respect to the 8-hour ozone and $PM_{2.5}$ NAAQS. EPA made national findings, effective on May 25, 2005, that the States had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were due in July 2000, 3 years after the promulgation of the 8-hour ozone and $PM_{2.5}$ NAAQS. These findings started a 2-year clock for EPA to promulgate a FIP to address the requirements of section 110(a)(2)(D). Under CAA section 110(c)(1), EPA may issue a FIP anytime after such findings are made and must do so within two years unless a SIP revision correcting the deficiency is approved by EPA before the FIP is promulgated.

On April 28, 2006, EPA promulgated FIPs for all States covered by CAIR in order to ensure the emissions reductions required by CAIR are achieved on schedule. The CAIR FIPs require EGUs to participate in the EPA-administered CAIR SO_2, NO_X annual, and NO_X ozone season trading programs, as appropriate. The CAIR FIP SO_2, NO_X annual, and NO_X ozone season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the FIP and SIP trading programs means that these trading programs will work together to effectively create a single trading program for each regulated pollutant (SO_2, NO_X annual, and NO_X ozone season) in all States covered by the CAIR FIP or SIP trading program for that pollutant. Further, as provided in a rule published by EPA on November 2, 2007, a State's CAIR FIP is automatically withdrawn when EPA approves a SIP revision, in its entirely and without any conditions, as fully meeting the requirements of CAIR. Where only portions of the SIP revision are approved, the corresponding portions of the FIP are automatically withdrawn and the remaining portions of the FIP stay in place. Finally, the CAIR FIPs also allow States to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement certain CAIR FIP provisions (e.g., the methodology for allocating NO_X allowances to sources in the State), while the CAIR FIP remains in place for all other provisions.

On April 28, 2006, EPA published two additional CAIR-related final rules that added the States of Delaware and New Jersey to the list of States subject to CAIR for $PM_{2.5}$ and announced EPA's final decisions on reconsideration of five issues, without making any substantive changes to the CAIR requirements. On October 19, 2007, EPA amended CAIR and the CAIR FIPs to clarify the definition of ''cogeneration unit'' and thus the applicability of the CAIR trading program to cogeneration units.

EPA was sued by a number of parties on various aspects of CAIR, and on July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety. *North Carolina* v. *EPA*, 531 F.3d 836 (DC Cir. Jul. 11, 2008). However, in response to EPA's petition for rehearing, the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. *North Carolina* v. *EPA*, 550 F.3d 1176 (DC Cir. Dec. 23, 2008). The Court thereby left CAIR in place in order to ''temporarily preserve the environmental values covered by CAIR'' until EPA replaces it with a rule consistent with the Court's opinion. *Id.* at 1178. The Court directed EPA to ''remedy CAIR's flaws'' consistent with its July 11, 2008 opinion, but declined to impose a schedule on EPA for

[1] On May 11, 2009, North Carolina submitted a letter of clarification related to this SIP revision. This letter clarifies the reference to ''NO_X ozone season trading program'' in 15A North Carolina Administrative Code (NCAC) 02D.2401(b)(3)(4) was intended to refer to the CAIR NO_X ozone season trading program. North Carolina also clarified the reference to ''oil'' in 15A NCAC 02D.2401(b)(3)(B) to mean fuel oil as that term is used in 40 CFR 96.4(b)(1)(i). Further, North Carolina acknowledged that the reference to 40 CFR 96.4(b)(1)(iii) in 15 A NCAC 02D .2401(b)(3)(C) is not a restriction on hours of operation but rather provides how a unit's potential NO_X mass emissions shall be calculated.

completing that action. *Id.* Therefore, CAIR and the CAIR FIP are currently in effect in North Carolina.

III. What are the General Requirements of CAIR and the CAIR FIPs?

CAIR establishes State-wide emission budgets for SO_2 and NO_X and is to be implemented in two phases. The first phase of NO_X reductions starts in 2009 and continues through 2014, while the first phase of SO_2 reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO_X and SO_2 starts in 2015 and continues thereafter. CAIR requires States to implement the budgets by either: (1) Requiring EGUs to participate in the EPA-administered cap-and-trade programs; or (2) adopting other control measures of the State's choosing and demonstrating that such control measures will result in compliance with the applicable State SO_2 and NO_X budgets.

The May 12, 2005 and April 28, 2006 CAIR rules provide model rules that States must adopt (with certain limited changes, if desired) if they want to participate in the EPA-administered trading programs. With two exceptions, only States that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for States that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for States that include all non-EGUs from their NO_X SIP Call trading programs in their CAIR NO_X ozone season trading programs.

IV. What are the Types of CAIR SIP Submittals?

States have the flexibility to choose the type of control measures they will use to meet the requirements of CAIR. EPA anticipates that most States will choose to meet the CAIR requirements by selecting an option that requires EGUs to participate in the EPA-administered CAIR cap-and-trade programs. For such States, EPA has provided two approaches for submitting and obtaining approval for CAIR SIP revisions. States may submit full SIP revisions that adopt the model CAIR cap-and-trade rules. If approved, these SIP revisions will fully replace the CAIR FIPs. Alternatively, States may submit abbreviated SIP revisions. These SIP revisions will not replace the CAIR FIPs; however, the CAIR FIPs provide that, when approved, the provisions in these abbreviated SIP revisions will be used instead of or in conjunction with, as appropriate, the corresponding provisions of the CAIR FIPs (*e.g.*, the NO_X allowance allocation methodology).

A State submitting a full SIP revision may either adopt regulations that are substantively identical to the model rules or incorporate by reference the model rules. CAIR provides that States may only make limited changes to the model rules if the States want to participate in the EPA-administered trading programs. A full SIP revision may change the model rules only by altering their applicability and allowance allocation provisions to:

1. Include all NO_X SIP Call trading sources that are not EGUs under CAIR in the CAIR NO_X ozone season trading program;

2. Provide for State allocation of NO_X annual or ozone season allowances using a methodology chosen by the State;

3. Provide for State allocation of NO_X annual allowances from the compliance supplement pool (CSP) using the State's choice of allowed, alternative methodologies; or

4. Allow units that are not otherwise CAIR units to opt individually into the CAIR SO_2, NO_X annual, or NO_X ozone season trading programs under the opt-in provisions in the model rules.

An approved CAIR full SIP revision addressing EGUs' SO_2, NO_X annual, or NO_X ozone season emissions will replace the CAIR FIP for that State for the respective EGU emissions. As discussed above, EPA approval in full, without any conditions, of a CAIR full SIP revision causes the CAIR FIPs to be automatically withdrawn.

V. Analysis of North Carolina's CAIR SIP Submittal

A. State Budgets for Allowance Allocations

The CAIR NO_X annual and ozone season budgets were developed from historical heat input data for EGUs. Using these data, EPA calculated annual and ozone season regional heat input values, which were multiplied by 0.15 pounds per million British thermal unit (lb/mmBtu) for phase 1, and 0.125 lb/mmBtu, for phase 2, to obtain regional NO_X budgets for 2009–2014 and for 2015 and thereafter, respectively. EPA derived the State NO_X annual and ozone season budgets from the regional budgets using State heat input data adjusted by fuel factors.

The CAIR State SO_2 budgets were derived by discounting the tonnage of emissions authorized by annual allowance allocations under the Acid Rain Program under title IV of the CAA. Under CAIR, each allowance allocated in the Acid Rain Program for the years in phase 1 of CAIR (2010 through 2014) authorizes 0.50 ton of SO_2 emissions in the CAIR trading program, and each Acid Rain Program allowance allocated for the years in phase 2 of CAIR (2015 and thereafter) authorizes 0.35 ton of SO_2 emissions in the CAIR trading program.

In today's action, EPA is proposing to approve North Carolina's SIP revision that adopts the budgets established for the State in CAIR. These budgets are 62,183 tons for NO_X annual emissions from 2009 through 2014, and 51,819 tons from 2015 and thereafter; 28,392 tons for NO_X ozone season emissions from 2009 through 2014, and 23,660 tons from 2015 and thereafter; and 137,342 tons for SO_2 annual emissions from 2010 through 2014, and 96,139 tons from 2015 and thereafter. Additionally, because North Carolina has chosen to include all non-EGUs in the State's NO_X SIP call trading program, the CAIR NO_X ozone season budget will be increased annually by 2,443 tons to account for such NO_X SIP Call trading sources. North Carolina's SIP revision sets these budgets as the total amounts of allowances available for allocation for each year under the EPA-administered cap-and-trade programs.

EPA notes that, in *North Carolina*, 531 F.3d at 916–21, the Court determined, among other things, that the State SO_2 and NO_X budgets established in CAIR were arbitrary and capricious.[2] However, as discussed above, the Court also decided to remand CAIR but to leave the rule in place in order to ''temporarily preserve the environmental values covered by CAIR'' pending EPA's development and promulgation of a replacement rule that remedies CAIR's flaws. *North Carolina*, 550 F.3d at 1178. EPA had indicated to the Court that development and promulgation of a replacement rule would take about two years. *Reply in Support of Petition for Rehearing or Rehearing en Banc* at 5 (filed Nov. 17, 2008 in *North Carolina* v. *EPA*, Case No. 05–1224, DC Cir.). The process at EPA of developing a proposal that will undergo notice and comment and result

[2] The Court also determined that the CAIR trading programs were unlawful (*Id.* at 906–8) and that the treatment of CAA title IV allowances in CAIR was unlawful (*Id.* at 921–23). For the same reasons that EPA is approving the provisions of North Carolina's SIP revision that use the SO_2 and NO_X budgets set in CAIR, EPA is also approving, as discussed below, North Carolina's SIP revision to the extent the SIP revision adopts the CAIR trading programs, including the provisions addressing applicability, allowance allocations, and use of title IV allowances.

in a final replacement rule is ongoing. In the meantime, consistent with the Court's orders, EPA is implementing CAIR by approving State SIP revisions that are consistent with CAIR (such as the provisions setting State SO_2 and NO_X budgets for the CAIR trading programs) in order to ''temporarily preserve'' the environmental benefits achievable under the CAIR trading programs.

On May 7, 2009, EPA participated in a teleconference with North Carolina and requested several clarifications. EPA received a letter from North Carolina dated May 8, 2009, that provided the requested clarifications. Specifically, in the May 8, 2009, letter the State clarified references in North Carolina's rule to ''CAIR NO_X Ozone Season trading program'' and ''fuel oil.'' In addition, North Carolina acknowledged that the reference to 40 CFR 96.4(b)(1)(iii) in 15A North Carolina Administrative Code (NCAC) 02D .2401(b)(3)(c) is not a restriction on hours of operation, but rather provides how a unit's potential NO_X mass emissions will be calculated.

B. CAIR Cap-and-Trade Programs

The CAIR NO_X annual and ozone-season model trading rules both largely mirror the structure of the NO_X SIP Call model trading rule in 40 CFR Part 96, subparts A through I. While the provisions of the NO_X annual and ozone-season model rules are similar, there are some differences. For example, the NO_X annual model rule (but not the NO_X ozone season model rule) provides for a CSP, which is discussed below and under which allowances may be awarded for early reductions of NO_X annual emissions. As a further example, the NO_X ozone season model rule reflects the fact that the CAIR NO_X ozone season trading program replaces the NO_X SIP Call trading program after the 2008 ozone season and is coordinated with the NO_X SIP Call program. The NO_X ozone season model rule provides incentives for early emissions reductions by allowing banked, pre-2009 NO_X SIP Call allowances to be used for compliance in the CAIR NO_X ozone-season trading program. In addition, States have the option of continuing to meet their NO_X SIP Call requirement by participating in the CAIR NO_X ozone season trading program and including all their NO_X SIP Call trading sources in that program.

The provisions of the CAIR SO_2 model rule are also similar to the provisions of the NO_X annual and ozone season model rules. However, the SO_2 model rule is coordinated with the ongoing Acid Rain SO_2 cap-and-trade program under CAA title IV. The SO_2 model rule uses the title IV allowances for compliance, with each allowance allocated for 2010–2014 authorizing only 0.50 ton of emissions and each allowance allocated for 2015 and thereafter authorizing only 0.35 ton of emissions. Banked title IV allowances allocated for years before 2010 can be used at any time in the CAIR SO_2 cap-and-trade program, with each such allowance authorizing 1 ton of emissions. Title IV allowances are to be freely transferable among sources covered by the Acid Rain Program and sources covered by the CAIR SO_2 cap-and-trade program.

EPA also used the CAIR model trading rules as the basis for the trading programs in the CAIR FIPs. The CAIR FIP trading rules are virtually identical to the CAIR model trading rules, with changes made to account for Federal rather than State implementation. The CAIR model SO_2, NO_X annual, and NO_X ozone season trading rules and the respective CAIR FIP trading rules are designed to work together as integrated SO_2, NO_X annual, and NO_X ozone season trading programs.

In the SIP revision, North Carolina chooses to implement its CAIR budgets by requiring EGUs to participate in EPA-administered cap-and-trade programs for SO_2, NO_X annual, and NO_X ozone season emissions. North Carolina has adopted a full SIP revision that adopts, with certain allowed changes discussed below, the CAIR model cap-and-trade rules for SO_2, NO_X annual, and NO_X ozone season emissions.

C. Applicability Provisions

In general, the CAIR model trading rules apply to any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 megawatt electrical (MWe) producing electricity for sale.

States have the option of bringing in, for the CAIR NO_X ozone season program only, those units in the State's NO_X SIP Call trading program that are not EGUs as defined under CAIR. EPA advises States exercising this option to add the applicability provisions in the State's NO_X SIP Call trading rule for non-EGUs to the applicability provisions in 40 CFR 96.304 in order to include in the CAIR NO_X ozone season trading program all units required to be in the State's NO_X SIP Call trading program that are not already included under 40 CFR 96.304. Under this option, the CAIR NO_X ozone season program must cover all large industrial boilers and combustion turbines, as well as any small EGUs (*i.e.* units serving a generator with a nameplate capacity of 25 MWe or less) that the State currently requires to be in the NO_X SIP Call trading program.

North Carolina has chosen to expand the applicability provisions of the CAIR NO_X ozone season trading program to include all non-EGUs in the State's NO_X SIP Call trading program.

D. NO_X Allowance Allocations

Under the NO_X allowance allocation methodology in the CAIR model trading rules and in the CAIR FIP, NO_X annual and ozone season allowances are allocated to units that have operated for five years, based on heat input data from a three-year period that are adjusted for fuel type by using fuel factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. The CAIR model trading rules and the CAIR FIP also provide a new unit set-aside from which units without five years of operation are allocated allowances based on the units' prior year emissions.

States may establish in their SIP submissions a different NO_X allowance allocation methodology that will be used to allocate allowances to sources in the States if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative NO_X allowance allocation methodologies, States have flexibility with regard to:

1. The cost to recipients of the allowances, which may be distributed for free or auctioned;

2. The frequency of allocations;

3. The basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and

4. The use of allowance set-asides and, if used, their size.

North Carolina has chosen to distribute NO_X annual and NO_X ozone season allowances with its own methodology. North Carolina has chosen to distribute NO_X annual allowances by submitting the table adopted in 15A NCAC 02D .2403(a) which establishes the North Carolina CAIR NO_X annual allocation for existing units. North Carolina has chosen to establish a new unit set aside for each control period. For CAIR NO_X emissions for each control period, CAIR NO_X allowances available for allocation for new unit set asides will be 2,638 tons for 2009–2014 and 1,154 tons for 2015 and thereafter.

North Carolina has chosen to distribute NO_X ozone season allowances by submitting the table adopted in 15A NCAC 02D .2405(a)(1) which establishes the North Carolina CAIR NO_X ozone season allocations for existing units. North Carolina has chosen to establish a new unit set aside for each control period. For CAIR NO_X ozone season emissions, allowances available for allocation for new unit set asides will be 1,234 tons for 2009–2014 and 555 tons for 2015 and thereafter.

The State's NO_X ozone season allocation provisions have been modified to add requirements associated with North Carolina's option to bring its non-EGUs into the CAIR NO_X ozone season trading program. The State has chosen to distribute CAIR NO_X Ozone season allowances to non-EGUs by submitting a table adopted in 15A NCAC 02D .2405(a)(2).

E. Allocation of NO_X Allowances From Compliance Supplement Pool

The CAIR establishes a CSP to provide an incentive for early reductions in NO_X annual emissions. The CSP consists of 200,000 CAIR NO_X annual allowances of vintage 2009 for the entire CAIR region, and a State's share of the CSP is based upon the projected magnitude of the emission reductions required by CAIR in that State. States may distribute CSP allowances, one allowance for each ton of early reduction, to sources that make NO_X reductions during 2007 or 2008 beyond what is required by any applicable State or Federal emission limitation. States also may distribute CSP allowances based upon a demonstration of need for an extension of the 2009 deadline for implementing emission controls.

The CAIR annual NO_X model trading rule establishes specific methodologies for allocations of CSP allowances. States may choose an allowed, alternative CSP allocation methodology to be used to allocate CSP allowances to sources in the States.

Consistent with the flexibility given to States in the model trading rule, North Carolina has not chosen to modify the provisions of the CAIR NO_X annual model trading rule concerning the allocation of allowances from the CSP. North Carolina has not chosen to adopt CSP provisions since the State does not have any allowances available to allocate under the CSP provisions.

F. Individual Opt-in Units

The opt-in provisions of the CAIR SIP model trading rules allow certain non-EGUs (i.e., boilers, combustion turbines, and other stationary fossil-fuel-fired devices) that do not meet the applicability criteria for a CAIR trading program to participate voluntarily in (*i.e.*, opt into) the CAIR trading program. A non-EGU may opt into one or more of the CAIR trading programs. In order to qualify to opt into a CAIR trading program, a unit must vent all emissions through a stack and be able to meet monitoring, recordkeeping, and recording requirements of 40 CFR part 75. The owners and operators seeking to opt a unit into a CAIR trading program must apply for a CAIR opt-in permit. If the unit is issued a CAIR opt-in permit, the unit becomes a CAIR unit, is allocated allowances, and must meet the same allowance-holding and emissions monitoring and reporting requirements as other units subject to the CAIR trading program. The opt-in provisions provide for two methodologies for allocating allowances for opt-in units, one methodology that applies to opt-in units in general and a second methodology that allocates allowances only to opt-in units that the owners and operators intend to repower before January 1, 2015.

States have several options concerning the opt-in provisions. States may adopt the CAIR opt-in provisions entirely or may adopt them but exclude one of the methodologies for allocating allowances. States may also decline to adopt the opt-in provisions at all.

Consistent with the flexibility given to States in the FIPs, North Carolina has chosen to allow non-EGUs meeting certain requirements to participate in the CAIR NO_X annual trading program. The North Carolina rule allows for both the opt-in allocation methods as specified in 40 CFR part 96, Subpart II of the CAIR NO_X annual trading program.

Consistent with the flexibility given to the States in the FIPs, North Carolina has chosen to permit non-EGUs meeting certain requirements to participate in the CAIR NO_X ozone season trading program. The North Carolina rule allows for both of the opt-in allocation methods as specified in 40 CFR part 96 Subpart III of the CAIR NO_X ozone season trading program.

Consistent with the flexibility given to the States in the FIPs, North Carolina has chosen to allow certain non-EGUs to opt into the CAIR SO_2 trading program. The North Carolina rule allows for both of the opt-in allocation methods as specified in 40 CFR part 96 Subpart III of the CAIR SO_2 trading program.

VI. Proposed Action

EPA is proposing to approve, as interpreted and clarified herein, North Carolina's full CAIR SIP revision submitted on June 20, 2008. Under the approved SIP revision, North Carolina is choosing to participate in the EPA-administered CAIR cap-and-trade programs for SO_2, NO_X annual, and NO_X ozone season emissions. The approved SIP revision, as interpreted and clarified herein, meets the applicable requirements of CAIR, which are set forth in 40 CFR 51.123(o) and (aa), with regard to NO_X annual and NO_X ozone season emissions, and 40 CFR 51.124(o), with regard to SO_2 emissions. If this proposed approval for North Carolina's full CAIR SIP revision is finalized, EPA will promulgate, in conjunction with the final rule for this action, rules implementing the automatic withdrawal—in accordance with 40 CFR 52.35 and 52.36—of the CAIR FIPs for SO_2, NO_X annual, and NO_X ozone season emissions for North Carolina sources.

VII. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Carbon monoxide, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 96

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

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

Dated: July 29, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. E9–18999 Filed 8–6–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAR Case 2009–013; Docket 2009–0026; Sequence 1]

RIN 9000–AL40

Federal Acquisition Regulation; FAR Case 2009–013, Nonavailable Articles

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to revise the list of nonavailable articles at FAR 25.104(a). The Councils also request public comment as to whether some articles on the list of nonavailable articles are now mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality and should therefore be removed from the list.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before October 6, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2009–013 by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''FAR case 2009–013'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with FAR Case FAR case 2009–013. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''FAR case 2009–013'' on your attached document.

• *Fax:* 202–501–4067.

• *Mail:* General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case FAR case 2009–013 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, Procurement Analyst, at (202) 208–6925 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR case FAR case 2009–013.

SUPPLEMENTARY INFORMATION:

A. Background

The Buy American Act does not apply with respect to articles, materials, or supplies if articles, materials, or supplies of the class or kind to be acquired, either as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

A nonavailability determination has been made for the articles listed in FAR 25.104(a). As stated at FAR 25.103, this determination does not necessarily mean that there is no domestic source for the listed items, but that domestic sources can only meet 50 percent or less of total U.S. Government and nongovernment demand.

Before acquisition of an article on the list, the procuring agency is responsible for conducting market research appropriate to the circumstances, including seeking domestic sources. This applies to acquisition of an article as—

(A) An end product; or

(B) A significant component (valued at more than 50 percent of the value of all the components).

The class determination for articles on the list does not apply if the contracting officer learns at any time before the time designated for receipt of bids in sealed bidding or final offers in negotiation that an article on the list is available domestically in sufficient and reasonably available commercial quantities of a satisfactory quality to meet the requirements of the solicitation.

The head of the contracting activity may make an individual determination that an article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. If the contracting officer considers that the nonavailability of an article is likely to affect future acquisitions, the contracting officer may submit a copy of the determination and supporting

documentation to the appropriate council identified in FAR 1.201–1, in accordance with agency procedures, for possible addition to the list in FAR 25.104.

1. Proposed Additions to List

Accordingly, the Defense Supply Center Philadelphia (DSCP), a field activity of the Defense Logistics Agency (DLA), has requested addition of yeast (active dry and instant active dry) and canned pineapple. The results of DSCP market research are summarized as follows:

a. *Active Dry Yeast and Instant Active Dry Yeasts.* Through contacts with industry, reviews of customer requirements and an analysis of market availability, DSCP has determined that there are no domestic sources for active dry yeast and instant active dry yeast. All production domestically of active dry yeast and instant active dry yeast has ceased with processing shifted to production facilities in Mexico and Canada. Active dry yeast and instant active dry yeast are key ingredients in the baking of fresh bread and yeast-raised products. Contact was made with DSCP's customers, and all have stated that there are no acceptable alternatives to the active dry yeast and instant active dry yeast, items that are fundamental in the preparation of quick breads, white breads, rolls, variety grain breads, specialty breads, and yeast-raised products such as donuts and sweet rolls.

b. *Pineapple, Solid Pack, Canned.* There are no longer any domestic sources for canned pineapple in its various solid pack forms, including rings, chunks, tidbits, and crushed. The last domestic source closed its only plant in June 2007. Domestic canned pineapple has been supplanted by cheaper, imported products. Canned pineapple is used on the menus of the U.S. Military Services and as an ingredient in certain recipes. While it has been used by the military worldwide, it is especially important to customers, such as Navy ships, that need a longer shelf life item because they have limited access to fresh fruits.

2. Proposed Revision of List

A previous FAR Case, 2003–007, added to the list at FAR 25.104(a) an article titled ''modacrylic fur ruff'' (69 FR 34241, June 18, 2004). This addition was based upon a domestic nonavailability determination approved by the Under Secretary of Defense (Acquisition, Technology and Logistics) dated December 11, 2002, for modacrylic fiber. Therefore, this rule proposes to correct the listing to read ''modacrylic fiber'' in lieu of ''modacrylic fur ruff.''

3. Publication of List for Comment

In addition, FAR 25.104(b) requires publication of the list of nonavailable articles for public comment in the **Federal Register** no less frequently than once every five years. The list was last published for comment on May 18, 2004 (69 FR 28104) (FAR Case 2004–024). The Councils are seeking comment on whether some articles on the list should be removed because they are now mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Specific information with regard to domestic production capacity in relation to U.S. Government and nongovernment demand and the quality of domestically produced items would be most helpful in determining whether articles should remain on or be removed from the list. A sources-sought notice will also be published in FedBizOpps in an effort to increase the awareness of this request.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the Councils do not expect that there are domestic small businesses that can fulfill the Government's requirements for the proposed added items. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 25 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2009–013), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: July 22, 2009.

Al Matera,

Director, Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 25 as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 25 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

25.104 [Amended]

2. Amend section 25.104 by removing from paragraph (a) ''Modacrylic fur ruff'' and adding ''Modacrylic fiber'' in its place, and by adding, in alphabetical order, ''Pineapple, canned'' and ''Yeast, active dry and instant active dry''.

[FR Doc. E9–18992 Filed 8–6–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–R9–MB–2009–0003; 91200–1231–9BPP]

RIN 1018–AW46

Migratory Bird Hunting; Approval of Tungsten-Iron-Fluoropolymer Shot Alloys as Nontoxic for Hunting Waterfowl and Coots; Availability of Draft Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of draft environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service propose to approve tungsten-iron-fluoropolymer shot alloys for hunting waterfowl and coots. We published an advance notice of proposed rulemaking for this group of alloys in the **Federal Register** on March 3, 2009, under RIN 1018–AW46 (74 FR 9207). Having completed our review of the application materials, we have concluded that these alloys are very unlikely to adversely affect fish, wildlife, or their habitats.

DATES: Send comments on this proposal and/or the associated Draft Environmental Assessment by September 8, 2009.

ADDRESSES: *Draft Environmental Assessment:* You may obtain a copy of the draft environmental assessment

online at *http://www.regulations.gov* or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: You may submit comments on the proposed rule by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments to Docket Number FWS–R9–MB–2009–0003.
- *U.S. mail or hand-delivery:* Public Comments Processing, *Attn:* RIN 1018–AW46; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203–1610.

We will not accept e-mails or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide (*see* the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: George T. Allen, Division of Migratory Bird Management, 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

The Migratory Bird Treaty Act of 1918 (Act) (16 U.S.C. 703–711) and the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712) implement migratory bird treaties between the United States and Great Britain for Canada (1916, amended), Mexico (1936, amended), Japan (1972, amended), and Russia (then the Soviet Union, 1978). These treaties protect certain migratory birds from take, except as permitted under the Acts. The Acts authorize the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, we control hunting of migratory game birds through regulations in 50 CFR part 20.

Deposition of toxic shot and release of toxic shot components in waterfowl hunting locations are potentially harmful to many organisms. Research has shown that ingested spent lead shot causes significant mortality in migratory birds. Since the mid-1970s, we have sought to identify shot types that do not pose significant toxicity hazards to migratory birds or other wildlife. We addressed lead poisoning in waterfowl in an Environmental Impact Statement (EIS) in 1976, and again in a 1986 supplemental EIS. The 1986 document provided the scientific justification for a ban on the use of lead shot and the subsequent approval of steel shot for hunting waterfowl and coots that began that year, with a complete ban of lead for waterfowl and coot hunting in 1991. We have continued to consider other potential candidates for approval as nontoxic shot. We are obligated to review applications for approval of alternative shot types as nontoxic for hunting waterfowl and coots.

Tundra Composites, LLC, seeks approval of Tungsten-Iron-Fluoropolymer (TIF) shot alloys of 41.5 to 95.2 percent tungsten, 1.5 to 52.0 percent steel, and 3.5 to 8.0 percent fluoropolymer by weight as nontoxic. The tungsten and iron in this shot type have already been approved in other nontoxic shot types. The applicant did a worst-case evaluation of the potential impacts of the fluoropolymer on fish, wildlife, and their habitats.

The data from the applicant indicate that the tungsten-iron-fluoropolymer alloys will be nontoxic when ingested by waterfowl, and should not pose a significant danger to migratory birds, other wildlife, or their habitats. We conclude that they raise no particular concerns about deposition in the environment or about ingestion by waterfowl or predators.

Many hunters believe that some nontoxic shot types do not compare favorably to lead and that they may damage some shotgun barrels, and a small percentage of hunters have not complied with nontoxic shot regulations. Allowing use of additional nontoxic shot types may encourage greater hunter compliance and participation with nontoxic shot requirements and discourage the use of lead shot. The use of nontoxic shot for waterfowl hunting increased after the ban on lead shot (Anderson *et al.* 2000), but we believe that compliance will continue to increase with the availability and approval of other nontoxic shot types. Increased use of nontoxic shot will enhance protection of migratory waterfowl and their habitats. More important, however, is that the Fish and Wildlife Service is obligated to consider all complete nontoxic shot submissions.

We have reviewed the shot under the criteria in Tier 1 of the revised nontoxic shot approval procedures contained in 50 CFR 20.134 for permanent approval of shot as nontoxic for hunting waterfowl and coots. We propose to amend 50 CFR 20.21 (j) to add TIF shot to the list of the approved types of shot for waterfowl and coot hunting.

Affected Environment

Waterfowl Populations

In 2008, in the Waterfowl Breeding Population and Habitat Survey traditional survey area (strata 1–18, 20–50, and 75–77), the total duck population estimate was 37.3 ± with a standard error of 0.6 million birds. This was 9% lower than last year's estimate of 41.2 ± 0.7 million birds, but 11% above the 1955–2007 long-term average. Mallard (*Anas platyrhynchos*) abundance was 7.7 ± 0.3 million birds, similar to last year's estimate of 8.3 ± 0.3 million birds and to the long-term average. Blue-winged teal (*A. discors*) estimated abundance was 6.6 ± 0.3 million birds similar to last year's estimate of 6.7 ± 0.4 million birds, and 45% above the long-term average. Estimated abundances of gadwall (*A. strepera;* 2.7 ± 0.2 million) and northern shovelers (*A. clypeata*; 3.5 ± 0.2 million) were lower than those of last year (−19% and −23%, respectively), but both remained 56% above their long-term averages. Estimated abundance of American wigeon (*A. americana*; 2.5 ± 0.2 million) was similar to the 2007 estimate and the long-term average. Estimated abundances of green-winged teal (*A. crecca*; 3.0 ± 0.2 million) and redheads (*Aythya americana*; 1.1 ± 0.1 million) were similar to last year's, but were each more than 50% above their long-term averages. The redhead and green-winged teal estimates were the highest and the second highest ever for the traditional survey area. The canvasback (*A. valisineria*) estimate of 0.5 ± 0.05 million was down 44% relative to 2007's record high, and 14% below the long-term average. Northern pintails (*Anas acuta*; 2.6 ± 0.1 million) were 22% below last year's estimate and 36% below their long-term average. The estimate for scaup (*Aythya affinis* and *A. marila* combined), 3.7 ± 0.2 million, was similar to that of 2007 and 27% below the long-term average.

Habitats

Habitat conditions during the 2008 Waterfowl Breeding Population and Habitat Survey were characterized in many areas by a delayed spring compared to several preceding years. Drought in many parts of the traditional survey area contrasted sharply with record snow and rainfall in the eastern survey area. The total pond estimate for Prairie Canada and the United States combined was 4.4 ± 0.2 million ponds, 37% below last year's estimate of 7.0 ± 0.3 million ponds and 10% lower than the long-term average of 4.9 ± 0.03 million ponds. The 2008 estimate of ponds in Prairie Canada was 3.1 ± 0.1 million. This was a 39% decrease from last year's estimate (5.0 ± 0.3 million), and 11% below the 1955–2007 average (3.4 ± 0.03 million). The 2008 pond estimate for the north-central United States (1.4 ± 0.1 million) was 30% lower than last year's estimate (2.0 ± 0.1 million) and 11% below the long-term

average (1.5 ± 0.02 million). The projected mallard fall-flight index was 9.2 ± 0.8 million, similar to the 2007 estimate of 10.9 ± 1.0 million birds. The eastern survey area was restratified in 2005 and is now composed of strata 51–72. Estimates of mallards, scaup, scoters (black [*Melanitta nigra*], white-winged [*M. fusca*], and surf [*M. perspicillata*]), green-winged teal, American wigeon, bufflehead (*B. albeola*), American black duck (*A. rubripes*), ring-necked duck (*Aythya collaris*), mergansers (red-breasted [*Mergus serrator*], common [*M. merganser*], and hooded [*Lophodytes cucullatus*]), and goldeneye (common [*Bucephala clangula*] and Barrow's [*B. islandica*]) all were similar to their 2007 estimates and long-term averages.

Characterization of the Shot Type

Tungsten-Iron-Fluoropolymer shot has a density ranging from 8.0 to 12.5 grams per cubic centimeter (g/cm^3), and is corrosion resistant and magnetic. Tundra Composites estimates that the volume of TIF shot for use in hunting migratory birds in the United States will be approximately 330,000 pounds (150,000 kilograms, kg) per year.

The 8.0 g/cm^3 alloy is approximately the same density as steel. The other alloys are increasingly greater in sectional density. The steel in the alloys contains up to 1.3% manganese, 1.2% silicon, and 1.2% carbon by weight. The shot may have a very fine residual coating of mica from production. We expect the environmental and health effects of the mica to be negligible.

TABLE 1—COMPOSITION OF TIF SHOT ALLOYS

Alloy	Density (g/cm^3)	Percent tungsten	Percent steel *	Percent fluoropolymer
1	8.0	41.5–50.6	41.6–52.0	6.1–8.0
2	9.5	61.0–68.7	24.8–34.0	5.0–6.6
3	11.0	75.2–81.8	12.5–20.5	4.3–5.7
4	12.5	85.9–96.0	1.0–10.3	3.8–5.2

* The steel contains no more than 0.25% chromium, 0.20% copper, and 0.20% nickel. In the alloys, these percentages are no more than 0.13%, 0.1%, and 0.1%, respectively.

Environmental Fate of the Tungsten and Iron in TIF Shot

The tungsten and the iron in these alloys have been approved in other nontoxic shot types (see ''Impact of Approval of the Shot Type''), and the submitters asserted that the alloys pose no adverse toxicological risks to waterfowl or other forms of terrestrial or aquatic life. The metals in the alloys are insoluble under normal hot and cold. Neither manufacturing the shot nor firing shotshells containing the shot will alter the metals or the fluoropolymer, or change how they dissolve in the environment.

Possible Environmental Concentrations for the Manganese and Silicon and Fluoropolymer in TIF Shot in Terrestrial Systems

Calculation of the estimated environmental concentration (EEC) of a candidate shot in a terrestrial ecosystem is based on 69,000 shot per hectare (ha) (50 CFR 20.134). These calculations assume that the shot dissolves promptly and completely after deposition. Because the tungsten and iron have been approved in other nontoxic shot types, we focus on the manganese and silicon in the alloys.

The EEC for the manganese in TIF shot would be approximately 0.11 parts per million. The maximum increase in environmental concentration for manganese in terrestrial settings would be 23.1 micrograms per liter. If the shot were completely dissolved or eroded, the EEC in soil is much less than the 50th percentile of typical background concentrations for manganese in soils of the United States.

If totally dissolved, the shot would produce a silicon concentration of 0.1082 parts per million (ppm), or 0.07 kg/ha/year. Silicon is not found free in nature, but combines with oxygen and other elements in nature to form silicates (LANL 2003; USGS 2009). Silicates constitute more than 25% of the Earth's crust (USGS 2009). Sand, quartz, rock crystal, amethyst, agate, flint, jasper, and opal are some of the forms in which the oxide appears (LANL 2003). Thus, the silicon from TIF shot would be insignificant.

Possible Environmental Concentrations for the Manganese, Silicon, and Fluoropolymer in the TIF Shot in Aquatic Systems

The EEC for water assumes that 69,000 number 4 shot are completely dissolved in 1 ha of water 30.48 centimeters deep. The submitter then calculates the concentration of each metal in the shot if the shot pellets dissolve completely. The analyses assume complete dissolution of the shot type containing the highest proportion of each metal in the range of alloys submitted.

The maximum EEC for manganese is 23.1 ppm. There are no U.S. Environmental Protection Agency (EPA) acute or chronic quality criteria available for manganese for freshwater or saltwater. However, the State of Colorado has acute and chronic freshwater quality criteria for manganese of 2,986 ppm and 1,650 ppm, respectively (assuming a hardness of 100 mg/L as $CaCO_3$). The manganese from TIF shot would lead to a fraction of these concentrations, so we believe that the manganese from TIF shot will not pose a threat to the environment.

The EEC for silicon from TIF shot would be 21.4 ppm. The EPA has set no acute or chronic criteria for silicon in freshwater or saltwater. Furthermore, silicates are commonly present in many soils and sediments.

For the fluoropolymer in the shot, the EEC in aquatic systems would be 273.1 ppm. We believe this value has little meaning, given the insolubility of the fluoropolymer.

In Vitro Solubility Evaluation of TIF Shot

When nontoxic shot is ingested by waterfowl, both physical breakup of the shot and dissolution of the metals that comprise the shot may occur in the highly acidic environment of the gizzard. In addition to the standard Tier 1 application information (50 CFR 20.134), Tundra Composites provided the results of an in vitro gizzard simulation test conducted to quantify the release of metals in solution under the prevailing pH conditions of the avian gizzard. The metal concentrations released during the simulation test were, in turn, compared to known levels of metals that cause toxicity in waterfowl. The evaluation followed the methodology of Kimball and Munir (1971) as closely as possible.

The test solution pH averaged 2.01 over the 14-day test period and the average temperature of the digestion solution averaged 41.8 °C. In the test,

the average amount of nickel, copper, and chromium released from 8 TIF shot/day was 0.037 mg, 0.017 mg, and 0.024 mg, respectively.

It is reasonable to expect that if the *in vitro* gizzard simulation test conditions had degraded the fluoropolymer in the TIF shot, fluoride would be present in the digestion solution. However, the fluoropolymer present in TIF shot is extremely resistant to degradation. The formation of hazardous decomposition by-products from the fluoropolymer occurs only at temperatures over 300 °C. A representative fluoropolymer, polytetrafluoroethylene, will endure 260 °C for more than 2 years until failure due to degradation (Imbalzano 1991). The applicant concluded that the fluoride concentrations in the solution were background levels of fluoride in the digestion solution, rather than a decomposition by-product of the fluoropolymer. This conclusion was supported by the variability and lack of a trend in the estimated fluoride concentrations (Day 0 concentrations were greater than Day 14 concentrations). Perfluorooctanoic acid (PFOA) is not used in the manufacture or formulation of the fluoropolymer present in TIF shot because it has been identified as a persistent global contaminant (EPA 2003).

The testing completed by the applicant indicates that TIF shot is highly resistant to degradation, and poses little risk to waterfowl or other biota if ingested in the field. The slow breakdown of the shot only permits metals to be released at concentrations that are substantially below toxic levels of concern in waterfowl. Furthermore, the fluoropolymer present in TIF shot will not degrade if ingested by waterfowl.

Impacts of Approval of the Shot Type

Effects of the Metals

We have previously assessed and approved various alloys containing tungsten, and/or iron as nontoxic for hunting waterfowl (*e.g.* 66 FR 737, January 4, 2001; 68 FR 1388, January 10, 2003; 69 FR 48163, August 9, 2004; 70 FR 49194, August 23, 2005; and 71 FR 4294, January 26, 2006). We have approved alloys of almost 100% of both tungsten and iron. Approval of TIF alloys raises no new concerns about approval of the tungsten or the iron in TIF shot.

Manganese

Manganese is an essential nutrient for both plants and animals. In animals, manganese is associated with growth, normal functioning of the central nervous system, and reproductive function. In plants, manganese is essential for the oxidation-reduction process (EPA 2007). Manganese compounds are important soil constituents, and the 50th percentile of typical background concentrations for manganese range from 400 kg dry weight in eastern U.S. soils to 600 kg dry weight in western U.S. soils.

One number 4 TIF shot contains approximately 0.001 gram of manganese. The geometric mean of avian No Observed Adverse Effect Level (NOAEL) values for reproduction and growth that were identified by the EPA in its derivation of an Ecological Soil Screening Level (Eco-SSL) for manganese was 179 kg of body weight per day (EPA 2007). Based upon the avian NOAEL of 179 milligrams of manganese per kilogram of body weight per day, a 2-kg bird could safely consume about 352 TIF shot per day without suffering from the consumption of the shot. Similarly for mammals, the geometric mean of mammalian NOAEL values for reproduction and growth that were identified by the EPA in its derivation of an Eco-SSL for manganese was 51.5 milligrams of manganese per kilogram of body weight per day (EPA 2007). Based upon the mammalian NOAEL of 51.5 milligrams of manganese per kilogram of body weight per day, a 1-kg mammal could safely consume approximately 50 TIF shot per day without suffering manganese toxicosis.

There are no EPA acute or chronic or freshwater saltwater criteria for manganese. However, Colorado acute and chronic freshwater criteria are 2,986 micrograms per liter and 1,650 micrograms per liter, respectively (assuming a hardness of 100 milligrams per liter as $CaCO_3$) (5 CCR 1002–31). The aquatic EEC for manganese is 23.1 micrograms per liter when we assume complete dissolution of the 69,000 shot in 1 ha of water 30.48 cm deep. Therefore, the manganese from TIF shot should not pose an environmental problem in aquatic environments.

Based upon available NOAEL values, birds and mammals would have to ingest in excess of 50 TIF shot per day before manganese toxicosis could occur. Assuming complete erosion of all shot, the EEC of manganese in soil is much less than the 50th percentile of typical background concentrations for manganese in soils of the United States. The EEC for manganese is well below both the acute and chronic criteria for freshwater from the State of Colorado, assuming complete dissolution of the shot. In sum, the manganese in TIF shot will result in very minimal estimated exposure concentrations to wetland biota.

Nickel

No reproductive or other effects were observed in mallards consuming the equivalent of 102 milligrams of nickel as nickel sulfate each day for 90 days (Eastin and O'Shea 1981). Therefore, the 0.037 milligram of nickel released from 8 TIF shot per day will pose no risk of adverse effects to waterfowl. In addition, metallic nickel likely is absorbed less from the gastrointestinal tract than is the nickel sulfate used in the mallard reproduction study.

Copper

The maximum tolerable level of dietary copper during the long-term growth of chickens and turkeys has been reported to be 300 kg (CMTA 1980). At the maximum tolerable level for chronic exposure of 300 kg for poultry, a 1.8-kg chicken consuming 100 g of food per day (Morck and Austic 1981) would consume 30 mg copper per day (16.7 milligrams of copper per kilogram of body weight per day). Since the average amount of copper released from 8 TIF shot per day would be 0.017 mg, a bird would have to ingest in excess of 1000 TIF shot to exceed the maximum tolerable level.

Dietary levels of 10.0 mg chromium(III)/kilogram for 10 weeks depressed survival in young black ducks (Haseltine *et al.* 1985), but no adverse effects were observed in chickens exposed to 100 ppm dietary chromium(VI) in a 32-day study (Rosomer *et al.* 1961). Therefore, the average amount of chromium released from 8 TIF shot/day of 0.024 mg will pose no risk of adverse effects to waterfowl.

Effects of Silicon

We found no data for assessing acute or chronic toxicity of the silicon present in TIF shot. EPA has not set acute or chronic criteria for silicon in aquatic systems. However, silicon compounds are so widespread in nature, and we think it highly likely that sediments consumed incidentally by waterfowl contain silicates.

Silicon is not found free in nature, but silicates constitute more than 25% of the Earth's crust (USGS 2009), in sand, quartz, rock crystal, amethyst, agate, flint, jasper, and opal, among other rocks. Granite, hornblende, asbestos, feldspar, clay, and mica are among the numerous silicate minerals.

Effects of the Fluoropolymer

No data are available on acute or chronic toxicity of the fluoropolymer

used in the TIF alloys. However, fluorinated organic polymers are very stable and resistant to hydrolysis (Danish Ministry of the Environment 2004). An *in vitro* gizzard simulation test conducted with 8.0 g/cm^3 TIF shot showed that the fluoropolymer used in the alloys will not degrade if ingested by waterfowl. Exposure to stable fluoropolymers does not give rise to increased free fluoride concentration in the blood in humans (Danish Ministry of the Environment 2004).

Based on the information provided by the applicant and our assessment, we have little concern for problems due to organisms ingesting TIF shot or from dissolution of the shot in aquatic settings.

Effects of the Approval on Migratory Waterfowl

Allowing use of additional nontoxic shot types may encourage greater hunter compliance and participation with nontoxic shot requirements and discourage the use of lead shot. Furnishing additional approved nontoxic shot types will likely further reduce the use of lead shot. Thus, approving additional nontoxic shot types will likely result in a minor positive long-term impact on waterfowl and wetland habitats.

Effects on Endangered and Threatened Species

The impact on endangered and threatened species of approval of the TIF alloys would be very small, but positive. The metals in TIF alloys have been approved in other nontoxic shot types, and we believe that the fluoropolymer is highly unlikely to adversely affect animals that consume the shot or habitats in which the shot might be used. We see no potential effects on threatened or endangered species due to approval of these alloys.

We obtained a biological opinion pursuant to section 7 of the ESA prior to establishing the seasonal hunting regulations. The hunting regulations promulgated as a result of this consultation remove and alleviate chances of conflict between migratory bird hunting and endangered and threatened species.

Effects on Ecosystems

Previously approved shot types have been shown in test results to be nontoxic to the migratory bird resource, and we believe that they cause no adverse impact on ecosystems. There is concern, however, about noncompliance and potential ecosystem effects. The use of lead shot has a negative impact on wetland ecosystems due to the erosion of shot, causing sediment/soil and water contamination and the direct ingestion of shot by aquatic and predatory animals. Though we believe noncompliance is of concern, approval of the TIF alloys will have little impact on the resource.

Cumulative Impacts

We foresee no negative cumulative impacts of approval of the TIF alloys for waterfowl hunting. Their approval may help to further reduce the negative impacts of the use of lead shot for hunting waterfowl and coots. We believe the impacts of approval of TIF shot for waterfowl hunting in the United States should be positive.

Summary

Previous assessments of nontoxic shot types indicated that the iron and the tungsten from shot alloys should not harm aquatic or terrestrial systems. The solubility testing of TIF shot indicated that the negligible release of the metals from TIF shot (including the trace amounts of chromium, copper, and nickel released at low pH) will not be a hazard to aquatic systems or to biota. For these reasons, and in accordance with 50 CFR 20.134, we propose to approve TIF shot as nontoxic for hunting waterfowl and coots, and propose to amend 50 CFR 20.21(j) accordingly. Our approval is based on the toxicological report, acute toxicity studies, reproductive/chronic toxicity studies, and other published research. The available information indicates that the TIF alloys should be nontoxic when ingested by waterfowl and that they pose no significant danger to migratory birds, other wildlife, or their habitats.

Literature Cited

For a complete list of the literature cited in this proposed rule, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Public Comments

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov*.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

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

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

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

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

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

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions).

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action will not have a significant economic impact on a substantial number of small entities. The rule would allow small entities to continue actions they have been able to take under the regulations—actions specifically designed to improve the economic viability of those entities—and, therefore, will not significantly affect them economically. We certify that because this rule will not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)).

a. This rule will not have an annual effect on the economy of $100 million or more.

b. This rule will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, Tribal, or local government agencies; or geographic regions.

c. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

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

a. This rule will not ''significantly or uniquely'' affect small governments. A small government agency plan is not required. Actions under the regulation will not affect small government activities in any significant way.

b. This rule will not produce a Federal mandate of $100 million or greater in any year. It will not be a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

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

Federalism

This rule does not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It will not interfere with the ability of States to manage themselves or their funds.

Civil Justice Reform

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

Paperwork Reduction Act

This proposed rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has approved our collection of information associated with applications for approval of nontoxic shot (50 CFR 20.134) and assigned OMB Control Number 1018–0067, which expires April 30, 2012.

National Environmental Policy Act

Our Draft Environmental Assessment is part of the administrative record for this proposed regulations change. In accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.* and Part 516 of the U.S. Department of the Interior Manual (516 DM), approval of TIF alloys will not have a significant effect on the quality of the human environment, nor would it involve unresolved conflicts concerning alternative uses of available resources. Therefore, preparation of an Environmental Impact Statement (EIS) is not required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated potential effects on federally recognized Indian Tribes and have determined that there are no potential effects. This rule will not interfere with the ability of Tribes to manage themselves or their funds or to regulate migratory bird activities on Tribal lands.

Energy Supply, Distribution, or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 addressing regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule change will not be a significant regulatory action under E.O. 12866, nor would it significantly affect energy supplies, distribution, or use. This action will not be a significant energy action, and no Statement of Energy Effects is required.

Compliance With Endangered Species Act Requirements

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

List of Subjects in 50 CFR Part 20

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

For the reasons discussed in the preamble, we propose to amend part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a–j; Public Law 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

2. Amend § 20.21 by revising paragraph (j) to read as follows:

§ 20.21 What hunting methods are illegal?

* * * * *

(j)(1) While possessing loose shot for muzzle loading or shotshells containing other than the following approved shot types.

Approved shot type *	Percent composition by weight	Field testing device **
Bismuth-tin	97 bismuth, and 3 tin	Hot Shot.®***
Iron (steel)	iron and carbon	Magnet or Hot Shot.®
Iron-tungsten	any proportion of tungsten, and ≥1 iron	Magnet or Hot Shot.®
Iron-tungsten-nickel	≥1 iron, any proportion of tungsten, and up to 40 nickel	Magnet or Hot Shot.®
Tungsten-bronze	51.1 tungsten, 44.4 copper, 3.9 tin, and 0.6 iron, or 60 tungsten, 35.1 copper, 3.9 tin, and 1 iron.	Rare Earth Magnet.
Tungsten-iron-copper-nickel	40–76 tungsten, 10–37 iron, 9–16 copper, and 5–7 nickel	Hot Shot® or Rare Earth Magnet.
Tungsten-matrix	95.9 tungsten, 4.1 polymer	Hot Shot.®

Approved shot type *	Percent composition by weight	Field testing device **
Tungsten-polymer	95.5 tungsten, 4.5 Nylon 6 or 11	Hot Shot.®
Tungsten-tin-iron	any proportions of tungsten and tin, and ≥1 iron	Magnet or Hot Shot.®
Tungsten-tin-bismuth	49–71 tungsten, 29–51 tin; 0.5–6.5 bismuth, and 0.8 iron	Rare Earth Magnet.
Tungsten-tin-iron-nickel	65 tungsten, 21.8 tin, 10.4 iron, and 2.8 nickel	Magnet.
Tungsten-iron-polymer	41.5–95.2 tungsten, 1.5–52.0 iron, and 3.5–8.0 fluoropolymer	Magnet or Hot Shot.®

* Coatings of copper, nickel, tin, zinc, zinc chloride, and zinc chrome on approved nontoxic shot types also are approved.
** The information in the ''Field Testing Device'' column is strictly informational, not regulatory.
*** The ''HOT*SHOT'' field testing device is from Stream Systems of Concord, CA.

(2) Each approved shot type must contain less than 1 percent residual lead (*see* § 20.134).

(3) This shot type restriction applies to the taking of ducks, geese (including brant), swans, coots (*Fulica americana*), and any other species that make up aggregate bag limits with these migratory game birds during concurrent seasons in areas described in § 20.108 as nontoxic shot zones.

Dated: July 30, 2009.

Will Shafroth,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E9–18985 Filed 8–6–09; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 74, No. 151
Friday, August 7, 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.

RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

Proposed Information Collection Activities

ACTION: Notice and request for comments.

SUMMARY: The Recovery Accountability and Transparency Board (Board) invites comments on the proposed information collection request as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 6, 2009.

ADDRESSES: Send all comments to Jennifer Dure, Office of General Counsel, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60 days' notice to the public for comment on information collection activities before seeking approval of such activities by the Office of Management and Budget (OMB). Specifically, the Board invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the information collection activities are necessary for the Board to properly execute its functions; (ii) the accuracy of the Board's estimates of the burden of the information collection activities; (iii) ways for the Board to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for the Board to minimize the burden of information collection activities on the public.

Below is a brief summary of the proposed information collection:

Title of Collection: Section 1512 Data Standards.

OMB Control No.: 0430–0001.

Description: The American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5, 123 Stat. 115 (2009)) (the Recovery Act) established the Board and required that the Board establish and maintain a public-facing website to track covered funds. Section 1512 of the Recovery Act requires recipients of Federal financial assistance—namely, grants, cooperative agreements, contracts and loans—to report on the use of funds. These reports are to be submitted to FederalReporting.gov, and certain information from these reports will later be posted on the public-facing Web site Recovery.gov. More specifically, as set forth in OMB's June 22, 2009, Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009 (OMB Guidance):

Prime Recipients: The prime recipient is ultimately responsible for the reporting of all data required by section 1512 of the Recovery Act and the OMB Guidance, including the Federal Funding Accountability and Transparency Act (FFATA) data elements for the sub-recipients of the prime recipient required under section 1512(c)(4). In addition, the prime recipient must report three additional data elements associated with any vendors receiving funds from the prime recipient for any payments greater than $25,000. Specifically, the prime recipient must report the identity of the vendor by reporting the DUNS number, the amount of the payment, and a description of what was obtained in exchange for the payment. If the vendor does not have a DUNS number, then the name and zip code of the vendor's headquarters will be used for identification.

Sub-Recipients of the Prime Recipient: The sub-recipients of the prime recipient may be required by the prime recipient to report the FFATA data elements required under section 1512(c)(4) for payments from the prime recipient to the sub-recipient. The reporting sub-recipients must also report one data element associated with any vendors receiving funds from that sub-recipient. Specifically, the sub-recipient must report, for any payments greater than $25,000, the identity of the vendor by reporting the DUNS number, if available, or otherwise the name and zip code of the vendor's headquarters.

Required Data: Below are the basic reporting requirements to be reported on prime recipients, recipient vendors, sub-recipients, and sub-recipient vendors.

Prime Recipient

1. Federal Funding Agency Name
2. Award identification
3. Recipient DUNS
4. Parent DUNS
5. Recipient CCR information
6. CFDA number, if applicable
7. Recipient account number
8. Project/grant period
9. Award type, date, description, and amount
10. Amount of Federal Recovery Act funds expended to projects/activities
11. Activity code and description
12. Project description and status
13. Job creation narrative and number
14. Infrastructure expenditures and rationale, if applicable
15. Recipient primary place of performance
16. Recipient area of benefit
17. Recipient officer names and compensation (Top 5)
18. Total number and amount of small sub-awards; less than $25,000

Recipient Vendor

1. DUNS or Name and zip code of Headquarters (HQ)
2. Expenditure amount
3. Expenditure description

Sub-Recipient (also referred to as FFATA Data Elements)

1. Sub-recipient DUNS
2. Sub-recipient CCR information
3. Sub-recipient type
4. Amount received by sub-recipient
5. Amount awarded to sub-recipient
6. Sub-award date
7. Sub-award period
8. Sub-recipient place of performance
9. Sub-recipient area of benefit
10. Sub-recipient officer names and compensation (Top 5)

Sub-Recipient Vendor

1. DUNS or Name and zip code of HQ

Affected Public: All recipients of Recovery funds, as defined in section 1512(b)(1) of the Recovery Act.

Total Estimated Number of Respondents: 248,275.

Frequency of Responses: Quarterly.

Total Estimated Annual Burden Hours: 1,489,650.

Ivan Flores,

Paralegal Specialist, Recovery Accountability and Transparency Board.

[FR Doc. E9–18933 Filed 8–6–09; 8:45 am]

BILLING CODE 6820–GA–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2009–0051]

Notice of Request for Extension of Approval of an Information Collection; Irradiation Phytosanitary Treatment of Imported Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the use of irradiation as a phytosanitary treatment of imported fruits and vegetables.

DATES: We will consider all comments that we receive on or before October 6, 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–2009–0051* 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–2009–0051, 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–2009–0051.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: For information regarding regulations for irradiation as a phytosanitary treatment of imported fruits and vegetables, contact Dr. Inder P. Gadh, Senior Risk Manager–Treatments, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734–0627. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION: *Title:* Irradiation Phytosanitary Treatment of Imported Fruits and Vegetables.

OMB Number: 0579–0155.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) is authorized, among other things, to regulate the importation of plants, plant products, including fruits and vegetables, and other articles to prevent the introduction of plant pests and noxious weeds into the United States.

Regulations governing the importation of fruits and vegetables are set out in 7 CFR part 319. In accordance with the regulations, some fruits and vegetables from certain regions of the world must be treated for insect pests in order to be eligible for entry into the United States.

The regulations in 7 CFR part 305 provide for the use of irradiation as a phytosanitary treatment for fruits and vegetables imported into the United States. The irradiation treatment provides protection against all insect pests including fruit flies, the mango seed weevil, and others. It may be used as an alternative to other approved treatments for these pests in fruits and vegetables, such as fumigation, cold treatment, heat treatment, and other techniques.

The regulations concerning irradiation treatment involve the collection of information, including a compliance agreement, 24-hour notification, labeling, dosimetry recordings, requests for dosimetry device approval, requests for facility approval, trust fund agreement, and annual work plan, as well as recordkeeping.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, 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 information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.0015369 hours per response.

Respondents: Foreign plant protection services, irradiation facility personnel, importers.

Estimated annual number of respondents: 93.

Estimated annual number of responses per respondent: 433.76344.

Estimated annual number of responses: 40,340.

Estimated total annual burden on respondents: 62 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 3rd day of August 2009.

William H. Clay,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–18987 Filed 8–6–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Information Collection for Determining Eligibility for Free and Reduced Price Meals

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on a proposed information collection for determining eligibility for free and reduced price meals and free milk in schools. 7 CFR part 245 contains information on Federal requirements regarding the determination and verification of eligibility for free and reduced price meals. The provisions also apply to the determination of eligibility for free milk under the Special Milk Program, OMB Number 0584–0005 and are generally applicable to the Child and Adult Care Food Program, OMB Number 0584–0055 and the Summer Food Service Program, OMB Number 0584–0280 when individual children's eligibility must be established. The current approval for the information collection burden associated with 7 CFR part 245 expires on January 31, 2010. This proposed collection is a revision of the currently approved collection for determining eligibility for free and reduced price meals and free milk in schools and concerns the collection of eligibility information and verification proceedings.

DATES: Written comments must be submitted by October 6, 2009.

ADDRESSES: 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 proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments may be sent to: Mrs. Lynn Rodgers-Kuperman, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 638, Alexandria, Virginia 22302. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov*, and follow the online instructions for submitting comments electronically.

All written comment(s) will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Mrs. Lynn Rodgers-Kuperman at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Title: Determining Eligibility for Free and Reduced Price Meals.

OMB Number: 0584–0026.

Expiration Date: January 31, 2010.

Type of Request: Revision of a currently approved collection.

Abstract: The Richard B. Russell National School Lunch Act (NSLA), as amended, authorizes the National School Lunch Program (NSLP). All schools participating in the National School Lunch Program, OMB Number 0584–0006, Expiration May 31, 2012 or School Breakfast Program, OMB Number 0584–0012, Expiration May 31, 2012 must make free and reduced price meals available to eligible children, and all schools and institutions participating in the free milk option of the School Milk Program must make free milk available for eligible children. The instant information collection asks for information about eligibility for participation in the Programs indicated above and verification procedures employed by participating schools.

The affected public, estimated number of respondents, frequency of reporting, annual responses and burden for reporting and recordkeeping are as follows:

TABLE 1—REPORTING

Affected public	(b) Form number	(c) Number respondents	(d) Number responses per respondent	(e) Est. total annual responses (cxd)	(f) Hours per response	(g) Total burden (exf)
Reporting Burden						
Individuals & Households	N/A	8,600,000.00	1	8,600,000.00	.5	4,300,000.00
State Agencies	N/A	56.00	6	336.00	3	1,008.00
SFA	N/A	20,858.00	11	229,438.00	.25	573,595.00
Schools	N/A	101,705.00	13	1,322,165	.08	1,057,732.00
Total		8,722,619.00	31	10,151,939	3.83	5,932,335.00
Summary of Reporting Burden		8,722,619.00	31	10,151,939	284.54380	11,864,670.00

TABLE 2—RECORDKEEPING:

Affected public	(b) Form number	(c) Number respondents	(d) Number responses per respondent	(e) Est. total annual responses (cxd)	(f) Hours per response	(g) Total burden (exf)
Recordkeeping Burden						
State Agencies	N/A	48.00	1	48.00	.25	12.00

TABLE 2—RECORDKEEPING:—Continued

Affected public	(b) Form number	(c) Number respondents	(d) Number responses per respondent	(e) Est. total annual responses (cxd)	(f) Hours per response	(g) Total burden (exf)
Total	.....	48.00	1	48.00	.25	12.00
Summary of Recordkeeping Burden	.....	48.00	1	48.00	.25	12.00

Estimated Total for Reporting and Recordkeeping Burden: 11,864,682.

Dated: August 3, 2009.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. E9–18994 Filed 8–6–09; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Cold Storage Survey. Revision to burden hours will be needed due to changes in the size of the target population, expected increases in response rates, and modes of data collection. The questionnaires have had some minor modifications to accommodate changes in the products stored by the industry, and to make the questionnaires easier to complete. The entire target population for cold storage operators will be contacted for this data on a monthly basis. Fruit storage operations are contacted on a seasonal basis. The capacity survey is conduced once every other year. These surveys are voluntary, except for operations that store certain manufactured dairy products that are required by Public Law No. 106–532 and 107–171 to respond.

DATES: Comments on this notice must be received by October 6, 2009 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0001, by any of the following methods:

- *E-mail: omboffi cer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *Fax:* (202) 720–6396.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Cold Storage Survey.

OMB Control Number: 0535–0001.

Expiration Date of Approval: December 31, 2009.

Type of Request: To revise and extend a currently approved information collection for a period of three years.

Abstract: The primary objective of the National Agricultural Statistics Service (NASS) is to collect, prepare and issue State and national estimates of crop and livestock production, prices, and disposition; as well as economic statistics, environmental statistics related to agriculture and also to conduct the Census of Agriculture.

The monthly Cold Storage Survey provides information on national supplies of food commodities in refrigerated storage facilities. A biennial survey of refrigerated warehouse capacity is also conducted to provide a benchmark of the capacity available for refrigerated storage of the nation's food supply. Information on stocks of food commodities facilitates proper price discovery and orderly marketing, processing, and distribution of agricultural products.

Authority: These data will be collected under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This notice is submitted in accordance with the Paperwork Reduction Act of 1995, (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1985). NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E–Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33376.

Estimate of Burden: Public reporting burden for this information collection is based on 5 individual surveys with expected responses of 10–30 minutes. The Refrigerated Capacity Survey is conducted once every 2 years, the other surveys are conducted 8–12 times per year.

Respondents: Refrigerated storage facilities.

Estimated Number of Respondents: 3,000.

Estimated Total Annual Burden on Respondents: With an estimated response rate of approximately 80%, we estimate the burden to be 7,600 hours. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690–2388.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) 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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, July 7, 2009.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. E9–18927 Filed 8–6–09; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Form FNS–143, Claim for Reimbursement (Summer Food Service Program)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on a proposed information collection. The proposed collection is an extension of a currently approved collection for the FNS–143, Claim for Reimbursement (Summer Food Service Program), which is used to collect data on the number of meals served and cost data from sponsoring organizations participating in the Program.

DATES: Written comments must be submitted by October 6, 2009.

ADDRESSES: 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, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Mrs. Lynn Rodgers-Kuperman, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 638, Alexandria, Virginia 22302. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comment(s) will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Request for additional information should be directed to: Mrs. Lynn Rodgers-Kuperman at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Title: FNS–143, Claim for Reimbursement (Summer Food Service Program).

OMB Number: 0584–0041.

Expiration Date: August 31, 2009.

Type of Request: Revision of a currently approved collection.

Abstract: The Summer Food Service Program Claim for Reimbursement, Form FNS–143, is used to collect data on the number of meals served and cost data from sponsoring organizations whose participation in this program is administered directly by the Food and Nutrition Service (FNS) Regional Office, commonly known as Regional Office Administered Program (ROAP). The FNS Regional Office directly administers participation of the Summer Food Service Program (SFSP) for sponsoring organizations in Virginia. In order to determine the amount of reimbursement sponsoring organizations are entitled to receive for meals served, they must complete the form. The completed forms are either sent to the Child Nutrition Payments Center at the FNS Mid-Atlantic Regional Office where they are entered into an electronic payment system or sponsoring organizations may submit forms electronically via the Internet directly into the Child Nutrition Payments Center. The payment system computes earned reimbursement. Earned reimbursement in the SFSP is based on performance and is determined by comparing an assigned rate for operations and for administration per meal served to actual operational and administrative costs. To fulfill the earned reimbursement requirements set forth in SFSP regulations issued by the Secretary of Agriculture at 7 CFR 225.9, the meal and cost data must be collected on the FNS–143.

The form is an intrinsic part of the accounting system currently being used by the subject program to ensure proper reimbursement as well as to facilitate adequate recordkeeping.

Respondents: The respondents are sponsoring organizations participating in the SFSP under the auspices of the FNS ROAP.

Estimated Number of Respondents: 121.

Estimated Number of Responses per Respondent:: 3.

Estimated Hours per Response: .5.

Estimated Annual Burden Hours: 181.5.

Estimated Total Annual Burden on Respondents: 181.5 hours.

Dated: August 3, 2009.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. E9–18950 Filed 8–6–09; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2009–0042]

Notice of Revision and Request for Extension of Approval of an Information Collection; Plant Pest, Noxious Weed, and Garbage Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to revise an information collection associated with plant pest, noxious weed, and garbage regulations and to request an extension of approval of the information collection.

DATES: We will consider all comments that we receive on or before *October 6, 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-2009-0042* 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–2009–0042, 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–2009–0042.

Reading Room: You may read any comments that we receive on this

docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: For information regarding plant pest, noxious weed, and garbage regulations, contact Dr. Shirley Wager-Pagé, Chief, Pest Permit Branch, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734–8453. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Plant Pest, Noxious Weed, and Garbage Regulations.

OMB Number: 0579–0054.

Type of Request: Revision and extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) is authorized, among other things, to prohibit the importation and interstate movement of plants, animals, plant and animal products, noxious weeds, and other articles to prevent the introduction into and dissemination within the United States of plant and animal pests and diseases and noxious weeds.

In connection with this mission, APHIS regulates the importation and interstate movement of plant pests, noxious weeds, and waste material derived from plant or animal matter (commonly referred to as garbage) under 7 CFR parts 330 and 360 and 9 CFR part 94.

These regulations contain information collection requirements, including requirements to apply for permits to import regulated articles (*e.g.,* plant pests, noxious weeds, or soil) or to move regulated articles interstate, requirements for facilities to be approved by APHIS to dispose of regulated garbage, and requirements for any person engaged in the business of handling or disposing of regulated garbage to first enter into a compliance agreement with APHIS. These requirements are necessary to ensure that importation and interstate movement of regulated articles, and disposal of regulated garbage, occur under appropriate conditions to prevent the dissemination of plant and animal pests and diseases and noxious weeds.

This information collection includes information collection requirements currently approved by the Office of Management and Budget (OMB) under control numbers 0579–0054, ''Plant Pest, Noxious Weed, and Garbage Regulations,'' and 0579–0306, ''Interstate Movement of Garbage from Hawaii.'' After OMB approves and combines the burden for both collections under a single collection (0579–0054), the Department will retire number 0579–0306.

We are asking OMB to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, 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 information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.500398 hours per response.

Respondents: Importers and shippers of plant pests, noxious weeds, and other regulated articles; State plant health authorities; owners/operators of regulated garbage-handling facilities.

Estimated annual number of respondents : 25,755.

Estimated annual number of responses per respondent: 1.2193748.

Estimated annual number of responses: 31,405.

Estimated total annual burden on respondents: 15,715 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 3rd day of August 2009.

William H. Clay,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–18989 Filed 8–6–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2009–0043]

Notice of Request for Extension of Approval of an Information Collection; Virus-Serum-Toxin Act and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the Virus-Serum-Toxin Act and regulations.

DATES: We will consider all comments that we receive on or before October 6, 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–2009–0043* 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–2009–0043, 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–2009–0043.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you,

please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: For information on the Virus-Serum-Toxin Act and regulations, contact Dr. Albert Morgan, Section Leader, Operational Support Staff, Center for Veterinary Biologics, VS, APHIS, 4700 River Road, Unit 148, Riverdale, MD 20737; (301) 734–8245. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION: *Title:* Virus-Serum-Toxin Act and Regulations.

OMB Number: 0579–0318.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture has authority to administer the regulations in 9 CFR, chapter I, subchapter E, to ensure that veterinary biological products are pure, safe, potent, and effective. Veterinary biological products are defined as all viruses, serums, toxins (excluding substances that are selectively toxic to microorganisms, *e.g.*, antibiotics, or analogous products at any stage of production, shipment, distribution, or sale, which are intended for use in the treatment of animals and which act primarily through the direct stimulation, supplementation, enhancement, or modulation of the immune system or immune response. The term ''biological products'' includes, but is not limited to, vaccines, bacterins, allergens, antibodies, antitoxins, toxoids, immunostimulants, certain cytokines, antigenic or immunizing components of live organisms, and diagnostic components that are of natural or synthetic origin or that are derived from synthesizing or altering various substances or components of substances, such as microorganisms, genes or genetic sequences, carbohydrates, proteins, antigens, allergens, or antibodies.

In accordance with the regulations in 9 CFR 105.3 and 115.2, APHIS may notify a veterinary biologics licensee or permittee to stop the preparation, importation, and/or distribution and sale of a serial or a subserial of a veterinary biologic if, at any time, it appears that such product may be worthless, contaminated, dangerous, or harmful in the treatment of animals. This notification triggers two information collection activities: (1) After being contacted by APHIS, veterinary biologics licensees or permittees must immediately, but no later than 2 days, send stop distribution and sale notifications to any wholesalers, jobbers, dealers, foreign consignees, or other persons known to have such veterinary biologic in their possession, and (2) veterinary biologics licensees and permittees must account for the remaining quantity of each serial or subserial of any such veterinary biologic at each location in the distribution channel known to the licensee or permittee.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning these information collection activities. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, 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 information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.7666 hours per response.

Respondents: U.S. establishments that produce and/or import veterinary biological products, and their wholesalers, dealers, jobbers, foreign consignees, or other persons known to have any such worthless, contaminated, dangerous, or harmful veterinary biological product in their possession.

Estimated annual number of respondents: 55.

Estimated annual number of responses per respondent: 1.09.

Estimated annual number of responses: 60.

Estimated total annual burden on respondents: 106 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 3rd day of August 2009.

William H. Clay,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–18988 Filed 8–6–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lolo National Forest; MT; Cedar-Thom EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) on a proposal to implement restoration activities, fuel reduction treatments, and recreation enhancements within the Cedar and Thompson Creek drainages, Lolo National Forest, Superior Ranger District, Mineral County, Montana.

This EIS will tier to the Lolo National Forest Plan Final EIS (April 1986).

DATES: Comments concerning the scope of the analysis must be received by no later than 30 days from date of publication of this notice in the **Federal Register**. The draft environmental impact statement is expected July 2010 and the final environmental impact statement is expected March 2011.

ADDRESSES: Send written comments to: Cedar-Thom Project Leader, USDA Forest Service, P.O. Box 429, Plains, Montana 59859. Comments may also be sent via e-mail to: *comments-northern-lolo-superior@fs.fed.us.*

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action.

FOR FURTHER INFORMATION CONTACT: Pat Partyka, Project Leader, (406) 826–4314.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Lolo National Forest Plan, 1986, provides overall guidance for land management activities in the project area. The purposes of the Cedar-Thom project are to: (1) Restore vegetative conditions that are resistant to undesirable effects of fire, insects, disease, and drought; (2) Reduce forest fuels in wildland urban interface (WUI) and non-WUI areas and re-establish fire as a disturbance process on the landscape; (3) Improve or maintain big game winter range; (4) Enhance watershed health with improvements to fish habitat and stream function; and (5) Enhance recreation opportunities and establish trail travel management designations consistent with land management objectives.

Proposed Action

The Cedar-Thom project area of approximately 58,000 acres is located southwest of Superior, Montana within TI5N, R27W; TI5N, R28W; TI6N, R27W; TI6N, R28W; TI7N, R26W; T 1 7N, R27W, P.M.M. Within this area, the Lolo National Forest proposes the following activities to achieve the purpose and need for the project: (1) Timber harvest on approximately 6758 acres; (2) non-commercial mechanical vegetation treatments on about 2290 acres; (3) Prescribed burning on approximately 9550 acres; (4) temporary road construction (5 miles) and long-term specified road construction (6 miles); (5) Road decommissioning (116 miles), road storage (9 miles), and gate closure (6 miles); (6) Culvert replacements; (7) Restoration of selected stream segments; (8) Riparian vegetation planting; (9) Removal of a 500-foot segment of historic railroad grade that infringes on Cedar Creek; (10) Roadside weed spraying; (11) Development of an 8-mile ATV trail using primarily existing road prisms; (12) Construction of an equestrian trailhead for the Thompson Creek trail (#173); (13) Construction of a non-motorized trail from Mink Peak to Lost Lake; and (14) Change the travel management status on trails that are currently designated as both motorized and non-motorized to non-motorized only.

If, after the completion of the environmental analysis and review of public comments the Responsible Official decides to select an action alternative, implementation could begin in 2012 and would continue for several years.

Nature of Decision To Be Made

The Forest Supervisor will decide whether to implement the proposed action, take an alternative action that meets the purpose and need, or take no action. The decision may include a site-specific amendment to the Lolo National Forest Plan to allow approximately 215 acres of fuel reduction treatments that would include the removal of commercial-sized trees within Management Area 11, in which the Forest Plan limits tree cutting to that required to eliminate safety hazards or permit trail construction.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. Information on the proposed action will be posted on the Forest Web site at: *http://www.fs.fed.us/rl/lolo/projects/.*

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Dated: July 31, 2009.

Deborah L.R. Austin,

Forest Supervisor.

[FR Doc. E9–18934 Filed 8–6–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet at the Trinity County schools office conference room on August 17, 2009 from 6:30 p.m. The purpose of this meeting is to discuss proposed projects under Title II of the Secure Rural Schools and Community Self-Determination Act of 2008.

DATES: Monday, August 17, 2009 at 6:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Office of Education, 201 Memorial Drive, Weaverville, CA 96093.

FOR FURTHER INFORMATION CONTACT: Resource Advisory Committee Coordinator John Heibel at 530–226–2524 or *jheibel@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public input sessions will be provided and individuals will have the opportunity to address the Trinity County Resource Advisory Committee.

Dated: July 29, 2009.

Scott G. Armentrout,

Deputy Forest Supervisor, Shasta-Trinity National Forest.

[FR Doc. E9–18617 Filed 8–6–09; 8:45 am]

BILLING CODE M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on August 25, 2009 at The Chateau, 955 Fairway Blvd., Incline Village, NV 89451. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held August 25, 2009, beginning at 1 p.m. and ending at 4 p.m.

ADDRESSES: The meeting will be held at The Chateau, 955 Fairway Boulevard, Incline Village, NV 89451.

FOR FURTHER INFORMATION OR TO REQUEST AN ACCOMMODATION (ONE WEEK PRIOR TO MEETING DATE) CONTACT: Linda Lind, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543–2787.

SUPPLEMENTARY INFORMATION: Items to be covered on the agenda include: (1) Discussion of the Tahoe Science Consortium review of capital projects for monitoring and adaptive management opportunities; (2) review of the Erosion Control Program process and priorities; and (3) Public Comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend at the above address. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer

any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: July 31, 2009.

Gina Thompson,

Acting Forest Supervisor.

[FR Doc. E9–18832 Filed 8–6–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2009–0024]

Codex Alimentarius Commission: Thirtieth Session of the Codex Committee on Fish and Fishery Products

AGENCY: Office of the Acting Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Acting Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services, are sponsoring a public meeting on September 2, 2009. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States positions that will be discussed at the 30th Session of the Codex Committee on Fish and Fishery Products (CCFFP) of the Codex Alimentarius Commission (Codex), which will be held in Agadir, Morocco from September 28 to October 2, 2009. The Acting Under Secretary for Food Safety and the FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 30th Session of the CCFFP and to address items on the agenda.

DATES: The public meeting is scheduled for Wednesday, September 2, 2009, from 1 p.m. to 4 p.m.

ADDRESSES: The public meeting will be held in the Harvey Wiley Federal Building, 5100 Paint Branch Parkway, College Park, Maryland 20740. The meeting room number is 1A001. Documents related to the 30th Session of the CCFFP will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.*

The U.S. Delegate to the 30th Session of the CCFFP, Mr. Donald Kraemer, Food and Drug Administration, invites interested U.S. parties to submit their comments electronically to the following e-mail address *Melissa.Ellwanger@fda.hhs.gov.*

Registration

To gain admittance to this meeting, individuals must present a photo ID for identification and also are required to pre-register. In addition, no cameras or videotaping equipment will be permitted in the meeting room. To pre-register, please send the following information to this e-mail address: *Melissa.Ellwanger@fda.hhs.gov* by August 17th, 2009:

—Your Name,
—Organization,
—Mailing Address,
—Phone number,
—E-mail address.

For Further Information About the 30th Session of the CCFFP Contact: Melissa Ellwanger, Assistant to the U.S. Delegate to the CCFFP, FDA, Center for Food Safety and Applied Nutrition, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835; Phone: (301) 436–1401; Fax: (301) 436–2601. E-mail: *Melissa.Ellwanger@fda.hhs.gov.*

For Further Information About the Public Meeting Contact: Doreen Chen-Moulec, Staff Officer, U.S. Codex Office, Food Safety and Inspection Service (FSIS), Room 4865, South Building, 1400 Independence Avenue SW., Washington, DC 20250, Phone: (202) 7205–7760, Fax: (202) 720–3157, E-mail: *doreen.chen-moulec@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The CCFFP was established to elaborate codes, standards and related texts for fish and fishery products. The CCFFP is hosted by Norway.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 30th Session of the CCFFP will be discussed during the public meeting:

- Matters referred to the CCFFP from other Codex bodies
- Draft Code of Practice for Fish and Fishery Products (Lobsters and Relevant Definitions)
- Draft Code of Practice for Fish and Fishery Products (Crabs and Relevant Definitions)
- Draft Standard for Sturgeon Caviar
- Draft List of Methods for the Determination of Biotoxins in the Standard for Raw and Live Bivalve Mollusks
- Proposed Draft Code of Practice for Fish and Fishery Products (Other Sections including Smoked Fish)
- Proposed Draft Standard for Smoked Fish, Smoked-Flavored Fish and Smoked-Dried Fish
- Proposed Draft Code of Practice on the Processing of Scallop Meat
- Proposed Draft Standard for Quick Frozen Scallop Adductor Muscle Meat
- Proposed Draft Revision of the Procedure for the Inclusion of Additional Species in Standards for Fish and Fishery Products
- Proposed Draft Standard for Fresh/Live and Frozen Abalone (*Haliotis spp*)
- Proposed Draft Standard for Fish Sauce
- Proposed Draft Amendment to the Standard for Quick Frozen Fish Sticks (Nitrogen Factors)
- Food Additive Provisions in Standards for Fish and Fishery Products

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access copies of these documents at *http://www.codexalimentarius.net/current.asp.*

Public Meeting

At the September 2, 2009, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 30th Session of the CCFFP, Mr. Donald Kraemer, at *Melissa.Ellwanger@fda.hhs.gov.* Written comments should state that they relate to activities of the 30th Session of the CCFFP.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2009_Notices_Index/.* FSIS will also make copies of this **Federal Register**

publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on August 3, 2009.

Karen Stuck,

U.S. Manager for Codex Alimentarius.

[FR Doc. E9–18926 Filed 8–6–09; 8:45 am]

BILLING CODE 3410–DM–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development: Comments Requested

SUMMARY: U.S. Agency for International Development (USAID)—is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995, Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (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 the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before October 6, 2009.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management. Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov.*

ADDRESSES: Send comments via e-mail at *sgetson@usaid.gov* or mail comments to: Stephanie Getson, Bureau for Democracy, Conflict and Humanitarian Assistance, Office of Civilian Response (DCHA/OCR), United States Agency for International Development, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC 20523, (202) 712–1372.

SUPPLEMENTARY INFORMATION:

OMB No.: OMB 0412–0580.

Form No.: N/A.

Title: OCR Deployment Tracking System (DTS).

Type of Review: Renewal of Information Collection.

Purpose: The purpose of this information collection will be used to (a) Track operations of the hiring process; (b) monitor the deployment validation process; (c) identify and plan deployment teams; (d) assess and manage the deployment and logistics of team members; (e) notify, locate and mobilize individuals in a deployed area, as necessary during emergency or other threatening situation; (f) notify the designated emergency contact in case of a medical or other emergency involving an individual; (g) manage orientation, annual, specialized and predeployment training in preparation for projected deployments.

Annual Reporting Burden:

Respondents: 250.

Total annual responses: 1000.

Total annual hours requested: 375 hours.

Dated: July 28, 2009.

Cynthia Staples,

Acting Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. E9–18618 Filed 8–6–09; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Privacy Act of 1974, System of Records

AGENCY: United States Agency for International Development.

ACTION: Notice of significantly altered system of records.

SUMMARY: The United States Agency for International Development (USAID) is issuing public notice of its intent to alter its system of records maintained in accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended, entitled ''USAID 029—Deployment Tracking System,'' originally published in the **Federal Register** on Tuesday, March 3, 2009 (74 FR 40).

DATES: Public comments must be received on or before September 8, 2009. Unless comments are received that would require a revision, this update to the system of records will become effective on September 16, 2009.

ADDRESSES: You may submit comments:

Paper Comments:

Mail: Chief Privacy Officer, United States Agency for International Development, 1300 Pennsylvania Avenue, NW., Suite 2.12–003, Washington, DC 20523–2120.

Electronic Comments: Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions on the Web site for submitting comments.

FOR FURTHER INFORMATION CONTACT: General questions regarding this notice should be directed to Stephanie Getson, Office of Civilian Response, (202) 712–1372. Privacy Act related questions should be directed to Rhonda Turnbow, Deputy Chief Privacy Officer (202) 712–0106.

SUPPLEMENTARY INFORMATION: USAID is proposing to alter its system of records pursuant to the Privacy Act (5 U.S.C. 552a), entitled the Deployment Tracking System (DTS). This system was established to support USAID's responsibilities as part of an interagency effort led by the Department of State, known as the Civilian Response Corps (CRC). In order to participate as a partner agency, USAID must have mechanisms in place to identify, assign or employ personnel with appropriate skill sets and have the ability to mobilize these resources rapidly in response to stabilization crisis.

USAID is proposing to alter its ''Deployment Tracking System Records'' to increase the categories of records contained within the system of records.

This expansion is needed in order to fully participate with the other partner agencies and meet the data collection requirements of the CRC. USAID proposes to add the following categories of records: Citizenship, military service information, social security number, medical clearance information and security clearance information. This information is required by the CRC to help determine which individuals are appropriate for each mission, assist in coordinating visas, registering individuals on military flights, ensuring individuals are properly cleared for deployment and determining if an individual has the appropriate clearances to attend briefings.

Philip M. Heneghan,
Chief Privacy Officer.

USAID–029

Revise the categories of records covered by the system to read as follows:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

This system will contain information relevant to the planning, administration, training, and management of CRC personnel. Categories of records include: Full name, date of birth, height/weight, hair/eye color, blood type, marital status, religion, citizenship, home address, home phone number, mobile phone number, personal e-mail address, emergency contact, next of kin, passport information, driver license information, military record, citizenship, social security number, medical clearance information and security clearance information.

* * * * *

[FR Doc. E9–18942 Filed 8–6–09; 8:45 am]
BILLING CODE 6116–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–845]

Stainless Steel Sheet and Strip in Coils From Japan: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to timely requests by two manufacturers/exporters, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain stainless steel sheet and strip in coils (SSSSC) from Japan with respect to Hitachi Cable Ltd. (Hitachi Cable) and Nippon Kinzoku Co., Ltd. (NKKN). The review covers the period July 1, 2007, through June 30, 2008.

We preliminarily determine that NKKN and Hitachi Cable did not make sales below normal value (NV).

If the preliminary results are adopted in our final results of the administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on the preliminary results.

DATES: *Effective Date:* August 7, 2009.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Rebecca Trainor, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4929 and (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

In response to timely requests by two manufacturers/exporters, on August 26, 2008, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on certain SSSSC from Japan with respect to Hitachi Cable and NKKN covering the period July 1, 2007, through June 30, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 73 FR 50308 (August 26, 2008).

On September 4, 2008, we issued the antidumping duty questionnaire to Hitachi Cable and NKKN. We received responses to sections A, B, and C of the questionnaire from Hitachi Cable and NKKN in October and November 2008.

On November 12, and 25, 2008, the petitioners in the above-referenced administrative review (*i.e.,* AK Steel Corporation and Allegheny Technologies, Inc.) (collectively, the petitioners) filed timely sales-below-cost-allegations against Hitachi Cable and NKKN, respectively. *See* 19 CFR 351.301(d)(2)(ii). Accordingly, on December 18, 2008, the Department initiated sales-below-cost investigations on both Hitachi Cable and NKKN and, as a result, required Hitachi Cable and NKKN to submit responses to section D of the Department's antidumping duty questionnaire.[1] We received responses to section D of the questionnaire in January 2009.

During the period December 2008 through July 2009, we issued to Hitachi Cable and NKKN supplemental questionnaires with respect to sections A, B, C, and D of the original questionnaire. We received responses to these questionnaires during the period December 2008 through July 2009.

On March 9, 2009, pursuant to section 751(a)(3) of the Tariff Act of 1930, as amended (the Act), the Department postponed the preliminary results of this review until July 31, 2009. *See Stainless Steel Sheet and Strip in Coils from Japan and Taiwan: Notice of Extension of Time Limit for Preliminary Results of the 2007–2008 Administrative Reviews,* 74 FR 10885 (March 13, 2009).

Pursuant to section 782(i) of the Act, the Department conducted verifications of the questionnaire responses submitted by Hitachi Cable, NKKN, and one of NKKN's affiliated resellers, Nikkin Steel Co., Ltd. in May and June 2009.[2] *See* Memoranda to The File, ''Verification of the Sales Responses of Nippon Kinzoku Co, Ltd. (NKKN) in the Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from Japan,'' (July 31, 2009) (''NKKN Sales Verification Report''); ''Verification of the Sales Response of Nikkin Steel Co., Ltd. (Nikkin Steel) in the Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils (SSSSC) from Japan,'' (July 13, 2009); ''Verification of the Sales Responses of Hitachi Cable Limited (HCL) and Hitachi Cable America (HCA) (collectively Hitachi Cable) in the Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from Japan,'' (July 20, 2009) (''Hitachi Cable Sales Verification Report''); and ''Verification of the Cost Response of Nippon Kinzoku Co., Ltd. in the Antidumping Duty Administrative Review of Certain Stainless Steel Sheet and Strip in Coils from Japan,'' (June 3, 2009). The verification reports are on file and available in the Central Records Unit (CRU), Room 1117 of the Department's main building.

[1] *See* Memorandum to James Maeder, Director Office 2, ''The Petitioners' Allegation of Sales Below the Cost of Production for Hitachi Cable Limited and Hitachi Cable America,'' (December 18, 2008) (Hitachi Cable Cost Initiation Memo); and Memorandum to James Maeder, Director Office 2, ''The Petitioners' Allegation of Sales Below the Cost of Production for Nippon Kinzoku Co., Ltd. and its Affiliates S–Metal, Goka, Marubeni-Itochu Steel America Inc., and Marubeni-Itochu Specialty Steel Corp.,'' (December 18, 2008) (NKKN Cost Initiation Memo).

[2] The verification of Hitachi Cable's cost response will be conducted after the preliminary results.

Scope of the Order

For purposes of this order, the products covered are certain SSSSC. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.,* cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.,* flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.,* cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [3]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [4]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1,700 Mpa and ultimate tensile strengths as high as 1,750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly

[3] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[4] ''Gilphy 36'' is a trademark of Imphy, S.A.

used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [5]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.,* carpet knives).[6] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.'' [7]

Period of Review

The period of review (POR) is July 1, 2007, through June 30, 2008.

Bona Fides Analysis of Hitachi Cable's U.S. Sale

In comments submitted to the Department on November 12, 2008, February 2, 2009, and February 23, 2009, the petitioners alleged that Hitachi Cable's sole U.S. sale during the POR was not a *bona fide* transaction, and requested that the Department rescind the review of Hitachi Cable on this basis. Specifically, the petitioners argued that the price, quantity, payment period and delivery terms were not consistent with normal commercial considerations for the product and producer concerned. They concluded that, given the totality of the circumstances, there is no evidence to support a finding that the sale at issue was a *bona fide* commercial transaction reflective of normal commercial terms to be followed for future sales.

For the following reasons, we preliminarily determine that Hitachi Cable's sale to the United States is a *bona fide* sale. We confirmed at verification that the U.S. sale at issue consisted of a sample of subject merchandise sold for testing purposes. As explained in the sales verification report and as discussed in Hitachi Cable's questionnaire responses, Hitachi Cable produces a niche product to the exact specifications of each customer. It routinely produces test samples for both established and new customers in a similar quantity as that requested by the U.S. customer in this case. *See* Hitachi Cable Sales Verification Report, at 6–8.[8] Although the home market database contains no sales of identical merchandise to serve as a comparison to the U.S sale, it contains several sales of similar subject merchandise with prices and quantities that are comparable to those of the U.S. sale. *See* ''Hitachi Cable Ltd. Preliminary Results Margin Calculations'' (July 31, 2009) (Hitachi Calculation Memo).[9] Furthermore, we find that the delivery method Hitachi Cable employed for the U.S. sale was not inconsistent with normal industry practice for small-quantity sales, as the same delivery method was used by the other respondent in this review, NKKN (*see* Hitachi Cable Sales Verification Report, at 6; and NKKN Sales Verification Report, at 5). Finally, with respect to the payment, Hitachi Cable established payment terms in accordance with its normal sales process, and provided a reasonable explanation at verification for why the timing of the actual payment was inconsistent with the payment terms indicated on the sales documents. *See* Hitachi Cable Sales Verification Report at 14.

Therefore, based on the record information and our verification thereof, we preliminarily determine that Hitachi Cable's sale to the United States constitutes a *bona fide* commercial transaction.

Comparisons to Normal Value

To determine whether sales of SSSSC from Japan to the United States were made at less than NV, we compared the export price (EP) or constructed export price (CEP) to the NV, as described in the ''Constructed Export Price/Export Price'' and ''Normal Value'' sections of this notice, below. We made adjustments to the reported U.S. and home market sales data based on verification findings, as described in the Hitachi Calculation Memo and Memorandum to the File, ''Nippon Kinzoku Ltd. Preliminary Results Margin Calculations'' (July 31, 2009).

Pursuant to section 777A(d)(2) of the Act, for NKKN and Hitachi Cable we compared the EPs or CEPs, as appropriate, of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the ''Cost of Production Analysis'' section, below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by NKKN and Hitachi Cable covered by the description in the ''Scope of the Order'' section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), we compared U.S. sales of SSSSC to sales of SSSSC made in the comparison market for NKKN and Hitachi Cable within the contemporaneous window period, which extends from three months prior to the month of the U.S. sales until two months after the U.S. sales. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales of SSSSC to sales of SSSSC of the most similar foreign like product made in the ordinary course of trade.

In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order: Grade of stainless steel, whether hot- or cold-rolled, gauge, surface finish, metallic coating, non-metallic coating, width, temper, and edge trim.

Constructed Export Price/Export Price

For certain U.S. sales made by NKKN we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to

[5] ''Durphynox 17'' is a trademark of Imphy, S.A.

[6] This list of uses is illustrative and provided for descriptive purposes only.

[7] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

[8] We note that NKKN, the other respondent in this review, also produced test samples for customers in the normal course of business. *See* NKKN Sales Verification Report, at 5.

[9] At verification we observed that one of the reported home market sales selected for individual review also consisted of a test sample. *See* Hitachi Cable Sales Verification Report, at 6.

importation and CEP methodology was not otherwise warranted based on the facts of record.

For Hitachi Cable's U.S. sale and certain of NKKN's U.S. sales, we calculated CEP in accordance with section 772(b) of the Act because the subject merchandise was sold for the account of NKKN and Hitachi Cable by their respective subsidiaries in the United States to unaffiliated purchasers.

A. Hitachi Cable

In accordance with section 772(b) of the Act, we calculated CEP, as the subject merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

We made deductions from the starting price for international freight expenses, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*e.g.,* imputed credit expenses), and indirect selling expenses (including inventory carrying costs and other indirect selling expenses).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Hitachi Cable and its U.S. affiliate on its sales of the subject merchandise in the United States and the profit associated with those sales.

B. NKKN

In accordance with section 772(a) of the Act, we calculated EP for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States. We based EP on prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price, where appropriate, for foreign inland freight expenses, foreign inland insurance expenses, and foreign brokerage and handling expenses, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

We made deductions from the starting price for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight and insurance expenses, foreign brokerage and handling expenses, marine insurance expenses, international freight expenses, U.S. brokerage and handling expenses, and U.S. warehousing expenses.

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*e.g.,* imputed credit expenses and warranty expenses), and indirect selling expenses (including inventory carrying costs and other indirect selling expenses).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by NKKN and its U.S. affiliate on its sales of the subject merchandise in the United States and the profit associated with those sales.

Normal Value

A. Home Market Viability and Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that both NKKN and Hitachi Cable had viable home markets during the POR. Consequently, we based NV on home market sales for NKKN and Hitachi Cable.

B. Affiliated-Party Transactions and Arm's-Length Test

During the POR, NKKN and Hitachi Cable sold the foreign like product to affiliated customers. To test whether these sales were made at arm's-length prices, we compared, on a product-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all applicable billing adjustments, discounts and rebates, movement charges, direct selling expenses, and packing expenses. Pursuant to 19 CFR 351.403(c) and in accordance with the Department's practice, where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186, 69187 (Nov. 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 percent and 102 percent in order for sales to be considered in the ordinary course of trade and used in the NV calculation). Sales to affiliated customers in the comparison market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade. *See* 19 CFR 351.102(b).

C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *See id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731, 61732 (November 19, 1997) (*Plate from South Africa*). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.,* the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.,* NV based on either home market or third country prices),[10] we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States,* 243 F. 3d 1301, 1314 (Fed. Cir. 2001). When

[10] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) expenses, and profit for CV, where possible.

the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sales to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.,* no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Plate from South Africa,* at 61732–33.

In this administrative review, we obtained information from each respondent regarding the marketing stages involved in making the reported foreign market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

1. Hitachi Cable

Hitachi Cable made one CEP sale through the U.S. affiliate, HCA, to an end-user in the United States on a delivered basis. We examined the selling functions performed by Hitachi Cable for the sale, but not those performed by HCA, consistent with our normal practice for CEP sales. *See Plate from South Africa,* at 61731, 61732. Hitachi Cable performed the following selling functions for the U.S. sale: invoicing, customer visits, finished goods storage, freight arrangements, and payment collection. As there was only one channel of distribution for the CEP sale made during the POR, we find that there is one LOT in the U.S. market.

In the Japanese market, Hitachi Cable made sales to end-users on a delivered basis. We found that Hitachi Cable performed the following selling functions for home market sales: invoicing, customer visits, finished goods storage, freight arrangements, and payment collection. As there was only one channel of distribution for home market sales, we find that there was one LOT in the home market. As the selling functions performed for U.S. and home market customers are identical, we preliminarily determine that the U.S. and home market sales were made at the same LOT during the POR. Consequently, we matched the CEP sale to comparison-market sales at the same LOT, and no LOT adjustment is warranted.

2. NKKN

NKKN reported that it made EP and CEP sales to end-users in the United States through two channels of distribution. For EP sales, NKKN made sales to end-users on an FOB basis through an unaffiliated Japanese reseller with knowledge that the subject merchandise was destined for the United States (channel 2). For CEP sales, NKKN made sales to end-users through affiliated trading companies in Japan and the United States, on either an ex-warehouse or a delivered basis (channel 1).

We compared the selling activities performed for the two sales channels in the United States to determine whether they were indicative of different LOTs. For EP sales, NKKN performed the following selling functions: sales and marketing (*e.g.,* invoicing and joint customer visits), freight and delivery services, and warranty claim processing. For CEP sales, NKKN and/or its affiliated Japanese trading company performed the following selling functions: sales and marketing (*e.g.,* invoicing and joint customer visits), and freight and delivery services. Thus, with the exception of warranty claim processing, NKKN performed the same selling activities for sales made through both channels of distribution in the United States. With respect to warranty claim processing, which NKKN performed for EP sales, but not CEP sales, we find that this selling function alone does not constitute a substantial difference in selling functions and, therefore, is not sufficient to establish a different LOT. As explained in the Department's regulations at 19 CFR 351.412(c)(2), ''{s}ubstantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing.'' Therefore, we determine that one LOT exists in the U.S. market.

In the Japanese market, NKKN and its affiliated resellers made sales to unaffiliated trading companies and end-users through two channels of distribution (*i.e.,* direct from NKKN to trading companies, or out of inventory). For direct sales, NKKN and/or its affiliated resellers performed the following selling functions: sales and marketing (*e.g.,* invoicing and customer visits), freight and delivery services, print advertising, and warranty claim processing. For sales made out of inventory, NKKN's affiliated resellers performed warehousing/inventory maintenance in addition to the selling functions listed above for direct sales. We do not find that the performance of warehousing/inventory maintenance alone is sufficient to distinguish sales made out of inventory as a separate LOT. *See* 19 CFR 351.412(c)(2). Therefore, we determine that there is one LOT in the home market.

Finally, we compared the U.S. LOT to the home-market LOT, and found that the selling functions performed for customers in both markets were virtually identical. Specifically, NKKN and/or its affiliates in Japan provided sales and marketing, freight and delivery services, and warranty claim processing at equal levels of intensity to both markets. The exception was print advertising, which NKKN performed at a low level of intensity in the home market only. As the performance of this selling function alone is not sufficient to establish a different LOT between sales made in the Japanese market and those made to the United States, we preliminarily determine that the sales to the U.S. and home market during the POR were made at the same LOT. *Id.* Consequently, we matched EP and CEP sales to comparison-market sales at the same LOT and no LOT adjustment was warranted.

D. Cost of Production Analysis

Based on our analysis of the petitioners' allegations, we found that there were reasonable grounds to believe or suspect that Hitachi Cable's and NKKN's sales of SSSSC in the home market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated sales-below-cost investigations to determine whether Hitachi Cable's and NKKN's sales were made at prices below their respective COPs. *See* the Hitachi Cable Cost Initiation Memo, and the NKKN Cost Initiation Memo.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the respondents' COPs based on the sum of their costs of materials and conversion for the foreign like product, plus amounts for G&A expenses and interest expenses. *See* ''Test of Comparison Market Sales Prices'' section below for treatment of comparison-market selling expenses.

The Department relied on the COP data submitted by Hitachi Cable and NKKN for the cost reporting period in their most recent supplemental section D questionnaire responses for the COP calculations, except for the following instances where the information was not appropriately quantified or valued.

Hitachi Cable

1. The only product Hitachi Cable sold in the United States during the POR was produced within the POR but outside of the alternative cost reporting period (CRP).[11] Accordingly, the reported costs for the U.S. product were based on the standard costs and variances applicable during the POR but outside the alternative CRP. Because Hitachi Cable's reported costs for the products sold in the home market were based on the standard costs and variances for the alternative CRP, we used the alternative CRP standard costs and variances to calculate the costs of the U.S. product.

2. We included certain non-operating income and expense items in the numerator of the G&A expense ratio calculation, which Hitachi had excluded from its calculation. Also, we used the cost of goods sold from Hitachi Cable's financial statements as the denominator in the calculation of the G&A expense ratio as opposed to the total COM plus beginning inventory, as calculated by Hitachi.

3. We estimated the consolidated packing expense based on Hitachi's unconsolidated packing expenses and removed it from the cost of goods sold, which is used as the denominator in the calculation of the financial expense ratio. *See Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review,* 73 FR 7710 (February 11, 2008), and accompanying Issues and Decision Memorandum at Comment 12.

4. Hitachi did not provide a cost for one product. Thus, for the preliminary results, we used a similar product's cost as a surrogate cost.

See Memorandum to Neal M. Halper, Director of Office of Accounting, ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Hitachi Cable Ltd.'' (July 31, 2009).

NKKN

1. We used the revised COM for the U.S. steel grades that NKKN provided at the Department's request after the cost verification.

2. We revised the reported COM to include the cost of re-slitting that was performed by affiliated resellers, consistent with the statute to treat such costs as a part of COM. *See* sections 773(a)(6) and 773(b)(3)(A) of the Act. NKKN originally included these costs in its affiliated resellers' home market sales databases.

See Memorandum to Neal M. Halper, Director of Office of Accounting, ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Nippon Kinzoku Co., Ltd.'' (July 31, 2009).

Test of Comparison-Market Sales Prices

On a product-specific basis, we compared the weighted-average COP to the home market sales of the foreign like product, adjusted where applicable, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices, adjusted for any applicable billing adjustments, were exclusive of any applicable movement charges, rebates, discounts, and direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

In determining whether to disregard comparison-market sales made at prices below the COP, we examine, in accordance with sections 773(b)(1)(A) and (B) or the Act: (1) whether, within an extended period of time, such sales were made in substantial quantities; and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's comparison-market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales because: (1) they were made within an extended period of time in ''substantial quantities,'' in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices that would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain specific products, more than 20 percent of Hitachi Cable's and NKKN's comparison-market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

E. Calculation of Normal Value Based on Comparison-Market Prices

1. Hitachi Cable

We based NV for Hitachi Cable on prices to unaffiliated customers in the home market, or prices to affiliated customers in the home market that were determined to be at arm's length. Where appropriate, we made adjustments to the starting price for billing adjustments. We also made deductions for inland freight (plant/warehouse to customer), under section 773(a)(6)(B)(ii) of the Act, and home market credit expenses, pursuant to 773(a)(6)(C)(iii) of the Act.

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

We also deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

2. NKKN

We based NV for NKKN on delivered prices to unaffiliated customers in the home market, or prices to affiliated customers in the home market that were determined to be at arm's length. Where appropriate, we made adjustments to the starting price for billing adjustments and rebates. We made deductions, where appropriate, for pre-sale warehousing expenses and inland freight (plant to internal or external warehouse, and plant to customer) and insurance expenses, under section 773(a)(6)(B)(ii) of the Act.

For home market price-to-EP comparisons, we made circumstance-of-sale adjustments for differences in credit expenses and warranty expenses, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

For home market price-to-CEP comparisons, we made deductions for home market credit and warranty expenses, pursuant to 773(a)(6)(C) of the Act.

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

We also deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

[11] The CRP for Hitachi Cable was shifted from July 1, 2007, through June 30, 2008 (POR) to April 1, 2007, through March 31, 2008 (Hitachi Cable's fiscal year).

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415 based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of the Review

We preliminarily determine that weighted-average dumping margins exist for the respondents for the period July 1, 2007, through June 30, 2008, as follows:

Manufacturer/Exporter	Percent margin
Hitachi Cable Limited	0.00
Nippon Kinzoku Company Limited.	0.23 (*de minimis*)

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c)(ii), interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs. *See* 19 CFR 351.309(d)(1). Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) A brief summary of the argument; and (3) a table of authorities.

Interested parties who wish to request a hearing or to participate if one is requested must submit a written request to the Assistant Secretary for Import Administration, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the respective case briefs.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

For Hitachi Cable's U.S. sales and the majority of NKKN's U.S. sales, we note that the respondents reported the entered value for the U.S. sales in question. We will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer.

For some of NKKN's U.S. sales, we note that NKKN did not report the entered value for the U.S. sales in question. We will calculate importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-specific *ad valorem* ratios based on the estimated entered value.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.,* at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.,* less than 0.50 percent). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate effective during the POR (*i.e.,* 40.18 percent) if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 40.18 percent, the all-others rate established in the LTFV investigation. These requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: July 31, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–18959 Filed 8–6–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–892]

Carbazole Violet Pigment 23 from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2008, the Department of Commerce (the Department) published in the **Federal Register** its notice of opportunity to request an administrative review of the antidumping duty order on carbazole violet pigment 23 (CVP 23) from the People's Republic of China (PRC). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 72764 (December 1, 2008). In response, on December 30, 2008, Trust Chem Co., Ltd. (Trust Chem) requested an administrative review of the antidumping duty order on CVP 23 from the PRC for the period December 1, 2007 through November 30, 2008. On February 2, 2009, the Department published a notice of initiation of this administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 5821 (February 2, 2009). The current deadline for the preliminary results of this review is September 2, 2009.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the 245-day time limit for the preliminary results to a maximum of 365 days.

The Department has determined it is not practicable to complete this review within the statutory time limit because we require additional time to develop the record fully and analyze information related to Trust Chem's U.S. sales and the market economy purchases made by Nantong Longding Chemical Co. Ltd., the manufacturer which sold CVP 23 to Trust Chem. For these reasons, it is impracticable to complete the preliminary results of this administrative review within the originally–specified time limit. Accordingly, the Department is extending the time limit for completion of the preliminary results of this administrative review until no later than December 22, 2009, which is 356 days from the last day of the anniversary month. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: July 30, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–18957 Filed 8–6–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils From Mexico; Preliminary Results of Antidumping Duty Administrative Review and Intent Not To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from respondent, ThyssenKrupp Mexinox S.A. de C.V. (Mexinox S.A.) and Mexinox USA, Inc. (Mexinox USA) (collectively, Mexinox) and Petitioners,[1] the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (S4 in coils) from Mexico. This administrative review covers imports of subject merchandise from Mexinox S.A. during the period July 1, 2007, to June 30, 2008.

We preliminarily determine that sales of S4 in coils from Mexico have been made below normal value (NV). The Department also finds that revocation of the order with respect to Mexinox is not warranted under 19 CFR 351.222(b)(2). If these preliminary results are adopted in our final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on the difference between the constructed export price (CEP) and NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument: (1) A statement of the issues; (2) a brief summary of the argument; and (3) a table of authorities.

DATES: *Effective Date:* August 7, 2009.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards, Brian Davis, or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–8029, (202) 482–7924, or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 1999, the Department published in the **Federal Register** the *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From Mexico*, 64 FR 40560 (July 27, 1999) (*Order*). On July 11, 2008, the Department published a notice entitled *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 39948 (July 11, 2008), covering, *inter alia*, S4 in coils from Mexico for the period of review (POR) (*i.e.*, July 1, 2007, through June 30, 2008).

On July 30, 2008, Mexinox requested (1) revocation of the antidumping order on S4 in coils from Mexico with respect to Mexinox and (2) that the Department conduct an administrative review of Mexinox for the period from July 1, 2007, through June 30, 2008. On July 31, 2008, in accordance with 19 CFR 351.213(b)(1), Petitioners also requested that the Department conduct an administrative review of Mexinox for the period July 1, 2007, through June 30, 2008. On August 26, 2008, the Department published in the **Federal Register** a notice of initiation of this

[1] Petitioners are Allegheny Ludlum Corporation, AK Steel Corporation, and North American Stainless.

antidumping duty administrative review covering the period July 1, 2007, through June 30, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 73 FR 50308 (August 26, 2008). On September 2, 2008, the Department issued an antidumping duty questionnaire to Mexinox. Mexinox submitted its response to section A of the questionnaire (AQR) on October 7, 2008, and its response to sections B, C, D, and E of the questionnaire (BQR, CQR, DQR, and EQR, respectively) on November 12, 2008. On December 12, 2008, Mexinox submitted factual information for the Department's consideration in the instant review. On January 29, 2009, the Department issued a supplemental questionnaire for sections A through C. The Department received comments from Petitioners on February 6, 2009 [2] and February 13, 2009.[3] Because it was not practicable to complete this review within the normal time frame, on March 2, 2009, the Department published in the **Federal Register** a notice extending the time limits for this review. *See Stainless Steel Sheet and Strip in Coils from Mexico; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 9079 (March 2, 2009). This extension established the deadline for these preliminary results as July 31, 2009. Mexinox responded to the Department's January 29, 2009, supplemental questionnaire on March 4, 2009 (SQR). On March 16, 2009, the Department received comments on Mexinox's AQR, BQR, CQR, and SQR from Petitioners. On March 31, 2009, and April 8, 2009, the Department issued section D and section E supplemental questionnaires, respectively. On May 1, 2009, Mexinox submitted its response to the Department's March 31, 2009, section D supplemental questionnaire (SDQR). On May 12, 2009, the Department issued a second section D questionnaire. On May 19, 2009, Mexinox submitted its response to the Department's April 8, 2009, section E supplemental questionnaire (SEQR) and on June 3, 2009, it submitted its response to the Department's second section D supplemental questionnaire (SSDQR). On June 4, 2009, the Department issued a second supplemental questionnaire covering sections A through C, and on June 11, 2009, the Department issued a third supplemental questionnaire covering section D. On July 6, 2009, Mexinox filed its collective responses to the Department's June 4, 2009, second supplemental questionnaire as well as the Department's June 11, 2009, third section D supplemental questionnaire (collectively, SSQR).

Period of Review

The POR is July 1, 2007, through June 30, 2008.

Notice of Intent Not To Revoke Order in Part

On July 30, 2008, Mexinox requested that, pursuant to 19 CFR 351.222(b)(2), the Department revoke it from the antidumping duty order on S4 in coils from Mexico at the conclusion of this administrative review. Mexinox submitted along with its revocation request a certification stating that: (1) The company sold subject merchandise at not less than NV during the POR, and that in the future it would not sell such merchandise at less than NV; (2) the company has sold the subject merchandise to the United States in commercial quantities during each of the past three years, and (3) the company agrees to immediate reinstatement of the antidumping duty order, if the Department concludes that the company, subsequent to revocation, sold the subject merchandise at less than NV. *See* 19 CFR 351.222(e).

In determining whether or not to revoke an antidumping duty order with respect to a particular producer/exporter under 19 CFR 351.222(b)(2), the Department considers whether: (1) The producer/exporter has sold the subject merchandise at not less than NV for a period of at least three consecutive years; (2) the producer/exporter has agreed to immediate reinstatement of the order if the Department finds that it has resumed making sales at less than NV; and (3) the continued application of the order is not otherwise necessary to offset dumping.

In this case, our preliminary margin calculation shows that Mexinox sold the subject merchandise at less than NV during the current review period. *See* ''Preliminary Results of Review'' section below. Moreover, Mexinox received antidumping duty margins above *de minimis* in the previous two administrative reviews. Mexinox makes its request predicated on the assumption that an appeal will result in recalculations for both administrative reviews of margins at zero or *de minimis*. However, it is not the Department's policy to speculate regarding potential future outcome of appeals when determining whether revocation of the merchandise produced and exported by a particular company from an existing antidumping duty order is warranted. *See*, *e.g.*, *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and Determination To Revoke in Part*, 73 FR 66218, 66219 (November 7, 2008). While we acknowledge that the Department's determinations in the two prior segments of this proceeding are currently before NAFTA panels, there is no final and conclusive judgment supporting Mexinox's arguments or invalidating the Department's findings in the prior administrative reviews. Moreover, Mexinox's certification is based on the contention that the Department should offset sales made at less than NV with the sales that were made at not less than NV. In other words, Mexinox suggests that it had sales of the subject merchandise at less than NV during the relevant time period. However, 19 CFR 351.22(E)(1)(ii) requires the company to certify that the company sold its subject merchandise at not less than NV during each of the past three consecutive years. Therefore, we preliminarily find that Mexinox has sold subject merchandise at less than NV within the period of at least three consecutive years. Accordingly, we preliminarily determine, pursuant to 19 CFR 351.222(b)(2), that revocation of the order with respect to Mexinox is not warranted.

Scope of the Order

For purposes of the order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36,

[2] Comments were in regard to Mexinox's AQR, BQR, and CQR.

[3] Comments were in regard to Mexinox's DQR.

7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to the order is dispositive.

Excluded from the scope of the order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of the order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of the order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of the order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [4]

Certain electrical resistance alloy steel is also excluded from the scope of the order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [5]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of the order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [6]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of the order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[7] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and

[4] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[5] ''Gilphy 36'' is a trademark of Imphy, S.A.

[6] ''Durphynox 17'' is a trademark of Imphy, S.A.

[7] This list of uses is illustrative and provided for descriptive purposes only.

0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.'' [8]

Date of Sale

Mexinox reported the invoice date as the date of sale for certain sales made in all channels of distribution in both the home and U.S. markets. For all other sales in both the home market and the United States, Mexinox reported the date of the binding contract as the date of its sales made pursuant to these binding contracts. Specifically, due to volatile metal prices in recent years, Mexinox stated that it entered into binding contracts fixing prices and quantities for specified sales of subject merchandise for certain customers. *See* Mexinox's AQR at pages A–50 through A–51. *See also* Mexinox's SQR at page A–46.

The Department normally uses invoice date as the date of sale, but may use a date other than the invoice date, if the Department is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. *See* 19 CFR 351.401(i). For purposes of this review, we examined whether invoice date, contract date, or another date better represents the date on which the material terms of sale were established for all of Mexinox's sales to customers in the home and U.S. markets. The Department, in reviewing Mexinox's questionnaire responses, found that the material terms of sale for all sales are set on the date on which the invoice is issued. *See* Mexinox's AQR at attachments A–5–B through A–5–E for sample sales documents in the U.S. and home market for each channel of distribution as well as for a fixed-price contract. *See also* Mexinox's SSQR at Attachments A–32–A through A–32–D for relevant written sales contracts and documentation (*i.e.*, list of base prices, alloy surcharge sales contracts, analysis or quantities shipped under the contract, sample transaction(s): Contract sale, and sample transaction(s): Non-contract sale) between Mexinox and its customers who are part of the fixed-price contracts.

Mexinox explained that other than sales under binding, fixed-price contracts, both home market and U.S. sales by Mexinox generally involve the placement of a purchase order by the customer. *See* Mexinox's AQR at pages 54–55. Mexinox also states that the purchase order is not binding on either party, is subject to cancellation, and the quantities initially requested can be changed after the initial order date and up until the merchandise is released for shipment. *See* Mexinox's AQR at pages 54–55. *See also* Mexinox's AQR at 17–19. The sales order entered into Mexinox's system at the time of sale may include a provisional price term, however, the sales order acknowledgement sent to the customer after the order is placed does not contain a sales price. Instead, sales prices in both markets are subject to further negotiation up until the time of shipment and invoicing (with the final price included on the invoice) in order to accommodate rapidly changing market price conditions, including changes in steel alloy prices and alloy surcharges. *See* Mexinox's AQR at page 55. In instances in which there were changes to the material terms of sale after the invoice, Mexinox explained that credit or debit notes will be issued after invoicing to correct for any billing errors. *See* Mexinox's SQR at page 21.

In its SQR at page A–55, Mexinox states that the price and quantity for its sales made pursuant to the binding, fixed contracts are, ''firmly established under the contract with the customer, and do not change between the contract date and the invoicing of material to the customer.'' However, in reviewing the record, the Department preliminarily finds that the material terms of sale (*e.g.*, price and quantity) are subject to, and in some instances did, change between the contract date and when Mexinox issued invoices to its customers for sales subject to these allegedly binding contracts. Specifically, we noted instances in which (1) Mexinox did not ship the full quantity specified under the contract and (2) the contracts specify ranges of alloy surcharges which are determined at the time of shipment.

Lastly, if the respondent or other party wants the Department to use a different date than invoice date, it must submit information that supports the use of a different date. In the instant review, the Department, for purposes of these preliminary results, finds that Mexinox has not met its burden of proving that the material terms of its U.S. sales were set and were no longer subject to change prior to the invoice date. For a detailed discussion of our date of sale analysis, *see* ''Analysis of Data Submitted by ThyssenKrupp Mexinox S.A. de C.V. for the Preliminary Results of the Antidumping Duty Administrative Review on Stainless Steel Sheet and Strip in Coils from Mexico'' from Patrick Edwards and Brian Davis, International Trade Compliance Analysts, to the File, dated July 31, 2009 (Preliminary Analysis Memorandum).

Based on all of the above, we preliminarily determine that invoice date is the appropriate date of sale for all of Mexinox's home market and U.S. sales in this administrative review because it represents the date upon which the material terms of sale are established. This is consistent with previous administrative reviews of this order. *See*, *e.g.*, *Stainless Steel Sheet and Strip in Coils From Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 45708 (August 6, 2008) (*2006–2007 Preliminary Results*), unchanged in *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 74 FR 6365 (February 9, 2009) (*2006–2007 Final Results*), *Stainless Steel Sheet and Strip in Coils from Mexico: Amended Final Results of Antidumping Duty Administrative Review*, 73 FR 14215 (March 17, 2008) (*2005–2006 Amended Final Results*), and *Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 35618 (June 21, 2006) (*2004–2005 Preliminary Results*) unchanged in *Stainless Steel Sheet and Strip in Coils From Mexico; Final Results of Antidumping Duty Administrative Review*, 71 FR 76978 (December 22, 2006) (*2004–2005 Final Results*).

Sales Made Through Affiliated Resellers

A. U.S. Market

Mexinox USA, a wholly-owned subsidiary of Mexinox S.A., which in turn is a subsidiary of ThyssenKrupp Stainless AG (*see* Mexinox's AQR at pages A–9 and A–19, respectively), sold subject merchandise in the United States during the POR to unaffiliated customers. Mexinox USA also made sales of subject merchandise to U.S. affiliate Ken-Mac Metals (Ken-Mac)

[8] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

which is an operating division of ThyssenKrupp Materials NA, Inc. (*id.* at pages A–15 and A–27), which is a subsidiary of ThyssenKrupp USA, Inc. (*id.* at page A–27), the primary holding company for ThyssenKrupp Stainless AG in the U.S. market (*id.* at page A–26). Ken-Mac purchased subject merchandise from Mexinox USA and further manufactured and/or resold the subject merchandise to unaffiliated customers in the United States during the POR. For purposes of these preliminary results of review, we have included both Mexinox USA's and Ken-Mac's sales of subject merchandise to unaffiliated customers in the United States in our margin calculation.

B. Home Market

Mexinox Trading, S.A. de C.V. (Mexinox Trading), a subsidiary of Mexinox S.A., resold the foreign like product, as well as other merchandise, in the home market during the POR. *See* Mexinox's AQR at page A–20. Mexinox S.A.'s sales to Mexinox Trading represented a small portion of Mexinox S.A.'s total sales of the foreign like product in the home market and constituted less than five percent of all home market sales. *See*, *e.g.*, Mexinox's AQR at page A–3. Because sales to Mexinox Trading of the foreign like product were below the five percent threshold established under 19 CFR 351.403(d), we did not require Mexinox S.A. to report Mexinox Trading's downstream sales to its first unaffiliated customer. This is consistent with the most recently completed administrative reviews of S4 in coils from Mexico. *See*, *e.g.*, *2006–2007 Preliminary Results* at 45711, unchanged in *2006–2007 Final Results*; *see also Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 43600, 43602 (August 6, 2007) (*2005–2006 Preliminary Results*), unchanged in *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 73 FR 7710 (February 11, 2008) (*2005–2006 Final Results*), and *2005–2006 Amended Final Results*; *see also 2004–2005 Final Results* at 35620 and accompanying Issues and Decision Memorandum at Comment 2.

Fair Value Comparisons

To determine whether sales of S4 in coils from Mexico to the United States were made at less than fair value (LTFV), we compared CEP sales made in the United States by both Mexinox USA and Ken-Mac to unaffiliated purchasers to NV as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(2) of the Tariff Act of 1930, as amended (the Act), we compared individual CEPs to monthly weighted-average NVs. For austenitic grade products where we are using a quarterly costing approach, as described in the ''Normal Value'' section below, we have not made price-to-price comparisons outside of a quarter to lessen the distortive effect of comparing non-contemporaneous sales prices during a period of significantly changing costs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Mexinox S.A. covered by the description in the ''Scope of the Order'' section above, and sold in the home market during the POR, to be foreign like product for purposes of determining appropriate product comparisons to U.S. sales. We relied on nine characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of priority): (1) Grade; (2) cold/hot rolled; (3) gauge; (4) surface finish; (5) metallic coating; (6) non-metallic coating; (7) width; (8) temper; and (9) edge trim. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's original September 2, 2008, questionnaire.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we base NV on sales made in the comparison market at the same level of trade (LOT) as the export transaction. The NV LOT is based on the starting price of sales in the home market or, when NV is based on constructed value (CV), that of the sales from which selling, general, and administrative (SG&A) expenses and profit are derived. With respect to CEP transactions in the U.S. market, the CEP LOT is the level of the constructed sale from the exporter to the importer. *See Mittal Steel USA, Inc.* v. *United States*, 2007 Ct. Int'l Trade Lexis 138, at *25 (Ct. Int'l Trade August 1, 2007).

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. *See* 19 CFR 351.412(c)(2). If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is at a more advanced stage of distribution than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See*, *e.g.*, *Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada*, 67 FR 8781 (February 26, 2002) and accompanying Issues and Decision Memorandum at Comment 8; *see also Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil; Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 17406, 17410 (April 6, 2005), unchanged in *Notice of Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil*, 70 FR 58683 (October 7, 2005). For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). We expect that if the claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims the LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 65 FR 30068 (May 10, 2000) and accompanying Issues and Decision Memorandum at Comment 6.

We obtained information from Mexinox regarding the marketing stages involved in making its reported home market and U.S. sales to both affiliated and unaffiliated customers. Mexinox provided a description of all selling activities performed, along with a flowchart and tables comparing the LOTs among each channel of distribution and customer category for both markets. *See* Mexinox's AQR at A–38 through A–39 and Attachments A–4–B and A–4–C.

Mexinox sold S4 in coils to end-users and retailers/distributors in the home market and to end-users and distributors/service centers in the United States. For the home market, Mexinox S.A. identified two channels of distribution described as follows: (1)

Direct shipments (*i.e.*, products produced to order); and (2) sales from inventory. Within each of these two channels of distribution, Mexinox S.A. made sales to affiliated and unaffiliated distributors/retailers and end-users. *See* Mexinox's AQR at page A–32. We reviewed the intensity of all selling functions Mexinox S.A. claimed to perform for each channel of distribution and customer category. For certain functions, such as: (1) Pre-sale technical assistance; (2) processing of customer orders; (3) sample analysis; (4) prototypes and trial lots; (5) freight and delivery; (6) price negotiation/customer communications; (7) sales calls and visits; (8) continuous technical service; (9) international travel; (10) currency risks; (11) sales forecasting and market research; (12) providing rebates; and (13) warranty services, the level of performance for both direct shipments and sales from inventory was identical across all types of customers. Only a few functions exhibited differences, including: (1) Inventory maintenance/ just-in-time performance; (2) further processing; (3) credit and collection; (4) low volume orders; and (5) shipment of small packages. *See* Mexinox's AQR at Attachment A–4–C. While we find differences in the levels of intensity performed for some of these functions, such differences are minor and do not establish distinct LOTs in Mexico. Based on our analysis of all of Mexinox S.A.'s home market selling functions, we preliminarily find all home market sales were made at the same LOT, the NV LOT.

We then compared the NV LOT, based on the selling functions associated with the transactions between Mexinox S.A. and its customers in the home market, to the CEP LOT, which is based on the selling functions associated with the transaction between Mexinox S.A. and its affiliated importer, Mexinox USA. Our analysis indicates the selling functions performed for home market customers are either performed at a higher degree of intensity or are greater in number than the selling functions performed for Mexinox USA. *See* Mexinox's AQR at pages A–40 through A–45 and Attachments A–4–A through A–4–C. For example, in comparing Mexinox's selling functions, we find there are more functions performed in the home market which are not a part of CEP transactions (*e.g.*, pre-sale technical assistance, sample analysis, prototypes and trial lots, price negotiation/customer communications, price negotiations/customer communications, inventory maintenance/just-in-time performance, international travel, currency risks, sales forecasting and market research, providing rebates, sales calls and visits, credit and collection, and warranty services). For selling functions performed for both home market sales and CEP sales (*e.g.*, processing customer orders, freight and delivery arrangements, further processing, low volume orders, and shipment of small packages), we find Mexinox S.A. actually performed each activity at a higher level of intensity in the home market. *See* Mexinox's AQR at Attachment A–4–C. Based on Mexinox's responses, we note that CEP sales from Mexinox S.A. to Mexinox USA generally occur at the beginning of the distribution chain, representing essentially a logistical transfer of inventory that resembles ex-factory sales. *See* Mexinox's AQR at page A–42 and at Attachment A–4–A. In contrast, sales in the home market (including sales to Mexinox Trading) occur closer to the end of the distribution chain and involve smaller volumes and more customer interaction which, in turn, require the performance of more selling functions. *See* Mexinox's AQR at pages A–43 A–44 and Attachments A–4–A through A–4–C. Based on the abovementioned information, we preliminarily conclude the NV LOT is at a more advanced stage than the CEP LOT.

Because we found the home market and U.S. sales were made at different LOTs, we examined whether a LOT adjustment or a CEP offset may be appropriate in this review. As we found only one LOT in the home market, it was not possible to make a LOT adjustment to home market sales, because such an adjustment is dependent on our ability to identify a pattern of consistent price differences between the home market sales on which NV is based and home market sales at the LOT of the export transaction. *See* 19 CFR 351.412(d)(1)(ii). Furthermore, we have no other information that provides an appropriate basis for determining a LOT adjustment. Because the data available do not form an appropriate basis for making a LOT adjustment, and because the NV LOT is at a more advanced stage of distribution than the CEP LOT, we have preliminarily made a CEP offset to NV in accordance with section 773(a)(7)(B) of the Act.

Constructed Export Price

Mexinox indicated it made CEP sales through its U.S. affiliate, Mexinox USA, in the following four channels of distribution: (1) Direct shipments to unaffiliated customers; (2) stock sales from the San Luis Potosi factory; (3) sales to unaffiliated customers through Mexinox USA's warehouse inventory; and (4) sales through Ken-Mac.[9] *See* Mexinox's AQR at pages A–32 through A–35.

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. We preliminarily find Mexinox properly classified all of its U.S. sales of subject merchandise as CEP transactions because such sales were made in the United States through Mexinox USA or Ken-Mac to unaffiliated purchasers. We based CEP on packed prices to unaffiliated purchasers in the United States sold by Mexinox USA or its affiliated reseller, Ken-Mac. We made adjustments for billing adjustments, discounts and rebates, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, including foreign inland freight, foreign brokerage and handling, inland insurance, U.S. customs duties, U.S. inland freight, U.S. brokerage and handling, and U.S. warehousing expenses. As directed by section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, credit expenses, warranty expenses, and a certain expense of proprietary nature (*see* Mexinox's CQR at pages C–49 through C–50)), inventory carrying costs, packing costs, and other indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act. We used the expenses as reported by Mexinox made in connection with its U.S. sales, with the exception of the U.S. indirect selling expense ratio which we recalculated. *See* Preliminary Analysis Memorandum.

For sales in which the material was sent to an unaffiliated U.S. processor, we made an adjustment based on the transaction-specific further-processing expenses incurred by Mexinox USA. In addition, the U.S. affiliated reseller, Ken-Mac, performed some further manufacturing for its sales to

[9] Ken-Mac is an affiliated service center located in the United States which purchases S4 in coils produced by Mexinox S.A. and then resells the merchandise (after, in some instances, further manufacturing) to unaffiliated U.S. customers. *See* Mexinox's AQR at pages A–15 through A–16.

unaffiliated U.S. customers. For these sales, we deducted the cost of further processing in accordance with section 772(d)(2) of the Act. In calculating the cost of further manufacturing for Ken-Mac, we relied upon Ken-Mac's reported cost of further manufacturing materials, labor and overhead. We also included amounts for further manufacturing general and administrative expenses (G&A), as reported in Mexinox's cost database submitted in its SSDQR, except where adjusted as noted above.

Normal Value

A. Cost Averaging Methodology

The Department's normal practice is to calculate an annual weighted-average cost for the entire POR. *See*, *e.g.*, *Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review*, 65 FR 77852 (December 13, 2000), and accompanying Issues and Decision Memorandum at Comment 18, and *Notice of Final Results of Antidumping Duty Administrative Review of Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006), and accompanying Issues and Decision Memorandum at Comment 5 (explaining the Department's practice of computing a single weighted-average cost for the entire period). However, the Department recognizes that possible distortions may result if our normal annual average cost method is used during a period of significant cost changes. In determining whether to deviate from our normal methodology of calculating an annual weighted average cost, the Department evaluates the case-specific record evidence using two primary factors: (1) The change in the cost of manufacturing (COM) recognized by the respondent during the POR must be deemed significant; and (2) the record evidence must indicate that sales during the shorter averaging periods could be reasonably linked with the cost of production (COP) or CV during the same shorter averaging periods. *See Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398, 75399 (December 11, 2008) (*SSPC from Belgium*) and accompanying Issues and Decision Memorandum at Comment 4; *see also 2006–2007 Final Results* and accompanying Issues and Decision Memorandum at Comment 5.

1. Significance of Cost Changes

In prior cases, the Department established 25 percent as the threshold (between the high and low quarterly COM) for determining that the changes in COM are significant enough to warrant a departure from our standard annual costing approach. *See SSPC from Belgium* and accompanying Issues and Decision Memorandum at Comment 4 ; *see also 2006–2007 Preliminary Results* at 45709–45710, unchanged in *2006–2007 Final Results* and accompanying Issues and Decision Memorandum at Comment 5. In the instant case, record evidence shows that Mexinox experienced significant changes (*i.e.*, changes that exceeded 25 percent) between the high and low quarterly COM during the POR and that the change in COM is primarily attributable to the price volatility for nickel, a major input consumed in the production of the austenitic hot-rolled stainless steel coil purchased by Mexinox, and then used to produce some of the merchandise under consideration. *See* ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—ThyssenKrupp Mexinox S.A. de C.V.,'' from Sheikh Hannan, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, dated July 31, 2009 (Cost Calculation Memorandum). In examining both the company-specific inventory records for austenitic hot-rolled stainless steel coil and global market pricing indices for nickel, we found that nickel prices changed dramatically throughout the POR and consequently directly affected the cost of the material inputs consumed by Mexinox. *See* Cost Calculation Memorandum. Specifically, the record data shows that the percentage difference between the high and low quarterly COM for the austenitic grades of products clearly exceeded 25 percent during the POR. *See* Cost Calculation Memorandum. As a result, we have determined for the preliminary results that the changes in COM for austenitic grades for Mexinox are significant enough to warrant a departure from our standard annual costing approach, as these significant cost changes create distortions in the Department's sales-below-cost test as well as the overall margin calculation.

2. Linkage Between Cost and Sales Information

As noted above, the Department preliminarily found cost changes to be significant in this administrative review; thus the Department subsequently evaluated whether there is evidence of linkage between the cost changes and the sales prices during the POR. The Department's definition of linkage does not require direct traceability between specific sales and their specific production cost, but rather relies on whether there are elements which would indicate a reasonable correlation between the underlying costs and the final sales prices levied by the company. *See 2006–2007 Final Results* and accompanying Issues and Decision Memorandum at Comment 5; *see also SSPC from Belgium* and accompanying Issues and Decision Memorandum at Comment 4. These correlative elements may be measured and defined in a number of ways depending on the associated industry, and the overall production and sales processes.

In the instant case, Mexinox employs an alloy surcharge mechanism. As articulated in *2006–2007 Final Results* (and accompanying Issues and Decision Memorandum at Comment 5) and *SSPC from Belgium* (and accompanying Issues and Decision Memorandum at Comment 4), through the alloy surcharge levied on all sales during the POR, there is a linkage between the volatile direct material costs and final sale prices. Specifically, the alloy surcharge mechanism links the nickel acquisition and consumption costs to the market prices promulgated by the London Metal Exchange (LME). *See*, *e.g.*, *2006–2007 Preliminary Results* at 45709, unchanged in *2006–2007 Final Results.* The alloy surcharge regime is a common business practice in the stainless steel industry, whereby the changes in material costs realized by producers during the months preceding the date of sale are measured based on the LME and ultimately passed on to its final customers. *See 2006–2007 Preliminary Results* at 45709, unchanged in *2006–2007 Final Results.* The alloy surcharge figure does not need to directly correspond to changes in the price of the applicable raw material used in the production to which the surcharge applies. The surcharge amount is, by design, a mechanism developed to account for raw material price changes. This alloy surcharge mechanism, as noted above, allows companies to pass on the changes in raw material costs to their customers, thereby establishing a reasonable link between the underlying costs and sales prices.

In light of the two factors discussed above, a significant change in COM between the high and low quarters exists and a reasonable linkage between cost and sales information exists through the alloy surcharge mechanism. Accordingly, we have preliminarily determined that a quarterly costing approach would lead to more appropriate comparisons in our antidumping duty calculations for austenitic products. Therefore, we preliminarily used quarterly indexed annual average direct material costs and annual weighted-average conversion

costs in the COP and CV calculations for austenitic products. For those products reported that do not contain nickel (*e.g.*, ferritic grade products), we have continued to use a single weighted-average total COM for the POR.

B. Selection of Comparison Market

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared Mexinox's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because Mexinox's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for subject merchandise, we determined the home market was viable. *See*, *e.g.*, Mexinox's SSQR at Attachment B–32 (home market sales database) and at Attachment C–33 (U.S. sales database).

C. Affiliated Party Transactions and Arm's Length Test

Sales to affiliated customers in the home market not made at arm's length prices are excluded from our analysis because we consider them to be outside the ordinary course of trade. *See* section 773(f)(2) of the Act; *see also* 19 CFR 351.102(b). Consistent with 19 CFR 351.403(c) and (d) and agency practice, ''the Department may calculate NV based on sales to affiliates if satisfied that the transactions were made at arm's length.'' *See China Steel Corp.* v. *United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003). To test whether the sales to affiliates were made at arm's length prices, we compared, on a model-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all direct selling expenses, billing adjustments, discounts, rebates, movement charges, and packing. Where prices to the affiliated party are, on average, within a range of 98 to 102 percent of the price of identical or comparable merchandise to the unaffiliated parties, we determine that the sales made to the affiliated party are at arm's length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69194 (November 15, 2002). In this review, however, we found that prices to affiliated parties were, on average, outside of the 98 to 100 percent of the price of identical or comparable subject merchandise sold to unaffiliated parties. Accordingly, we found both affiliated home market customers failed the arm's length test and, in accordance with the Department's practice, we excluded sales to these affiliates from our analysis.

D. Cost of Production Analysis

Because we disregarded sales of certain products made at prices below the COP in the most recently completed review of S4 in coils from Mexico (*see 2006–2007 Preliminary Results* at 45713–45714, unchanged in *2006–2007 Final Results*), we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review for Mexinox may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Mexinox. We relied on home market sales and COP information provided by Mexinox in its questionnaire responses, except where noted below:

Using Mexinox's reported quarterly cost database for austenitic grades of product, we measured the cost changes, in terms of a percentage, to develop the direct material indices for each quarter within a specific austenitic stainless steel grade. We used these indices to calculate an annual weighted-average COP for the POR and then restate that annual average COP to each respective quarter on an equivalent basis.

ThyssenKrupp Nirosta GmbH (TKN) and ThyssenKrupp AST, S.p.A. (TKAST), hot-rolled stainless steel coil producers affiliated with Mexinox, sold hot-rolled stainless steel coil to Mexinox USA, which in turn sold hot-rolled stainless steel coil to Mexinox S.A. Hot-rolled stainless steel coil is considered a major input to the production of S4 in coils. Section 773(f)(3) of the Act (the major input rule) states:

> If in the case of a transaction between affiliated persons involving the production by one of such persons of a major input to the merchandise, the administering authority has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input, then the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production, if such cost is greater than the amount that would be determined for such input under paragraph (2).

Paragraph 2 of section 773(f) of the Act (transactions disregarded) states:

> A transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.

In accordance with the major input rule, and as stated in the *2006–2007 Preliminary Results* at 45714, unchanged in *2006–2007 Final Results*, it is the Department's normal practice to use all three elements of the major input rule (*i.e.*, transfer price, COP and market price) where available.

For these preliminary results, we evaluated the transfer prices between Mexinox and its affiliated hot-rolled stainless steel coil suppliers on a grade-specific basis. For certain grades of hot-rolled stainless steel coil, all three elements of the major input analysis were available. These grades of hot-rolled stainless steel coil account for the majority of volume of hot-rolled stainless steel coil that Mexinox purchased from TKN and TKAST during the POR. As such, we find these purchases provide a reasonable basis for the Department to measure the preferential treatment, if any, given to Mexinox for purchases of hot-rolled stainless steel coil from TKN and TKAST during the POR. Therefore, we adjusted the reported costs to reflect the higher of transfer prices, COP, or market prices of hot-rolled stainless steel coil, where available. Additionally, if necessary, we relied on these results to adjust the reported cost for grades where all three elements of the major input were not available. *See* Cost Calculation Memorandum.

Because we have determined that shorter cost periods are appropriate for the COP analysis of austenitic grades, we have performed the major input analysis on a quarterly basis for all grades of austenitic hot-rolled stainless steel coil. For all other grades of hot-rolled stainless steel coil, we have performed the cost-based part of the major input analysis on a POR basis.

We revised Mexinox's G&A expenses to include employee profit sharing expenses and exclude gains on the sales of land and a warehouse. Further, we disallowed the offsets to the G&A expenses for the revenues earned from the recovery of accounts receivables, payments for certificate of material origin requested by customers, ECS fees, lease, travel expenses, and freight because the corresponding expense

items are reported by Mexinox as selling activities. We also revised the denominator used by Mexinox to calculate the G&A expense rate by several items to allow for symmetry between the way the rate was calculated and the application of the rate. In addition, we adjusted the denominator of the financial expense ratio to exclude the packing expenses and include the major input adjustments. *See* Cost Calculation Memorandum.

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. As noted in section 773(b)(1)(D) of the Act, prices are considered to provide for recovery of costs if such prices are above the weighted average per-unit COP for the period of investigation or review. In the instant case, we have relied on a quarterly costing approach for austenitic grades of merchandise. Similar to that used by the Department in cases of high-inflation (*see*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia*, 64 FR 73164 (December 29, 1999) at Comment (1), this methodology restates the quarterly costs on a year-end equivalent basis, calculates an annual weighted-average cost for the POR and then restates it to each respective quarter. We find that this quarterly costing method meets the requirements of section 773(b)(2)(D) of the Act.

Where less than 20 percent of the respondent's home market sales of a given model were at prices below the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time and in ''substantial quantities.'' Where 20 percent or more of the respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because: (1) They were made within an extended period of time in ''substantial quantities,'' in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Our cost test for Mexinox revealed that, for home market sales of certain models, less than 20 percent of the sales of those models were at prices below the COP. We therefore retained all such sales in our analysis and used them as the basis for determining NV. Our cost test also indicated that for home market sales of other models, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

E. Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Mexinox's material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of CV as described above in the ''Cost of Production Analysis'' section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

F. Price-to-Price Comparisons

We calculated NV based on prices to unaffiliated customers. Mexinox S.A. reported home market sales in Mexican pesos, but noted certain home market sales were invoiced in U.S. dollars during the POR. *See* Mexinox's BQR at pages B–26 and B–27. In our margin calculations, we used the currency of the sale invoice at issue and applied the relevant adjustments in the actual currency invoiced or incurred by Mexinox. We accounted for billing adjustments, discounts, and rebates, where appropriate. We also made deductions, where appropriate, for foreign inland freight, insurance, handling, and warehousing, pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise compared pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. In particular, we made COS adjustments for imputed credit expenses and warranty expenses. As noted above in the ''Level of Trade'' section of this notice, we also made an adjustment for the CEP offset in accordance with section 773(a)(7)(B) of the Act. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

We used Mexinox's home market adjustments and deductions as reported. For purposes of these preliminary results, we have accepted Mexinox's reporting of the handling expenses incurred by Mexinox's home market affiliate, Mexinox Trading and imputed credit expenses based on reported payment dates. However, in order to be consistent with past administrative reviews of this case, we intend to request additional information regarding these handling expenses and the actual date of payment for these sales after the issuance of these preliminary results, and address these issues in our final results. *See* Preliminary Analysis Memorandum. *See*, *e.g.*, *2006–2007 Final Results* and accompanying Issues and Decision Memorandum at Comment 1; *see also 2005–2006 Preliminary Results* at 43605, *2005–2006 Final Results,* and *2005–2006 Amended Final Results*; *see also 2004–2005 Preliminary Results* at 35623 (unchanged in *2004–2005 Final Results*).

G. Price-to-CV Comparisons

Where we were unable to find a home market match of such or similar merchandise, in accordance with section 773(a)(4) of the Act, we based NV on CV. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by Dow Jones Reuters Business Interactive, LLC (trading as Factiva), in accordance with section 773A(a) of the Act.

Preliminary Results of Review

As a result of our review, we preliminarily find that the following weighted-average dumping margin exists for the period July 1, 2007, through June 30, 2008:

Manufacturer/Exporter	Weighted average margin (percentage)
ThyssenKrupp Mexinox S.A. de C.V.	13.31

Public Comment

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c). Rebuttal briefs limited to issues raised in the case briefs may be filed no later than five days after the time limit for submitting the case briefs. *See* 19 CFR 351.309(d). Parties who submit argument in these proceedings are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, parties submitting case briefs and/or rebuttal briefs are requested to provide the Department with an additional copy of the public version of any such argument on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such argument or at a hearing, within 120 days of publication of these preliminary results, unless extended. *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Duty Assessment

Upon completion of this administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. The total customs value is based on the entered value reported by Mexinox for all U.S. entries of subject merchandise initially entered for consumption to the United States made during the POR. *See* Preliminary Analysis Memorandum. In accordance with 19 CFR 356.8(a), the Department intends to issue assessment instructions to CBP on or after 41 days following the publication of the final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the company included in these preliminary results for which the reviewed company did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company or companies involved in the transaction.

Cash Deposit Requirements

Furthermore, the following cash deposit requirements will be effective for all shipments of S4 in coils from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this review, except if the rate is less than 0.50 percent (*de minimis* within the meaning of 19 CFR 351.106(c)(1)), the cash deposit will be zero; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the all-others rate of 30.85 percent, which is the all-others rate established in the LTFV investigation. *See Order*. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: July 31, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–19008 Filed 8–6–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–825]

Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on polyethylene terephthalate (PET) film, sheet and strip from India for the period January 1, 2007, through December 31, 2007. We preliminarily determine that subsidies are being provided on the production and export of PET film from India. See the ''Preliminary Results of Administrative Review'' section, below. If the final results remain the same as the preliminary results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties. Interested parties are invited to comment on the preliminary results of this administrative review. *See* the ''Public Comment'' section of this notice, below.

EFFECTIVE DATE: August 7, 2009.

FOR FURTHER INFORMATION CONTACT: Elfi Blum, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0197.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2002, the Department published in the **Federal Register** the countervailing duty (CVD) order on PET film from India. *See Countervailing Duty Order: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from India*, 67 FR 44179 (July 1, 2002) (*PET Film Order*). On July 11, 2008, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity*

to Request Administrative Review, 73 FR 39948 (July 11, 2008).

On July 15, 2008, the Department received a timely request to conduct an administrative review of the PET Film Order from Jindal Poly Films Limited of India (Jindal), formerly named Jindal Polyester Limited, an Indian producer and exporter of subject merchandise. On August 26, 2008, the Department initiated an administrative review of the CVD order on PET film from India covering Jindal for the period January 1, 2007, through December 1, 2007. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 FR 50308 (August 26, 2008).

The Department issued questionnaires to the Government of India (GOI) and Jindal on September 9, 2008. On October 23, 2008, the GOI submitted its questionnaire response. Jindal submitted its questionnaire response on October 30, 2008. The Department issued its first supplemental questionnaires to the GOI and Jindal on February 13, 2009. On March 9, 2009, the GOI submitted its first supplemental response, and Jindal submitted its first supplemental response on March 11, 2009.

On April 2, 2009, the Department extended the time limit for the preliminary results of the countervailing duty administrative review until July 31, 2009. *See Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review*, 74 FR 14960 (April 2, 2009).

The Department issued a second supplemental questionnaire to the GOI and Jindal on July 6, 2009 and on June 23, 2009, respectively. Jindal filed its second supplemental response on July 14, 2009. On July 20, 2009, the GOI filed its response to the Department's second supplemental questionnaire.

Scope of the Order

For purposes of the order, the products covered are all gauges of raw, pretreated, or primed Polyethylene Terephthalate Film, Sheet and Strip, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance–enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Subsidies Valuation Information

Allocation Period

Under 19 CFR § 351.524(d)(2)(i), we will presume the allocation period for non–recurring subsidies to be the average useful life (AUL) prescribed by the Internal Revenue Service (IRS) for renewable physical assets of the industry under consideration (as listed in the IRS's 1977 Class Life Asset Depreciation Range System, and as updated by the Department of the Treasury). This presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets of the company or industry under investigation. Specifically, the party must establish that the difference between the AUL from the tables and the company–specific AUL or country–wide AUL for the industry under investigation is significant, pursuant to 19 CFR § 351.524(d)(2)(i) and (ii). For assets used to manufacture plastic film, such as PET film, the IRS tables prescribe an AUL of 9.5 years.[1] In the 2003 administrative review, the Department determined that Jindal had rebutted the presumption and applied a company–specific AUL of 17 years for Jindal. S*ee Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006) (*PET Film Final Results of 2003 Review*). Because there is no new evidence on the record that would cause the Department to reconsider this decision in this review, the Department has preliminarily determined to continue to use an AUL of 17 years for Jindal in allocating non–recurring subsidies.

Benchmark Interest Rates and Discount Rates

For programs requiring the application of a benchmark interest rate or discount rate, 19 CFR § 351.505(a)(1) states a preference for using an interest rate that the company could have obtained on a comparable loan in the commercial market. Also, 19 CFR § 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient ''could actually obtain on the market'' the Department will normally rely on actual short–term and long–term loans obtained by the firm. However, when there are no comparable commercial loans, the Department may use a national average interest rate, pursuant to 19 CFR § 351.505(a)(3)(ii).

Pursuant to 19 CFR § 351.505(a)(2)(iv), if a program under review is a government provided, short–term loan program, the preference would be to use a company–specific annual average of the interest rates on comparable commercial loans during the year in which the government–provided loan was taken out, weighted by the principal amount of each loan. For this review, the Department required a rupee–denominated short–term loan benchmark rate to determine benefits received under the Pre–Shipment Export Financing and Post–Shipment Export Financing programs. For further information regarding this program, *see* the ''Pre–Shipment and Post–Shipment Export Financing'' section below.

In a prior review of this case, the Department determined that Inland Bill Discounting (IBD) loans are more comparable to pre–shipment and post–shipment export financing loans than other types of rupee–denominated short–term loans. *See Preliminary Results and Rescission in Part of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 70 FR 46483, 46485 (August 10, 2005) (*PET Film Preliminary Results of 2003 Review*) (unchanged in the final results). There is no new information or evidence of changed circumstances which would warrant reconsidering this finding. Therefore, for these preliminary results, we continue to use IBD loans as the basis for the short–term rupee–denominated benchmark for all applicable programs for Jindal.

Jindal did not have any US dollar–denominated short–term loans during the POR. Therefore, in accordance with 19 CFR § 351.505(a)(3)(ii), the Department used a national average dollar–denominated short–term interest rate, as reported in the International Monetary Fund's publication International Financial Statistics (IMF Statistics) for Jindal.

Further, for those programs requiring a rupee–denominated discount rate or the application of a rupee–denominated long–term benchmark rate, we used, where available, company–specific, weighted–average interest rates on comparable commercial long–term, rupee–denominated loans. For this review, the Department required benchmarks to determine benefits received under the Export Promotion Capital Goods Scheme (EPCGS) and Export Oriented Units (EOU) programs. Jindal did not have comparable commercial long–term rupee–

[1] For our subsidy calculations, we round the 9.5 years up to 10 years.

denominated loans for all required years; therefore, for those years for which we did not have company–specific information, we relied on comparable long–term rupee–denominated benchmark interest rates from the immediately preceding year as directed by 19 CFR § 351.505(a)(2)(iii). When there were no comparable long–term, rupee–denominated loans from commercial banks during either the year under consideration or the preceding year, we used national average interest rates, pursuant to 19 CFR § 351.505(a)(3)(ii), from the IMF Statistics.

A. Programs Preliminarily Determined to be Countervailable

1. Pre–Shipment and Post–Shipment Export Financing

The Reserve Bank of India (RBI), through commercial banks, provides short–term pre–shipment financing, or ''packing credits,'' to exporters. Upon presentation of a confirmed export order or letter of credit to a bank, companies may receive pre–shipment loans for working capital purposes (*i.e.*, purchasing raw materials, warehousing, packing, transportation, etc.) for merchandise destined for exportation. Companies may also establish pre–shipment credit lines upon which they draw as needed. Limits on credit lines are established by commercial banks and are based on a company's creditworthiness and past export performance. Credit lines may be denominated either in Indian rupees or in a foreign currency. Commercial banks extending export credit to Indian companies must, by law, charge interest at rates determined by the RBI.

Post–shipment export financing consists of loans in the form of discounted trade bills or advances by commercial banks. Exporters qualify for this program by presenting their export documents to the lending bank. The credit covers the period from the date of shipment of the goods to the date of realization of the proceeds from the sale to the overseas customer. Under the Foreign Exchange Management Act of 1999, exporters are required to realize proceeds from their export sales within 180 days of shipment. Post–shipment financing is, therefore, a working capital program used to finance export receivables. In general, post–shipment loans are granted for a period of not more than 180 days.

In the original investigation, the Department determined that the pre–shipment and post–shipment export financing programs conferred countervailable subsidies on the subject merchandise because: (1) the provision of the export financing constitutes a financial contribution pursuant to section 771(5)(D)(i) of the Act as a direct transfer of funds in the form of loans; 2) the provision of the export financing confers benefits on the respondents under section 771(5)(E)(ii) of the Act to the extent that the interest rates provided under these programs are lower than comparable commercial loan interest rates; and (3) these programs are specific under section 771(5A)(A) and (B) of the Act because they are contingent upon export performance. *See Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) From India*, 67 FR 34905 (May 16, 2002), and accompanying *Issues and Decision Memorandum (PET Film Final Determination)*, at ''Pre–Shipment and Post–Shipment Financing.'' There is no new information or evidence of changed circumstances that would warrant reconsidering this finding. Therefore, for these preliminary results, we continue to find this program countervailable.

Jindal reported that it did not receive any post–shipment export financing during the POR. However, it did report receiving pre–shipment export financing during the POR. With regard to pre–shipment loans, the benefit conferred is the difference between the amount of interest the company paid on the government loan and the amount of interest it would have paid on a comparable commercial loan (i.e., the short–term benchmark). Because pre–shipment loans are tied to a company's exports rather than exports of subject merchandise, we calculated the subsidy rate for these loans by dividing the total benefit by the value of Jindal's total exports during the POR. *See* 19 CFR § 351.525(b). On this basis, we preliminarily determine the net countervailable subsidy from pre–shipment export financing for Jindal to be 0.08 percent *ad valorem* during the POR.

2. Advance License Program (ALP)

Under the ALP, exporters may import, duty free, specified quantities of materials required to manufacture products that are subsequently exported. The exporting companies, however, remain contingently liable for the unpaid duties until they have fulfilled their export requirement. The quantities of imported materials and exported finished products are linked through standard input–output norms (SIONs) established by the GOI. During the POR, Jindal used advance licenses to import certain materials duty free.

In the 2005 administrative review of this proceeding, the GOI indicated that it had revised its Foreign Trade Policy and Handbook of Procedures for the ALP during that POR. The Department analyzed the changes introduced by the GOI to the ALP in 2005 and acknowledged that certain improvements to the ALP system were made. However, the Department found that systemic issues continued to exist in the ALP system during the POR. *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 7708 (February 11, 2008), and accompanying *Issues and Decision Memorandum, at Comment 3 (PET Film Final Results of 2005 Review); see also, Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India*, 71 FR 45034 (August 8, 2006), and accompanying Issues and Decision Memorandum, at Comment 10 *(Lined Paper - Final Determination)*. Based on the information submitted by the GOI and examined during previous reviews of this proceeding, the Department noted that the systemic issues previously identified by the Department continued to exist. *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 72 FR 6530 (February 12, 2007), at *Comment 3, (PET Film Final Results of 2004 Review). See also PET Film Final Results of 2005 Review*, Issues and Decision Memorandum, at ''Advance License Program (ALP),'' and *Comment 3*. In the 2005 review, the Department specifically stated that it continues to find the ALP countervailable because of the systemic deficiencies in the ALP identified in that review:

> the GOI's lack of a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts that is reasonable and effective for the purposes intended, as required under19 CFR § 351.519. Specifically, we still have concerns with regard to several aspects of the ALP including (1) the GOI's inability to provide the SION calculations that reflect the production experience of the PET film industry as a whole; (2) the lack of evidence regarding the implementation of penalties for companies not meeting the export requirements under the ALP or for claiming excessive credits; and, (3)

the availability of ALP benefits for a broad category of ''deemed'' exports. *See PET Film Final Results of 2005 Review*, at *Comment 3*.[2]

Further, in that same review, the Department found that PET film producers ''do not have to keep track of wastage since it is not recoverable for the production of PET film.'' *Id*. Accordingly, no allowance was made by the GOI to account for waste to ensure that the amount of duty deferred would not exceed the amount of import charges on imported inputs consumed in the production of the exported subject merchandise. See id. Furthermore, the Department found that, in developing the SIONs for Pet Film, the GOI did not tie the relevant production numbers to a producer's accounting system or financial statement. *Id*.

In this review, Jindal, reporting the revisions addressed in the above referenced 2005 administrative review of the order, argued that the ALP ''now meets the Department's criteria for being non–countervailable.'' *See Jindal's Original Questionnaire Response,* at 78 (October 30, 2008). Specifically, Jindal argued that the GOI, in order to strengthen the supervision and monitoring system of the ALP, conducted an on–the-spot verification of Jindal's plant to review the actual consumption and utilization of the inputs imported duty free under the ALP. Jindal also provided supporting documentation and copies of GOI publications on the administration of the ALP, the introduction of Appendix 23, and the revision of the PET Film SION. The Department requested Jindal to provide a copy of the GOI's verification of Jindal's Appendix 23 consumption register for the actual quantity imported during the POR, against the quantities included in the SION for PET Film, as enumerated in paragraph 4.28(v) of the Handbook of Procedures 2004–2009. However, Jindal was unable to do so because none of its advance licenses had been redeemed for which it is required to maintain an Appendix 23 to this date. Thus, the Department was unable to examine whether the Appendix 23 is indeed effective in tracing the consumption of the quantities of inputs imported duty free to the quantities of subject merchandise exported, in accordance with the 2005 SION for PET Film. Therefore, there is no record evidence demonstrating the functionality and accuracy of the GOI's new monitoring procedures to ensure that the inputs imported duty free were consumed in the production of subject merchandise exported, in accordance with the newly established PET Film SION. Moreover, Jindal did not address any concerns the Department had in the 2005 review with respect to the formulation and verification of the PET Film SION. In particular, the GOI did not require Jindal to tie the inventory and consumption data to Jindal's accounting systems and financial statements in order to verify the accuracy of Jindal's data, or to account for waste, normally incurred in the production. In addition, in the current review the Department noted inconsistencies between the inputs listed in the revised SIONs for PET Film (H209 and H210), as reported in Exhibit 31(c) of *Jindal's Original Questionnaire Response*, and certain input items listed as allowed to be imported under an advance license by Jindal. Specifically, it appears that several of the items imported, or allowed to be imported, under Jindal's advance licenses were not listed in the SIONs. *See* Jindal's Second Supplemental Questionnaire Response, Exhibit S2–39 (July 14, 2009) (*Jindal's Second Supplemental Questionnaire Response*). The Department intends to further investigate these inconsistencies.

Because the systemic deficiencies in the ALP system identified above still exist, the Department continues to find that the ALP confers a countervailable subsidy because: (1) a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program, as the GOI exempts the respondents from the payment of import duties that would otherwise be due; (2) the GOI does not have in place and does not apply a system that is reasonable and effective for the purposes intended in accordance with 19 CFR § 351.519(a)(4), to confirm which inputs, and in what amounts, are consumed in the production of the exported products, making normal allowance for waste nor did the GOI carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts; thus, the entire amount of the import duty deferral or exemption earned by the respondent constitutes a benefit under section 771(5)(E) of the Act; and, (3) this program is specific under section 771(5A)(A) and (B) of the Act because it is contingent upon exportation.

Pursuant to 19 CFR § 351.524(c)(1), the exemption of import duties normally provides a recurring benefit. Under this program, for 2007, Jindal did not have to pay certain import duties for inputs that were used in the production of subject merchandise. Thus, we are treating the benefit provided under the ALP as a recurring benefit.

Jindal received various ALP licenses, which it reported separately for the production of: (1) subject merchandise; (2) non–subject merchandise; and (3) in the case of invalidated licenses, both subject and non–subject merchandise. However, upon close examination of those exhibits, the Department was not able to determine whether certain licenses are in fact tied to the production of a particular product within the meaning of 19 CFR § 351.525(b)(5). The Department, after examining all original ALP licenses submitted in Exhibit S2–39 of *Jindal's Second Supplemental Questionnaire Response*, and comparing those to the data reported in Exhibits 31(a) and (b), noted certain inconsistencies. For further clarification, *see Memorandum to File from Elfi Blum: Calculations for the Preliminary Results: Jindal Poly Films of India Limited (Jindal) (July 31, 2009).* As a result, we cannot determine that the ALP licenses are tied to the production of a particular product within the meaning of 19 CFR § 351.525(b)(5), and we find that Jindal's ALP licenses benefit all of the company's exports. Therefore, we have divided the resulting net benefit by Jindal's total export sales. On this basis, we determine the countervailable subsidy provided under the ALP to be 1.35 percent *ad valorem* for Jindal.

3. Export Promotion Capital Goods Scheme (EPCGS)

The EPCGS provides for a reduction or exemption of customs duties and excise taxes on imports of capital goods used in the production of exported products. Under this program, producers pay reduced duty rates on imported capital equipment by committing to earn convertible foreign currency equal to four to five times the value of the capital goods within a period of eight years. Once a company has met its export obligation, the GOI will formally waive the duties on the imported goods. If a company fails to meet the export obligation, the company is subject to payment of all or part of the duty reduction, depending on the extent of the shortfall in foreign currency earnings, plus a penalty interest.

In the investigation, the Department determined that import duty reductions provided under the EPCGS are countervailable export subsidies because the scheme: (1) provides a financial contribution pursuant to

[2] *See* Memorandum to File from Elfi Blum: Placing the GOI Verification Report of the 2005 Countervailing Duty Administrative Review on the Record of the 2007 Countervailing Duty Administrative Review.

section 771(5)(D)(ii) in the form of revenue forgone for not collecting import duties; (2) respondents receive two different benefits under section 771(5)(E) of the Act; and (3) the program is contingent upon export performance, and is specific under section 771(5A)(A) and (B) of the Act. *See, e.g., PET Film Final Results of 2004 Review*, 72 FR 6530, Issues and Decision Memorandum, at ''EPCGS.'' There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, for these preliminary results, we continue to find this program countervailable.

The first benefit is the amount of unpaid import duties that would have to be paid to the GOI if accompanying export obligations are not met. The repayment of this liability is contingent on subsequent events, and in such instances, it is the Department's practice to treat any balance on an unpaid liability as a contingent liability interest–free loan, pursuant to 19 CFR § 351.505(d)(1). *Id.* The second benefit is the waiver of duty on imports of capital equipment covered by those EPCGS licenses for which the export requirement has already been met. For those licenses for which companies demonstrate that they have completed their export obligation, we treat the import duty savings as grants received in the year in which the GOI waived the contingent liability on the import duty exemption, pursuant to 19 CFR § 351.505(d)(2).

Import duty exemptions under this program are provided for the purchase of capital equipment. The preamble to our regulations states that if a government provides an import duty exemption tied to major equipment purchases, ''it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non–recurring . . .'' *See Countervailing Duties; Final Rule*, 63 FR 65348, 65393 (November 25, 1998). In accordance with 19 CFR § 351.524(c)(2)(iii), we are treating these exemptions as non–recurring benefits.

Jindal reported that they imported capital goods under the EPCGS in the years prior to and during the POR. Jindal received various EPCGS licenses, which it reported were for the production of: (1) subject merchandise, and (2) non–subject merchandise. However, information provided by Jindal indicates that some of the licenses were issued for the purchase of capital goods and materials used in the production of both subject and non–subject merchandise, or were reported as such in a prior review. *See Jindal's Original Questionnaire Response*, at Exhibits 20(a), 20(c), 22(a), and 22(b), and Jindal's First Supplemental Response, at Exhibit S1–1 and S1–20(b). Further, license documentation included in Jindal's most recent supplemental response indicates an endorsement by the GOI for the export of both subject and non–subject merchandise, and capital equipment reported imported for the production of non–subject merchandise only, endorsed by the GOI for the export of subject merchandise. *See Jindal's Second Supplemental Questionnaire Response*, at Exhibit S2–29. Based on the information and documentation submitted by Jindal, we cannot determine that the EPCGS licenses are tied to the production of a particular product within the meaning of 19 CFR § 351.525(b)(5). As such, we find that all of Jindal's EPCGS licenses benefit all of the company's exports.

Jindal met the export requirements for certain EPCGS licenses prior to December 31, 2007, and the GOI has formally waived the relevant import duties. For most of its licenses, however, Jindal has not yet met its export obligation as required under the program. Therefore, although Jindal has received a deferral from paying import duties when the capital goods were imported, the final waiver on the obligation to pay the duties has not yet been granted for many of these imports.

To calculate the benefit received from the GOI's formal waiver of import duties on Jindal's capital equipment imports where its export obligation was met prior to December 31, 2007, we considered the total amount of duties waived (net of required application fees) to be the benefit. Further, consistent with the approach followed in the investigation, we determine the year of receipt of the benefit to be the year in which the GOI formally waived Jindal's outstanding import duties. *See PET Film Final Determination*, and accompanying Issues and Memorandum, at *Comment 5*. Next, we performed the ''0.5 percent test,'' as prescribed under 19 CFR § 351.524(b)(2), for each year in which the GOI granted Jindal an import duty waiver. Those waivers with values in excess of 0.5 percent of Jindal's total export sales in the year in which the waivers were granted were allocated using Jindal's company–specific AUL, while waivers with values less than 0.5 percent of Jindal's total export sales were expensed in the year of receipt. *See* ''Allocation Period'' section, above.

As noted above, import duty reductions that Jindal received on the imports of capital equipment for which they have not yet met export obligations may have to be repaid to the GOI if the obligations under the licenses are not met. Consistent with our practice and prior determinations, we will treat the unpaid import duty liability as an interest–free loan. *See* 19 CFR § 351.505(d)(1); and *PET Film Final Determination and Issues and Decision Memorandum*, at ''EPCGS''; *see also Final Affirmative Countervailing Duty Determination: Bottle–Grade Polyethylene Terephthalate (PET) Resin From India*, 70 FR 13460 (March 21, 2005) (*Indian PET Resin Final Determination*).

The amount of the unpaid duty liabilities to be treated as an interest–free loan is the amount of the import duty reduction or exemption for which the respondent applied, but, as of the end of the POR, had not been finally waived by the GOI. Accordingly, we find the benefit to be the interest that Jindal would have paid during the POR had it the full amount of the duty reduction or exemption at the time of importation. *See, e.g., Preliminary Results and Rescission in Part of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 70 FR 46483, 46485 (August 10, 2005) (*PET Film Preliminary Results of 2003 Review*) (unchanged in the final results, 71 FR 7534); *see also (Indian PET Resin Final Determination).*

As stated above, under the EPCGS program, the time period for fulfilling the export commitment expires eight years after importation of the capital good. As such, pursuant to 19 CFR § 351.505(d)(1), the benchmark for measuring the benefit is a long–term interest rate because the event upon which repayment of the duties depends (*i.e.*, the date of expiration of the time period to fulfill the export commitment) occurs at a point in time that is more than one year after the date of importation of the capital goods (i.e., under the EPCGS program, the time period for fulfilling the export commitment is more than one year after importation of the capital good). As the benchmark interest rate, we used the weighted–average interest rate from all comparable commercial long–term, rupee–denominated loans for the year in which the capital good was imported. *See* the ''Benchmarks for Loans and Discount Rate'' section above for a discussion of the applicable benchmark. We then multiplied the total amount of unpaid duties under each license by the long–term benchmark interest rate for the year in which the license was approved and summed these amounts to

determine the total benefit for each company.

The benefit received under the EPCGS is the total amount of: (1) the benefit attributable to the POR from the formally waived duties for imports of capital equipment for which respondents met export requirements by December 31, 2007, and/or (2) interest due on the contingent liability loans for imports of capital equipment that have not met export requirements. We then divided that total by Jindal's total exports to determine a subsidy of 4.06 percent *ad valorem*.

4. Export Oriented Units (EOU)

Companies that are designated as an EOU are eligible to receive various forms of assistance in exchange for committing to export all of the products they produce, excluding rejects and certain domestic sales, for five years. Companies designated as EOUs may receive the following benefits: (1) duty–free importation of capital goods and raw materials; (2) reimbursement of central sales taxes (CST) paid on capital goods and materials procured within India; (3) purchase of materials and other inputs free of central excise duty; and (4) receipt of duty drawback on furnace oil procured from domestic oil companies. Consistent with its previous administrative review, Jindal reported that it had been designated as an EOU. *See PET Film Final Results of 2004 Review*, and accompanying Issues and Decision Memorandum, at ''Export Oriented Units.'' Specifically, Jindal reported receiving the following benefits: (1) the duty–free importation of capital goods and materials; (2) the reimbursement of CST paid on raw materials and capital goods procured domestically; and (3) the purchase of materials and other inputs free of central excise duty.

The Department previously determined that the purchase of materials and/or inputs free of central excise duty is not countervailable. *See Indian PET Resin Final Determination*, Issues and Decision Memorandum, at ''Export Oriented Units (EOUs) Programs: Purchase of Material and other Inputs Free of Central Excise Duty.'' With respect to the other categories of benefits enumerated above, the Department determined that the EOU program was specific, within the meaning of section 771(5A)(A) and (B) of the Act, because the receipt of benefits under this program was contingent upon export performance. *See, e.g., Indian PET Resin Final Determination*, Issues and Decision Memorandum, at ''Export–Oriented Unit (EOU) Program: Duty–Free Import of Capital Goods and Raw materials,'' and ''Export–Oriented Unit (EOU) Program: Reimbursement of Central Sales Tax (CST) Paid on Materials Procured Domestically.'' There is no new information or evidence of changed circumstances that would warrant reconsidering this finding.

In this review, Jindal reported also receiving benefits from the ''EOU Duty Drawback on Furnace Oil Procured From Domestic Oil Companies'' program and the ''EOU Income Tax Exemption Scheme (Section 10B),'' both programs previously reported as not used in prior reviews of this proceeding. We determined that the EOU Duty Drawback on Furnace Oil Procured From Domestic Oil Companies was countervailable in *Indian PET Resin Final Determination, Issues and Decision Memorandum*, at ''Export–Oriented Unit (EOU) Program: Duty Drawback on Furnace Oil Procured from Domestic Oil Companies.'' There is no new information or evidence of changed circumstances that would warrant reconsidering this finding. The countervailability of the EOU Income Tax Exemption Scheme (Section 10B) is discussed below under section (d).

a. Duty–Free Importation of Capital Goods and Raw Materials

Under this program, an EOU is entitled to import, duty–free, capital goods and raw materials for the production of exported goods in exchange for committing to export all of the products it produces over five years. The Department previously determined that the duty–free importation of capital goods and raw materials provides a financial contribution and confers benefits equal to the amount of exemptions of customs duties. *See* Sections 771(5)(D)(ii) and (E) of the Act. *See also, Indian PET Resin Final Determinatio*n, Issues and Decision memorandum, at ''Export–Oriented Unit (EOU) Program: Duty–Free Import of Capital Goods and Raw Materials.'' With respect to raw material imports, the GOI was not able to demonstrate that it has in place and applies a system that is reasonable and effective for the purposes intended in accordance with 19 CFR § 351.519(a)(4), to confirm which inputs, and in what amounts, are consumed in the production of the exported products, making normal allowance for waste.

Based on the information provided by Jindal in the form of copies of its ''Executed Legal agreement for EOU Unit'' with the GOI, at Exhibits 26(b.i.), and 26(b.ii.), until an EOU demonstrates that it has fully met its export requirement, the company remains contingently liable for the import duties. *See Jindal's Original Questionnaire Response*, at Exhibits 26(b.i.) and 26(b.ii.). Jindal has not yet met its export requirement under this program and will owe the unpaid duties if the export requirement is not met. (Upon Jindal meeting its export requirement, the Department will treat the waived duties as a grant.) Therefore, consistent with 19 CFR § 351.505(d)(1), until the contingent liability for the unpaid duties is officially waived by the GOI, we consider the unpaid duties to be an interest–free loan made to Jindal at the time of importation. We determine the benefit to be the interest that Jindal would have paid during the POR had it borrowed the full amount of the duty reduction or exemption at the time of importation.

Pursuant to 19 CFR § 351.505(d)(1), the benchmark for measuring the benefit is a long–term interest rate because the event upon which repayment of the duties depends (*i.e.*, the date of expiration of the time period to fulfill the export commitment) occurs at a point in time that is more than one year after the date of importation of the capital goods (*i.e.*, under the EOU program, the time period for fulfilling the export commitment is more than one year after importation of the capital good). We used the long–term, rupee–denominated benchmark interest rate discussed in the ''Benchmarks for Loans and Discount Rate'' section above for each year in which capital goods were imported as the benchmark.

Further, for duty exemptions under this program that are tied to capital equipment purchases, in accordance with 19 CFR § 351.524(c)(2)(iii), we are treating these exemptions as non–recurring benefits and allocating those benefits over Jindal's company specific AUL.

For the duty free importation of capital goods, because Jindal did not fulfill any export obligation under the EOU program, we determined the benefit for each year is the total amount of interest that would have been paid if Jindal had received a loan to pay the duties. To calculate the benefit to Jindal under this program, we summed the amount of interest that would have been paid during the POR, and the duty exemptions on raw material inputs received during the POR. We then divided Jindal's total benefits under this program by its total export sales during the POR. On this basis, we determine the countervailable subsidy from this category of the program to be 1.09 percent ad valorem for Jindal.

b. Reimbursement of CST Paid on Materials Procured Domestically

Under this program, Jindal was also reimbursed for the CST it paid on raw materials and capital goods procured domestically. The Department previously determined that the reimbursement of CST paid on materials procured domestically provides a financial contribution and confers benefits equal to the amount of reimbursements of sales taxes pursuant to sections 771(5)(D)(ii) and (E) of the Act. *See, e.g., PET Film Preliminary Results of 2003 Review*, 70 FR at 46490 (unchanged in the final results). Specifically, the benefit associated with domestically purchased materials is the amount of reimbursed CST received by Jindal during the POR.

Normally, tax reimbursements, such as the CST, are considered to be recurring benefits. However, a portion of the benefit of this program is tied to the purchase of capital assets. As such, pursuant to 19 CFR § 351.524(c)(2)(iii), we would normally treat such reimbursements as non–recurring benefits. However, we performed the ''0.5 percent test,'' as prescribed under 19 CFR § 351.524(b)(2) and found that the amount of CST reimbursements tied to capital goods received during the POR was less than 0.5 percent of total export sales for 2007. We also performed the ''0.5 percent test on Jindal's reimbursements of CST on its purchases of capital assets for the 2006 and 2005 review periods, and found that they were less than 0.5 percent of total export sales for the respective years. Therefore, the benefits under this program were expensed entirely in the year earned and the only benefit was from the CST reimbursements claimed under this program during the POR. *See* 19 CFR § 351.524(b)(2). To calculate the benefit for Jindal, we first summed the total amount of CST reimbursements for capital goods and raw materials received during the POR. We divided this amount by the total value of Jindal's export sales during the POR. On this basis, we preliminarily determine the countervailable subsidy provided to Jindal through the reimbursement of CST under the EOU program to be 0.03 percent *ad valorem*.

c. EOU Duty Drawback on Furnace Oil Procured From Domestic Oil Companies

During the POR Jindal was reimbursed for duties paid on its furnace oil purchased from domestic oil companies. This duty drawback rate on furnace oil purchases is only available to EOUs. The ''all–industry'' rate is calculated in part, on the total cost of insurance and freight (CIF) value of oil imported by the two major Indian oil suppliers. This duty drawback on furnace oil is not tied to the production process of any particular industry or product, including the subject merchandise, but applies only to the overall import charges on furnace oil without taking into consideration how the furnace oil is used by an EOU, and even if it is consumed in the production process. An EOU's reimbursement is based on the FOB value of the invoice received from the Indian oil supplier, inclusive of the import duties paid by the Indian oil supplier. *See Memorandum from Sean Carey to Barbara Tillman, Acting Deputy Assistant Secretary for Import Administration: Countervailing Duty Investigation of Polyethylene Terephthalate (PET) Resin from India: Preliminary Analysis of the Export Oriented Unit (EOU) Program on Duty Drawback on Furnace Oil Procured from Domestic Oil Companies Program and Purchases of Materials and Other Inputs Free of Central Excise Duty*, at 1–3 (February 14, 2005).

As mentioned above, the Department previously determined that this program is limited to EOUs and therefore, is specific as an export subsidy under section 771(5A)(A) and (B) of the Act. In addition, the Department found that this program provides a financial contribution in accordance with section 771(5)(D)(ii) of the Act, in the amount of the reimbursement claimed. Finally, a benefit is conferred in accordance with section 771(5)(D)(ii) of the Act and section 771(5)(E) of the Act and 19 CFR § 351.519(a)(4)(ii) in the entire amount of the reimbursement claimed under this program, since the GOI does not have a system or procedure in place to confirm the amount of furnace oil consumed in the production of exports for purposes of claiming duty drawback. *See* 19 CFR § 351.519(a)(1)(i); *see also Indian PET Resin Final Determination*, at ''Export–Oriented Unit (EOU) Program: Duty Drawback on Furnace Oil Procured from Domestic Oil Companies.''

To calculate the countervailable export subsidy for Jindal, we summed the amount of duty drawback claimed under this program during the POR, and divided this benefit by Jindal's total export sales during the POR. Thus, the countervailable subsidy is 0.07 percent *ad valorem* for Jindal.

d. EOU Income Tax Exemption Scheme (Section 10B)

In the instant review, Jindal reported that, in accordance with Section 10B of the Income Tax Act, 1961, it was allowed to deduct its profits derived from the export sales as an EOU, as defined in the FTP, from its taxable income during the POR. Specifically, Section 10B states that:

> Subject to the provisions of this section, a deduction of such profits and gains as are derived by a hundred per cent export–oriented undertaking. . . for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce . . . shall be allowed from the total income of the assessee . . .

See Jindal's Original Questionnaire Response, at Exhibit 35(a). According to Jindal, an EOU does not have to file a formal application to make this deduction under the program. *See id.*, at 97. According to the GOI, ''no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1st day of April, 2010 and subsequent years.'' *See GOI's Original Questionnaire Response*, at 57.

Based on the information above, we preliminarily determine this program to be a countervailable export subsidy, because it is contingent upon export performance and, therefore, specific in accordance with section 771(5A)(A) and (B) of the Act. Pursuant to section 771(5)(D)(ii) of the Act, the GOI provides a financial contribution in the form of revenue forgone. The benefit equals the difference between the amount of income taxes that would be payable absent this program and the actual amount of taxes payable by Jindal, pursuant to section 771(5)(E) of the Act. We also determine that the EOU Income Tax Exemption Scheme (Section 10B) provides a recurring benefit under 19 CFR § 351.509(c) and 19 CFR § 351.524(c). We then divided this benefit by Jindal's total export sales during the POR, to determine a countervailable subsidy of 0.15 percent *ad valorem* for Jindal.

5. State and Union Territory Sales Tax Incentive Programs

According to the GOI, state governments in India grant exemptions to, or deferrals from, sales taxes in order to encourage regional development. *See GOI's Original Questionnaire Response*, at 46 to 50 (October 16, 2008; revised October 23, 2008) and the GOI's First Supplemental Response, at 18 to 19 (March 9, 2009). These incentives allow privately–owned (*i.e.*, not 100 percent owned by the GOI) manufacturers, that are in selected industries and are located in the designated regions, to sell

goods without charging or collecting state sales taxes.

In the original CVD investigation, we determined that the operation of these types of state sales tax programs confer countervailable subsidies. *See PET Film Final Determination, Issues and Decision Memorandum*, at ''State of Maharashtra Programs'' and ''State of Uttar Pradesh Programs:'' Sales Tax Incentives;'' *see also, PET Film Final Results of 2005 Review*, at ''*State Sales Tax Incentive Programs.*'' Specifically, the Department found that these programs provide a financial contribution in the form of revenue foregone by the respective state governments pursuant to section 771(5)(D)(ii) of the Act, and confer a benefit equal to the amount of the tax exemption, pursuant to section 771(5)(E) of the Act. Pursuant to section 771(5A)(A) and (D)(iv) of the Act, these programs are specific because they are limited to certain geographical regions within the respective states administering the programs.

To calculate the benefit, we first calculated the total sales tax reduction or exemption the respondents received during the POR by subtracting taxes paid from the amount that would have been paid on their purchases during the POR absent these programs. We then divided this amount by Jindal's total sales during the POR to calculate a net countervailable subsidy of 0.35 percent *ad valorem* for Jindal.

In the current review, Jindal argues that the sales tax law in the State of Maharashtra (SOM), under which Jindal did not pay or collect sales taxes, was repealed and a value–added tax (VAT) regime replaced it. Furthermore, Jindal states that the exemption of sales tax on purchases has not been replaced by any other scheme of the GOI. Thus, Jindal contends that this meets the requirements of a program–wide change under section 351.526 of the Department's regulations. *See Jindal's Original Questionnaire Response*, at 85. Exhibits S1–18(b) and S1–18 of *Jindal's First Supplemental Questionnaire Response* provide notification of the SOM VAT Tax Act, 2002, published in the SOM Gazette on March 9, 2005, effective date April 1, 2009, and an excerpt of section 95 of the SOM VAT Act, stating that the SOM Sales Tax Act has been repealed, respectively. Further, Jindal states that, under the VAT regime, the exemption of sales tax *on sales* available under the Package Scheme of Incentives of Maharashtra continues until May 26, 2011, for Jindal. *See Jindal's Original Questionnaire Response*, at 84. However, they note that the exemption from sales tax on *purchases* is no longer available.

The GOI, in its original response confirms that the Bombay Sales Tax Act, 1959, has been repealed, and that a VAT regime (provided for under SOM VAT Rules, 2005) has been introduced. Further, the GOI argues that no benefits are available under the previous scheme. *See GOI's Original Questionnaire Response*, at 50.

Record evidence shows that the existing state sales tax incentive program provides residual benefits. Jindal does not have to collect sales taxes or VAT on its sales until May 26, 2011. Likewise, suppliers to Jindal are still exempted from collecting sales tax under the Package Scheme of Incentives for its sales to Jindal. Thus, Jindal is still benefiting from this scheme in the form of uncollected sales taxes from suppliers. Therefore, the Department preliminarily determines that the conditions of 19 CFR § 351.526(d)(1) have not been met, and no adjustment to the cash deposit rate is warranted. In addition, the Department intends to issue another questionnaire to Jindal and the GOI to further investigate the existence of an additional benefit through the reimbursement of the VAT, following these preliminary results of review.

B. Programs Preliminarily Determined to be Not Used

We preliminarily determine that Jindal did not apply for or receive benefits during the POR under the programs listed below:

1. Duty Free Replenishment Certificate (DFRC) (GOI)
2. Target Plus Scheme (GOI)
3. Capital Subsidy (GOI)
4. Exemption of Export Credit from Interest Taxes (GOI)
5. Loan Guarantees from the GOI
6. Income Tax Exemption Scheme (Sections 10A) (GOI)
7. Duty Entitlement Passbook Scheme (DEPS/DEPB)
8. State of Maharashtra (SOM) Electricity Duty Exemption
9. State Sales Tax Incentive Programs other than from the SOM, Uttaranchel, and State of Gujarat
10. Octroi Refund Scheme-(SOM)
11. Waiving of Interest on Loans by SICOM Limited (SOM)
12. State Sales Tax Incentives-section 4–A of the Uttar Pradesh Trade Tax Act
13. State of Uttar Pradesh Capital Incentive Scheme
14. SOG Infrastructure Assistance Schemes
15. Capital Incentive Scheme of Uttaranchel

C. Programs for which more Information is Required

1. Invalidated Licenses under the ALP

In its original questionnaire response Jindal points out that an Advance License is not transferable, in accordance with the Indian EXIM Policy 2002–2007 and the Foreign Trade Policy (FTP) 2004–2009. However, in accordance with Para 4.1.1(b) of the EXIM Policy, 2002–2007, and Para 4.13 of the Handbook of Procedures, 2002–2007, and Para 4.1.11 of the FTP 2004–2009, Jindal noted that an Advance License can be invalidated in favor of a domestic supplier. *See Jindal's Original Questionnaire Response*, at 73 to 74 (October 30, 2008) (*Jindal's Original Questionnaire Response*). Once the GOI has invalidated an Advance License, in whole or in part, the import entitlement under the advance license is reduced to the extent of the invalidation, and the GOI will issue an Advance Intermediate License to the supplier. Subsequently, the domestic supplier has to follow all procedures of the Advance License for imports and exports. *See Jindal's First Supplemental Response*, at 21 to 22 (March 11, 2009) (*Jindal's First Supplemental Response*).

According to Jindal, the issuance of an Advance Intermediate License to the supplier for the quantity and value of inputs against which the existing Advance License was reduced or invalidated, ensures that inputs imported duty free and consumed in the production of the intermediate product are consumed in the production of a final product for which the Advance License was issued, and that that product is ultimately exported. See Jindal's Original Questionnaire Response, at 73–74.

In response to the Department's request to explain under what circumstances Jindal will request that the GOI invalidate an Advance License, Jindal responded that this is based on its business decisions, such as availability of indigenous inputs, size of consignments and inventory. Jindal further explained that, based on its request to the GOI, the GOI will invalidate the requested quantity for direct import and will issue a corresponding invalidation letter to Jindal, specifying the quantity and value of the invalidated item, and includes the name of the domestic supplier obtaining the advance intermediate license, and the amount and value assigned to the advance intermediate license. In addition, Jindal points out that it does not have any information concerning the import of inputs on part of the domestic supplier against its

intermediate advance license. *Id.*, at 34–37.

Further, Jindal reported that it purchased materials from such domestic suppliers who received Advance Intermediates Licenses from the GOI based on the quantity and value of Jindal's invalidated licenses during the POR. In its second supplemental questionnaire response, Jindal provided the Department with a detailed listing, reporting the date and value of its purchases from these domestic suppliers by invoice, exclusive of any excise tax or value added tax. *See Jindal's Second Supplemental Questionnaire Response*, at 32.

In its second supplemental response, the GOI explained that the decision of an Advance License holder to invalidate a license or parts thereof, is based on business or economic reasons, such as price, availability, or technical specifications of the input. The export obligation (EO) accompanying the Advance Intermediate License, according to the GOI, is monitored by the DGFT, which maintains the records in a master register. Like the holder of an Advance License, the holder of an Advance Intermediate License is required to separately fulfill its EO in correlation to the inputs this domestic supplier imports, and is required to file the requisite forms with the DGFT. The amount of inputs the holder of the Advance Intermediate License can import remains the same as was authorized in the original advance license. *See GOI's Second Supplemental Response*, at 3 to 4 (July 20, 2009) (*GOI's Second Supplemental Response*).

The information provided on the record of this review by Jindal and the GOI indicates that both the benefit and the EO in the amount of the invalidation of the original license in quantity and value, are transferred to the recipient of the Advance Intermediate License (*i.e.*, the domestic supplier). Jindal provided supporting documentation issued by the GOI that discloses the amount and total value of the invalidation for the input, as well as the name and address of the domestic supplier receiving the endorsement. *See Jindal's First Supplemental Questionnaire Response*, at Exhibit S1–15. Further, the holder of the Advance Intermediate License has to file certifications, *i.e.*, an ANF 4F form, with the DGFT to demonstrate that it is meeting its export commitment in accordance with the authorized duty free imports, indicating that both the benefit and the EO in the amount of invalidation are transferred from Jindal to the domestic supplier. *See GOI's Second Supplemental Response*, at 3 and Annexure 2.

At this time we do not have sufficient information from Jindal or the GOI to determine whether the GOI's invalidation of Jindal's Advanced Licenses provided a benefit to Jindal under under section 771(5)(E) of the Act. Specifically, the record is unclear as to what consideration, if any, that Jindal received from its suppliers in return for the license(s) invalidated by the GOI.

We intend to seek further information and issue an interim analysis describing our preliminary findings with respect to this program before the final determination, so that parties will have the opportunity to comment on our findings before the final results of review.

Preliminary Results of Administrative Review

In accordance with 19 CFR § 351.221(b)(4)(i), we have calculated an individual subsidy rate for Jindal for the POR. We preliminarily determine the total countervailable subsidy to be 7.18 percent *ad valorem* for Jindal.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR § 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or in the original countervailing duty investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 20.40 percent ad valorem, the all–others rate made effective by the CVD investigation. *See PET Film Final Determination*, 67 FR at 34906. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Assessment Rates

Upon publication of the final results of this review, the Department shall determine, and Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries. Pursuant to 19 CFR § 351.212(b)(2), the Department will instruct CBP to assess countervailing duties by applying the rates included in the final results of the review to the entered value of the merchandise. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification applies to entries of subject merchandise during the POR produced by any company included in the final results of review for which the reviewed company did not know that the merchandise it sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, the Department will instruct CBP to liquidate un–reviewed entries at the ''all others'' rate if there is no rate for the intermediary involved in the transaction. *See id.*

Disclosure and Public Hearing

We will disclose the calculations used in our analysis to parties to this segment of the proceeding within five days of the public announcement of this notice. *See* 19 CFR § 351.224(b). Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, within 30 days of the date of publication of this notice. *See* 19 CFR § 351.310(c). Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed.

Pursuant to 19 CFR § 351.309, interested parties may submit written comments in response to these preliminary results. Unless the time period is extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice in the **Federal Register**. *See* 19 CFR § 351.309(c). Rebuttal briefs, which must be limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. *See* 19 CFR § 351.309(d). Parties who submit arguments in this proceeding are

requested to submit with the argument: (1) a statement of the issues; (2) a brief summary of the argument; and (3) a table of authorities cited. Further, we request that parties submitting written comments provide the Department with a diskette containing an electronic copy of the public version of such comments. Case and rebuttal briefs must be served on interested parties, in accordance with 19 CFR § 351.303(f).

Unless extended, the Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR § 351.221(b)(4).

Dated: July 31, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–19007 Filed 8–6–09; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* September 7, 2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On June 15, 2009, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (74 FR 28221–28222) of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

NSN: 7530–00–NIB–0878—Folder File.
NSN: 7530–00–NIB–0879—Folder File.
NSN: 7530–00–NIB–0889—Folder File.
NPA: Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY.
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products, New York, NY.
Coverage: A-list for the total Government requirement as aggregated by the General Services Administration.
NSN: 7510–00–NIB–0862—Tape, Pressure Sensitive .75 × 1000 6 rolls per pack.
NSN: 7510–00–NIB–0863—Tape, Pressure Sensitive .75 × 1000 6 rolls per pack.
NSN: 7510–00–NIB–0864—Tape, Pressure Sensitive .75 × 1000 10 rolls per pack.
NPA: Alphapointe Association for the Blind, Kansas City, MO.
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products, New York, NY.
Coverage: A-list for the total Government requirement as aggregated by the General Services Administration.
NSN: 7520–00–NIB–2016—Highlighter, Biodegradable.
NPA: West Texas Lighthouse for the Blind, San Angelo, TX.
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products, New York, NY.
Coverage: A-list for the total Government requirement as aggregated by General Services Administration.
NSN: MR 520—3 Pack Holiday Soy Candle.
NPA: Industries for the Blind, Inc., West Allis, WI.
Contracting Activity: Defense Commissary Agency (DeCA)—Military Resale, Fort Lee, VA.
Coverage: C-list for the total requirement of Defense Commissary Agency.
NSN: 7220–00–NSH–0007—Mat, Floor.
NSN: 7220–00–NSH–0009—Mat, Floor.
NSN: 7220–00–NSH–0010—Mat, Floor.
NPA: Northeastern Michigan Rehabilitation and Opportunity Center (NEMROC), Alpena, MI.
Contracting Activity: Federal Acquisition Service, GSA/FAS Southwest Supply Center (QSDAC), Fort Worth, TX.
Coverage: B-list for the broad Government requirement as aggregated by the General Services Administration.
NSN: MR 300—Camelbak Thermos Shippers.
NSN: MR 832—Tomato Saver Shippers.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, NC.
Contracting Activity: Defense Commissary Agency (DeCA)—Military Resale, Fort Lee, VA.
Coverage: C-list for the total requirement of Defense Commissary Agency.

Services

Service Type/Location: Custodial Services; U.S. Capitol Building, Capitol Visitor Center, 2nd and D Street, SW, Washington, DC.
NPA: FEDCAP Rehabilitation Services, Inc., New York, NY.
Contracting Activity: Architect of the Capitol, Washington, DC.
Service Type/Location: Facility Management; Schofield Barracks, Schofield, HI, Helemano Military Reservation, Wahiawa, HI, Tripler Army Medical Center, HI, Wheeler Army Air Field, Schofield Barracks, HI, Fort Shafter, HI.
NPA: Goodwill Contract Services of Hawaii, Inc., Honolulu, HI.
Service Type/Location: Grounds Maintenance Service; Schofield Barracks, Schofield, HI, Helemano Military Reservation, Wahiawa, HI, Tripler Army Medical Center, HI, Wheeler Army Air Field, Schofield Barracks, HI, Fort Shafter, HI.
NPA: Lanakila Rehabilitation Center, Honolulu, HI.
Contracting Activity: Department of the Army, Fort Shafter, HI.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. E9–18925 Filed 8–6–09; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to and Deletions From Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must Be Received on or Before: 9/7/2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

For Further Information or to Submit Comments Contact: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice for the service will be required to furnish the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following service is proposed for addition to the Procurement List for provision by the nonprofit agency listed:

Service

Service Type/Location: Base Supply Center, USCG Sand Island, 400 Sand Island Parkway, Honolulu, HI.
NPA: South Texas Lighthouse for the Blind, Corpus Christi, TX.
Contracting Activity: Dept. of Homeland Security, U.S. Coast Guard, ISC, Honolulu, HI.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Paper, Tabulating Machine

NSN: 7530–00–NIB–0320.
NSN: 7530–00–NIB–0342.
NSN: 7530–00–NIB–0343.
NPAs: Arizona Industries for the Blind, Phoenix, AZ, Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY, Tarrant County Association for the Blind, Fort Worth, TX.
Contracting Activity: GSA/FSS OFC SUP CTR—Paper Products, New York, NY.

Easel, Wallboard, Cork

NSN: 7195–01–484–0009.

Easel, Wallboard, Fabric

NSN: 7195–01–484–0008.
NSN: 7195–01–484–0018.
NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA.
Contracting Activity: GSA/FSS OFC SUP CTR—Paper Products, New York, NY.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. E9–18924 Filed 8–6–09; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 09–30]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 09–30 with attached transmittal, and policy justification.

Dated: July 28, 2009.

Patricia L. Toppings,

OSD Federal Register, Liaison Officer Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 15 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-30, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Kuwait for defense articles and services estimated to cost $1.8 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Beth M. McCormick

Beth M. McCormick
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 09-30

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Kuwait

(ii) Total Estimated Value:

Major Defense Equipment*	$ .970 billion
Other	$ .830 billion
TOTAL	$1.800 billion

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 8 KC-130J Multi-mission Cargo Refueling Aircraft, 32 AE-2100D3 Turbo propeller engines, 8 spare AE-2100D3 Turbo propeller engines, 4 AN/ALR-56M Radar Warning Receivers, 4 AN/AAR-47 Missile Approach Warning Systems, 4 AN/ALE-47 Countermeasures Dispenser Sets, 20 AN/ARC-210 (RT-1851A(U)) Very High Frequency/Ultra High Frequency HAVEQUICK/Single Channel Ground and Airborne Radio Systems, spare and repair parts, support equipment, publications and technical documentation, warranties, aircraft ferry support, repair and return, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services and other related elements of program support.

(iv) Military Department: Navy (SBE and SBF)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: JUL 15 2009

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kuwait – KC-130J Multi-mission Aircraft

The Government of Kuwait has requested a possible sale of 8 KC-130J Multi-mission Cargo Refueling Aircraft, 32 AE-2100D3 Turbo propeller engines installed, 8 spare AE-2100D3 Turbo propeller engines, 4 AN/ALR-56M Radar Warning Receivers, 4 AN/AAR-47 Missile Approach Warning Systems, 4 AN/ALE-47 Countermeasures Dispenser Sets,
20 AN/ARC-210 (RT-1851A(U)) Very High Frequency/Ultra High Frequency HAVEQUICK/Single Channel Ground and Airborne Radio Systems, spare and repair parts, support equipment, publications and technical documentation, warranties, aircraft ferry support, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services and other related elements of program support. The estimated cost is $1.8 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The Government of Kuwait needs these aircraft to strengthen its tactical and operating capabilities with its defense network. The aircraft will provide enhanced airlift capability, and with the refueling capability, add significant operational flexibility by extending the range of Kuwait's air defense aircraft.

The proposed sale of these aircraft will not alter the basic military balance in the region.

The principal contractor will be Lockheed Martin Aeronautics Company in Marietta, Georgia. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government or contractor representatives to Kuwait.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-30

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The KC-130J aircraft is a multi-mission tactical tanker/transport which is designed to provide support required by Marine Air Ground Task Forces. The aircraft is a versatile asset that provides in-flight refueling to tactical aircraft and helicopters as well as rapid ground refueling when required. Additional tasks performed include aerial delivery of troops and cargo, emergency resupply into unimproved landing zones within the objective or designated operating area, airborne Direct Air Support Center, emergency medevac, evacuation missions and a myriad of other support missions as dictated by circumstance. The KC-130J contains systems that include sensitive state-of-the-art technology to assist in mission accomplishment and enhance survivability during operations. Specific sensitive equipment associated with the sale is as follows:

a. The AN/ALR-56M Radar Warning Receiver (RWR) is designed to detect incoming radar signals, identify and characterize those signals to a specific threat, and alert the aircrew through the Tactical Electronic Warfare System display. The system consists of external antennae mounted on the fuselage and wing tips. The solid state ALR-56 is based on a digitally-controlled dual channel receiver that scans within a specific frequency spectrum and is capable of adjusting to threat changes by modifications to the software. The RWR will not be provided In Country Reprogramming capability.

b. The AN/AAR-47 Missile Approach Warning System warns of threat missile approach by detecting radiation associated with the rocket motor and automatically initiates flare ejection. The system is a passive Electro-Optic Missile Warning System designed to provide warning of Surface to Air Missiles and pass information to Airborne Electronic Countermeasures systems to launch chaff and flares. The system operates through sensors located in four quadrants on the aircraft.

c. The AN/ALE-47 Countermeasures Dispenser Set provides an integrated, threat-adaptive, computer controlled capability for dispensing expendable decoys. The ALE-47 system enhances aircraft survivability in sophisticated threat environments. The system is designed to provide the capability of automatic or pilot commanded response, and works alone or in coordination with other defensive countermeasures systems to defeat airborne and ground based threats.

d. The AN/ARC-210 TALON Very High Frequency/Ultra High Frequency (VHF/UHF) HAVEQUICK/Single Channel Ground and Airborne Radio Systems (SINCGARS) multimode communications system can operate in an Electronic Counter Countermeasures (ECCM) type VHF/UHF radio system. The system combines digital radio technology and software reprogrammability for exceptional performance, capability and flexibility. It provides multimode voice and data communications in normal, secure and jam-resistant modes over the V/UHF spectrum. This system (which includes HAVEQUICK I and HAVEQUICK II and SINCGARS capability) provides full interoperability with U.S. and allied forces operating in theater.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E9–18954 Filed 8–6–09; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS). The purpose of the Committee meeting is to do a review and analysis of installation visits to consolidate data/findings for annual report recommendations. The meeting is open to the public, subject to the availability of space.

DATES: August 10–11, 2009, 8:30 a.m.–5 p.m.

ADDRESSES: Double Tree Hotel Crystal City National Airport, 300 Army Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: MSgt Robert Bowling, USAF, DACOWITS, 4000 Defense Pentagon, Room 2C548A, Washington, DC 20301–4000. *Robert.bowling@osd.mil.* Telephone (703) 697–2122. Fax (703) 614–6233.

SUPPLEMENTARY INFORMATION:

Meeting Agenda

Monday, August 10, 2009 8:30 a.m.–5 p.m.

—Welcome and announcements
—Review/Discuss Installation Visits
—Public Forum

Tuesday, August 11, 2009 8:30 a.m.–5 p.m.

—Welcome and announcements
—Review/Discuss Installation Visits

Written Statements: Interested persons may submit a written statement for consideration by the Defense Department Advisory Committee on Women in the Services. Individuals submitting a written statement must submit their statement to the Point of Contact listed above at the address detailed above NLT 5 p.m., Friday, August 7, 2009. If a written statement is not received by Friday, August 7, 2009 prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Department Advisory Committee on Women in the Services until its next open meeting. The Designated Federal Officer will review all timely submissions with the Defense Department Advisory Committee on Women in the Services Chairperson and ensure they are provided to the members of the Defense Department Advisory Committee on Women in the Services.

Oral Statements: If members of the public are interested in making an oral statement, a written statement must be submitted as above. After reviewing the written comments, the Chairperson and the Designated Federal Officer will determine who of the requesting persons will be able to make an oral presentation of their issue during an open portion of this meeting or at a future meeting. Determination of who will be making an oral presentation will depend on time available and if the topics are relevant to the Committee's activities. Two minutes will be allotted to persons desiring to make an oral presentation. Oral presentations by members of the public will be permitted only on Monday, August 10, 2009 from 4:30 p.m. to 5 p.m. before the full Committee. Number of oral presentations to be made will depend on the number of requests received from members of the public.

Dated: August 3, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–18895 Filed 8–6–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Task Force on Sexual Assault in the Military Services

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meetings of the Defense Task Force on Sexual Assault in the Military Services (hereafter referred to as the Task Force) will take place:

DATES: Monday, August 17; Tuesday, August 18; and Wednesday, August 19, 2009 8 a.m. to 4:30 p.m. Eastern Daylight Time (hereafter referred to as EDT).

ADDRESSES: Windsor Room, Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Michael Molnar, Deputy to the Executive Director; 2850 Eisenhower Avenue, Suite 100, Alexandria, Virginia 22314; phone (888) 325–6640; fax (703) 325–6710; *michael.molnar@wso.whs.mil.*

SUPPLEMENTARY INFORMATION:

Purpose: Purpose of the meeting is to obtain and discuss information on the Task Force's congressionally mandated task to examine matters related to sexual assault in the Military Services through briefings from, and discussion with, Task Force staff, subject-matter experts, document review, and preparation of the Task Force report.

Agenda

Monday, August 17, 2009

8 a.m.–8:05 a.m. Welcome, Administrative Remarks.
8:05 a.m.–8:10 a.m. Opening Remarks.
8:10 a.m.–9:30 a.m. Content Discussion and Writing of the Final Report.
9:30 a.m.–9:45 a.m. Break.
9:45 a.m.–12 p.m. Content Discussion and Writing of the Final Report.
12 p.m.–1 p.m. Noon Meal.
1 p.m.–2:30 p.m. Content Discussion and Writing of the Final Report.
2:30 p.m.–2:45 p.m. Break.
2:45 p.m.–4:25 p.m. Content Discussion and Writing of the Final Report.
4:25 p.m.–4:30 p.m. Wrap Up.

Tuesday, August 18, 2009

8 a.m.–8:05 a.m. Welcome, Administrative Remarks.
8:05 a.m.–8:10 a.m. Opening Remarks.
8:10 a.m.–9:30 a.m. Content Discussion and Writing of the Final Report.
9:30 a.m.–9:45 a.m. Break.
9:45 a.m.–12 p.m. Content Discussion and Writing of the Final Report.
12 p.m.–1 p.m. Noon Meal.
1 p.m.–2:30 p.m. Content Discussion and Writing of the Final Report.
2:30 p.m.–2:45 p.m. Break.
2:45 p.m.–4:25 p.m. Content Discussion and Writing of the Final Report.
4:25 p.m.–4:30 p.m. Wrap Up.

Wednesday, August 19, 2009

8 a.m.–8:05 a.m. Welcome, Administrative Remarks.
8:05 a.m.–8:10 a.m. Opening Remarks.
8:10 a.m.–9:30 a.m. Content Discussion and Writing of the Final Report.
9:30 a.m.–9:45 a.m. Break.
9:45 a.m.–12 p.m. Content Discussion and Writing of the Final Report.
12 p.m.–1 p.m. Noon Meal.
1 p.m.–2:30 p.m. Content Discussion and Writing of the Final Report.
2:30 p.m.–2:45 p.m. Break.
2:45 p.m.–4:25 p.m. Content Discussion and Writing of the Final Report.
4:25 p.m.–4:30 p.m. Wrap Up.

The public can view meeting updates at *http://www.dtic.mil/dtfsams.*

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

Committee's Designated Federal Officer: Colonel Cora M. Jackson-Chandler; 2850 Eisenhower Avenue, Suite 100, Alexandria, Virginia 22314; phone (888) 325–6640; fax (703) 325–6710; *cora.chandler@wso.whs.mil.*

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a) (3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Defense Task Force on Sexual Assault in the Military Services about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Defense Task Force on Sexual Assault in the Military Services.

All written statements shall be submitted to the Designated Federal Officer for the Defense Task Force on Sexual Assault in the Military Services, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer is provided in this notice or can be obtained from the GSA's FACA Database: *https://www.fido.gov/facadatabase/public.asp.*

Written statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the listed address above no later than 7 a.m., EDT, Thursday, August 13, 2009. Written statements received after this date may not be provided to, or considered by, the Defense Task Force on Sexual Assault in the Military Services until its next meeting.

The Designated Federal Officer will review all timely submissions with the Defense Task Force on Sexual Assault in the Military Services Co-Chairs and ensure they are provided to all members of the Defense Task Force on Sexual Assault in the Military Services before the meeting that is the subject of this notice.

Dated: July 21, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–18898 Filed 8–6–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2009–OS–0119]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Defense Manpower Data Center, DoD.

ACTION: Notice of a computer matching program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act is hereby giving notice to the record subjects of a computer matching program between the Department of Veterans Affairs (VA) and DoD that their records are being matched by computer. The purpose of this agreement is to verify an individual's continuing eligibility for VA benefits by identifying VA disability benefit recipients who return to active

duty and to ensure that benefits are terminated if appropriate.

DATES: This proposed action will become effective September 8, 2009 and matching may commence unless changes to the matching program are required due to public comments or by Congressional or by Office of Management and Budget objections. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 1901 South Bell Street, Suite 920, Arlington, VA 22202–4512.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel P. Jenkins at telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DMDC and VA have concluded an agreement to conduct a computer matching program between the agencies. The purpose of this agreement is to verify an individual's continuing eligibility for VA benefits by identifying VA disability benefit recipients who return to active duty and to ensure that benefits are terminated if appropriate.

The parties to this agreement have determined that a computer matching program is the most efficient, expeditious, and effective means of obtaining the information needed by the VA to identify ineligible VA disability compensation recipients who have returned to active duty. This matching agreement will identify those veterans who have returned to active duty, but are still receiving disability compensation. If this identification is not accomplished by computer matching, but is done manually, the cost would be prohibitive and it is possible that not all individuals would be identified.

A copy of the computer matching agreement between VA and DMDC is available upon request to the public. Requests should be submitted to the address caption above or to the Department of Veterans Affairs, Veterans Benefit Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on July 23, 2009, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 23, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

Notice of a Computer Matching Program Between the Department of Veterans Affairs and the Department of Defense for Verification of Disability Compensation

A. *Participating Agencies:* Participants in this computer matching program are the Department of Veterans Affairs (VA) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The VA is the source agency, *i.e.,* the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, *i.e.,* the agency that actually performs the computer matching.

B. *Purpose of the Match:* The purpose of this agreement is to verify eligibility for DoD/USCG members of the Reserve forces who receive VA disability compensation or pension to also receive military pay and allowances when performing reserve duty.

The VA will provide to DMDC identifying information on all VA recipients receiving a VA disability compensation or pension. DMDC will match the information with its reserve military pay data and provide for each match (hit) the number of training days, by fiscal year, for which the veteran was paid. The VA will use this information to make, where appropriate, necessary VA payment adjustments.

C. *Authority for Conducting the Match:* 38 U.S.C. 5304(c) Prohibition Against Duplication of Benefits provides that VA disability compensation or pension based upon his or her previous military service shall not be paid to a person for any period for which such person receives active service pay. 10 U.S.C. 12316, Payment of certain Reserves while on duty further provides that a reservist who is entitled to disability payments due to his or her earlier military service and who performs duty for which he or she is entitled to DoD/USCG compensation may elect to receive for that duty either the disability payments or, if he or she waives such payments, the DoD/USCG compensation for the duty performed.

D. *Records To Be Matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

The VA will use the system of records identified as ''VA Compensation, Pension and Education and Vocational Rehabilitation Records—VA (58 VA 21/22/28),'' republished in its entirety at 74 FR 14865 (April 1, 2009). Attachment 3 is a copy of the system notice with the appropriate routine use, *i.e.,* RU 39.

DoD will use the system of records identified as DMDC 01, entitled, ''Defense Manpower Data Center Data Base,'' published at 73 FR 5820, January 31, 2008. Attachment 5 is a copy of the system notice with the appropriate routine use, *i.e.*, RU l(e)(l) annotated.

E. *Description of Computer Matching Program:* Annually, VA will submit to DMDC an electronic data of all VA pension and disability compensation beneficiaries as of the end of September. Upon receipt of the data, DMDC will match by SSN with reserve pay data as submitted to DMDC by the military services and the USCG. Upon a SSN match, or a ''hit,'' of both data sets, DMDC will provide VA the individual's name and other identifying data, to include the number of training days, by Fiscal Year, for each matched record. Training days are the total of inactive duty drills paid plus active duty days paid.

The hits will be furnished to VA which will be responsible for verifying and determining that the data in the DMDC electronic files is consistent with the VA files and for resolving any discrepancies or inconsistencies on an individual basis. VA will initiate actions to obtain an election by the individual of which pay he or she wishes to receive and will be responsible for making final determinations as to positive identification, eligibility for, or amounts of pension or disability compensation benefits, adjustments thereto, or any recovery of overpayments, or such other action as authorized by law.

The electronic file provided by VA will contain information on approximately 2.9 pension and disability compensation recipients.

The DMDC computer database file contains approximately 832,000 DoD and 8,000 USCG reservists who receive pay in allowance for performing authorized duty.

The VA will furnish DMDC the name and SSN of all VA pension and disability compensation recipients and

DMDC will supply VA the name, SSN, date of birth, and the number of training days by fiscal year of each reservist who is identified as a result of the match.

F. *Inclusive Dates of the Matching Program:* This computer matching program is subject to public comment and review by Congress and the Office of Management and Budget. If the mandatory 30-day period for comment has expired and no comments are received and if no objections are raised by either Congress or the Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange at a mutually agreeable time and thereafter on a quarterly basis. By agreement between VA and DMDC, the matching program will be in effect for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for Receipt of Public Comments or Inquiries:* Director, Defense Privacy Office, 1901 South Bell Street, Suite 920, Arlington, VA 22202–4512. Telephone (703) 607–2943.

[FR Doc. E9–18893 Filed 8–6–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2009–OS–0112]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Defense Logistics Agency is proposing to amend a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective without further notice on September 8, 2009 unless comments are received which would result in a contrary determination.

ADDRESSES: Chief Privacy and FOIA Officer, Headquarters Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis Oleinick at (703) 767–6194.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's system of record notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: July 21, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

S370.20 CAHS

SYSTEM NAME:

Employee Relations under Negotiated Grievance Procedures (October 18, 1999, 64 FR 56198).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with ''S375.20.''

SYSTEM LOCATION:

Delete entry and replace with ''Defense Logistics Agency Human Resources Center (DHRC), 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Defense Logistics Agency Human Resources Center-Columbus (DHRC–C), 3990 East Broad Street, Building 11, Section 3, Columbus, OH 43213–0919.

Defense Logistics Agency Human Resources Center-New Cumberland (DHRC–N), 2001 Mission Drive, Suite 3, New Cumberland, PA 17070–5042.

Defense Logistics Agency Human Resources Center-Department of Defense (DHRC–D), 3990 East Broad Street, Building 306, Columbus, OH 43218–25260.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''The file includes name, addresses, phone numbers and details pertaining to the discipline, grievance, complaint, or appeal.

Note: Equal Employment Opportunity (EEO) complaints filed under statutory Equal Employment Opportunity Commission procedures are covered under EEOC/GOVT–1, entitled ''Equal Employment Opportunity in the Federal Government Complaint and Appeal Records.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''Public Law 92–261; 5 U.S.C. Chapter 33, Examination, Selection, and Placement; 5 U.S.C. Chapter 75, Adverse Actions; 5 U.S.C. Chapter 71, Labor-Management Relations, and 29 U.S.C. Chap. 14, Age Discrimination Employment.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Director, Defense Logistics Agency Human Resources Center (DHRC), 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Director, Defense Logistics Agency Human Resources Center-Columbus (DHRC–C), 3990 East Broad Street, Building 11, Section 3, Columbus, OH 43213–0919.

Director, Defense Logistics Agency Human Resources Center-New Cumberland (DHRC–N), 2001 Mission Drive, Suite 3, New Cumberland, PA 17070–5042.

Director, Defense Logistics Agency Human Resources Center-Department of Defense (DHRC–D), 3990 East Broad Street, Building 306, Columbus, OH 43218–25260.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221. Inquiry should contain the subject individual's full name.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the subject individual's full name.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Supervisors or other appointed

officials designated for this purpose, Human Resource specialists, and grievant.''

* * * * *

S375.20

SYSTEM NAME:

Employee Relations under Negotiated Grievance Procedures.

SYSTEM LOCATION:

Defense Logistics Agency Human Resources Center (DHRC), 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Defense Logistics Agency Human Resources Center-Columbus (DHRC–C), 3990 East Broad Street, Building 11, Section 3, Columbus, OH 43213–0919.

Defense Logistics Agency Human Resources Center-New Cumberland (DHRC–N), 2001 Mission Drive, Suite 3, New Cumberland, PA 17070–5042.

Defense Logistics Agency Human Resources Center-Department of Defense (DHRC–D), 3990 East Broad Street, Building 306, Columbus, OH 43218–25260.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former civilian employees and applicants on whom discipline, grievance, complaint or appeal records exist.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file includes name, addresses, phone numbers and details pertaining to the discipline, grievance, complaint, or appeal.

Note: Equal Employment Opportunity (EEO) complaints filed under statutory Equal Employment Opportunity Commission procedures are covered under EEOC/GOVT–1, entitled ''Equal Employment Opportunity in the Federal Government Complaint and Appeal Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 92–261; 5 U.S.C. Chapter 33, Examination, Selection, and Placement; 5 U.S.C. Chapter 75, Adverse Actions; 5 U.S.C. Chapter 71, Labor-Management Relations, and 29 U.S.C. Chap. 14, Age Discrimination Employment.

PURPOSE(S):

Records are used to process, administer and adjudicate discipline, grievance, complaints, and appeal actions. Records are also used for litigation and program evaluation purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Representatives of the Office of Personnel Management (OPM) on matters relating to the inspection, survey, audit or evaluation of civilian personnel management programs or personnel actions, or such other matters under the jurisdiction of the OPM.

Appeals authority for the purpose of conducting hearings in connection with employee's appeals from adverse actions and formal discrimination complaints.

The DoD ''Blanket Routine Uses'' also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored on paper and/or on electronic storage media.

RETRIEVABILITY:

Records are retrieved by the subject individual's name.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must access the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non duty hours.

RETENTION AND DISPOSAL:

Records are destroyed four years after case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Logistics Agency Human Resources Center (DHRC), 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Director, Defense Logistics Agency Human Resources Center-Columbus (DHRC–C), 3990 East Broad Street, Building 11, Section 3, Columbus, OH 43213–0919.

Director, Defense Logistics Agency Human Resources Center-New Cumberland (DHRC–N), 2001 Mission Drive, Suite 3, New Cumberland, PA 17070–5042.

Director, Defense Logistics Agency Human Resources Center-Department of Defense (DHRC–D), 3990 East Broad Street, Building 306, Columbus, OH 43218–25260.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the subject individual's full name.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the subject individual's full name.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Supervisors or other appointed officials designated for this purpose, Human Resource specialists, and grievant.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–18905 Filed 8–6–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2009–OS–0118]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Defense Logistics Agency is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 8, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis Oleinick at (703) 767–6194.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 23, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

S300.10

SYSTEM NAME:

Voluntary Leave Transfer Program Records (June 12, 2006, 71 FR 33728).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Human Resources Policy and Information, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6231, Fort Belvoir, VA 22060–6221, and the Human Resources Offices of the Defense Logistics Agency (DLA) Primary Level field activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.''

* * * * *

STORAGE:

Delete entry and replace with ''Records may be stored on paper and/or on electronic storage media.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Staff Director, Human Resources Policy and Information, Defense Logistics Agency, ATTN: J–1, 8725 John J. Kingman Road, Stop 6231, Fort Belvoir, VA 22060–6221, and the Human Resources Officers of the DLA Primary Level field activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221 or to the Human Resources Office of the DLA Primary Level field activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individual should provide full name and Social Security Number (SSN).''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221 or to the Human Resources Office of the DLA Primary Level field activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individual should provide full name and Social Security Number (SSN).''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.''

* * * * *

S300.10

SYSTEM NAME:

Voluntary Leave Transfer Program Records.

SYSTEM LOCATION:

Human Resources Policy and Information, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6231, Fort Belvoir, VA 22060–6221, and the Human Resources Offices of the Defense Logistics Agency (DLA) Primary Level field activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have volunteered to participate in the leave transfer program as either a donor or a recipient.

CATEGORIES OF RECORDS IN THE SYSTEM:

Leave recipient records contain the individual's name, organization, office telephone number, Social Security Number, position title, grade, pay level, leave balances, brief description of the medical or personal hardship which qualifies the individual for inclusion in the program, the status of that hardship, and a statement that selected data elements may be used in soliciting donations.

The file may also contain medical or physician certifications and agency approvals or denials.

Donor records include the individual's name, organization, office telephone number, Social Security Number (SSN), position title, grade, and pay level, leave balances, number of hours donated and the name of the designated recipient.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. Chapter 63, sections 6331–6339, Leave; Public Law 103–103, Federal Employees Leave Sharing Act of 1993; 5 CFR Part 630, Absence and Leave, Subpart I, Voluntary Leave Transfer Program; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

Records are used to manage the DLA Voluntary Leave Transfer Program. The recipient's name, position data, organization, and a brief hardship description are published internally for passive solicitation purposes. The Social Security Number (SSN) is sought to effectuate the transfer of leave from the donor's account to the recipient's account.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Labor in connection with a claim filed by an employee for compensation due to a job-connected injury or illness; where leave donor and leave recipient are employed by different Federal agencies, to the personnel and pay offices of the Federal agency involved to effectuate the leave transfer.

The DoD ''Blanket Routine Uses'' apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored on paper and/or on electronic storage media.

RETRIEVABILITY:

Records are retrieved by name or Social Security Number (SSN).

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non-duty hours.

RETENTION AND DISPOSAL:

Records are destroyed one year after the end of the year in which the file is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Human Resources Policy and Information, Defense Logistics Agency, ATTN: J–1, 8725 John J. Kingman Road, Stop 6231, Fort Belvoir, VA 22060–6221, and the Human Resources Officers of the DLA Primary Level field activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221 or to the Human Resources Office of the DLA Primary Level field activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individual should provide full name and Social Security Number (SSN).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221 or to the Human Resources Office of the DLA Primary Level field activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individual should provide full name and Social Security Number (SSN).

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Record subject; personnel and leave records; and medical certification and similar data.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–18907 Filed 8–6–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2009–OS–0111]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Defense Logistics Agency is proposing to amend a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective without further notice on September 8, 2009 unless comments are received which would result in a contrary determination.

ADDRESSES: Chief Privacy and FOIA Officer, Headquarters Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis Oleinick at (703) 767–6194.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's system of record notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: July 21, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

S900.40

SYSTEM NAME:

Government Telephone Use Records (September 8, 2003, 68 FR 52909).

CHANGES:

SYSTEM IDENTIFIER:

Replace entry with ''S284.89.''

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Records are located at Defense Logistics Agency, Enterprise Support Installations Management Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, and at the telephone control offices within the DLA Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 133, Under Secretary of Defense for Acquisition, Technology, and Logistics; 44 U.S.C. 3501 *et seq.,* Federal Information Policy; Committee on National Security Systems Directive No. 900, Governing Procedures of the Committee on National Security Systems promulgated pursuant to 47 U.S.C. 901 *et seq.,* National Telecommunications; E.O. 12731, Principles of ethical conduct for Government officers and employees; 5 CFR part 2635, Standards of Ethical Conduct for Employees of the Executive Branch; and DOD Instruction 5335.1, Telecommunications Services In The National Capital Region (NCR).''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Staff Director, Defense Logistics Agency, Enterprise Support Installations Management Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, and the Telecommunications Control Officers of the DLA Primary Level Field Activities. Official mailing addresses are published

as an appendix to DLA's compilation of systems of records notices.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221. Individuals need to provide their full name and the DLA facility or activity where employed at the time the records were created or processed.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221. Individuals need to provide their full name and the DLA facility or activity where employed at the time the records were created or processed.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.''

* * * * *

S284.89

SYSTEM NAME:

Government Telephone Use Records.

SYSTEM LOCATION:

Records are located at Defense Logistics Agency, Enterprise Support Installations Management, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, and at the telephone control offices of the DLA Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DLA employees, military members, contractors, and individuals authorized to use government telephone systems, including cellular telephones, pagers, and telecommunications devices for the deaf or speech impaired and wireless air cards. The records also cover individuals who have been issued telephone calling cards.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records include individual's name and physical location; duty telephone, cell, and pager numbers; billing account codes; government issued telephone calling card account number; equipment and calling card receipts and turn-in documents; and details of telephone use to include dates and times of telephone calls made or received, numbers called or called from, city and State, duration of calls, and assessed costs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 133, Under Secretary of Defense for Acquisition, Technology, and Logistics; 44 U.S.C. 3501 *et seq.,* Federal Information Policy; Committee on National Security Systems Directive No. 900, Governing Procedures of the Committee on National Security Systems promulgated pursuant to 47 U.S.C. 901 *et seq.,* National Telecommunications; E.O. 12731, Principles of ethical conduct for Government officers and employees; 5 CFR part 2635, Standards of Ethical Conduct for Employees of the Executive Branch; and DOD Instruction 5335.1, Telecommunications Services In The National Capital Region (NCR).

PURPOSE(S):

Records are maintained to verify that telephones are used for official business or authorized purposes; to identify inappropriate calls and the persons responsible, and to collect the costs of those calls from those responsible. These records may be used as a basis for disciplinary action against offenders.

Records are also maintained to ensure proper certification and payment of bills; to safeguard telecommunications assets; for internal management control; for reporting purposes; and to forecast future telecommunications requirements and costs.

Statistical data, with all personal identifiers removed, may be used by management officials for purposes of conducting studies, evaluations, and assessments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974 these records may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be released to telecommunications service providers to permit servicing the account. The DoD ''Blanket Routine Uses'' also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored on paper and on electronic storage media.

RETRIEVABILITY:

Records are retrieved by individual's name, billing account code, or telephone number.

SAFEGUARDS:

Access to the data is limited to those who require the records in the performance of their official duties. The electronic records employ user identification and password protocols. Physical entry is restricted by the use of locks, guards, and administrative procedures. Employees are periodically briefed on the consequences of improperly accessing restricted databases or records.

RETENTION AND DISPOSAL:

Records are destroyed when 3 years old. Initial telephone use reports may be destroyed earlier if the information needed to identify abuse has been captured in other records.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Defense Logistics Agency, Enterprise Support Installations Management Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, and the Telecommunications Control Officers of DLA Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Individuals need to provide their full name and the DLA facility or activity where employed at the time the records were created or processed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained

in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Individuals need to provide their full name and the DLA facility or activity where employed at the time the records were created or processed.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Data is supplied by the telephone user, telecommunications service providers, and DLA management.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–18906 Filed 8–6–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2009–OS–0124]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Defense Manpower Data Center, DoD.

ACTION: Notice of a computer matching program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment; however, this notification will be completed by the DoD, the source agency. The DoD, as the source agency under the Privacy Act is hereby giving notice to the record subjects of a computer matching program between the Office of Personnel Management (OPM) and Defense Manpower Data Center (DMDC) that their records are being matched by computer. The purpose of this agreement is for disclosure of Federal Employees Health Benefits (FEHB) Program and Federal employment information to DMDC. This disclosure by OPM will provide the DoD with the FEHB eligibility and Federal employment information necessary to determine continuing eligibility for the TRICARE Reserve Select (TRS) program.

DATES: This proposed action will become effective September 8, 2009 and matching may commence unless changes to the matching program are required due to public comments or by Congressional or Office of Management and Budget objections. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 1901 South Bell Street, Suite 920, Arlington, VA 22202–4512.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel P. Jenkins at telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DMDC and OPM have concluded an agreement to conduct a computer matching program between the agencies. The purpose of this agreement is to verify an individual's continuing eligibility for the TRICARE Reserve Select (TRS) program.

The parties to this agreement have determined that a computer matching program is the most efficient, expeditious, and effective means of obtaining the information needed by the OPM to identify individual's ineligible to continue the TRICARE Reserve Select Program. If this identification is not accomplished by computer matching, but is done manually, the cost would be prohibitive and it is possible that not all individuals would be identified.

A copy of the computer matching agreement between OPM and DMDC is available upon request to the public. Requests should be submitted to the address caption above or to the Office of Personnel Management, 1900 E Street, NW., Room 5415, Washington, DC 20415.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on July 28, 2009, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated February 8, 1996 (61 FR 6435).

Dated: July 28, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

Notice of a Computer Matching Agreement Between the Office of Personnel Management and the Defense Manpower Data Center, Department of Defense for Disclosure of Federal Employees Health Benefits (FEHB) Program Eligibility in Determining Eligibility for TRICARE Reserve Select

A. *Participating Agencies:* Participants in this computer matching program are the Office of Personnel and Management (OPM) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The DMDC is the source agency, *i.e.,* the activity disclosing the records for the purpose of the match. The OPM is the specific recipient activity or matching agency, *i.e.,* the agency that actually performs the computer matching.

B. *Purpose of the Match:* The purpose of this agreement is to establish the conditions, safeguards and procedures under which the Office of Personnel Management (OPM) will disclose FEHB eligibility and Federal employment information to the Defense Manpower Data Center (DMDC), Defense Enrollment and Eligibility Reporting System Office (DEERS), and the Office of the Assistant Secretary of Defense (Reserve Affairs). This disclosure by OPM will provide the DoD with the FEHB eligibility and Federal employment information necessary to determine continuing eligibility for the TRICARE Reserve Select (TRS) program.

C. *Authority for Conducting the Match:* This CMA is executed to comply with the Privacy Act of 1974 (Title 5 United States Code (U.S.C.) 552a), as amended, (as amended by Public Law (Pub. L.) 100–503, the Computer Matching and Privacy Protection Act (CMPPA) of 1988), the Office of Management and Budget (OMB) Circular A–130, titled ''Management of Federal Information Resources'' at 61 **Federal Register** (FR) 6435 (February 20, 1996), and OMB guidelines pertaining to computer matching at 54 FR 25818 (June 19, 1989).

The John Warner National Defense Authorization Act of 2007 (NDAA of 2007) established the enhanced TRICARE Reserve Select program as of Oct. 1, 2007. Selected Reserve members, who are eligible for FEHB under chapter 89 of title 5, U.S.C. are ineligible for TRICARE Reserve Select. This agreement implements the additional

validation processes needed by DoD to insure Selected Reserve members eligible for FEHB are not enrolled in TRS.

D. *Records To Be Matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

OPM will use the system of records identified as OPM/GOVT–1 entitled ''General Personnel Records,'' at 71 FR 35342 (June 19, 2006).

DoD will use the SOR identified as DMDC 02 DoD, entitled ''Defense Enrollment Eligibility Reporting System (DEERS), (April 22, 2009, 74 FR 18356).'' SSNs of DoD TRS Sponsors will be released to OPM pursuant to the routine use ''22'' set forth in the system notice, which provides that data may be released to OPM ''for support of the DEERS enrollment process and to identify individuals not entitled to health care under TRS.''

E. *Description of Computer Matching Program:* Under the terms of this matching agreement, DMDC will provide to OPM a file of social security numbers (SSN) DOB, and Name for Selected Reserve members who are enrolled in TRS. DMDC will update their database with FEHBP eligibility information from the OPM response file. DMDC will be responsible for providing the verified information to the Reserve components for processing of TRS eligibility.

OPM agrees to conduct a semi-annual computer match of the SSNs of Selected Reservists enrolled in TRS provided by DMDC against the information found in OPM's personnel system of record. OPM will validate the identification of the Selected Reserve record that matches against the name, SSN and date of birth provided by DMDC. OPM will provide an FEHB Plan Code, a multiple record indicator and a DOB match indicator. OPM will forward a response file to DMDC within 30 business days following the receipt of the initial finder file and for any subsequent files submitted.

F. *Inclusive Dates of the Matching Program:* This computer matching program is subject to public comment and review by Congress and the Office of Management and Budget. If the mandatory 30 day period for comment has expired and no comments are received and if no objections are raised by either Congress or the Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange at a mutually agreeable time and thereafter on a quarterly basis. By agreement between OPM and DMDC, the matching program will be in effect for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for Receipt of Public Comments or Inquiries:* Director, Defense Privacy Office, 1901 South Bell Street, Suite 920, Arlington, VA 22202–4512. Telephone (703) 607–2943.

[FR Doc. E9–18896 Filed 8–6–09; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD 2009–OS–0116]

Privacy Act of 1974; System of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to Delete Systems of Records.

SUMMARY: The Defense Intelligence Agency is deleting a system of records notice from its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a) as amended.

DATES: This proposed action will be effective without further notice on September 8, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: DIA Privacy Act Coordinator, Records Management Section, 200 McDill Blvd, Washington DC 20340.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Intelligence Agency is proposing to delete a system of records notice from its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a) as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 27, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

LDIA 0335

SYSTEM NAME:

Alcohol and Drug Abuse Reporting Program (February 22, 1993, 58 FR 10613).

REASON:

The records contained in this system of records have been migrated into the Employee Assistance Program Case Records (EAP), an approved DIA SORN (LDIA 06–0001).

[FR Doc. E9–18903 Filed 8–6–09; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2009–OS–0122]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Defense Logistics Agency is proposing to amend a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective without further notice on September 8, 2009 unless comments are received which would result in a contrary determination.

ADDRESSES: Chief Privacy and FOIA Officer, Headquarters Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221

FOR FURTHER INFORMATION CONTACT: Mr. Lewis Oleinick at (703) 767–6194.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's system of record notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: July 28, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

S180.10

SYSTEM NAME:

Congressional, Executive, and Political Inquiry Records (September 4, 2007, 72 FR 506668).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Records contain representative's name, constituent's name, details surrounding the issue being researched and control number. The records may also contain the constituent's home address, home telephone number, or related personal information provided by the constituent/representative making the inquiry.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 133, Under Secretary of Defense for Acquisition and Technology; and DOD Directive 5400.04, Provision of Information to Congress.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Records are maintained in a secure, limited access, or monitored work area. Physical entry by unauthorized persons is restricted by the use of locks, guards, or administrative procedures. Access to personal information is restricted to those who require the records in the performance of their official duties. Access to computer records is further restricted to DL staff only. All personnel whose official duties require access to the information are trained in the proper safeguarding and use of the information.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Individuals should provide their name, home address, and representative's name.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Individuals should provide their name, home address, and representative's name.''

* * * * *

S180.10

SYSTEM NAME:

Congressional, Executive, and Political Inquiry Records.

SYSTEM LOCATION:

Office of Legislative Affairs, Headquarters Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2545, Fort Belvoir, VA, 22060–6221, and the DLA Primary Level Field Activities. Mailing addresses for the DLA Primary Level Field Activities may be obtained from the System manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, organizations, and other entities who have requested Members of State and Federal Legislative and Executive Branches of Government make inquiries on their behalf.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain representative's name, constituent's name, details surrounding the issue being researched and control number. The records may also contain the constituent's home address, home telephone number, or related personal information provided by the constituent/representative making the inquiry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 133, Under Secretary of Defense for Acquisition and Technology; and DOD Directive 5400.04, Provision of Information to Congress.

PURPOSE(S):

Information is collected to reply to inquiries and to determine the need for and course of action to be taken for resolution. Information may be used by the DLA Director, Chief of Staff, DLA Senior Leadership and DLA Primary Level Field Activity Commanders and decision makers as a basis to institute policy or procedural changes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information is furnished to Members/Staff of State and Federal Legislative and Executive Branches of Government who wrote to DLA on behalf of the constituent and who use it to respond to the constituent, or for other related purposes.

To Federal and local government agencies having cognizance over or authority to act on the issues involved.

The DoD ''Blanket Routine Uses'' apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and electronic form.

RETRIEVABILITY:

Retrieved by constituent name, representative name, or control number.

SAFEGUARDS:

Records are maintained in a secure, limited access, or monitored work area. Physical entry by unauthorized persons is restricted by the use of locks, guards, or administrative procedures. Access to personal information is restricted to those who require the records in the performance of their official duties. Access to computer records is further restricted to DL staff only. All personnel whose official duties require access to the information are trained in the proper safeguarding and use of the information.

RETENTION AND DISPOSAL:

Records are destroyed after eight years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Legislative Affairs, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the DLA Primary Level Field Activity Commanders.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Individuals should provide their name, home address, and representative's name.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Individuals should provide their name, home address, and representative's name.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is provided by constituent, the constituent's representative, and from agency files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–18908 Filed 8–6–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2009–OS–0113]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to Alter a System of Records.

SUMMARY: The Office of the Secretary of Defense is proposing to alter a systems of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 8, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 17, 2009, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 21, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

DMDC 02 DoD

SYSTEM NAME:

Defense Enrollment Eligibility Reporting System (DEERS) (April 22, 2009)

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 301, Departmental Regulations; 10 U.S.C. Chapter 53, Miscellaneous Rights and Benefits, Chapter 54, Commissary and Exchange Benefits, Chapter 55 Medical and Dental Care, Chapter 58 Benefits and Services for Members being Separated or Recently Separated, and Chapter 75 Deceased Personnel; 10 U.S.C. 136 Under Secretary of Defense for Personnel Readiness; 20 U.S.C. 1070a (f)(4), Higher Education Opportunity Act; 31 U.S.C. 3512(c) Executive Agency Accounting and Other Financial Management; 50 U.S.C. Chapter 23, Internal Security; DoD Directive 1341.1, Defense Enrollment/Eligibility Reporting System; DoD Instruction 1341.2, DEERS Procedures; 5 U.S.C. App. 3 (Pub. L. 95–452, as amended Inspector General Act of 1978; Pub. L. 106–265, Federal Long-Term Care Insurance; and 10 U.S.C. 2358, Research and Development Projects; 42 U.S.C., Chapter 20, Subchapter I–G, Registration and Voting by Absent Uniformed Services Voters and Overseas Voters in Elections for Federal Office, Sec. 1973ff, Federal responsibilities and DoD Directive 1000.4, Federal Voting Assistance Program (FVAP); Homeland Security Presidential Directive 12, Policy for a common Identification Standard for Federal Employees and Contractors; 38 CFR part 9.20, Traumatic injury protection, Servicemembers' Group Life Insurance and Veterans' Group Life Insurance; and E.O. 9397 (SSN) as amended.''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Social Security Administration (SSA) to perform computer data matching against the SSA Wage and Earnings Record file for the purpose of identifying employers of Department of Defense (DoD) beneficiaries eligible for health care. This employer data will in turn be used to identify those employed beneficiaries who have employment-related group health insurance, to coordinate insurance benefits provided by DoD with those provided by the other insurance. This information will also be used to perform computer data matching against the SSA Master Beneficiary Record file for the purpose of identifying DoD beneficiaries eligible for health care who are enrolled in the Medicare Program, to coordinate insurance benefits provided by DoD with those provided by Medicare.

2. To the Office of Disability and Insurance Security Programs, for the purpose of expediting disability processing of wounded military service members and veterans.

3. To other Federal agencies and State, local and territorial governments to identify fraud and abuse of the Federal agency's programs and to identify debtors and collect debts and overpayment in the DoD health care programs.

4. To each of the fifty States and the District of Columbia for the purpose of conducting an on going computer matching program with State Medicaid agencies to determine the extent to which State Medicaid beneficiaries may be eligible for Uniformed Services health care benefits, including CHAMPUS, TRICARE, and to recover Medicaid monies from the CHAMPUS program.

5. To provide dental care providers assurance of treatment eligibility.

6. To Federal agencies and/or their contractors, in response to their requests, for purposes of authenticating the identity of individuals who, incident to the conduct of official business, present the Common Access Card or similar identification as proof of identity to gain physical or logical access to government and contractor facilities, locations, networks, or systems.

7. To State and local child support enforcement agencies for purposes of providing information, consistent with the requirements of 29 U.S.C. 1169(a), 42 U.S.C. 666(a)(19), and E.O. 12953 and in response to a National Medical Support Notice (NMSN) (or equivalent notice if based upon the statutory authority for the NMSN), regarding the military status of identified individuals and whether, and for what period of time, the children of such individuals are or were eligible for DoD health care coverage. **Note:** Information requested by the States is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

8. To the Department of Health and Human Services (HHS):

a. For purposes of providing information, consistent with the requirements of 42 U.S.C. 653 and in response to an HHS request, regarding the military status of identified individuals and whether, and for what period of time, the children of such individuals are or were eligible for DoD healthcare coverage. **Note:** Information requested by HHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

b. For purposes of providing information so that specified Medicare determinations, specifically late enrollment and waiver of penalty, can be made for eligible (1) DoD military retirees and (2) spouses (or former spouses) and/or dependents of either military retirees or active duty military personnel, pursuant to section 625 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2002 (as codified at 42 U.S.C. 1395p and 1395r).

c. To the Office of Child Support Enforcement, Federal Parent Locator Service, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; the relationship to a child receiving benefits provided by a third party and the name and SSN of those third party providers who have a legal responsibility. Identifying delinquent obligors will allow State Child Support Enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

d. For purposes of providing information to the Centers for Medicare and MEDICAID Services (CMS) to account for the impact of DoD healthcare on local reimbursement rates for the Medicare Advantage program as required in 42 CFR 422.306.

9. To the American Red Cross for purposes of providing emergency notification and assistance to members of the Armed Forces, retirees, family members or survivors.

10. To the Department of Veterans Affairs (DVA):

a. To provide military personnel, pay and wounded, ill and injured identification data for present and former military personnel for the purpose of evaluating use of veterans' benefits, validating benefit eligibility and maintaining the health and well being of veterans and their family members.

b. To provide identifying military personnel data to the DVA and its insurance program contractor for the purpose of notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968) and for DVA to administer the Traumatic Servicemember's Group Life Insurance (TSGLI) (Traumatic Injury Protection Rider to Servicemember's Group Life Insurance (TSGLI), 38 CFR part 9.20).

c. To register eligible veterans and their dependents for DVA programs.

d. Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension Program (38 U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

e. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

(1) Providing full identification of active duty military personnel, including full time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program. The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting overpayment (38 U.S.C. 5304(c)).

(2) Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 1606—Selected Reserve and Title 38 U.S.C., Chapter 30—Active Duty), the REAP educational benefit (Title 10 U.S.C., Chapter 1607), and the National Call to Service enlistment educational benefit (Title 10, Chapter 510). The Post-9/11 GI Bill (Title 38 U.S.C., Chapter 33) and The Transferability of education assistance to family members. The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

(3) Providing identification of reserve duty, including full time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 12316) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

(4) Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law requires recoupment of severance payments before DVA disability compensation can be paid (10 U.S.C. 1174).

f. To provide identifying military personnel data to the DVA for the purpose of notifying such personnel of information relating to educational assistance as required by the Veterans Programs Enhancement Act of 1998 (38 U.S.C. 3011 and 3034).

11. To DoD Civilian Contractors and grantees for the purpose of performing research on manpower problems for statistical analyses.

12. To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

13. To Defense contractors to monitor the employment of former DoD employees and military members subject to the provisions of 41 U.S.C. 423.

14. To Federal and Quasi Federal agencies, territorial, State, and local

governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and overpayments owed to these programs. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

15. To Federal and Quasi Federal agencies, territorial, State and local governments, and contractors and grantees for the purpose of supporting research studies concerned with the health and well-being of active duty, reserve, and retired personnel or veterans, to include family members. DMDC will disclose information from this system of records for research purposes when DMDC:

a. Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. Has secured a written statement attesting to the recipients' understanding of, and willingness to abide by these provisions.

16. To Federal and State agencies for purposes of obtaining socioeconomic information on Armed Forces personnel so that analytical studies can be conducted with a view to assessing the present needs and future requirements of such personnel.

17. To Federal and State agencies to validate demographic data (*e.g.,* Social Security Number, citizenship status, date and place of birth, *etc.*) for individuals in DoD personnel and pay files so that accurate information is available in support of DoD requirements.

18. To the Bureau of Citizenship and Immigration Services, Department of Homeland Security, for purposes of facilitating the verification of individuals who may be eligible for expedited naturalization (Pub. L. 108–136, Section 1701, and E.O. 13269, Expedited Naturalization).

19. To the Federal voting program to provide unit and e-mail addresses for the purpose of notifying the military members where to obtain absentee ballots.

20. To the Department of Homeland Security for the conduct of studies related to the health and well-being of Coast Guard members and to authenticate and identify Coast Guard personnel.

21. To Coast Guard recruiters in the performance of their assigned duties.

22. To Federal Agencies, to include OPM, Postal Service, Executive Office of the President and Administrative Office of the Courts; to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

a. Providing all reserve military members eligible for TRICARE Reserve Select (TRS) to be matched against the Federal agencies for providing those reserve military members that are also Federal civil service employees. This disclosure by the Federal agencies will provide the DoD with the FEHB eligibility and Federal employment information necessary to determine continuing eligibility for the TRS program. Only those reservists not eligible for FEHB are eligible for TRS (Section 1076d of title 10).

b. Providing all reserve military members to be matched against the Federal agencies for the purpose of identifying the Reserve Forces who are also employed by the Federal Government in a civilian position, so that reserve status can be terminated if necessary. To accomplish an emergency mobilization, individuals occupying critical civilian positions cannot be mobilized as Reservists.

c. To the Department of Education for the purpose of identifying dependent children of those military members killed in Operation Iraq Freedom and Operation Enduring Freedom (OIF/OEF), Afghanistan Only, for possible benefits.''

* * * * *

DMDC 02 DoD

SYSTEM NAME:

Defense Enrollment Eligibility Recording System (DEERS)

SYSTEM LOCATION:

EDS—Service Management Center, 1075 West Entrance Drive, Auburn Hills, MI 48326–2723.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty members and other Uniformed Servicemembers, *i.e.,* Department of Defense (DoD), Coast Guard, NOAA and USPHS; Reserve Members; National Guard members; State National Guard Employees; Presidential Appointees of all Federal Government agencies; DoD and Uniformed Service civil service employees, except Presidential appointees; Disabled American veterans; DoD and Uniformed Service contract employees; Former members (Reserve service, discharged RR or SR following notification of retirement eligibility); Medal of Honor recipients; Non-DoD civil service employees; U.S. Military Academy Students; Non-appropriated fund DoD and Uniformed Service employees (NAF); Non-Federal Agency Civilian associates, *i.e.* American Red Cross Emergency Services paid employees, Non-DoD contract employees; Reserve retirees not yet eligible for retired pay; Retired military members eligible for retired pay; Foreign Affiliates; DoD OCONUS Hires; DoD Beneficiaries; Civilian Retirees; Dependents; Members of the general public treated for a medical emergency in a DoD Medical Facility; Emergency Contact Person; Care Givers; Prior Military Eligible for VA benefits.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computer files containing beneficiary's name; Service or Social Security Number; enrollment number; relationship of beneficiary to sponsor; residence address of beneficiary or sponsor; date of birth of beneficiary; sex of beneficiary; branch of Service of sponsor; dates of beginning and ending eligibility; number of family members of sponsor; primary unit duty location of

sponsor; race and ethnic origin of beneficiary; occupation of sponsor; rank/pay grade of sponsor; disability documentation; wounded, ill and injured identification information; Medicare eligibility and enrollment data; primary and secondary fingerprints and photographs of beneficiaries; blood test results; Deoxyribonucleic Acid (DNA); dental care eligibility codes and dental x-rays.

Catastrophic Cap and Deductible (CCD) transactions, including monetary amounts; CHAMPUS/TRICARE claim records containing enrollee, participant and health care facility, provider data such as cause of treatment, amount of payment, name and Social Security or tax identification number of providers or potential providers of care; citizenship data/country of birth; civil service employee employment information (agency and bureau, pay plan and grade, nature of action code and nature of action effective date, occupation series, dates of promotion and expected return from overseas, service computation date); claims data; compensation data; contractor fee payment data; date of separation of former enlisted and officer personnel; demographic data (kept on others beyond beneficiaries) date of birth, home of record State, sex, race, education level; Department of Veterans Affairs disability payment records; digital signatures where appropriate to assert validity of data; e-mail (home/work); emergency contact information; immunization data; Information Assurance (IA) Workforce information; language data; military personnel information (rank, assignment/deployment, length of service, military occupation, education, and benefit usage); pharmacy benefits; reason leaving military service or DoD civilian service; Reserve member's civilian occupation and employment information; education benefit eligibility and usage; special military pay information; SGLI/FGLI; stored documents for proving identity and association; workforce information (*e.g.* Acquisition, First Responders); Privacy Act audit logs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. Chapters 53, Miscellaneous Rights and Benefits, Chapter 54, Commissary and Exchange Benefits, Chapter 55 Medical and Dental Care, Chapter 58 Benefits and Services for Members being Separated or Recently Separated, and Chapter 75 Deceased Personnel; 10 U.S.C. 136 Under Secretary of Defense for Personnel Readiness; 20 U.S.C. 1070a(f)(4), Higher Education Opportunity Act; 31 U.S.C. 3512(c) Executive Agency Accounting and Other Financial Management; 50 U.S.C. Chapter 23, Internal Security; DoD Directive 1341.1, Defense Enrollment/Eligibility Reporting System; DoD Instruction 1341.2, DEERS Procedures; 5 U.S.C. App. 3 (Pub. L. 95–452, as amended Inspector General Act of 1978; Pub. L. 106–265, Federal Long-Term Care Insurance; and 10 U.S.C. 2358, Research and Development Projects; 42 U.S.C., Chapter 20, Subchapter I–G, Registration and Voting by Absent Uniformed Services Voters and Overseas Voters in Elections for Federal Office, Sec. 1973ff, Federal responsibilities and DoD Directive 1000.4, Federal Voting Assistance Program (FVAP); Homeland Security Presidential Directive 12, Policy for a common Identification Standard for Federal Employees and Contractors; 38 CFR part 9.20, Traumatic injury protection, Servicemembers' Group Life Insurance and Veterans' Group Life Insurance; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

The purpose of the system is to provide a database for determining eligibility to DoD entitlements and privileges; to support DoD health care management programs; to provide identification of deceased members; to record the issuance of DoD badges and identification cards, *i.e.,* Common Access Cards (CAC) or beneficiary cards; and to detect fraud and abuse of the benefit programs by claimants and providers to include appropriate collection actions arising out of any debts incurred as a consequence of such programs.

To authenticate and identify DoD affiliated personnel (*e.g.,* contractors); to assess manpower, support personnel and readiness functions; to perform statistical analyses; identify current DoD civilian and military personnel for purposes of detecting fraud and abuse of benefit programs; to register current DoD civilian and military personnel and their authorized dependents for purposes of obtaining medical examination, treatment or other benefits to which they are entitled; to ensure benefit eligibility is retained after separation from the military; information will be used by agency officials and employees, or authorized contractors, and other DoD Components for personnel and manpower studies; and to assist in recruiting prior-service personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Social Security Administration (SSA) to perform computer data matching against the SSA Wage and Earnings Record file for the purpose of identifying employers of Department of Defense (DoD) beneficiaries eligible for health care. This employer data will in turn be used to identify those employed beneficiaries who have employment-related group health insurance, to coordinate insurance benefits provided by DoD with those provided by the other insurance. This information will also be used to perform computer data matching against the SSA Master Beneficiary Record file for the purpose of identifying DoD beneficiaries eligible for health care who are enrolled in the Medicare Program, to coordinate insurance benefits provided by DoD with those provided by Medicare.

2. To the Office of Disability and Insurance Security Programs, for the purpose of expediting disability processing of wounded military service members and veterans.

3. To other Federal agencies and State, local and territorial governments to identify fraud and abuse of the Federal agency's programs and to identify debtors and collect debts and overpayment in the DoD health care programs.

4. To each of the fifty States and the District of Columbia for the purpose of conducting an on going computer matching program with State Medicaid agencies to determine the extent to which State Medicaid beneficiaries may be eligible for Uniformed Services health care benefits, including CHAMPUS, TRICARE, and to recover Medicaid monies from the CHAMPUS program.

5. To provide dental care providers assurance of treatment.

6. To Federal agencies and/or their contractors, in response to their requests, for purposes of authenticating the identity of individuals who, incident to the conduct of official business, present the Common Access Card or similar identification as proof of identity to gain physical or logical access to government and contractor facilities, locations, networks, or systems.

7. To State and local child support enforcement agencies for purposes of providing information, consistent with the requirements of 29 U.S.C. 1169(a), 42 U.S.C. 666(a)(19), and E.O. 12953 and in response to a National Medical Support Notice (NMSN) (or equivalent notice if based upon the statutory authority for the NMSN), regarding the military status of identified individuals and whether, and for what period of time, the children of such individuals are or were eligible for DoD health care coverage. **Note:** Information requested by the States is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

8. To the Department of Health and Human Services (HHS):

a. For purposes of providing information, consistent with the requirements of 42 U.S.C. 653 and in response to an HHS request, regarding the military status of identified individuals and whether, and for what period of time, the children of such individuals are or were eligible for DoD healthcare coverage. **Note:** Information requested by HHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

b. For purposes of providing information so that specified Medicare determinations, specifically late enrollment and waiver of penalty, can be made for eligible (1) DoD military retirees and (2) spouses (or former spouses) and/or dependents of either military retirees or active duty military personnel, pursuant to section 625 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2002 (as codified at 42 U.S.C. 1395p and 1395r).

c. To the Office of Child Support Enforcement, Federal Parent Locator Service, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; the relationship to a child receiving benefits provided by a third party and the name and SSN of those third party providers who have a legal responsibility. Identifying delinquent obligors will allow State Child Support Enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

d. For purposes of providing information to the Centers for Medicare and MEDICAID Services (CMS) to account for the impact of DoD healthcare on local reimbursement rates for the Medicare Advantage program as required in 42 CFR 422.306.

9. To the American Red Cross for purposes of providing emergency notification and assistance to members of the Armed Forces, retirees, family members or survivors.

10. To the Department of Veterans Affairs (DVA):

a. To provide military personnel, pay and wounded, ill and injured identification data for present and former military personnel for the purpose of evaluating use of veterans' benefits, validating benefit eligibility and maintaining the health and well being of veterans and their family members.

b. To provide identifying military personnel data to the DVA and its insurance program contractor for the purpose of notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968) and for DVA to administer the Traumatic Servicemember's Group Life Insurance (TSGLI) (Traumatic Injury Protection Rider to Servicemember's Group Life Insurance (TSGLI), 38 CFR part 9.20).

c. To register eligible veterans and their dependents for DVA programs.

d. Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension Program (38 U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

e. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

(1) Providing full identification of active duty military personnel, including full time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program. The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment (38 U.S.C. 5304(c)).

(2) Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 1606—Selected Reserve and Title 38 U.S.C., Chapter 30—Active Duty), the REAP educational benefit (Title 10 U.S.C., Chapter 1607), and the National Call to Service enlistment educational benefit (Title 10, Chapter 510). The Post 9/11 GI Bill (Title 38 U.S.C., Chapter 33) and The Transferability of education assistance to family members. The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

(3) Providing identification of reserve duty, including full time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 12316) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

(4) Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law requires recoupment of severance payments before DVA disability compensation can be paid (10 U.S.C. 1174).

f. To provide identifying military personnel data to the DVA for the purpose of notifying such personnel of information relating to educational assistance as required by the Veterans Programs Enhancement Act of 1998 (38 U.S.C. 3011 and 3034).

11. To DoD Civilian Contractors and grantees for the purpose of performing research on manpower problems for statistical analyses.

12. To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

13. To Defense contractors to monitor the employment of former DoD employees and military members subject to the provisions of 41 U.S.C. 423.

14. To Federal and Quasi Federal agencies, territorial, State, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. Information released includes name, Social Security Number, and military or civilian address of individuals. To

detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

15. To Federal and Quasi Federal agencies, territorial, State and local governments, and contractors and grantees for the purpose of supporting research studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members. DMDC will disclose information from this system of records for research purposes when DMDC:

a. Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. Has secured a written statement attesting to the recipients' understanding of, and willingness to abide by these provisions.

16. To Federal and State agencies for purposes of obtaining socioeconomic information on Armed Forces personnel so that analytical studies can be conducted with a view to assessing the present needs and future requirements of such personnel.

17. To Federal and State agencies to validate demographic data (*e.g.,* Social Security Number, citizenship status, date and place of birth, *etc.*) for individuals in DoD personnel and pay files so that accurate information is available in support of DoD requirements.

18. To the Bureau of Citizenship and Immigration Services, Department of Homeland Security, for purposes of facilitating the verification of individuals who may be eligible for expedited naturalization (Pub. L. 108–136, Section 1701, and E.O. 13269, Expedited Naturalization).

19. To the Federal voting program to provide unit and e-mail addresses for the purpose of notifying the military members where to obtain absentee ballots.

20. To the Department of Homeland Security for the conduct of studies related to the health and well-being of Coast Guard members and to authenticate and identify Coast Guard personnel.

21. To Coast Guard recruiters in the performance of their assigned duties.

22. To Federal Agencies, to include OPM, Postal Service, Executive Office of the President and Administrative Office of the Courts; to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

a. Providing all reserve military members eligible for TRICARE Reserve Select (TRS) to be matched against the Federal agencies for providing those reserve military members that are also Federal civil service employees. This disclosure by the Federal agencies will provide the DoD with the FEHB eligibility and Federal employment information necessary to determine continuing eligibility for the TRS program. Only those reservists not eligible for FEHB are eligible for TRS (Section 1076d of title 10).

b. Providing all reserve military members to be matched against the Federal agencies for the purpose of identifying the Reserve Forces who are also employed by the Federal Government in a civilian position, so that reserve status can be terminated if necessary. To accomplish an emergency mobilization, individuals occupying critical civilian positions cannot be mobilized as Reservists.

c. To the Department of Education for the purpose of identifying dependent children of those military members killed in Operation Iraq Freedom and Operation Enduring Freedom (OIF/OEF), Afghanistan Only, for possible benefits.

The DoD ''Blanket Routine Uses'' published at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tapes and disks, and are housed in a controlled computer media library.

RETRIEVABILITY:

Records about individuals are retrieved by an algorithm which uses name, Social Security Number, date of birth, rank, and duty location as possible inputs. Retrievals are made on summary basis by geographic characteristics and location and demographic characteristics. Information about individuals will not be distinguishable in summary retrievals. Retrievals for the purposes of generating address lists for direct mail distribution may be made using selection criteria based on geographic and demographic keys.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted to those personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of locks, guards, and administrative procedures (*e.g.,* fire protection regulations).

Access to personal information is restricted to those who require the records in the performance of their official duties, and to the individuals who are the subjects of the record or their authorized representatives. Access to personal information is further restricted by the use of passwords, which are changed periodically. All individuals granted access to this system of records are to have received Information Assurance and Privacy Act training.

RETENTION AND DISPOSAL:

Data is destroyed when superseded or when no longer needed for operational purposes, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Deputy

Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

Written requests should contain the full name, Social Security Number (SSN), date of birth, and current address and telephone number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the OSD/JS FOIA Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should contain the name and number of this system of records notice along with the full name, Social Security Number (SSN), date of birth, and current address and telephone number of the individual and be signed.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals, personnel, pay, and benefit systems of the military and civilian departments and agencies of the Defense Department, the Coast Guard, the Public Health Service, the National Oceanic and Atmospheric Administration, Department of Veterans Affairs, and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–18894 Filed 8–6–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2009–OS–0123]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Defense Finance and Accounting Service (DFAS) is proposing to amend systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 8, 2009 unless comments are received which would result in a contrary determination.

ADDRESSES: Send comments to the Defense Finance and Accounting Service, FOIA/PA Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 589–3510.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service systems of notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 28, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

T1205

SYSTEM NAME:

Junior Reserve Officer Training Corps Payment Reimbursement System (April 28, 2000, 65 FR 24935).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Defense Finance and Accounting Service, 8899 East 56th Street, Indianapolis, IN 46269–0002.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 2031, as amended, Junior Reserve Officers' Training Corps, Reserve Officers' Training Corps Program for Secondary Educational Institutions; DoD Instruction 1205.13, Junior Reserve Officers Training Corps Program; DoDFMR 7000.14–R, Volume 10, Chapter 21; Headquarters, Defense Finance and Accounting Service, Memorandum of April 10, 1996; (Department of the Navy, Headquarters, U.S. Marine Corps, Memorandum of April 26, 1996; Department of the Navy, Office of the Assistant Secretary, Memorandum of June 21, 1996; Department of the Navy, Office of the Assistant Secretary, Memorandum of June 21, 1996, and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''The purpose of this system is as follows:

To accomplish payroll computations and the reimbursement portion of the Junior Reserve Officer Training Corps Instructor Program.

To provide statements and/or reports to each instructor and school/school district.

To answer inquiries from applicable Services and/or financial institution where funds were distributed.

To provide information required by an auditor during an audit of the program.

To assist the Services with audit of individual instructor, school, and/or school district.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the school/school district to provide information regarding the instructor's computed minimum instructor pay, and the amount being reimbursed by the applicable Military Service.

To the Treasury Department to provide information on check issues and electronic funds transfers.

To the Federal Reserve Banks to distribute payments made through the direct deposit system to financial organizations or their processing agents authorized by individuals to receive and deposit payments in their accounts.

The DoD ''Blanket Routine Uses'' published at the beginning of the DFAS compilation of systems of records notices also apply to this system.

* * * * *

STORAGE:

Delete entry and replace with ''The records are hard copy documents or electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''Name and Social Security Number.''

SAFEGUARDS:

Delete entry and replace with ''Records are stored in an office building protected by guards, controlled screening, use of visitor registers, electronic access, and/or locks. Access

to records is limited to authorized individuals who are properly screened and cleared on a need-to-know basis in the performance of their official duties. Passwords and digital signatures are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records are cut off at the end of each month or the end of each fiscal year and then maintained for 1 year or up to 6 years and 3 months from date of cutoff. Destruction is by tearing, shredding, pulping, macerating, or burning.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Deputy Director, Air Force Military Pay Operations, Defense Finance and Accounting Service, 8899 East 56th Street, Indianapolis, IN 46249–0002.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Individuals should furnish full name, Social Security Number, current address, telephone number.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about them contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Individuals should furnish full name, Social Security Number, current address, telephone number.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Individuals; school/school district offices; applicable Military Services; and the Defense Retiree and Annuitant (Pay) System (DRAS).''

* * * * *

T1205

SYSTEM NAME:

Junior Reserve Officer Training Corps Payment Reimbursement System.

SYSTEM LOCATION(S):

Defense Finance and Accounting Service, 8899 East 56th Street, Indianapolis, IN 46269–0002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military retirees who participate in the Junior Reserve Officer Training Corps (JROTC) Instructor Program at selected high schools within the continental United States and various overseas locations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal information regarding name, Social Security Number, school/school district name and address, applicable active duty entitlement amounts, and current gross retired pay amounts. Military Services' applicable contribution percentage, gross and net contribution percentage, gross and net contribution amounts, and current employment period beginning and closing dates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2031, as amended, Junior Reserve Officers' Training Corps, Reserve Officers' Training Corps Program for Secondary Educational Institutions; DoD Instruction 1205.13, Junior Reserve Officers Training Corps Program; DoDFMR 7000.14–R, Volume 10, Chapter 21; Headquarters, Defense Finance and Accounting Service, Memorandum of April 10, 1996; (Department of the Navy, Headquarters, U.S. Marine Corps, Memorandum of April 26, 1996; Department of the Navy, Office of the Assistant Secretary, Memorandum of June 21, 1996; Department of the Navy, Office of the Assistant Secretary, Memorandum of June 21, 1996, and E.O. 9397 (SSN), as amended.

PURPOSE(S):

The purpose of this system is as follows:

To accomplish payroll computations and the reimbursement portion of the Junior Reserve Officer Training Corps Instructor Program.

To provide statements and/or reports to each instructor and school/school district.

To answer inquiries from applicable Services and/or financial institution where funds were distributed.

To provide information required by an auditor during an audit of the program.

To assist the Services with audit of individual instructor, school, and/or school district.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the school/school district to provide information regarding the instructor's computed minimum instructor pay, and the amount being reimbursed by the applicable Military Service.

To the Treasury Department to provide information on check issues and electronic funds transfers.

To the Federal Reserve Banks to distribute payments made through the direct deposit system to financial organizations or their processing agents authorized by individuals to receive and deposit payments in their accounts.

The DoD ''Blanket Routine Uses'' published at the beginning of the DFAS compilation of systems of records notices also apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3). The purpose of the disclosure is to aid in the collection of outstanding debts owed to the Federal Government; typically, to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSITION OF RECORDS IN THE SYSTEM:

STORAGE:

The records are hard copy documents or electronic storage media.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Records are stored in an office building protected by guards, controlled screening, use of visitor registers, electronic access, and/or locks. Access to records is limited to authorized individuals who are properly screened and cleared on a need-to-know basis in the performance of their official duties. Passwords and digital signatures are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system.

RETENTION AND DISPOSAL:

Records are cut off at the end of each month or the end of each fiscal year and then maintained for 1 year or up to 6 years and 3 months from date of cut off. Destruction is by tearing, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Air Force Military Pay Operations, Defense Finance and Accounting Service, 8899 E. 56th Street, Indianapolis, IN 46249–0002.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/ Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Individuals should furnish full name, Social Security Number, current address, telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Individuals should furnish full name, Social Security Number, current address, telephone number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

RECORD SOURCE CATEGORIES:

Individuals; school/school district offices; applicable Military Services; and the Defense Retiree and Annuitant (Pay) System (DRAS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–18909 Filed 8–6–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2009–OS–0115]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Threat Reduction Agency, DoD.

ACTION: Notice to Add a System of Records.

SUMMARY: The Defense Threat Reduction Agency is proposing to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on September 8, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Carter at (703) 767–1771.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 20, 2009, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 21, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

HDTRA 08

SYSTEM NAME:

National Nuclear Weapon Stockpile Accountability Records.

SYSTEM LOCATION:

Headquarters, Defense Threat Reduction Agency, Nuclear Support Directorate, *Attn:* Chief, Stockpile Operations Branch, 8725 John J. Kingman Road, Stop 6201, Fort Belvoir, VA 22060–6201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals affiliated with DoD and Department of Energy Agencies who perform maintenance actions on the national nuclear weapon stockpile.

CATEGORIES OF RECORDS IN THE SYSTEM:

System access request forms and records of maintenance actions performed on the national nuclear stockpile. The records contain individual's name, Employee Identification Number or Social Security Number (SSN), affiliation (military, civilian, or contractor), military rank, physical and electronic duty addresses, duty telephone numbers, security clearance and read-in information, system access information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2121, the Atomic Energy Act of 1954; DoDD 5210.41, Security Policy for Protecting Nuclear Weapons; CJCSI 3150.04, Nuclear Weapons Stockpile Logistics Management and Nuclear Weapons Reports under the Joint Reporting Structure, DOE–DTRA Technical Publication (TP) 35–7, Inspection Records and E.O. 9397 (SSN).

PURPOSE(S):

To provide accountability by reporting maintenance actions on nuclear weapons in the national nuclear weapon stockpile in peacetime, crisis, and wartime to authorized DoD and Department of Energy personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552(a) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of United States Federal Government agencies in the performance of their official duties related to the accountability of the national nuclear weapons stockpile.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

Individual's name, user code, last four digits of Social Security Number (SSN), location, weapon serial number, system access level.

SAFEGUARDS:

Records are maintained in secure, limited access areas approved for classified processing. Servers, workstations and laptops are password protected. Data transmission is encrypted. Hardcopy files are classified documents when complete and protected as such, either in certified open storage areas or kept in secured, classified safes.

RETENTION AND DISPOSAL:

Nuclear weapons maintenance records are permanent records. Hard copy user access request forms will be retained for at least six years or longer if needed for investigative or security purposes. Electronic user identification, profiles, authorizations are permanent records for accountability; accounts will be deactivated when no longer in use.

SYSTEM MANAGER(S) AND ADDRESS:

Branch Chief, Defense Threat Reduction Agency, Nuclear Support Directorate, Stockpile Operations Branch (DTRA/NSPO), 8725 John J. Kingman Rd, Stop 6201, Ft. Belvoir, VA 22060–6201.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to Defense Threat Reduction Agency, Nuclear Support Directorate, *Attn:* Branch Chief, Stockpile Operations Branch, 8725 John J. Kingman Rd, Stop 6201, Ft. Belvoir, VA 22060–6201.

Individuals should furnish full name, last four digits of the Social Security Number (SSN), the duty locations where system access was granted, current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system of records should address written inquiries to Defense Threat Reduction Agency, Nuclear Support Directorate, *Attn:* Branch Chief, Stockpile Operations Branch (DTRA/NSPO), 8725 John J. Kingman Rd, Stop 6201, Ft. Belvoir, VA 22060–6201.

Individuals should furnish full name, last four digits of the Social Security Number (SSN), the duty locations where system access was granted, current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The DTRA rules for contesting contents are published in 32 CFR part 318, or may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Individual, individual's security manager and supervisor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–18904 Filed 8–6–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2009–OS–0114]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to Alter a System of Records.

SUMMARY: The Office of the Secretary of Defense is proposing to alter a systems of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 8, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 17, 2009, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 21, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

DMDC 01

SYSTEM NAME:

Defense Manpower Data Center Data Base. (January 31, 2008, 73 FR 5820).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with: ''5 U.S.C. 301, Departmental Regulations; 5 U.S.C. App. 3 (Pub. L. 95–452, as amended (Inspector General Act of 1978)); 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1562, Database on Domestic Violence Incidents; 20 U.S.C. 1070a(f)(4), Higher Education Opportunity Act; Public Law 106–265, Federal Long-Term Care Insurance; 10 U.S.C. 2358, Research and Development Projects; and E.O. 9397 (SSN), as amended.''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with: ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Department of Veteran Affairs (DVA):

a. To provide military personnel and pay data for present and former military personnel for the purpose of evaluating use of veterans benefits, validating

benefit eligibility and maintaining the health and well being of veterans and their family members.

b. To provide identifying military personnel data to the DVA and its insurance program contractor for the purpose of notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968).

c. To register eligible veterans and their dependents for DVA programs.

d. Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38 U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

e. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

(1) Providing full identification of active duty military personnel, including full time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program. The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment (38 U.S.C. 5304(c)).

(2) Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 1606—Selected Reserve and Title 38 U.S.C., Chapter 30—Active Duty). The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

(3) Providing identification of reserve duty, including full time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 12316) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

(4) Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law requires recoupment of severance payments before DVA disability compensation can be paid (10 U.S.C. 1174).

f. To provide identifying military personnel data to the DVA for the purpose of notifying such personnel of information relating to educational assistance as required by the Veterans Programs Enhancement Act of 1998 (38 U.S.C. 3011 and 3034).

2. To the Office of Personnel Management (OPM):

a. Consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub. L. 83–598, 84–356, 86–724, 94–455 and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

b. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) for the purpose of:

(1) Exchanging personnel and financial data to identify individuals who are improperly receiving military retired pay and credit for military service in their civil service annuities, or annuities based on the ''guaranteed minimum'' disability formula. The match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) 5 U.S.C. 8331 and the Federal Employees' Retirement System Act (FERSA) 5 U.S.C. 8411. DOD's legal authority for monitoring retired pay is 10 U.S.C. 1401.

(2) Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and cannot be released for extended active duty in the event of mobilization. Employing Federal agencies are informed of the reserve status of those affected personnel so that a choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Services.

c. Matching for administrative purposes to include updated employer addresses of Federal civil service employees who are reservists and demographic data on civil service employees who are reservists.

3. To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration. For the purpose of conducting aggregate statistical analyses on the impact of DoD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non compliance and delinquent filers.

4. To the Department of Health and Human Services (DHHS):

a. To the Office of the Inspector General, DHHS, for the purpose of identification and investigation of DoD employees and military members who may be improperly receiving funds under the Aid to Families of Dependent Children Program.

b. To the Office of Child Support Enforcement, Federal Parent Locator Service, DHHS, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; and for conducting computer matching as authorized by E.O. 12953 to facilitate the enforcement of child support owed by delinquent obligors within the entire civilian Federal government and the Uniformed Services work force (active and retired). Identifying delinquent obligors will allow State Child Support Enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

Note 1: Information requested by DHHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

Note 2: Quarterly wage information is not disclosed for those individuals performing intelligence or counter intelligence functions and a determination is made that disclosure could endanger the safety of the individual or compromise an ongoing investigation or intelligence mission (42 U.S.C. 653(n)).

c. To the Health Care Financing Administration (HCFA), DHHS for the purpose of monitoring HCFA

reimbursement to civilian hospitals for Medicare patient treatment. The data will ensure no Department of Defense physicians, interns, or residents are counted for HCFA reimbursement to hospitals.

d. To the Center for Disease Control and the National Institutes of Mental Health, DHHS, for the purpose of conducting studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members.

e. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of determining continued eligibility and help eliminate fraud and abuse in benefit programs by identifying individuals who are receiving Federal compensation or pension payments and also are receiving payments pursuant to Federal benefit programs being administered by the States.

5. To the Social Security Administration (SSA):

a. To the Office of Research and Statistics for the purpose of

(1) conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings, and

(2) obtaining current earnings data on individuals who have voluntarily left military service or DoD civil employment so that analytical personnel studies regarding pay, retention and benefits may be conducted.

Note 3: Earnings data obtained from the SSA and used by DoD does not contain any information that identifies the individual about whom the earnings data pertains.

b. To the Bureau of Supplemental Security Income for the purpose of verifying information provided to the SSA by applicants and recipients/beneficiaries, who are retired members of the Uniformed Services or their survivors, for Supplemental Security Income (SSI) or Special Veterans' Benefits (SVB). By law (42 U.S.C. 1006 and 1383), the SSA is required to verify eligibility factors and other relevant information provided by the SSI or SVB applicant from independent or collateral sources and obtain additional information as necessary before making SSI or SVB determinations of eligibility, payment amounts, or adjustments thereto.

c. To the Client Identification Branch for the purpose of validating the assigned Social Security Number for individuals in DoD personnel and pay files, using the SSA Enumeration Verification System (EVS).

d. To the Office of Disability and Insurance Security Programs, for the purpose of expediting disability processing of wounded military service members and veterans.

6. To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration regulations (50 U.S.C. App. 451 and E.O. 11623).

7. To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DoD civilian employees and military members by the states. To the Department of Labor to survey military separations to determine the effectiveness of programs assisting veterans to obtain employment.

8. To Federal and Quasi Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

9. To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

10. To state and local law enforcement investigative agencies to obtain criminal history information for the purpose of evaluating military service performance and security clearance procedures (10 U.S.C. 2358).

11. To Federal and Quasi Federal agencies, territorial, state and local governments, and contractors and grantees for the purpose of supporting research studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members. DMDC will disclose information from this system of records for research purposes when DMDC:

a. Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. Has required the recipient to (1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) In emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

12. To the Educational Testing Service, American College Testing, and like organizations for purposes of obtaining testing, academic, socioeconomic, and related demographic data so that analytical personnel studies of the Department of Defense civilian and military workforce can be conducted.

Note 4: Data obtained from such organizations and used by DoD does not contain any information that identifies the individual about whom the data pertains.

13. To Federal and State agencies for purposes of obtaining socioeconomic information on Armed Forces personnel so that analytical studies can be conducted with a view to assessing the present needs and future requirements of such personnel.

14. To Federal and state agencies for purposes of validating demographic data (*e.g.,* Social Security Number, citizenship status, date and place of birth, etc.) for individuals in DoD personnel and pay files so that accurate information is available in support of DoD requirements.

15. To the Bureau of Citizenship and Immigration Services, Department of Homeland Security, for purposes of facilitating the verification of individuals who may be eligible for expedited naturalization (Pub. L. 108–136, Section 1701, and E.O. 13269, Expedited Naturalization).

16. To Federal and State agencies, as well as their contractors and grantees, for purposes of providing military wage, training, and educational information so that Federal-reporting requirements, as mandated by statute, such as the Workforce Investment Act (29 U.S.C. 2801, *et seq.*) and the Carl D. Perkins Vocational and Applied Technology Act (20 U.S.C. 2301, *et seq.*) can be satisfied.

17. To Federal Agencies, including the Department of Education, to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of identifying dependent children of those military members killed in Operation Iraq Freedom and Operation Enduring Freedom (OIF/OEF) Afghanistan Only for possible benefits.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the OSD compilation of systems of records notices apply to this system.

Note 5: Military drug test information involving individuals participating in a drug abuse rehabilitation program shall be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DoD '''Blanket Routine Uses' do not apply to these types records.

* * * * *

RECORD ACCESS PROCEDURES:

Delete entry and replace with: ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should contain the name and number of this system of records notice along with the full name, Social Security Number (SSN), date of birth, current address, telephone number of the individual, and be signed.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with: ''The Office of the Secretary of Defense rules for accessing records, for contesting contents and appealing initial agency determinations are published in Office of the Secretary of Defense Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.''

* * * * *

DMDC 01

SYSTEM NAME:

Defense Manpower Data Center Data Base.

SYSTEM LOCATION:

Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army, Navy, Air Force, and Marine Corps officer and enlisted personnel who served on active duty from July 1, 1968, and after or who have been a member of a reserve component since July 1975; retired Army, Navy, Air Force, and Marine Corps officer and enlisted personnel; active and retired Coast Guard personnel; active and retired members of the commissioned corps of the National Oceanic and Atmospheric Administration; active and retired members of the commissioned corps of the Public Health Service; participants in Project 100,000 and Project Transition, and the evaluation control groups for these programs. All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later.

Current and former DoD civilian employees since January 1, 1972. All veterans who have used the GI Bill education and training employment services office since January 1, 1971. All veterans who have used GI Bill education and training entitlements, who visited a state employment service office since January 1, 1971, or who participated in a Department of Labor special program since July 1, 1971. All individuals who ever participated in an educational program sponsored by the U.S. Armed Forces Institute and all individuals who ever participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969.

Participants in the Department of Health and Human Services National Longitudinal Survey.

Survivors of retired military personnel who are eligible for or currently receiving disability payments or disability income compensation from the Department of Veterans Affairs; surviving spouses of active or retired deceased military personnel; 100% disabled veterans and their survivors; survivors of retired Coast Guard personnel; and survivors of retired officers of the National Oceanic and Atmospheric Administration and the Public Health Service who are eligible for or are currently receiving Federal payments due to the death of the retiree.

Individuals receiving disability compensation from the Department of Veterans Affairs or who are covered by a Department of Veterans Affairs insurance or benefit program; dependents of active and retired members of the Uniformed Services, selective service registrants.

Individuals receiving a security background investigation as identified in the Defense Central Index of Investigation. Former military and civilian personnel who are employed by DoD contractors and are subject to the provisions of 10 U.S.C. 2397.

All Federal civilian retirees.

All non appropriated funded individuals who are employed by the Department of Defense.

Individuals who were or may have been the subject of tests involving chemical or biological human subject testing; and individuals who have inquired or provided information to the Department of Defense concerning such testing.

Individuals who are authorized Web access to DMDC computer systems and databases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized personnel/employment/pay records consisting of name, Service Number, Selective Service Number, Social Security Number (SSN), citizenship data, compensation data, demographic information such as home town, age, sex, race, and educational level; civilian occupational information; performance ratings of DoD civilian employees and military members; reasons given for leaving military service or DoD civilian service; civilian and military acquisition work force warrant location, training and job specialty information; military personnel information such as rank, assignment/deployment, length of service, military occupation, aptitude scores, post service education, training, and employment information for veterans; participation in various in-service education and training programs; date of award of certification of military experience and training; military hospitalization and medical treatment, immunization, and pharmaceutical dosage records; home and work addresses; and identities of individuals involved in incidents of child and spouse abuse, and information about the nature of the abuse and services provided.

CHAMPUS claim records containing enrollee, patient and health care facility, provided data such as cause of treatment, amount of payment, name and Social Security or tax identification

number of providers or potential providers of care.

Selective Service System registration data.

Index fingerprints of Military Entrance Processing Command (MEPCOM) applicants.

Privacy Act audit logs.

Department of Veteran Affairs disability payment records. Credit or financial data as required for security background investigations.

Criminal history information on individuals who subsequently enter the military.

Office of Personnel Management (OPM) Central Personnel Data File (CPDF), an extract from OPM/GOVT–1, General Personnel Records, containing employment/personnel data on all Federal employees consisting of name, Social Security Number (SSN), date of birth, sex, work schedule (full time, part time, intermittent), annual salary rate (but not actual earnings), occupational series, position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier. Extract from Office of Personnel Management (OPM) OPM/CENTRAL–1, Civil Service Retirement and Insurance Records, including postal workers covered by Civil Service Retirement, containing Civil Service Claim number, date of birth, name, provision of law retired under, gross annuity, length of service, annuity commencing date, former employing agency and home address. These records provided by OPM for approved computer matching.

Non appropriated fund employment/personnel records consist of Social Security Number (SSN), name, and work address.

Military drug test records containing the Social Security Number (SSN), date of specimen collection, date test results reported, reason for test, test results, base/area code, unit, service, status (active/reserve), and location code of testing laboratory.

Names of individuals, as well as DMDC assigned identification numbers, and other user-identifying data, such as organization, Social Security Number (SSN), e-mail address, phone number, of those having Web access to DMDC computer systems and databases, to include dates and times of access.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. App. 3 (Pub. L. 95–452, as amended (Inspector General Act of 1978)); 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1562, Database on Domestic Violence Incidents; 20 U.S.C. 1070(f)(4), Higher Education Opportunity Act; Pub. L. 106–265, Federal Long-Term Care Insurance; 10 U.S.C. 2358, Research and Development Projects; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

The purpose of the system of records is to provide a single central facility within the Department of Defense to assess manpower trends, support personnel and readiness functions, to perform longitudinal statistical analyses, identify current and former DoD civilian and military personnel for purposes of detecting fraud and abuse of pay and benefit programs, to register current and former DoD civilian and military personnel and their authorized dependents for purposes of obtaining medical examination, treatment or other benefits to which they are qualified.

To collect debts owed to the United States Government and state and local governments.

Information will be used by agency officials and employees, or authorized contractors, and other DoD Components in the preparation of studies and policy as related to the health and well-being of current and past military and DoD affiliated personnel; to respond to Congressional and Executive branch inquiries; and to provide data or documentation relevant to the testing or exposure of individuals.

Military drug test records will be maintained and used to conduct longitudinal, statistical, and analytical studies and computing demographic reports on military personnel. No personal identifiers will be included in the demographic data reports. All requests for Service specific drug testing demographic data will be approved by the Service designated drug testing program office. All requests for DoD wide drug testing demographic data will be approved by the DoD Coordinator for Drug Enforcement Policy and Support, 1510 Defense Pentagon, Washington, DC 20301–1510.

DMDC Web usage data will be used to validate continued need for user access to DMDC computer systems and databases, to address problems associated with web access, and to ensure that access is only for official purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Department of Veteran Affairs (DVA):

a. To provide military personnel and pay data for present and former military personnel for the purpose of evaluating use of veterans benefits, validating benefit eligibility and maintaining the health and well being of veterans and their family members.

b. To provide identifying military personnel data to the DVA and its insurance program contractor for the purpose of notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968).

c. To register eligible veterans and their dependents for DVA programs.

d. Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38 U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

e. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

(1) Providing full identification of active duty military personnel, including full time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program. The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment (38 U.S.C. 5304(c)).

(2) Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 1606—Selected Reserve and Title 38 U.S.C., Chapter 30—Active Duty). The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

(3) Providing identification of reserve duty, including full time support

National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 12316) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

(4) Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law requires recoupment of severance payments before DVA disability compensation can be paid (10 U.S.C. 1174).

f. To provide identifying military personnel data to the DVA for the purpose of notifying such personnel of information relating to educational assistance as required by the Veterans Programs Enhancement Act of 1998 (38 U.S.C. 3011 and 3034).

2. To the Office of Personnel Management (OPM):

a. Consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub. L. 83–598, 84–356, 86–724, 94–455 and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

b. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) for the purpose of:

(1) Exchanging personnel and financial data to identify individuals who are improperly receiving military retired pay and credit for military service in their civil service annuities, or annuities based on the ''guaranteed minimum'' disability formula. The match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) 5 U.S.C. 8331 and the Federal Employees' Retirement System Act (FERSA) 5 U.S.C. 8411. DOD's legal authority for monitoring retired pay is 10 U.S.C. 1401.

(2) Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and cannot be released for extended active duty in the event of mobilization. Employing Federal agencies are informed of the reserve status of those affected personnel so that a choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Services.

c. Matching for administrative purposes to include updated employer addresses of Federal civil service employees who are reservists and demographic data on civil service employees who are reservists.

3. To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration. For the purpose of conducting aggregate statistical analyses on the impact of DoD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non compliance and delinquent filers.

4. To the Department of Health and Human Services (DHHS):

a. To the Office of the Inspector General, DHHS, for the purpose of identification and investigation of DoD employees and military members who may be improperly receiving funds under the Aid to Families of Dependent Children Program.

b. To the Office of Child Support Enforcement, Federal Parent Locator Service, DHHS, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; and for conducting computer matching as authorized by E.O. 12953 to facilitate the enforcement of child support owed by delinquent obligors within the entire civilian Federal government and the Uniformed Services work force (active and retired). Identifying delinquent obligors will allow State Child Support Enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

Note 1: Information requested by DHHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

Note 2: Quarterly wage information is not disclosed for those individuals performing intelligence or counter intelligence functions and a determination is made that disclosure could endanger the safety of the individual or compromise an ongoing investigation or intelligence mission (42 U.S.C. 653(n)).

c. To the Health Care Financing Administration (HCFA), DHHS for the purpose of monitoring HCFA reimbursement to civilian hospitals for Medicare patient treatment. The data will ensure no Department of Defense physicians, interns, or residents are counted for HCFA reimbursement to hospitals.

d. To the Center for Disease Control and the National Institutes of Mental Health, DHHS, for the purpose of conducting studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members.

e. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of determining continued eligibility and help eliminate fraud and abuse in benefit programs by identifying individuals who are receiving Federal compensation or pension payments and also are receiving payments pursuant to Federal benefit programs being administered by the States.

5. To the Social Security Administration (SSA):

a. To the Office of Research and Statistics for the purpose of

(1) Conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings, and

(2) Obtaining current earnings data on individuals who have voluntarily left military service or DoD civil employment so that analytical personnel studies regarding pay, retention and benefits may be conducted.

Note 3: Earnings data obtained from the SSA and used by DoD does not contain any information that identifies the individual about whom the earnings data pertains.

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c. To the Client Identification Branch for the purpose of validating the

assigned Social Security Number for individuals in DoD personnel and pay files, using the SSA Enumeration Verification System (EVS).

d. To the Office of Disability and Insurance Security Programs, for the purpose of expediting disability processing of wounded military service members and veterans.

6. To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration regulations (50 U.S.C. App. 451 and E.O. 11623).

7. To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DoD civilian employees and military members by the states. To the Department of Labor to survey military separations to determine the effectiveness of programs assisting veterans to obtain employment.

8. To Federal and Quasi Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

9. To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

10. To state and local law enforcement investigative agencies to obtain criminal history information for the purpose of evaluating military service performance and security clearance procedures (10 U.S.C. 2358).

11. To Federal and Quasi Federal agencies, territorial, state and local governments, and contractors and grantees for the purpose of supporting research studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members. DMDC will disclose information from this system of records for research purposes when DMDC:

a. Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. Has required the recipient to (1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) In emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

12. To the Educational Testing Service, American College Testing, and like organizations for purposes of obtaining testing, academic, socioeconomic, and related demographic data so that analytical personnel studies of the Department of Defense civilian and military workforce can be conducted.

Note 4: Data obtained from such organizations and used by DoD does not contain any information that identifies the individual about whom the data pertains.

13. To Federal and State agencies for purposes of obtaining socioeconomic information on Armed Forces personnel so that analytical studies can be conducted with a view to assessing the present needs and future requirements of such personnel.

14. To Federal and state agencies for purposes of validating demographic data (*e.g.,* Social Security Number, citizenship status, date and place of birth, etc.) for individuals in DoD personnel and pay files so that accurate information is available in support of DoD requirements.

15. To the Bureau of Citizenship and Immigration Services, Department of Homeland Security, for purposes of facilitating the verification of individuals who may be eligible for expedited naturalization (Pub. L. 108–136, Section 1701, and E.O. 13269, Expedited Naturalization).

16. To Federal and State agencies, as well as their contractors and grantees, for purposes of providing military wage, training, and educational information so that Federal-reporting requirements, as mandated by statute, such as the Workforce Investment Act (29 U.S.C. 2801, *et seq.*) and the Carl D. Perkins Vocational and Applied Technology Act (20 U.S.C. 2301, *et seq.*) can be satisfied.

17. To Federal Agencies, including the Department of Education, to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of identifying dependent children of those military members killed in Operation Iraqi Freedom and Operation Enduring Freedom (OIF/OEF) Afghanistan Only for possible benefits.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the OSD compilation of systems of records notices apply to this system.

Note 5: Military drug test information involving individuals participating in a drug abuse rehabilitation program shall be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DoD ''Blanket Routine Uses'' do not apply to these types records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number (SSN), occupation, or any other data element contained in system.

SAFEGUARDS:

Access to personal information is restricted to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of Common Access Cards (CAC). Physical entry is restricted by the use of locks, guards, and administrative procedures. All individuals granted access to this system of records are to have taken Information Assurance and Privacy Act training; all have been

through the vetting process and have ADP ratings.

RETENTION AND DISPOSAL:

The records are used to provide a centralized system within the Department of Defense to assess manpower trends, support personnel functions, perform longitudinal statistical analyses, and conduct scientific studies or medical follow-up programs and other related studies/analyses. Records are retained as follows:

(1) Input/source records are deleted or destroyed after data have been entered into the master file or when no longer needed for operational purposes, whichever is later. Exception: Apply NARA-approved disposition instructions to the data files residing in other DMDC data bases.

(2) The Master File is retained permanently. At the end of the fiscal year, a snapshot is taken and transferred to the National Archives in accordance with 36 CFR part 1228.270 and 36 CFR part 1234.

(3) Outputs records (electronic or paper summary reports) are deleted or destroyed when no longer needed for operational purposes. **Note:** This disposition instruction applies only to record keeping copies of the reports retained by DMDC. The DoD office requiring creation of the report should maintain its record keeping copy in accordance with NARA approved disposition instructions for such reports.

(4) System documentation (codebooks, record layouts, and other system documentation) are retained permanently and transferred to the National Archives along with the master file in accordance with 36 CFR part 1228.270 and 36 CFR part 1234.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should contain the full name, Social Security Number (SSN), date of birth, current address, and telephone number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should contain the name and number of this system of records notice along with the full name, Social Security Number (SSN), date of birth, current address, and telephone number of the individual and be signed.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense rules for accessing records, for contesting contents and appealing initial agency determinations are published in Office of the Secretary of Defense Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Record sources are individuals via survey questionnaires, the military services, the Department of Veteran Affairs, the U.S. Coast Guard, the National Oceanic and Atmospheric Administration, the Public Health Service, the Office of Personnel Management, Environmental Protection Agency, Department of Health and Human Services, Department of Energy, Executive Office of the President, and the Selective Service System.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–18897 Filed 8–6–09; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2009–0048]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Air Force proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on September 8, 2009, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330–1800.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Swilley at (703) 696–6489.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 17, 2009, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 21, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM IDENTIFIER: F065 AFMC A

SYSTEM NAME:

Defense Enterprise Accounting and Management System (DEAMS).

SYSTEM LOCATION:

Defense Information Systems Agency Montgomery, 401 East Moore Drive, Building 857, Maxwell-AFB, Gunter Annex, Montgomery, AL 36114–3001, and Air Force installations financial management offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Government civilians, suppliers, customers, Active Duty Air Force, Air Force Reserve, and Air National Guard military personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data includes name, date of birth, mailing address, service work location (duty station), job order number, Air Force Specialty Code (AFSC), rank, grade, employee number, Social Security Number (SSN), personal bank account number, information concerning individual records of appointment or assignment; official authenticated time and attendance records, individual leave records, information on employee's federal, state and local tax withholding and allotments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Department of Defense Financial Management Regulation (DoDFMR) 7000.14–R Vol. 4; 5 U.S.C. Sections 5335, General Schedule Pay Rates; 5531, Government Organization and Employees; and 5533, Dual Pay and Dual Employment; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

This system replaces the financial accounting legacy systems with a new system. DEAMS provides an integrated solution maintaining general ledger, accounts payable, accounts receivable, financial reporting, and billing information for the government.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the Department of Defense as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The ''DoD Blanket Routine Uses'' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

Personal information is retrieved by name, Social Security Number (SSN), or employee number.

SAFEGUARDS:

System data is maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screened and cleared for a need-to-know. User access is managed by the Common Access Card authentication and valid Personal Identification Number.

RETENTION AND DISPOSAL:

All records and data in the system will be retained based on the schedules defined in Defense Finance and Accounting Service 5015.2–M, Records Disposition Schedule. Paper records and DVDs are shredded, electronic records are degaussed.

SYSTEM MANAGER AND ADDRESS:

Program Manager, Director Enterprise Finance, 554 ELSG/ED, Bldg. 266, Rm S230, 4225 Logistics Ave., Wright-Patterson AFB, OH 45433–5769.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to Director, Enterprise Finance, 554 ELSG/ED, Bldg. 266, Rm S230, 4225 Logistics Ave., Wright-Patterson AFB, OH 45433–5769.

Request must contain full name, Social Security Number (SSN), current mailing address, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to Director, Enterprise Finance, 554 ELSG/ED, Bldg. 266, Rm S230, 4225 Logistics Ave., Wright-Patterson AFB, OH 45433–5769.

Request must contain full name, Social Security Number (SSN), current mailing address, date of birth, service number and signature must be certified or attested to (the validity of a signature on a document) by a notary public.

CONTESTING RECORDS PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37132, Controlling Internal, Public, and Interagency Air Force Information Collections; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

DEAMS receives data from personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–18899 Filed 8–6–09; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2009–0054]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend four systems of records.

SUMMARY: The Department of the Air Force proposes to amend four systems of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on September 8, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCISI, 1800 Air Force Pentagon, Suite 220, Washington, DC 20330–1800.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Swilley at (703) 696–6648.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record systems being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 28, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

F031 AF SP C

SYSTEM NAME:

Complaint/Incident Reports (June 11, 1997, 62 FR 31793).

CHANGES:

Change System ID to ''F031 AF SF C''.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Includes the incident or complaint report, statements by the subject or witness which includes their name, Social Security Number (SSN), status/grade, date and place of birth, local and permanent address, home phone, and their sponsor's name and social security number (SSN); information on seized or acquired property, if applicable, copies of forms referring cases to other agencies for final disposition, and other forms or reports required to complete basic report. Also includes an individual incident reference record.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 8013, Secretary of the Air Force and Air Force Manual 31–201, Volume 7, Security Forces Administration and Reports.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Headquarters, Air Force Security Forces Center, 1517 Billy Mitchell Boulevard, Lackland Air Force Base, Texas 78236–0119. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Headquarters, Air Force Security Forces Center, 1517 Billy Mitchell Boulevard, Lackland Air Force Base, Texas 78236–0119.

When requesting information in writing, individual should include full name, Social Security Number (SSN), military status, and home address. For a personal visit, individual must have a military ID, if applicable, a valid driver's license, or other appropriate proof of identity.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking to access records about themselves contained in this system should address requests to the Headquarters Air Force Security Forces Center, 1517 Billy Mitchell Boulevard, Lackland Air Force Base, Texas 78236–0119.

When requesting information in writing, individual should include full name, Social Security Number (SSN), military status, and home address. For a personal visit, individual must have a military ID, if applicable, a valid driver's license, or other appropriate proof of identity.''

* * * * *

F031 AF SF C

SYSTEM NAME:

Complaint/Incident Reports.

SYSTEM LOCATION:

Kept by the Chief of Security Forces at the installation where an individual becomes involved in an incident or complaint and by the Chief of Security Forces at the installation where an individual is assigned if the incident occurs at a different location.

Information copies of a report are kept at the individual's organization and other organizations which have an interest in a particular incident. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who become involved in complaints or incidents on Air Force installations or Air Force active duty personnel who become involved in incidents regardless of the location.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes the incident or complaint report, statements by the subject or witness which includes their name, Social Security Number (SSN), status/grade, date and place of birth, local and permanent address, home phone, and their sponsor's name and Social Security Number (SSN); information on seized or acquired property, if applicable, copies of forms referring cases to other agencies for final disposition, and other forms or reports required to complete basic report. Also includes an individual incident reference record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force and Air Force Manual 31–201, Volume 7, Security Forces Administration and Reports.

PURPOSE(S):

Used to record information on individual involvement in incidents or criminal activity. Reports are used to provide information to the appropriate individual within an organization who ensures corrective action is taken.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and card files.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are accessed by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in security file containers/cabinets. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Individual incident records are retained by the office of the Chief of Security Forces and destroyed three years after close of year in which last entry was made. Information copies at other activities are destroyed when no longer needed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters, Air Force Security Forces Center, 1517 Billy Mitchell Boulevard, Lackland Air Force Base, Texas 78236–0119.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Headquarters Air Force Security Forces Center, 1517 Billy Mitchell Boulevard, Lackland Air Force Base, Texas 78236–0119.

When requesting information in writing, individual should include full name, Social Security Number (SSN), military status, and home address. For a personal visit, individual must have a military ID, if applicable, a valid driver's license, or other appropriate proof of identity.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Headquarters Air Force Security Forces Center, 1517 Billy Mitchell Boulevard, Lackland Air Force Base, Texas 78236–0119.

When requesting information in writing, individual should include full name, Social Security Number (SSN), military status, and home address. For a personal visit, individual must have a military ID, if applicable, a valid driver's license, or other appropriate proof of identity.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from police and investigating officers, witnesses and from persons registering complaints or who become victims of a crime.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F031 AF SP D

SYSTEM NAME:

Field Interview Card (June 11, 1997, 62 FR 31793).

CHANGES:

Change System ID to ''F031 AF SF D.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 8013, Secretary of the Air Force and Air Force Manual 31–201, Volume 7, Security Forces Administration and Reports.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Headquarters, Air Force Security Forces Center, 1517 Billy Mitchell Boulevard, Lackland Air Force Base, Texas 78236–0119.''

* * * * *

F031 AF SF D

SYSTEM NAME:

Field Interview Card.

SYSTEM LOCATION:

Air Force installations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military personnel and civilian employees, Air Force Reserve personnel, dependents of military personnel, and civilians not affiliated with DoD.

CATEGORIES OF RECORDS IN THE SYSTEM:

Field interview card which contains name, address, telephone number, physical description, age, date of birth, description of clothing worn, if an automobile is involved, the make, year, decal number license and style and color.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force and Air Force Manual 31–201, Volume 7, Security Forces Administration and Reports.

PURPOSE(S):

Purpose of system is to obtain and record information on the presence of individuals in a given location at specific time and date.

Information is used by the Chief of Security Police and Security Police investigators at base level as an investigative tool in the identification of crime suspects and witnesses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties that are properly screened and cleared for need-to-know. Records are stored in security file containers/cabinets, and locked cabinets or rooms and are controlled by personnel screening.

RETENTION AND DISPOSAL:

Retained in office files for three months after monthly cut-off, and then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters, Air Force Security Forces Center, 1517 Billy Mitchell Boulevard, Lackland Air Force Base, Texas 78236–0119.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Chief of Security Police at base concerned.

Required information from individual will be name and address. Requester may visit the office of the Chief of Security Police at base concerned and must provide a current military identification card, or civilian identification card or driver's license.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Chief of Security Police at the base concerned.

Required information from individual will be name and address. Requester may visit the office of the Chief of Security Police at base concerned and must provide a current military identification card, or civilian identification card or driver's license.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Source of information is individual interviewed, witnesses and interviewing security policemen.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F031 AF SP F

SYSTEM NAME:

Notification Letters to Persons Barred From Entry to Air Force Installations (June 11, 1997, 62 FR 31793).

CHANGES:

Change System ID to ''F031 AF SF F''.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Chief of Security Forces at the installation where an individual is barred entry. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 8013, Secretary of the Air Force and Air Force Manual 31–201, Volume 7, Security Forces Administration and Reports.''

* * * * *

STORAGE:

Delete entry and replace with ''Maintained in file folders/cabinets and/or electronic storage media.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Headquarters Air Force Security Forces Center, 1517 Billy Mitchell Boulevard, Lackland Air Force Base, Texas 78236–0119.''

* * * * *

F031 AF SF F

SYSTEM NAME:

Notification Letters to Persons Barred From Entry to Air Force Installations.

SYSTEM LOCATION:

Chief of Security Forces at the installation where an individual is barred entry. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons prohibited from entering U.S. military installations for cause.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of the letter(s) to the individuals barring them from entry to a particular installation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force and Air Force Manual 31–201, Volume 7, Security Forces Administration and Reports.

PURPOSE(S):

Record provides a list of personnel who have been barred from entry to the installation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders/cabinets and/or electronic storage media.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms and protected by guards.

RETENTION AND DISPOSAL:

Retained for three years after removal from barred list; then destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters, Air Force Security Forces Center, 1517 Billy Mitchell Boulevard, Lackland Air Force Base, Texas 78236–0119.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to or visit the installation Chief of Security Forces. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Individuals should include full name, Social Security Number (SSN), and home address. During a personal visit individuals must provide a valid driver's license or other appropriate proof of identity.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the installation Chief of Security Forces. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Individuals should include full name, Social Security Number (SSN), and home address. During a personal visit individuals must provide a valid driver's license or other appropriate proof of identity.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from police and investigating officers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None

F051 AF SP G

SYSTEM NAME:

Pickup or Restriction Order (June 11, 1997, 62 FR 31793).

CHANGES:

Change System ID to ''F031 AF JF G.''

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Chief of Security Forces at the installation where an individual is barred entry. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 8013, Secretary of the Air Force and Air Force Manual 31–201, Volume 7, Security Forces Administration and Reports.''

* * * * *

STORAGE:

Delete entry and replace with ''Maintained in file folders/cabinets and/or electronic storage media.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Headquarters, Air Force Security Forces Center, 1517 Billy Mitchell Boulevard, Lackland Air Force Base, Texas 78236–0119.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Chief of Security Forces at the installation where the order was issued or to the member's unit commander at that installation.

Written inquiries or visitors requesting information must provide proof of identity (*e.g.,* identification card, or driver's license).''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Chief of Security Forces at the installation where the order was issued or to the member's unit commander at that installation.

Written inquiries or visitors requesting information must provide proof of identity (*e.g.,* identification card, or driver's license).''

* * * * *

F031 AF SF G

SYSTEM NAME:

Pickup or Restriction Order.

SYSTEM LOCATION:

Chief of Security Forces at those installations where the order was issued. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any Air Force member whose actions result in the unit commander issuing a pickup or restriction order. Some examples of actions that warrant an

order being issued include Absent without Leave (AWOL), suspicion of an offense, etc.

CATEGORIES OF RECORDS IN THE SYSTEM:

The record provides a complete physical description of the individual as well as his name, rank, Social Security Number, organization and date of birth. It also includes the reason for the order being issued.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force and Air Force Manual 31–201, Volume 7, Security Forces Administration and Reports.

PURPOSE(S):

The purpose of the record is to document the identity of a member of the Armed Forces whose actions justify the picking up or restriction of the member by his unit commander. The record is used as a notification bulletin for the pickup or restriction by Security Forces until disposition is made by the member's unit commander.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

Records from this system of records may be provided to other law enforcement agencies to assist in pickup of individuals.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders/cabinets and/or Electronic storage media.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms and protected by guards.

RETENTION AND DISPOSAL:

Record is retained until member is picked up or until the order is canceled by the issuing authority, at which time all copies are destroyed by tearing into pieces, shredding, pulping or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters Air Force Security Forces Center, 1517 Billy Mitchell Boulevard, Lackland Air Force Base, Texas 78236–0119.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Chief of Security Forces at the installation where the order was issued or to the member's unit commander at that installation.

Written inquiries or visitors requesting information must provide proof of identity (*e.g.,* identification card, or driver's license).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Chief of Security Forces at the installation where the order was issued or to the member's unit commander at that installation.

Written inquiries or visitors requesting information must provide proof of identity (*e.g.,* identification card, or driver's license).

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from police and investigating officers, from witnesses and from source documents such as reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–18902 Filed 8–6–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2009–0053]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Air Force is proposing to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 8, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information Officer, *Attn:* SAF/XCPPI, 1800 Air Force Pentagon, Washington DC 20330–1800

FOR FURTHER INFORMATION CONTACT: Mr. Ben M. Swilley, U.S. Air Force Privacy Officer, (703) 696–6172, DSN 426–6172.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 27, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

F033 AFNIC A

SYSTEM NAME:

Military Affiliate Radio System (MARS) Member Records (April 12, 1999, 64 FR 17636)

CHANGES:

* * * * *

STORAGE:

Delete entry and replace with ''Paper records and electronic storage media.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Records are accessed by authorized personnel in the course of their official duties who are properly screened and cleared for need-to-know. Records are also stored in locked file cabinets and password protected electronic media.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Director of Enterprise Services, HQ

AFNIC/ESLI, 203 W. Losey Street, Room 3100, Scott Air Force Base, IL 62225–5222.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether this system of record contains information on themselves should address written inquires to the Director of Enterprise Services, HQ AFNIC/ESLI, 203 W. Losey Street, Room 3100, Scott Air Force Base, IL 62225–5222.''

Individuals seeking information on this system should provide the individual name's, MARS call sign, amateur call sign, mailing address, Federal Communications license class, military status, telephone number, and date of birth.

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking to access records about themselves contained in this system should address written requests to the Director of Enterprise Services, HQ AFNIC/ESLI, 203 W. Losey Street, Room 3100, Scott Air Force Base, IL 62225–5222.

Written request should include the individual's name, MARS call sign, amateur call sign, mailing address, Federal Communications license class, military status, telephone number, and date of birth.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332; 32 CFR part 806b; or may be obtained from the system manager.''

* * * * *

F033 AFCA A

SYSTEM NAME:

Military Affiliate Radio System (MARS) Member Records.

SYSTEM LOCATION:

Air Force Network Integration Center (AFNIC), Air Force installations and Military Affiliate Radio System (MARS) member stations. Official mailing addresses are published as an appendix to the Air Force compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Amateur Radio Operators licensed by United States Air Force (USAF) Military Affiliate Radio System.

CATEGORIES OF RECORDS IN SYSTEM:

MARS Personnel Action Notification and Applications of Membership in Military Affiliate Radio System. Information includes individual name, Military Affiliate Radio System call sign, amateur call sign, mailing address, Federal Communications license class, military status, telephone number, and date of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of Air Force, powers and duties; delegation by; as implemented by Air Force Instruction 33–106, Managing High Frequency Radios, Personal Wireless Communication Systems, and the Military Affiliate Radio System.

PURPOSE(S):

To identify Military Affiliate Radio System members, to describe and update information concerning members, to assign call signs and designator, mailing address, amateur license, telephone number, and responsibilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The ''Blanket Uses'' published at the beginning of the Air Force's compilation of systems of record notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

Retrieved by name, by call sign, or designator and geographic location.

SAFEGUARDS:

Records are accessed by authorized personnel in the course of their official duties who are properly screened and cleared for need-to-know. Records are also stored in locked file cabinets and password protected electronic media.

RETENTION AND DISPOSAL:

Retained until reassignment or termination of membership, and then destroyed by tearing to pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Enterprise Services, HQ AFNIC/ESLI, 203 W. Losey Street, Room 3100, Scott Air Force Base, IL 62225–5222.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of record contains information on themselves should address written inquires to the Director of Enterprise Services, HQ AFNIC/ESLI, 203 W. Losey Street, Room 3100, Scott Air Force Base, IL 62225–5222.

Individuals seeking information on this system should provide the individual name's, MARS call sign, amateur call sign, mailing address, Federal Communications license class, military status, telephone number, and date of birth.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Director of Enterprise Services, HQ AFNIC/ESLI, 203 W. Losey Street, Room 3100, Scott Air Force Base, IL 62225–5222.

Written request should include the individual's name, MARS call sign, amateur call sign, mailing address, Federal Communications license class, military status, telephone number, and date of birth.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual members and Military Affiliate Radio System officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–18900 Filed 8–6–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2009–0049]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to Delete a System of Records.

SUMMARY: The Department of the Air Force proposes to delete a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 8, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCPPI, 1800 Air Force Pentagon, Suite 220, Washington, DC 20330–1800.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Swilley at (703) 696–6648.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Air Force proposes to delete one system of records notice from its inventory of recorded systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 23, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

Deletion:

F038 AFMC A

SYSTEM NAME:

Manhour Accounting System (MAS). (June 11, 1997, 62 FR 31793).

REASON:

The records are no longer maintained in this system. Therefore, this notice should be deleted.

[FR Doc. E9–18901 Filed 8–6–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Surplus Properties; Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: This amended notice provides information regarding the properties that have been determined surplus to the United States needs in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended, and the 2005 Base Closure and Realignment Commission Report, as approved, and following screening with Federal agencies and Department of Defense components. This Notice amends the Notice published in the **Federal Register** on May 9, 2006 (71 FR 26930).

DATES: Effective August 7, 2009, by adding the following surplus property.

FOR FURTHER INFORMATION CONTACT: Headquarters, Department of the Army, Assistant Chief of Staff for Installation Management, Base Realignment and Closure (BRAC) Division, Attn: DAIM–BD, 600 Army Pentagon, Washington, DC 20310–0600, (703) 601–2418. For information regarding the specific property listed below, contact the Army BRAC Division at the mailing address above or at *ArmyBRAC2005@hqda.army.mil.*

SUPPLEMENTARY INFORMATION: Under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, the Defense Base Closure and Realignment Act of 1990, as amended, and other public benefit conveyance authorities, this surplus property may be available for conveyance to State and local governments and other eligible entities for public benefit purposes. Notices of interest from representatives of the homeless, and other interested parties located in the vicinity of any listed surplus property should be submitted to the recognized Local Redevelopment Authority (LRA). Additional information for this or any Army BRAC 2005 surplus property may be found at *http://www.hqda.army.mil/acsimweb/brac/braco.htm.*

Surplus Property List

1. Addition

District of Columbia

Walter Reed Army Medical Center, (a portion of, comprising approximately 61 acres), 6900 Georgia Ave., NW., Washington, DC 20307.

The Army's Base Transition Coordinator is Mr. Randy Treiber whose e-mail address is *randal.treiber@us.army.mil* and his telephone number is (202) 782–7389. His mailing address is Walter Reed Army Medical Center, Base Transition Coordinator, 6900 Georgia Ave., NW., Washington, DC 20307.

The Government of the District of Columbia has been recognized as the Local Redevelopment Authority (LRA). The LRA is located at 1350 Pennsylvania Avenue, NW., Suite 317, Washington, DC 20004. The LRA's point of contact is Ms. Valerie Santos, Deputy Mayor for Planning and Economic Development, DC. She can be reached for information by calling (202) 727–6365.

Authority: This action is authorized by the Defense Base Closure and Realignment Act of 1990, Title XXIX of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101–510; the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, Public Law 103–421; and 10 U.S.C. 113.

Dated: July 31, 2009.

William T. Birney,

Assistant for Real Property, Office of the Deputy Assistant Secretary of the Army (Installations and Housing), OASA (I&E).

[FR Doc. E9–18951 Filed 8–6–09; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–353]

Application To Export Electric Energy; Application To Transfer Export Authority; Boralex Fort Fairfield LP and Boralex Ashland LP

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Boralex Fort Fairfield LP (Boralex FF), formerly known as Aroostook Valley Electric Company (AVEC), and its affiliate, Boralex Ashland LP (Boralex Ashland), jointly applied to voluntarily transfer the authority to export electric energy from the United States to Canada issued to AVEC, to Boralex Ashland pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before September 8, 2009.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–8008).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On July 27, 2001, DOE issued Order No. EA–239 authorizing AVEC to transmit electric energy from the United States to Canada. In that Order AVEC

was authorized to transmit the electrical output of its wood-burning generation facility, located in Fort Fairfield, Maine, to Canada using the international transmission facilities of Maine Public Service Company.

On February 22, 2002, DOE was informed that AVEC had changed its name to Boralex Fort Fairfield Inc. (BFF), and in 2006 BFF was converted from a Maine corporation to a Delaware limited partnership, and become Boralex FF.

On May 12, 2009, Boralex FF and Boralex Ashland jointly applied to DOE to voluntarily transfer the electricity export authority issued to AVEC in Order No. EA–239 to Boralex Ashland and to increase the authorized rate of export from 31 megawatts (MW) to 34 MW.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on this proceeding should be clearly marked with Docket No. EA–353. Additional copies are to be filed directly with Sylvain Aird, Vice President, Legal Affairs and Corporate Secretary, Boralex Inc., 770 Sherbrooke Street West, Suite 160, Montreal, Quebec H3A 1G1, Canada and Andrew B. Young, William M. Keyser, K&L Gates LLP, 1601 K Street, NW., Washington, DC 20006–1600. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm*, or by e-mailing Odessa Hopkins at *Odessa.hopkins@hq.doe.gov*.

Issued in Washington, DC, on August 3, 2009.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E9–18945 Filed 8–6–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–164–C]

Application To Export Electric Energy; Constellation Energy Commodities Group, Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Constellation Energy Commodities Group, Inc. (Constellation) applied to renew its authority to export electric energy from the United States to Canada for a period of five years pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before September 8, 2009.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–8008).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C.824a(e)).

On January 23, 1998, DOE issued Order No. EA–164 authorizing Constellation to transmit electric energy from the United States to Canada as a power marketer using international transmission facilities located at the United States border with Canada for a period of two years. DOE has twice renewed Constellation's authority to export for five-year terms. The most recent authorization in Order No. EA–164–B will expire on January 31, 2010. On July 27, 2009, Constellation filed an application with DOE to renew the export authority contained in Order No. EA–164–B for an additional five-year term.

Constellation does not own any electric transmission facilities nor does it hold a franchised service area. The electric energy which Constellation proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States, and exported using international transmission facilities that have previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Constellation Energy Commodities Group, Inc. application to export electric energy to Canada should be clearly marked with Docket No. EA–164–C. Additional copies are to be filed directly with Lael Campbell, Constellation Energy Commodities Group, Inc., 111 Market Place, Suite 500, Baltimore, Maryland 21202. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm,* or by e-mailing Odessa Hopkins at *Odessa.hopkins@hq.doe.gov*.

Issued in Washington, DC, on August 3, 2009.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E9–18944 Filed 8–6–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC09–731–000]

Commission Information Collection Activities, Proposed Collection; Comment Request

July 31, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A) (2006), the Federal Energy Regulatory Commission (FERC or Commission) is soliciting public comment on the proposed information collection described below.

DATES: Comments on the proposed collection of information are due 60 days after publication in the **Federal Register**.

ADDRESSES: Comments may be filed either electronically (e-Filed) or in paper format, and should refer to Docket No. IC09–731–000. Documents must be prepared in an acceptable filing format and in compliance with Commission submission guidelines at *http://www.ferc.gov/help/submission-guide.asp*.

Comments may be eFiled. The eFiling option under the Documents & Filings tab on the Commission's home Web page (*http://www.ferc.gov*) directs users to the eFiling Web page. First-time users should follow the eRegister instructions on the eFiling Web page to establish a user name and password before eFiling. Filers will receive an e-mailed confirmation of their eFiled comments.

Commentors filing electronically should not make a paper filing. Commentors that are not able to file electronically must send an original and 14 paper copies of the filing to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Parties interested in receiving automatic notification of activity in this docket may do so through eSubscription. The eSubscription option under the Documents & Filings tab on the Commission's home Web page directs users to the eSubscription Web page. Users submit the docket numbers of the filings they wish to track and will subsequently receive an e-mail notification each time a filing is made under the submitted docket numbers. First-time users will need to establish a user name and password before eSubscribing.

Filed comments and FERC issuances may be viewed, printed and downloaded remotely from the Commission's Web site. The eLibrary link found at the top of most of the Commission's Web pages directs users to FERC's eLibrary. From the eLibrary Web page, choose General Search, and in the Docket Number space provided, enter IC09–731, then click the Submit button at the bottom of the page. For help with any of the Commission's electronic submission or retrieval systems, contact FERC Online Support via e-mail at: *ferconlinesupport@ferc.gov*, or telephone toll-free: (866) 208–3676 (TTY (202) 502–8659).

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION: In order to meet the requirements of Section 1252(e)(3) of the Energy Policy Act of 2005, the Commission proposes to conduct a survey with a response deadline of April 30, 2010, and publish a report on the results in 2010. The proposed survey is necessary to update the 2006 and 2008 advanced metering and demand response information collected on previous Commission surveys. A copy of the survey, instructions, and glossary are attached and part of this document, but they are not being printed in the **Federal Register**. The Attachments are available on the FERC's eLibrary (*http://www.ferc.gov/docs-filing/elibrary.asp*) by searching Docket No. IC09–731–000, and through the FERC Public Reference Room. Interested parties may also request paper copies of the survey, instructions, and glossary by contacting Michael Miller by telephone at (202) 502–8415, by fax at (202) 273–0873, or by e-mail at *michael.miller@ferc.gov*.

Section 1252(e)(3) of the Energy Policy Act of 2005,[1] requires the Commission to prepare and publish an annual report, by appropriate region, that assesses demand response resources, including those available from all consumer classes. Specifically, EPAct 2005 Section 1252(e)(3) requires that the Commission identify and review:

(A) Saturation and penetration rate of advanced meters and communications technologies, devices and systems;

(B) Existing demand response programs and time-based rate programs;

(C) The annual resource contribution of demand resources;

(D) The potential for demand response as a quantifiable, reliable resource for regional planning purposes;

(E) Steps taken to ensure that, in regional transmission planning and operations, demand resources are provided equitable treatment as a quantifiable, reliable resource relative to the resource obligations of any load-serving entity, transmission provider, or transmitting party; and

(F) Regulatory barriers to improved customer participation in demand response, peak reduction and critical period pricing programs.

In 2006 and 2008, the Commission designed and used Office of Management and Budget (OMB) approved collections FERC–727, *Demand Response and Time Based Rate Programs Survey* (OMB Control No. 1902–0214), and FERC–728, *Advanced Metering Survey* (OMB Control No. 1902–0213), to collect and convey to Congress the requested demand response and advanced metering information. The collection proposed herein will update the information filed previously in the FERC–727 and 728 surveys. The Commission investigated alternatives, including using data from the North American Electric Reliability Corporation (NERC) and the Energy Information Administration (EIA), to fielding and collecting data using a FERC designed survey. However, as explained below, the data cannot be obtained by the Commission in time to complete the 2010 report to Congress.

In addition to creating the demand response and advanced metering requirements, EPAct 2005 enacted section 215 of the Federal Power Act (FPA) titled ''Electric Reliability,'' authorizing the Commission to approve and enforce reliability standards for the reliability of the interstate grid.[2] Section 215 of the FPA authorized FERC to certify an Electric Reliability Organization (ERO) to develop the reliability standards for the Nation's bulk power system, subject to Commission review and approval. NERC has been certified by the Commission as the ERO for the United States.[3] Among many other things, NERC has begun to collect demand response data on dispatchable and non-

[1] Pub. L. 109–58, § 1252(e)(3), 119 Stat. 594, 966 (2005) (EPAct 2005).

[2] Pub. L. 109–58, § 1211(a), 119 Stat. 594, 941 (codified at 16 U.S.C. 824o (2006)).

[3] *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g & compliance,* 117 FERC ¶ 61,126 (2006), *appeal docketed sub nom. Alcoa, Inc.* v. *FERC*, No. 06–1426 (D.C. Cir. Dec. 29, 2006).

dispatchable resources that it needs to conduct its reliability work. The Demand Response Data Task Force at NERC is in the process of developing a Demand Response Availability Data System (DADS) to collect demand response program information. NERC is planning a limited trial run of DADS in 2010 followed by a full-scale version, with disaggregated information on utility/load serving entity demand response programs, in 2011. NERC will not be collecting the 2009 data that the Commission plans to collect in its proposed survey. Moreover, NERC proposes to collect detailed demand response data on a quarterly basis for the year 2010, beginning in June 2010 and plans to publish the annual data for 2010 by May 1, 2011 Thus, the Commission will not be able to use the 2010 data that NERC proposes to collect for the FERC's 2010 report to Congress.

The Energy Information Administration (EIA) collects aggregated information on energy efficiency and load management as well as advanced metering data in its EIA–861, *''Annual Electric Power Industry Report.''* The data collected in this survey does not identify existing demand response programs or time-based rate programs, but it does support the Commission's advanced metering data needs. Unfortunately, the finalized advanced metering data for 2009 will not be available until the fourth quarter of 2010 under EIA's proposed schedule. Therefore, the EIA data will not be available to the Commission in time to use in its 2010 report to Congress.

Therefore, because the alternatives will not provide data in a timely manner for the 2010 report, the Commission proposes to conduct a survey (attached) with a response deadline of April 30, 2010. This survey has been designed to be consistent with the NERC's data collection such that, in future years, the Commission may be able to use the NERC data when it becomes available, phase-out the FERC demand response survey and still comply with EPAct 2005 Section 1252(e)(3).

FERC staff has designed a survey that will impose minimal burden on respondents by providing respondents with an easy-to-complete, fillable form that will include such user friendly features as pre-populated fields and drop-down menus, make use of the data that is becoming available from reliable sources, and provide it with the information necessary to draft and file the report that is required by Congress. It is a streamlined and simplified version of past surveys and can be electronically filed. A paper version of the survey will be available for those who are unable to file electronically.

The Commission is proposing to collect the demand response and advanced metering information via a voluntary survey from the nation's entities that serve wholesale and retail customers. The information will be used to draft and file the report that is required by Congress. Industry cooperation is important for us to obtain as accurate and up-to-date information as possible to respond to Congress, as well as to provide information to states and other market participants. We, therefore, strongly encourage all potential survey respondents to complete the survey.

In summary, the Commission seeks public comment on the proposed survey (FERC–731, ''Demand Response/Time-Based Rate Programs and Advanced Metering'') and the related estimated burden. FERC also requests OMB approval to administer the survey and to collect the information on demand response and advanced metering.

Action: The Commission is requesting comments on the proposed survey and related burden estimate. The Commission is also requesting OMB approval for the collection of information on demand response and advanced metering.

Burden Statement: The proposed survey targets respondents who directly serve wholesale and retail customers. The Commission estimates the public reporting burden for this information collection will be 13,600 hours and will affect 3,400 respondents. The burden for the collection is:

	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
FERC–731 Demand Response/Time-Based Rate Programs and Advanced Metering Survey	3,400	1	4	13,600

The estimated total cost to respondents is $838,865.00 [13,600 hours divided by 2,080 hours [4] per year, times $128,297 [5] equals $838,865.00]. The cost per respondent is $246.73.

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 respondent's cost estimate is based on 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) Problems in measuring data elements collected; (2) regulatory or other barriers to gathering the information; (3) terms and definitions in the survey and glossary; (4) other sources of information on advanced metering and demand response programs; (5) the accuracy of the agency's burden estimate of the proposed collection of information, including the validity of the methodology and assumptions used; (6) ways to enhance the quality, utility and clarity of the information to be collected; and, (7) ways to minimize respondent information collection burden.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Note: The Attachments (survey, instructions, and glossary) will not be printed in the **Federal Register**. The Attachments are

[4] Number of hours an employee works each year.

[5] Average annual salary per employee.

available on the FERC's eLibrary (*http://www.ferc.gov/docs-filing/elibrary.asp*) by searching Docket No. IC09–731–000, and through the FERC Public Reference Room.

[FR Doc. E9–18914 Filed 8–6–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–516–459]

South Carolina Electric & Gas Company; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

July 31, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–516–459.

c. *Date filed:* August 28, 2008.

d. *Applicant:* South Carolina Electric & Gas Company.

e. *Name of Project:* Saluda Hydroelectric Project.

f. *Location:* On the Saluda River in Richland, Lexington, Saluda, and Newberry counties, South Carolina. The project does not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. James M. Landreth, Vice President, Fossil/Hydro Operations South Carolina Electric & Gas Company, 111 Research Drive, Columbia, South Carolina 29203; or Mr. William R. Argentieri, Manager-Civil Engineering, South Carolina Electric & Gas Company, 111 Research Drive, Columbia, South Carolina 29203, (803) 217–9162.

i. *FERC Contact:* Lee Emery at (202) 502–8379, or e-mail at *lee.emery@ferc.gov.*

j. The deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice and reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''e-filing'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.''

k. This application has been accepted and is ready for environmental analysis at this time.

l. *Project description:* The existing 207.3-megawatt (MW) Saluda Project consists of a single development with the following features: (1) A 7,800-foot-long, 213-foot-high earth-fill dam (Saluda dam), with South Carolina State Highway 6 (Highway 6) running along the top of the dam; (2) a dike that extends 2,550 feet from the north end of the dam, running parallel with Highway 6; (3) a 2,900-foot-long emergency spillway, with six steel Tainter gates, that is located 500 feet from the south end of Saluda dam, and a spillway channel that reconnects with the Saluda River about 0.75 miles downstream from the Saluda powerhouse; (4) a 2,300-foot-long, 213-foot-high roller compacted concrete backup dam located along the downstream toe of the Saluda dam, with (i) a crest elevation of 372.0 feet North American Vertical Datum of 1988 (NAVD88),[1] and (ii) rock fill embankment sections on the north and south ends of the backup dam, having a combined length of 5,700 feet; (5) a 41-mile-long, 50,900-acre reservoir (Lake Murray) at a full pool elevation of 358.5 feet NAVD88, with a total usable storage of approximately 635,000 acre-feet; (6) five 223-foot-high intake towers and associated penstocks; (7) a concrete and brick powerhouse containing four vertical Francis turbine generating units (three at 32.5 MW and one at 42.3 MW), and a fifth vertical Francis turbine generating unit (67.5 MW), which is enclosed in a weather-tight housing located on a concrete deck attached to the south end of the main powerhouse; (8) a 150-foot-long tailrace; and (9) appurtenant facilities. There is no transmission line or bypassed reach associated with the project.

[1] The license application contains documents that provide elevations based on NAVD88 datum or based on Plant Datum. To convert from Plant Datum to NAVD88 datum, subtract 1.5 feet.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary link.'' Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

All filings must: (1) Bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions, or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–18916 Filed 8–6–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12740–003]

Jordan Hydroelectric Limited Partnership; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

July 31, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major Original License.

b. *Project No.:* P–12740–003.

c. *Date filed:* July 13, 2009.

d. *Applicant:* Jordan Hydroelectric Limited Partnership.

e. *Name of Project:* Flannagan Hydroelectric Project.

f. *Location:* On the Pound River, near the Town of Clintwood, in Dickenson County, Virginia. The project would occupy federal land managed by the U.S. Army Corps of Engineers (Corps).

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. James B. Price, W.V. Hydro, Inc., P.O. Box 903, Gatlinburg, TN 37738, (865) 436–0402.

i. *FERC Contact:* John Ramer, (202) 502–8969 or *john.ramer@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* September 11, 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.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''efiling'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.''

m. The application is not ready for environmental analysis at this time.

n. The proposed project would utilize the existing U.S. Army Corps of Engineers' Flannagan dam, intake tower, outlet works, and 1,145-acre reservoir and would consist of the following proposed facilities: (1) Two new turbine generator units located within the Corps' existing intake tower having a total installed capacity of 3 megawatts; (2) a new control booth on the intake tower; (3) a new substation near the Corps' existing service bridge; (4) new transmission leads connecting the generator units to Appalachian Power Company's existing transmission line; and (5) appurtenant facilities. The average annual generation is estimated to be 9.5 gigawatt-hours.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Virginia State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at 800.4.

q. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency or Acceptance letter: September 2009

Issue Scoping Document: November 2009

Notice of application is ready for environmental analysis: February 2010

Notice of the availability of the EA: July 2010

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–18917 Filed 8–6–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 31, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09–98–000.

Applicants: Barton Windpower LLC, Barton Windpower II LLC.

Description: Application for Authorization of Transaction Under Section 203 of the Federal Power Act.

Filed Date: 07/31/2009.

Accession Number: 20090731–5032.

Comment Date: 5 p.m. Eastern Time on Friday, August 21, 2009.

Docket Numbers: EC09–99–000.

Applicants: MidAmerican Energy Company.

Description: Application of MidAmerican Energy Company for approval of acquisition of additional interest in transmission line pursuant to Section 203 of the Federal Power Act.

Filed Date: 07/30/2009.

Accession Number: 20090730–5122.

Comment Date: 5 p.m. Eastern Time on Thursday, August 20, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–4109–004; ER01–1178–005; ER03–175–008; ER03–394–006; ER03–427–006; ER07–265–010; ER08–100–009; ER99–3426–010.

Applicants: El Dorado Energy, LLC; Sempra Generation; Termoelectrica U.S., LLC; Elk Hills Power, LLC; Mesquite Power LLC; Sempra Energy Solutions LLC; Sempra Energy Trading LLC; San Diego Gas & Electric Company.

Description: Notice of Non-Material Change in Status—Sites for New Generation Capacity Development.

Filed Date: 07/31/2009.

Accession Number: 20090731–5051.

Comment Date: 5 p.m. Eastern Time on Friday, August 21, 2009.

Docket Numbers: ER99–1435–019.
Applicants: Avista Corporation.
Description: Notification of Change in Status pursuant to Section 35.42(d).
Filed Date: 07/31/2009.
Accession Number: 20090731–5020.
Comment Date: 5 p.m. Eastern Time on Friday, August 21, 2009.

Docket Numbers: ER00–1115–009; ER00–3562–010; ER00–38–009; ER01–2688–011; ER01–2887–008; ER01–480–008; ER02–1319–008; ER02–1367–006; ER02–1633–006; ER02–1959–007; ER02–2227–008; ER02–2229–007; ER02–600–009; ER03–838–007; ER04–1081–005; ER04–1099–006; ER04–1100–006; ER04–1221–005; ER04–831–007; ER03–1288–005; ER03–209–007; ER03–24–007; ER03–25–005; ER03–341–006; ER03–342–006; ER03–446–007; ER03–49–007; ER05–67–004; ER05–68–004; ER05–819–005; ER05–820–005; ER06–441–004; ER06–741–005; ER06–742–005; ER06–749–005; ER06–750–005; ER06–751–006; ER06–752–005; ER06–753–004; ER06–755–004; ER06–756–004; ER07–1335–005; ER09–71–001; ER99–970–009; ER09–1084–002; ER99–1983–007; ER98–1767–018.
Applicants: Calpine Energy Services, L.P., Carville Energy LLC, Columbia Energy LLC, Bethpage Energy Center 3, LLC, Santa Rosa Energy Center, LLC, Blue Spruce Energy Center, LLC, South Point Energy Center, LLC, Delta Energy Center, LLC, Calpine Construction Finance Company, LP, Calpine Newark, LLC, Calpine Philadelphia, Inc, KIAC Partners, Nissequogue Cogen Partners, Geysers Power Company, LLC, Otay Mesa Energy Center, LLC, Calpine Power America—CA, LLC, Calpine Power America—OR, LLC, CES Marketing IX, LLC, CES Marketing V, L.P., CES Marketing X, LLC, PCF2, LLC, Power Contract Financing, LLC, Mankato Energy Center, LLC, Riverside Energy Center, LLC, Auburndale Peaker Energy Center, L.L.C., TBG Cogen Partners, Zion Energy LLC, Rocky Mountain Energy Center, LLC, Rockgen Energy LLC, Pine Bluff Energy, LLC, Pastoria Energy Center, LLC, Morgan Energy Center, LLC, Mobile Energy LLC, Metcalf Energy Center, LLC, Los Medanos Energy Center LLC, Los Esteros Critical Energy Facility LLC, Hermiston Power, LLC, Goose Haven Energy Center, LLC, Gilroy Energy Center, LLC, Decatur Energy Center, LLC, Creed Energy Center, LLC, CPN Pryor Funding Corporation, CPN Bethpage 3rd Turbine Inc., Calpine Oneta Power, LP, Calpine Gilroy Cogen, L.P., Broad River Energy LLC.
Description: Notification of Change in Status pursuant to Section 35.42(d) of Auburndale Peaker Energy Center, L.L.C., *et al.*
Filed Date: 07/30/2009.
Accession Number: 20090730–5114.
Comment Date: 5 p.m. Eastern Time on Thursday, August 20, 2009.

Docket Numbers: ER00–1780–011; ER00–840–012; ER01–137–010; ER01–2641–015; ER01–2690–013; ER01–557–015; ER01–559–015; ER01–560–015; ER01–596–009; ER02–1942–012; ER02–2509–010; ER02–553–013; ER02–77–013; ER02–963–013; ER03–720–014; ER05–524–008; ER09–43–002; ER94–389–034; ER99–2992–011; ER99–3165–012.
Applicants: Big Sandy Peaker Plant, LLC, Tenaska Alabama II Partners, L.P., Tenaska Alabama Partners, L.P., Tenaska Georgia Partners, L.P., Tenaska Frontier Partners, Ltd., High Desert Power Project LLC, Tenaska Power Services Co., Wolf Hills Energy, LLC, Rolling Hills Generating L.L.C., Tenaska Washington Partners, L.P., Lincoln Generating Facility, LLC, Alabama Electric Marketing, LLC, California Electric Marketing, LLC, Crete Energy Venture, LLC, Kiowa Power Partners, L.L.C., Tenaska Gateway Partners, Ltd., Tenaska Virginia Partners, LP, University Park Energy, LLC, New Covert Generating Co., LLC, New Mexico Electric Marketing, LLC, Texas Electric Marketing, LLC.
Description: Notification of Change in Status pursuant to Section 35.42(d).
Filed Date: 07/30/2009.
Accession Number: 20090730–5117.
Comment Date: 5 p.m. Eastern Time on Thursday, August 20, 2009.

Docket Numbers: ER05–757–003.
Applicants: Victoria International LTD.
Description: Updated Market Power Analysis of Victoria International LTD.
Filed Date: 07/21/2009.
Accession Number: 20090721–5103.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 11, 2009.

Docket Numbers: ER06–615–051; ER09–241–003; ER09–240–003; ER09–213–001.
Applicants: California Independent System Operator Corporation.
Description: ISO Quarterly Reports on Market Performance.
Filed Date: 07/30/2009.
Accession Number: 20090730–5118.
Comment Date: 5 p.m. Eastern Time on Thursday, August 20, 2009.

Docket Numbers: ER06–1014–008.
Applicants: NYISO.
Description: NYISO Sixth Price Validation Informational Report.
Filed Date: 07/31/2009.
Accession Number: 20090731–5021.
Comment Date: 5 p.m. Eastern Time on Friday, August 21, 2009.

Docket Numbers: ER08–656–005.
Applicants: Shell Energy North America (US), L.P.
Description: Notice of Change in Status of Shell Energy North America (US), L.P.
Filed Date: 07/30/2009.
Accession Number: 20090730–5120.
Comment Date: 5 p.m. Eastern Time on Thursday, August 20, 2009.

Docket Numbers: ER08–771–001.
Applicants: North Allegheny Wind, LLC.
Description: North Allegheny Wind, LLC submits revised market based rate tariff and a notice of change in status.
Filed Date: 07/30/2009.
Accession Number: 20090731–0067.
Comment Date: 5 p.m. Eastern Time on Thursday, August 20, 2009.

Docket Numbers: ER08–1317–004.
Applicants: California Independent System Operator Corporation.
Description: Q2 2009 Quarterly Report on Progress in Processing Interconnection Requests of the California Independent System Operator Corporation.
Filed Date: 07/30/2009.
Accession Number: 20090730–5115.
Comment Date: 5 p.m. Eastern Time on Thursday, August 20, 2009.

Docket Numbers: ER09–1515–000.
Applicants: Consolidated Edison Company of New York,
Description: Consolidated Edison Company of New York, Inc submits Orginal Service Agreement 1484 to FERC Open Access Transmission Tariff, Original Volume 1 under NYISO, Inc to be effective 8/1/09 under ER09–1515.
Filed Date: 07/30/2009.
Accession Number: 20090730–0138.
Comment Date: 5 p.m. Eastern Time on Thursday, August 20, 2009.

Docket Numbers: ER09–1516–000.
Applicants: WSPP Inc.
Description: WSPP Inc. submits proposed revisions to the WSPP Agreement.
Filed Date: 07/30/2009.
Accession Number: 20090730–0236.
Comment Date: 5 p.m. Eastern Time on Thursday, August 20, 2009.

Docket Numbers: ER09–1517–000.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc submits notice of termination and consent to termination of the Large Connection Agreement among Whistling Wind WI Center, LLC, American Transmission Company, and the Midwest ISO.
Filed Date: 07/30/2009.
Accession Number: 20090730–0235.
Comment Date: 5 p.m. Eastern Time on Thursday, August 20, 2009.

Docket Numbers: ER09–1518–000.
Applicants: RRI Energy Electric Solutions, LLC.
Description: RRI Energy Electric Solutions, LLC submits notice of cancellation of its FERC Electric Tariff, Second Revised Volume No. 1.
Filed Date: 07/30/2009.
Accession Number: 20090730–0237.
Comment Date: 5 p.m. Eastern Time on Thursday, August 20, 2009.

Docket Numbers: ER09–1519–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits revised sheets to the Interconnection Facilities Agreement Service Agreement No. 12 between SCE and Pastoria Energy Facility, LLC.
Filed Date: 07/30/2009.
Accession Number: 20090730–0238.
Comment Date: 5 p.m. Eastern Time on Thursday, August 20, 2009.

Docket Numbers: ER09–1520–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits amended sheets to its First Revised FERC Electric Rate Schedule 86, a transmission service agreement between PNM and the United States of America *etc.*
Filed Date: 07/30/2009.
Accession Number: 20090730–0247.
Comment Date: 5 p.m. Eastern Time on Thursday, August 20, 2009.

Docket Numbers: ER09–1521–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Co submits Transmission Owner Tariff 2010—Exhibits PGE–1 through PGE–18.
Filed Date: 07/30/2009.
Accession Number: 20090731–0043.
Comment Date: 5 p.m. Eastern Time on Thursday, August 20, 2009.

Docket Numbers: ER09–1523–000.
Applicants: Entergy Arkansas, Inc.
Description: Entergy Arkansas, Inc submits notice of termination of First Revised Rate Schedule No. 104 *et al.*
Filed Date: 07/30/2009.
Accession Number: 20090731–0065.
Comment Date: 5 p.m. Eastern Time on Thursday, August 20, 2009.

Docket Numbers: ER09–1524–000.
Applicants: Black Hills Wyoming, LLC, Cheyenne Light Fuel & Power Company.
Description: Black Hills Wyomong, LLC *et al.* submits a Power Purchase Agreement under which Black Hills Wyoming will sell unit-contingent electric capacity and energy to CLFP on a long-term basis.
Filed Date: 07/30/2009.
Accession Number: 20090731–0068.
Comment Date: 5 p.m. Eastern Time on Thursday, August 20, 2009.

Docket Numbers: ER09–1525–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits Second Revised Sheet 1044 *et al.* to FERC Gas Tariff, Fourth Revised Volume 1.
Filed Date: 07/30/2009.
Accession Number: 20090731–0108.
Comment Date: 5 p.m. Eastern Time on Thursday, August 20, 2009.

Docket Numbers: ER09–1526–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest ISO submits revised tariff sheets revising certain provision of the Amended and Restated Midwest Contingency Reserve Sharing Group Agreement.
Filed Date: 07/30/2009.
Accession Number: 20090731–0109.
Comment Date: 5 p.m. Eastern Time on Thursday, August 20, 2009.

Docket Numbers: ER09–1527–000.
Applicants: Carolina Power & Light Company.
Description: Progress Energy Carolinas, Inc submits Original Service Agreement 309 to FERC Electric Tariff, Fourth Revised Volume 3 to be effective 8/1/09.
Filed Date: 07/31/2009.
Accession Number: 20090731–0110.
Comment Date: 5 p.m. Eastern Time on Friday, August 21, 2009.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES09–41–000.
Applicants: PATH West Virginia Transmission Company.
Description: Application of PATH West Virginia Transmission Company, LLC for authorization under Section 204(A).
Filed Date: 07/30/2009.
Accession Number: 20090730–5103.
Comment Date: 5 p.m. Eastern Time on Thursday, August 20, 2009.

Docket Numbers: ES09–42–000.
Applicants: PATH Allegheny Transmission Company, LLC, PATH Allegheny Virginia Transmission Corporation.
Description: Application of PATH Allegheny Transmission Company, LLC and PATH Allegheny Virginia Transmission Corporation for authorization under Section 204(A).
Filed Date: 07/30/2009.
Accession Number: 20090730–5124.
Comment Date: 5 p.m. Eastern Time on Thursday, August 20, 2009.

Docket Numbers: ES09–43–000.
Applicants: NorthWestern Corporation.
Description: Application of NorthWestern Corporation for Authorization Under Section 204 of the Federal Power Act.
Filed Date: 07/31/2009.
Accession Number: 20090731–5067.
Comment Date: 5 p.m. Eastern Time on Friday, August 21, 2009.

Docket Numbers: ES09–44–000.
Applicants: NorthWestern Corporation.
Description: Application of NorthWestern Corporation for Authorization Under Section 204 of the Federal Power Act.
Filed Date: 07/31/2009.
Accession Number: 20090731–5068.
Comment Date: 5 p.m. Eastern Time on Friday, August 21, 2009.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR06–1–023; RR07–1–006; RR07–2–006; RR07–3–007; RR07–4–006; RR07–5–007; RR07–6–008; RR07–7–009; RR07–8–007.
Applicants: North American Electric Reliability Corp.
Description: Compliance Filing of the North American Electric Reliability Corporation in Response to June 1, 2009 Order.
Filed Date: 07/30/2009.
Accession Number: 20090730–5067.
Comment Date: 5 p.m. Eastern Time on Thursday, August 20, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be

listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–18910 Filed 8–6–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

August 3, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–371–001.

Applicants: Crossroads Pipeline Company.

Description: Petal Gas Storage, LLC submits Substitute Eleventh Revised Sheet No 129 to its FERC Gas Tariff, Original Volume No 1.

Filed Date: 07/30/2009.

Accession Number: 20090730–0243.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 11, 2009.

Docket Numbers: RP09–716–002.

Applicants: Central Kentucky Transmission Company.

Description: Central Kentucky Transmission Company submits Third Revised Sheet 254 *et al.* to its FERC Gas Tariff, Original Revised Volume 1, to be effective 8/31/09.

Filed Date: 07/30/2009.

Accession Number: 20090731–0087.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 11, 2009.

Docket Numbers: RP96–320–111.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits amendment to a negotiated rates letter agreement executed by Gulf South and Atmos Energy Corporation.

Filed Date: 07/30/2009.

Accession Number: 20090730–0244.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 11, 2009.

Docket Numbers: RP06–200–054.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline, LLC submits Seventh Revised Sheet 8A *et al.* to FERC Gas Tariff, Second Revised Volume 1 to be effective 8/1/09.

Filed Date: 07/31/2009.

Accession Number: 20090731–0104.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 12, 2009.

Docket Numbers: RP08–436–004.

Applicants: Stingray Pipeline Company, L.L.C.

Description: Stingray Pipeline Company, LLC submits Sixth Revised Sheet 103 *et al.* part of its FERC Gas Tariff, Third Revised Volume 1, to be effective 8/1/09.

Filed Date: 07/31/2009.

Accession Number: 20090731–0143.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 12, 2009.

Docket Numbers: RP09–786–001.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits Substitute 1 Revised 30 Revised Sheet No. 54 to FERC Gas Tariff, Fifth Revised Volume No. 1.

Filed Date: 07/31/2009.

Accession Number: 20090731–0105.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 12, 2009.

Docket Numbers: RP99–176–203.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America, LLC submits two amendments to existing negotiated rate arrangements under Rate Schedule FTS Agreements with WEPCO.

Filed Date: 07/31/2009.

Accession Number: 20090731–0116.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 12, 2009.

Docket Numbers: RP99–176–204.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America LLC submits First Revised Sheet No 33G 06 to FERC Gas Tariff, Seventh Revised Volume No. 1.

Filed Date: 07/31/2009.

Accession Number: 20090731–0117.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 12, 2009.

Docket Numbers: RP99–518–111.

Applicants: Gas Transmission Northwest Corporation.

Description: Gas Transmission Northwest Corporation submits certain revised tariff sheets to part of its FERC Gas Tariff, Third Volume 1–A, to be effective 8/1/09.

Filed Date: 07/31/2009.

Accession Number: 20090731–0102.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 12, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–18919 Filed 8–6–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

July 31, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–845–000.

Applicants: TransColorado Gas Transmission Company LLC.

Description: TransColorado Gas Transmission Company LLC submits Second Revised Sheet No 1 *et al.* FERC Gas Tariff, Second Revised Volume No 1.

Filed Date: 07/29/2009.

Accession Number: 20090730–0136.

Comment Date: 5 p.m. Eastern Time on Monday, August 10, 2009.

Docket Numbers: RP09–846–000.

Applicants: Northwest Pipeline GP.

Description: Northwest Pipeline GP submits Third Revised Sheet No 5 *et al.* to its FERC Gas Tariff, Fourth Revised Volume No 1.

Filed Date: 07/29/2009.

Accession Number: 20090730–0135.

Comment Date: 5 p.m. Eastern Time on Monday, August 10, 2009.

Docket Numbers: RP09–847–000.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Co submits Second Revised Sheet No. 492 to FERC Gas Tariff, Second Revised Volume No. 1.

Filed Date: 07/29/2009.

Accession Number: 20090730–0133.

Comment Date: 5 p.m. Eastern Time on Monday, August 10, 2009.

Docket Numbers: RP09–848–000.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Company submits Seventh Revised Sheet 490 *et al.* of its FERC Gas Tariff. Second Revised Volume 1, to be effective 9/2/09.

Filed Date: 07/30/2009.

Accession Number: 20090730–0242.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 11, 2009.

Docket Numbers: RP09–849–000.

Applicants: Ozark Gas Transmission, LLC.

Description: Ozark Gas Transmission, LLC submits First Revised Sheet No 178 to its FERC Gas Tariff, First Revised Volume No 1.

Filed Date: 07/30/2009.

Accession Number: 20090730–0245.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 11, 2009.

Docket Numbers: RP09–850–000.

Applicants: Mojave Pipeline Company.

Description: Mojave Pipeline Company submits Twenty Sixth Revised Sheet 11 to its FERC Gas Tariff, Second Revised Volume 1, to be effective 9/1/09.

Filed Date: 07/30/2009.

Accession Number: 20090730–0147.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 11, 2009.

Docket Numbers: RP09–851–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: Transcontinental Gas Pipe Line Company submits First Revised Sheet 171 *et al.* to FERC Gas Tariff, Fourth Revised Volume 1, to be effective 8/30/09.

Filed Date: 07/30/2009.

Accession Number: 20090731–0086.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 11, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–18922 Filed 8–6–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

August 3, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–848–000.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Transmission Company submits Seventh Revised Sheet 490 *et al.* of its FERC Gas Tariff, Second Revised Volume 1, to be effective 9/2/09.

Filed Date: 07/30/2009.

Accession Number: 20090730–0242.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 11, 2009.

Docket Numbers: RP09–849–000.

Applicants: Ozark Gas Transmission, L.L.C.

Description: Ozark Gas Transmission, LLC submits First Revised Sheet No. 178 to its FERC Gas Tariff, First Revised Volume No. 1.

Filed Date: 07/30/2009.

Accession Number: 20090730–0245.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 11, 2009.

Docket Numbers: RP09–850–000.

Applicants: Mojave Pipeline Company.

Description: Mojave Pipeline Company submits Twenty Sixth Revised Sheet 11 to its FERC Gas Tariff, Second Revised Volume 1 to be effective 9/1/09.

Filed Date: 07/30/2009.

Accession Number: 20090730–0147.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 11, 2009.

Docket Numbers: RP09–851–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: Transcontinental Gas Pipe Line Company submits First Revised Sheet 171 *et al.* to FERC Gas Tariff, Fourth Revised Volume 1, to be effective 8/30/09.

Filed Date: 07/30/2009.

Accession Number: 20090731–0086.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 11, 2009.

Docket Numbers: RP09–852–000.

Applicants: Dominion South Pipeline Co., LP.

Description: Dominion South Pipeline Co., LP Annual Report of Penalty Revenues for the period May 1, 2008 through April 30, 2009.

Filed Date: 07/31/2009.

Accession Number: 20090731–5034.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 12, 2009.

Docket Numbers: RP09–853–000.

Applicants: White River Hub, LLC.

Description: White River Hub, LLC submits First Revised Sheet 76 *et al.* to Original Volume 1 of its FERC Gas Tariff, to be effective 8/31/09.

Filed Date: 07/31/2009.

Accession Number: 20090731–0106.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 12, 2009.

Docket Numbers: RP09–854–000.

Applicants: Sea Robin Pipeline Company, LLC.

Description: Sea Robin Pipeline Company, LLC submits First Revised Sheet 121 to its FERC Gas Tariff, Second Revised Volume 1, to be effective 9/1/09.

Filed Date: 07/31/2009.

Accession Number: 20090731–0103.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 12, 2009.

Docket Numbers: RP09–855–000.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America LLC submits First Revised Sheet 600 *et al.* part of its FERC Gas Tariff, Seventh Revised Volume 1, to be effective 9/1/09.

Filed Date: 07/31/2009.

Accession Number: 20090731–0112.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 12, 2009.

Docket Numbers: RP09–856–000.

Applicants: Horizon Pipeline Company, L.L.C.

Description: Horizon Pipeline Company, LLC submits First Revised Sheet 300 *et al.* to FERC Gas Tariff, Original Volume 1 to be effective 9/1/09.

Filed Date: 07/31/2009.

Accession Number: 20090731–0113.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 12, 2009.

Docket Numbers: RP09–857–000.

Applicants: Southern LNG Inc.

Description: Southern LNG, Inc submits Second Revised Sheet 41 *et al.* to FERC Gas Tariff, Original Volume 1 to be effective 9/1/09.

Filed Date: 07/31/2009.

Accession Number: 20090731–0114.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 12, 2009.

Docket Numbers: RP09–858–000.

Applicants: Trailblazer Pipeline Company LLC.

Description: Trailblazer Pipeline Company LLC submits First Revised Sheet 300 *et al.* part of its FERC Gas Tariff, Seventh Revised Volume 1, to be effective 9/1/09.

Filed Date: 07/31/2009.

Accession Number: 20090731–0115.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 12, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–18921 Filed 8–6–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No 2

July 31, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–739–002.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Iroquois Gas Transmission System submits Substitute Fifteenth Revised Sheet 120 to its FERC Gas Tariff, First Revised Volume 1.

Filed Date: 07/27/2009.

Accession Number: 20090728–0067.

Comment Date: 5 p.m. Eastern Time on Monday, August 10, 2009.

Docket Numbers: RP09–658–002.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits Third Revised Sheet No. 385 *et al.* to FERC Gas Tariff, Third Revised Volume No 1, to be effective 8/28/09.

Filed Date: 07/28/2009.

Accession Number: 20090728–0076.

Comment Date: 5 p.m. Eastern Time on Monday, August 10, 2009.

Docket Numbers: RP09–679–001.

Applicants: Wyckoff Gas Storage Company, LLC.

Description: Wyckoff Gas Storage Company, LLC submits Sub. First Revised Sheet 31 *et al.* to its FERC Gas Tariff, Original Volume 1, to be effective 8/1/09.

Filed Date: 07/28/2009.

Accession Number: 20090729–0123.

Comment Date: 5 p.m. Eastern Time on Monday, August 10, 2009.

Docket Numbers: RP09–713–002.

Applicants: Columbia Gulf Transmission Company.

Description: Columbia Gulf Transmission Company submits Thirteenth Revised Sheet 286 *et al.* to FERC Gas Tariff, Second Revised Volume 1, to be effective 8/28/09.

Filed Date: 07/28/2009.

Accession Number: 20090728–0078.

Comment Date: 5 p.m. Eastern Time on Monday, August 10, 2009.

Docket Numbers: RP09–715–002.

Applicants: Hardy Storage Company, LLC.

Description: Hardy Storage Company, LLC submits Third Revised Sheet Nos. 186 and 187 to FERC Gas Tariff, Original Revised Volume No 1.

Filed Date: 07/28/2009.

Accession Number: 20090728–0077.

Comment Date: 5 p.m. Eastern Time on Monday, August 10, 2009.

Docket Numbers: RP09–548–001.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits Substitute Second Revised Sheet No. 3 to FERC Gas Tariff, Third Revised Volume No. 1.

Filed Date: 07/29/2009.

Accession Number: 20090730–0131.

Comment Date: 5 p.m. Eastern Time on Monday, August 10, 2009.

Docket Numbers: RP09–550–001.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Co, LP submits Original Sheet No. 4021 *et al.* to FERC Gas Tariff, Sixth Revised Volume No. 1.

Filed Date: 07/29/2009.

Accession Number: 20090730–0132.

Comment Date: 5 p.m. Eastern Time on Monday, August 10, 2009.

Docket Numbers: RP09–552–001.

Applicants: Gulf Crossing Pipeline Company, LLC.

Description: Gulf Crossing Pipeline Co, LLC submits Original Sheet No. 1307 *et al.* to FERC Gas Tariff, Original Volume No. 1.

Filed Date: 07/29/2009.

Accession Number: 20090730–0134.

Comment Date: 5 p.m. Eastern Time on Monday, August 10, 2009.

Docket Numbers: RP09–815–001.

Applicants: Enbridge Offshore Pipelines (UTOS) LLC.

Description: Enbridge Offshore Pipelines submits Second Revised Sheet 4 *et al.*, to be effective 8/1/09.

Filed Date: 07/29/2009.

Accession Number: 20090729–0124.

Comment Date: 5 p.m. Eastern Time on Monday, August 10, 2009.

Docket Numbers: RP09–716–002.

Applicants: Central Kentucky Transmission Company.

Description: Central Kentucky Transmission Company submits Third Revised Sheet 254 *et al.* to its FERC Gas Tariff, Original Revised Volume 1 to be effective 8/31/09.

Filed Date: 07/30/2009.

Accession Number: 20090731–0087.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 11, 2009.

Docket Numbers: RP09–718–002.

Applicants: Egan Hub Storage, LLC.

Description: Egan Hub Storage, LLC submits tariff sheets reflecting the change standards on 6/1/09.

Filed Date: 07/30/2009.

Accession Number: 20090731–0088.

Comment Date: 5 p.m. Eastern Time on Thursday, August 6, 2009.

Docket Numbers: RP09–720–001.

Applicants: Algonquin Gas Transmission Company.

Description: Algonquin Gas Transmission submits tariff sheets reflecting the changed standards on 6/1/09.

Filed Date: 07/30/2009.

Accession Number: 20090731–0089.

Comment Date: 5 p.m. Eastern Time on Thursday, August 6, 2009.

Docket Numbers: RP09–721–001.

Applicants: Texas Eastern Transmission, LP.

Description: Texas Eastern Transmission, LP submits tariff sheets reflecting the changed standards on 6/1/09.

Filed Date: 07/30/2009.

Accession Number: 20090731–0091.

Comment Date: 5 p.m. Eastern Time on Thursday, August 6, 2009.

Docket Numbers: RP09–736–001.

Applicants: East Tennessee Natural Gas, LLC.

Description: East Tennessee Natural Gas, LLC submits tariff sheets reflecting the changed standards on 6/1/09.

Filed Date: 07/30/2009.

Accession Number: 20090731–0090.

Comment Date: 5 p.m. Eastern Time on Thursday, August 6, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to any subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–18920 Filed 8–6–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–18–000]

Dominion Transmission Inc.; Notice of Availability of the Environmental Assessment for the Proposed Dominion Hub III Project

July 31, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the natural gas pipeline facilities proposed by Dominion Transmission, Inc. (DTI) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act of 1969. The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects resulting from the construction and operation of DTI's proposed Dominion Hub III Project. The DTI Hub III Project would involve the construction of approximately 9.78 miles of 24-inch-diameter natural gas pipeline and associated aboveground facilities in Greene County, Pennsylvania. The proposed project also includes modifications to the existing Mockingbird Hill Compressor Station in Wetzel County, West Virginia.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to federal, state, and local agencies, newspapers, landowners in proposed area, interested individuals and groups, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission

decision on DTI's proposal, it is important that we receive your comments before the date specified below.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before September 8, 2009.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP09–18–000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the Quick Comment feature, which is located on the Commission's internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''Sign up'' or ''eRegister.'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

Label one copy of the comments for the attention of Gas Branch 2, PJ11.2. Mail your comments promptly, so that they will be received in Washington, DC on or before September 8, 2009.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP09–18). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–18911 Filed 8–6–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–83–000]

Dominion Transmission, Inc.; Notice of Availability of the Environmental Assessment for the Proposed Dominion Hub II Project

July 31, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas facilities proposed by Dominion Transmission, Inc. (DTI) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act of 1969. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed Dominion Hub II Project. DTI's proposal would abandon in-place one of three existing 5,800-horsepower (hp) compressor units and install one 10,310-hp natural gas-driven compressor unit as its replacement at the Borger Compressor Station in Tompkins County, New York. The project is the result of an agreement between DTI and the New York State Department of Environmental Control in which DTI agreed to install a new compressor with lower nitrogen oxide emissions.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426.

Copies of the EA have been mailed to federal and state agencies; elected officials; newspapers and libraries in the project area; parties to this proceeding; and those who have expressed an interest in this project by returning the Mailing List Form attached to the May 1, 2009 *Notice of Intent to Prepare an Environmental Assessment for the Proposed Dominion Hub II Project and Request for Comments on Environmental Issues.*

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments as specified below. Please carefully follow these instructions below to ensure that your comments are received in time and properly recorded.

You can make a difference by providing us with your specific comments or concerns about the Dominion Hub II Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before August 31, 2009.

For your convenience, there are three methods in which you can use to submit your comments to the Commission. In all instances please reference the project docket number CP09–83–000 with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the Quick Comment feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''*Sign up''* or ''*eRegister.''* You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of the Gas Branch 1, PJ–11.1.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decisions.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, then on ''General Search'' and enter the docket number excluding the last three digits in the docket number field (i.e., CP09–83). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notifications of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–18912 Filed 8–6–09; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion of filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA98–7–001]

Northern California Power Agency; Notice of Filing

July 31, 2009.

Take notice that on July 13, 2009, the Northern California Power Agency filed changes regarding its partial waiver granted in 1988, *Eastern Utilities Comm. et al.,* 83 FERC 61,334 (1998), pursuant to the Commission's Order, *Material Changes in Facts Underlying Waiver of Order 889 and Part 358 of the Commission Regulations,* 127 FERC 61,141 (2009).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 21, 2009.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–18915 Filed 8–6–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–443–000]

Duke Energy Arlington Valley, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 31, 2009.

This is a supplemental notice in the above-referenced proceeding of Duke Energy Arlington Valley, 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.[1]

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 19, 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 dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–18913 Filed 8–6–09; 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 31, 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.

Exempt:

Docket No.	File date	Presenter or requester
1. CP09–54–000	7–20–09	Hon. Jon M. Huntsman, Jr.
2. P–2210–169	7–23–09	Dan McClintock.[1]
3. P–13283–000	7–21–09	Hon. John. Cameron Henry, Jr.

[1] E-mail communication to staff.

[1] Filing submitted November 30, 2001 in Docket No. ER02–443–000.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–18918 Filed 8–6–09; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2006–0361; FRL–8939–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Trade Secret Claims for Emergency Planning and Community Right-to-Know Act (Renewal), EPA ICR No. 1428.08, OMB Control No. 2050–0078

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 8, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2006–0361, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *superfund.docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Superfund Docket (Mail code: 28221T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, Office of Emergency Management, 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8019; fax number: (202) 564–2625; E-mail address: *jacob.sicy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 27, 2009 (74 FR 8937), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–SFUND–2006–0361, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Superfund Docket is 202–566–0276.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Trade Secret Claims for Emergency Planning and Community Right-to-Know Act (Renewal).

ICR numbers: EPA ICR No. 1428.08, OMB Control No. 2050–0078.

ICR Status: This ICR is scheduled to expire on August 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This information collection request pertains to trade secrecy claims submitted under section 322 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), also known as Title III of SARA, the Superfund Amendments and Reauthorization Act. Title III contains provisions requiring facilities to report to State and local authorities, and EPA, the presence, use and release of extremely hazardous substances (described in sections 302 and 304) and hazardous and toxic chemicals (described in sections 311, 312 and 313 respectively). Section 322 of Title III allows a facility to withhold the specific chemical identity from these Title III reports if the facility asserts a claim of trade secrecy for that chemical identity. The provision establishes the requirements and procedures that facilities must follow to request trade secrecy treatment of chemical identities, as well as the procedures for submitting public petitions to the Agency for review of the ''sufficiency'' of trade secrecy claims. EPA published the trade secrecy regulations on July 29, 1988 (58 FR 28772), codified in 40 CFR part 350.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 9.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities that submit trade secret claims, including the manufacturing sector, coal and metal mining, electric utilities, construction, dry cleaners, chemical and paper manufacturers.

Estimated Number of Respondents: 327.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 3,106 hours.

Estimated Total Annual Cost: $195,447, which includes no annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 1,552 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease in burden is due to the decrease in the number of facilities that EPA estimates will make trade secret claims over the next three years covered by this ICR.

Dated: August 4, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–18962 Filed 8–6–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2008–0278; FRL–8942–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Mercury (Renewal), EPA ICR Number 0113.10, OMB Control Number 2060–0097

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before September 8, 2009.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2008–0278, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 30, 2008 (73 FR 31088), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2008–0278, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NESHAP for Mercury (Renewal).

ICR Numbers: EPA ICR Number 0113.10, OMB Control Number 2060–0097.

ICR Status: This ICR is scheduled to expire on August 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Mercury, published at 40 CFR part 61, subpart E, were proposed on December 7, 1971, promulgated on April 6, 1973, and amended on October 14, 1975, March 19, 1987, and October 17, 2000.

These standards apply to stationary sources, which process mercury ore to recover mercury, use mercury chlor-alkali cells to produce chlorine gas and alkali metal hydroxide, and either incinerate or dry wastewater treatment plant sludge. Approximately 107 sources (100 sludge incineration and drying plants and 7 mercury-cell chlor-alkali plants) are currently subject to the standard; and no additional sources are expected to become subject to the standard in the next three years. Mercury is the pollutant regulated under this standard. This information is being collected to ensure compliance with 40 CFR part 61, subpart E.

Owners or operators of affected facilities must make the following one-time only notification; date of construction or reconstruction, anticipated and actual dates of startup; physical or operational change to an existing facility; date of initial performance test; and results of initial performance test. These facilities must also maintain records of performance test results, and startup, shutdowns, and malfunctions. In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information enables the Agency to identify the sources subject to the standard, ensure initial compliance with emission limits, and verify continuous compliance with the standard and all other information needed to determine compliance with the applicable standards.

Any owner or operator subject to the provisions of this subpart must maintain a file of these measurements, and retain the file for at least two years following the collection of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there

is no such delegated authority, the reports are sent directly to the EPA regional office.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 160 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose and provide information to or for a Federal agency. This includes the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Mercury.

Estimated Number of Respondents: 107.

Frequency of Response: Initially, annually and semiannually.

Estimated Total Annual Hour Burden: 20,490.

Estimated Total Annual Cost: $1,735,421 in labor costs exclusively. There are no capital/startup or O&M costs associated with this ICR.

Changes in the Estimates: There is no change in the labor cost in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the industry is very low, negative or nonexistent, so there is no significant change in the overall burden.

Since there are no changes in the regulatory requirements and there is no significant industry growth, the labor hours and cost figures in the previous ICR are used in this ICR, and there is no change in burden to industry.

Dated: July 31, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–18965 Filed 8–6–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8596–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated July 17, 2009 (74 FR 34754).

Draft EISs

EIS No. 20090176, ERP No. D–FHW–L40237–WA, WA–502 Corridor Widening Project, Proposes Improvements to Five Miles of WA–502 (NE–219th Street) between NE 15th Avenue and NE 102nd Avenue, Funding, Clark County, WA.

Summary: EPA expressed environmental concerns about wetland mitigation, ecological connectivity issues and stormwater impacts. EPA requested additional analysis of indirect and cumulative effects of travel and land use change, mobile source air toxics, and invasive species. Rating EC2.

EIS No. 20090179, ERP No. D–AFS–K65367–CA, Klamath National Forest Motorized Route Designation, Motorized Travel Management, (Formerly Motorized Route Designation), Implementation, Siskiyou County, CA.

Summary: EPA expressed environmental concerns about water resource impacts, and asbestos impacts, and requested additional information on monitoring, enforcement commitments, effects of climate change, and future planning for specific designated routes. Rating EC2.

Final EISs

EIS No. 20090213, ERP No. F–USN–E11068–00, Undersea Warfare Training Range Project, Installation and Operation, Preferred Site Jacksonville Operating Area, FL and Alternative Sites (within the Charleston, SC; Cherry Point, NC; and VACAPES Operating Areas, VA.

Summary: EPA expressed environmental concerns about impacts to the marine environment from the deposition of expended training materials.

EIS No. 20090214, ERP No. F–CGD–A03086–00, PROGRAMMATIC—Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions, To Increase the Oil Removal Capability, U.S. Exclusive Economic Zone (EEZ), United States, Alaska, Guam, Puerto Pico and other U.S. Territories.

Summary: EPA continues to have environmental concerns about the potential environmental impacts from dispersant application.

EIS No. 20090201, ERP No. FS–AFS–K65281–CA, Brown Project, Revised Proposal to Improve Forest Health by Reducing Overcrowded Forest Stand Conditions, Trinity River Management Unit, Shasta-Trinity National Forest, Weaverville Ranger District, Trinity County, CA

Summary: No formal comment letter was sent to preparing agency.

Dated: August 4, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division Office of Federal Activities.

[FR Doc. E9–18967 Filed 8–6–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8596–1]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 07/27/2009 Through 07/31/2009 Pursuant to 40 CFR 1506.9.

EIS No. 20090265, Draft EIS, AFS, ID, Clearwater National Forest Travel Planning Project, Proposes to Manage Motorized and Mechanized Travel within the 1,827.380–Acre, Clearwater National Forest, Idaho, Clearwater, Latah and Shoshone Counties, ID, Comment Period Ends: 09/21/2009, Contact: Doug Gober 208–476–4541.

EIS No. 20090266, Draft EIS, IBR, CA, Madera Irrigation District Water Supply Enhancement Project, Constructing and Operating a Water Bank on the Madera Property, Madera County, CA, Comment Period Ends: 09/21/2009, Contact: Patti Clinton 559–487–5127.

EIS No. 20090267, Draft EIS, AFS, MT, Bitteroot National Forest Travel

Management Planning, To Address Conflicts between Motorized and Non-Motorized Users, Ravalli County, MT, Comment Period Ends: 09/21/2009, Contact: Dan Ritter 406–777–5461.

EIS No. 20090268, Final EIS, BLM, ID, Three Rivers Stone Quarry Expansion Project, Proposing to Expand the Quarry Operation up to an Additional 73 Acres to Increase Mine Production of Flaystone, Custer County, ID, Wait Period Ends: 09/08/2009, Contact: Charles Horsburgh 208–524–1569.

EIS No. 20090269, Final EIS, TVA, 00, Mountain Reservoirs Land Management Plan, Implementation, Proposes to Develop a Plan for Managing Nine Mountain Reservoirs: Chatuge, Hiwassee, Blue Ridge, Nottely, Ocoees 1, 2, and 3, Apalachia, and Fontana Reservoirs, Fannin, Towns, and Union Counties, GA; Cherokee, Clay, Graham, and Swain Counties, North Carolina; and Polk County, TN, Wait Period Ends: 09/08/2009, Contact: James F. Williamson, Jr. 865–632–6418.

EIS No. 20090270, Draft EIS, NRC, 00, GENERIC—License Renewal of Nuclear Plants (NUREG–1437), Volumes 1 and 2, Revision 1, To Improve the Efficiency of the License Renewal Process, Implementation,, Comment Period Ends: 10/13/2009, Contact: Jennifer Davis 1–800–368–5642 Ext. 3835.

EIS No. 20090271, Final EIS, GSA, CA, San Ysidro Land Port of Entry (LPOE) Improvement Project, Propose the Configuration and Expansion of the Existing (LPOE), San Ysidro, CA, Wait Period Ends: 09/08/2009, Contact: Osmahna A. Kadri 415–522–3617.

EIS No. 20090272, Draft EIS, UAF, 00, Modification of the Condor 1 and Condor 2 Military Operation Areas, 104th Fighter Wing of the Massachusetts Air National Guard Base (ANG) Proposes to Combine the Condor 1 and Condor 2 MOA, ME and NH, Comment Period Ends: 09/21/2009, Contact: Jay Nash 703–614–0346.

EIS No. 20090273, Draft EIS, FSA, 00, PROGRAMMATIC—Biomass Crop Assistance Program (BCAP), To Establish and Administer the Program Areas Program Component of BCAP as mandated in Title IX of the 2008 Farm Bill in the United States, Comment Period Ends: 09/21/2009, Contact: Matthew T. Ponish 202–720–6853.

EIS No. 20090274, Final EIS, FHW, CA, Marin-Sonoma Narrows (MSN) HOV Widening Project, Propose to Relieve Recurrent Congestion along US 101 south of the Route 37 Interchange in the City of Novato (Marin County) and ends north of the Corona Road Overcrossing in the City of Petaluma (Sonoma County), Marin and Sonoma Counties, CA, Wait Period Ends: 09/08/2009, Contact: Lanh T. Phan, P.E. 916–498–5046.

Amended Notices

EIS No. 20090190, Draft EIS, AFS, OR, Wallowa-Whitman National Forest Travel Management Plan, Designate Roads Trails and Areas for Motor Vehicle User, Baker, Grant, Umatilla, Union and Wallowa Counties, OR, Comment Period Ends: 09/17/2009, Contact: Cindy Whitlock 541–962—8501. Revision to FR Notice Published 06/19/2009: Extending Comment Period from 08/18/2009 to 09/17/2009.

Dated: August 4, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–18982 Filed 8–6–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8939–9]

Public Comment Requested on the Draft Environmental Impact Statement for the Proposed Site Designation of an Ocean Dredged Material Disposal Site Offshore of Guam

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice of Availability and request for public comment on a draft Environmental Impact Statement (EIS) to designate a permanent ocean dredged material disposal site (ODMDS) off Apra Harbor, Guam. EPA has the authority to designate ODMDS under Section 102 of the Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972 (33 U.S.C. 1401 *et seq.*). The U.S. Department of Navy, as a cooperating agency for this action, received Congressional appropriations to fund this site designation, and managed contracts for field studies identified by EPA for the preparation of the draft EIS.

DATES: Public comments on this draft EIS evaluation will be accepted until October 6, 2009.

ADDRESSES: Submit comments to: Mr. Allan Ota, U.S. Environmental Protection Agency, Region 9, Dredging and Sediment Management Team (WTR–8), 75 Hawthorne Street, San Francisco, California 94105–3901, *Telephone:* (415) 972–3476 or *Fax:* (415) 947–3537, or *E-mail: ota.allan@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Allan Ota, U.S. Environmental Protection Agency, Region 9, Dredging and Sediment Management Team (WTR–8), 75 Hawthorne Street, San Francisco, California 94105–3901, *Telephone:* (415) 972–3476 or *Fax:* (415) 947–3537, or *E-mail: ota.allan@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA requests public comments and intends to conduct a public meeting in Guam to collect comments on the draft EIS, titled ''Designation of an Ocean Dredged Material Disposal Site Offshore of Guam''. Copies of this draft EIS may be viewed at the following locations:

1. Guam EPA's Main Office, 17–3304 Mariner Avenue, Tiyan, Guam 96913.

2. Nieves M. Flores Memorial Public Library, 254 Martyr Street, Hagatna, Guam 96910.

3. Barrigada Public Library, 177 San Roque Drive, Barrigada, Guam 96913.

4. Dededo Public Library, 283 West Santa Barbara Avenue, Dededo, Guam 96929.

5. Maria R. Aguigui Memorial Library (Agat Public Library), 376 Cruz Avenue, Guam 96915.

6. Rosa Aguigui Reyes Memorial Library (Merizo Public Library), 376 Cruz Avenue, Merizo, Guam 96915.

7. Yona Public Library, 265 Sister Mary Eucharita Drive, Yona, Guam 96915.

8. U.S. Environmental Protection Agency (EPA) Library, 75 Hawthorne Street, 13th Floor, San Francisco, CA 94105.

9. U.S. EPA Web site: *http://www.epa.gov/region9/.*

10. U.S. Army Corps of Engineers' Web site: *http://www.poh.usace.army.mil.*

Background: Dredging is essential for maintaining safe navigation at port and naval facilities in Apra Harbor and other locations around Guam. Not all dredged materials are suitable for beneficial re-use (*e.g.,* construction materials, landfill cover), and not all suitable materials can be used or can be stockpiled for future use given costs, logistical constraints, and capacity of existing land disposal sites. Therefore, there is a need to designate a permanent ODMDS offshore of Guam. No actual disposal operations are authorized by this action; and disposal can only take place after a Federal Corps permit is secured. Before ocean disposal may take place, dredging projects must demonstrate a need for ocean disposal and the proposed dredged material must be suitable (non-toxic) according to USEPA ocean dumping criteria. Alternatives to ocean

disposal, including the option for beneficial re-use of dredged material, will be evaluated for each dredging project. The proposed ODMDS will be monitored periodically to ensure that the site operates as expected. This proposed site designation has been prepared pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act (MPRSA). The evaluation is based on EPA's general and specific criteria. Field studies, modeling of sediment dispersion following dredged material disposal under various scenarios, constrained areas, and economic considerations are included in the evaluation. The draft EIS contains an evaluation of potential impacts associated with the two ''Action'' alternatives, and the No-Action alternative. There are two alternative locations for a permanent ODMDS; either the North or Northwest alternative. The proposed North ODMDS is approximately 13.7 nautical miles offshore of Outer Apra Harbor, and in water depths ranging from 6,560 and 7,710 feet. The proposed Northwest ODMDS is approximately 8.9 nautical miles offshore of Outer Apra Harbor, and in water depths ranging from 8,200 and 9,055 feet. There would be a maximum annual disposal limit of 1,000,000 cubic yards of dredged material for whichever site is chosen. Either location has been determined to be environmentally suitable given depth and stability; however the Northwest alternative is the preferred site. The proposed ODMDS will be managed by the USEPA and U.S. Army Corps of Engineers (USACE) Honolulu District.

Comments were received during the scoping comment period and a public scoping meeting was held at the Weston Resort Guam on December 6, 2007. Revisions were made to the field sampling and data collection program (conducted in 2008) and to the analysis presented in the draft EIS to address these comments.

Public Meeting: EPA is requesting written comments on this draft EIS from federal, state, and local governments, industry, non-governmental organizations, and the general public. Comments will be accepted for 60 days, beginning with the date of this Notice. A public meeting is scheduled at the following location and date—August 20, 2009 6–8 p.m., at the Weston Resort Guam, 105 Gun Beach Road, Tumon, Guam. This meeting will consist of two parts—the first being an informational session, and the second a public hearing where the public may comment on the DEIS. Comments presented at the public hearing will be recorded and responded to in the Final EIS. If you require a reasonable accommodation for the public meeting, please contact Terisa Williams, EPA Region 9 Reasonable Accommodations Coordinator, at (415) 972–3829 or *Williams.terisa@epa.gov.*

Dated: July 16, 2009.

Responsible Official:

Laura Yoshii,

Acting Regional Administrator, Environmental Protection Agency, Region 9.

[FR Doc. E9–18871 Filed 8–6–09; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on August 13, 2009, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. *Approval of Minutes*

- July 9, 2009

B. *New Business*

- Farm Credit Administration Board Meetings—12 CFR Part 604—Direct Final Rule

C. *Reports*

- Office of Management Services Quarterly Report

Dated: August 5, 2009.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E9–19079 Filed 8–5–09; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 03–123; DA 09–1436]

Consumer and Governmental Affairs Bureau Seeks To Refresh the Record on Petition To Mandate Captioned Telephone Relay Service

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission, via the Consumer and Governmental Affairs Bureau (Bureau), seeks to refresh the record on a petition filed by various consumer groups requesting that the Commission initiate a rulemaking to make Captioned Telephone Relay Service (CTS) a mandatory form of telecommunications relay service (TRS). This issue has been raised again in a recently filed supplement to the petition, and comment is sought on the supplement as well.

DATES: Comments are due on or before July 27, 2009. Reply comments are due on or before August 10, 2009.

ADDRESSES: Interested parties may submit comments and reply comments identified by [CG Docket No. 03–123], by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting electronic filings.
- *Federal Communications Commission's Electronic Comment Filing System (ECFS): http://www.fcc.gov/cgb/ecfs.* Follow the instructions for submitting electronic filings.
- By filing paper copies.

For electronic filers through ECFS or the Federal eRulemaking Portal, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and [CG Docket No. 03–123]. 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. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the

Commission's Secretary, Office of the Secretary, Federal Communications Commission. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings or electronic media 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 mail and electronic media sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas Chandler, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–1475 (voice), (202) 418–0597 (TTY), or e-mail: *Thomas.Chandler@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's public notice in document DA 09–1436. Pursuant to 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are subject to disclosure. The full text of DA 09–1436 and subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. DA 09–1436 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact the Commission's contractor at its Web site, *http://www.bcpiweb.com*, or by calling (800) 378–3160. DA 09–1436 and subsequently filed documents in this matter may also be found by searching ECFS at *http://www.fcc.gov/cgb/ecfs* (insert [CG Docket No. 03–123] into the Proceeding block).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). DA 09–1436 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/trs.html.*

Synopsis

CTS is a form of TRS that permits persons with a hearing disability to simultaneously listen to what the other party is saying and read captions of what the other party is saying on the same device. In 2003, the Commission recognized CTS as a form of TRS eligible for compensation from the Interstate TRS Fund, but did not make it a mandatory service. *See Telecommunications Relay Service and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98–67, Declaratory Ruling, FCC 03–190, published at 68 FR 55898, September 29, 2003.

In 2005, a petition was filed by various consumer groups requesting that the Commission initiate a rulemaking to make CTS a mandatory form of TRS. The Bureau released a Public Notice seeking comment on the petition. *See Petition for Rulemaking Filed Concerning Mandating Captioned Telephone Relay Service and Authorizing Internet Protocol (IP) Captioned Telephone Relay Service*, CG Docket No. 03–123, Public Notice, DA 05–2961, published at 70 FR 71849, November 30, 2005.

On June 10, 2009, some of the parties to the original petition filed a supplement reiterating their request for rulemaking to make CTS a mandatory service. *See Telecommunications Relay Service and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket 03–123, Supplement to Petition to Mandate Captioned Telephone Relay Service.

Federal Communications Commission.

Suzanne M. Tetreault,

Acting Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. E9–18862 Filed 8–6–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 3, 2009.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Eagle Financial Corp., Casey, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Casey State Bank, Casey, Illinois, and First State Bank, Biggsville, Illinois.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. Truman Investment Group, Inc., St. Louis, Missouri; to become a bank holding company by acquiring 25.3 percent of the voting shares of Truman Bancorp, Inc., Clayton, Missouri, and thereby indirectly acquire Truman Bank, St. Louis, Missouri.

Board of Governors of the Federal Reserve System, August 4, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–18970 Filed 8–6–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the

Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 24, 2009.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Bank Applications Officer) 33 Liberty Street, New York, New York 10045–0001:

1. Banco do Brasil, S.A., Brasilia, Brazil, and Caixa de Previdencia dos Funcionarios do Banco do Brasil, Rio De Janiero, Brazil; to engage in securities brokerage and advisory activities in the United States through Banco Votorantim Securities, Inc., Sao Paulo, Brazil, pursuant to sections 225.28(b)(6)(ii) and (b)(7) of Regulation Y.

Board of Governors of the Federal Reserve System, August 4, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–18969 Filed 8–6–09; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Community-Based Abstinence Education Performance Progress Report.

OMB No.: 0970–0272.

Description: The discretionary funding Community-Based Abstinence Education Program (CBAE) is authorized by Title XI, Section 1110, of the Social Security Act (using the definitions contained in Title V, Section 510(b)(2) of the Social Security Act).

Program-Specific Performance Measure

The CBAE program developed a program-specific performance measure in response to the PART review (a process by which the Office of Management and Budget analyzes and rates a Federal program's procedures and strategies for evaluating its effectiveness), for which the program received a rating of Adequate. In an effort to gather program-specific data on rates of abstinence pre- and post-program participation, ACF and the Office of Management and Budget determined that a program-specific performance measure should be developed to assess key outcomes among program participants. The CBAE office convened a panel of abstinence education experts to gather input on the measure, and, based on the input provided, the CBAE office developed the measure. CBAE grantees will be required to ask twelve questions of the youth served in a pre- and post-survey, as well as a representative sample of the youth served in a follow-up survey.

The questions were carefully constructed by experienced evaluators to measure initiation and discontinuation of sexual intercourse as well as two key predictors of initiation: Sexual values and behavioral intentions.

The program office will collect and compile data to establish baselines and ambitious targets for the program-specific performance measure. The data will be aggregated and results will be shared with the public as they become available.

Respondents: Youth Participants.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Community-Based Abstinence Education Program Specific Performance Measure (pre-test survey)	1,000,000	1	0.25	250,000
Community-Based Abstinence Education Program Specific Performance Measure (post-test survey)	1,000,000	1	0.25	250,000
Community-Based Abstinence Education Program Specific Performance Measure (follow-up test survey)	500,000	1	0.25	125,000

Estimated Total Annual Burden Hours: 625,000.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address: infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project. *Fax:* 202–395–7245. *Attn:* Desk Officer for the Administration for Children and Families.

Dated: August 4, 2009.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9–18923 Filed 8–6–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–416]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Center for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Annual Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services Participation Report; *Form Number:* CMS–416 (OMB#: 0938–0354); *Use:* States are required to submit an annual report on the provision of EPSDT services pursuant to section 1902(a)(43)(D) of the Social Security Act. These reports provide CMS with data necessary to assess the effectiveness of State EPSDT programs, to determine a State's results in achieving its participation goal and to respond to inquiries. Respondents are State Medicaid Agencies. CMS has revised the form by withdrawing the three additional lines of data (lines 12d, 12e and 12f) that were included on the form which was recently approved on April 28, 2009. *Frequency:* Yearly; *Affected Public:* State, Tribal and Local governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 504. (For policy questions regarding this collection contact Cindy Ruff at 410–786–5916. For all other issues call 410–786–1326.)

CMS is requesting OMB review and approval of this collection by September 21, 2009, with a 180-day approval period. Written comments and recommendation will be considered from the public if received by the individuals designated below by the noted deadline below.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by September 8, 2009:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number (CMS–416), Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850 and, OMB Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, New Executive Office Building, Room 10235, Washington, DC 20503. Fax Number: (202) 395–6974.

Dated: July 31, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–18995 Filed 8–6–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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: Jail Diversion and Trauma Recovery—Priority to Veterans Program Evaluation—NEW

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services (CMHS) has implemented the Jail Diversion and Trauma Recovery Program (JDTR)—Priority to Veterans to support local implementation and State-wide expansion of trauma-integrated jail diversion programs to reach individuals with post-traumatic stress disorder (PTSD) and trauma-related disorders involved in the justice system. JDTR requires grantees to implement a State infrastructure program linked to a local pilot criminal justice diversion project. At the State level, the State Mental Health Authority (SMHA) will convene a State Advisory Committee that provides oversight of pilot projects' training, diversion, service delivery and local project evaluation, as well as design and implement plans to disseminate knowledge about effective pilot projects and to replicate them in other communities in the State. CMHS is requesting approval from the Office of Management and Budget (OMB) to implement a data collection document, the Semi-Annual Progress Report (SAPR), to evaluate the implementation, expansion, and sustainability of jail diversion and trauma-informed services developed under the JDTR program.

The current proposal requests implementing the Semi-Annual Progress Report (SAPR) to collect information in the following areas:

a. Document the State and pilot level goals for the project;

b. Describe the project environment, including changes that have helped or hindered implementation;

c. Estimate project spending on State, pilot, and evaluation activities;

d. Describe activities and progress on State level infrastructure change components, including barriers to progress;

e. Report on pilot project progress, including activities related to the pilot program, changes to program plans, and barriers to implementation;

f. Describe any project accomplishments, including documenting numbers and types of trainings, as well as any policy changes; and

g. Describe and update progress in meeting cross-site client evaluation requirements.

This information would be collected twice a year: In March and September. Six grantees were awarded 5-year grants in FY 2008 and six more 5-year grants are anticipated in 2009. The six FY 2008 grantees began data collection in March of FY 2009. Six additional possible future grantees awarded on September 30, 2009 would commence data collection in March of FY 2010. The burden estimate for completing the SAPR is as follows:

CY 2009 Annual Reporting Burden

Data collection activity	Number of respondents [1]	Responses per respondent [3]	Total responses	Average hours per response	Total hour burden
Semi-Annual Progress report	[2] 12	1	12	5	60
Overall Total:	12		12		60

[1] The respondents are the State Grantees.
[2] The respondents include FY 2008 Grantees and anticipated FY 2009 Grantees. The SAPR will be completed once by all 12 sites, in March 2010.
[3] The Project Director for each Grantee is responsible for compiling and submitting the SAPR.

CY 2010 Annual Reporting Burden

Data collection activity	Number of respondents [1]	Responses per respondent [3]	Total responses	Average hours per response	Total hour burden
Reporting for FY 2008 and anticipated FY 2009					
Semi-Annual Progress report	12	2	24	5	120
Reporting for possible FY 2010					
Semi-Annual Progress report	6	[2] 1	6	5	30
Overall Total:	18		30		150

[1] The respondents are the States.
[2] The SAPR will be completed once by possible FY 2010 sites, in March 2011.
[3] The Project Director for each Grantee is responsible for compiling and submitting the SAPR.

CY 2011 Annual Reporting Burden

Data collection activity	Number of respondents [1]	Responses per respondent [2]	Total responses	Average hours per response	Total hour burden
Semi-Annual Progress report	18	2	36	5	180
Overall Total:	18		36		180

[1] The respondents are the States.
[2] The Project Director for each Grantee is responsible for compiling and submitting the SAPR.

CY 2012 Annual Reporting Burden

Data collection activity	Number of respondents [1]	Responses per respondent [2]	Total responses	Average hours per response	Total hour burden
Semi-Annual Progress report	18	2	36	5	180
Overall Total:	18		36		180

[1] The respondents are the States.
[2] The Project Director for each Grantee is responsible for compiling and submitting the SAPR.

Send comments to Summer King, SAMHSA Reports Clearance Officer, OAS, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 and e-mail her a copy at *summer.king@samhsa.hhs.gov*. Written comments should be received within 60 days of this notice.

Dated: July 29, 2009.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. E9–18940 Filed 8–6–09; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2009 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of intent to award a Single Source Grant to Link2Health Solutions, Inc.

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) intends to award approximately $1,038,000 (total costs) for up to one year to Link2Health Solutions, Inc. This is not a formal request for applications. Assistance will be provided only to Link2Health Solutions, Inc based on the receipt of a satisfactory application that is approved by an independent review group.

Funding Opportunity Title: SM–09–020.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: Section 520(A) of the Public Health Service Act, as amended.

Justification: Only an application from Link2Health Solutions will be considered for funding under this announcement. One-year funding has become available to assist SAMHSA in responding to the growing and pressing need to provide resources for individuals stressed by the nation's current economic crisis. It is considered most cost-effective and efficient to supplement the existing grantee for the National Suicide Prevention Lifeline and to build on the existing capacity and infrastructure within its network of crisis centers.

Link2Health Solutions is in the unique position to carry out the activities of this grant announcement because it is the current recipient of SAMHSA's cooperative agreement to manage the National Suicide Prevention Lifeline. As such, Link2Health Solutions has been maintaining the network communications system and has an existing relationship with the networked crisis centers.

The crisis centers that comprise the National Suicide Prevention Lifeline are a critical part of the nation's mental health safety net. Many crisis centers are experiencing significant increases in calls. The National Suicide Prevention Lifeline crisis centers require assistance to continue to play their critical role in providing support as well as emergency services to suicidal callers during these challenging economic times. In addition, the National Suicide Prevention Lifeline crisis centers are community resources that need to be utilized to reach out to those in their communities most at risk, including those currently impacted severely by the economy.

Contact: Shelly Hara, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 8–1081, Rockville, MD 20857; *telephone:* (240) 276–2321; *E-mail: shelly.hara@samhsa.hhs.gov.*

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. E9–18873 Filed 8–6–09; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0354]

Guidance for Industry on Pharmaceutical Components at Risk for Melamine Contamination; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Pharmaceutical Components at Risk for Melamine Contamination.'' This guidance provides recommendations that will help pharmaceutical manufacturers of finished products, repackers, other suppliers, and pharmacists who engage in drug compounding avoid the use of components that are at risk for melamine contamination. As of the date of this announcement, FDA is not aware of any pharmaceutical components that are contaminated with melamine.

DATES: Submit written or electronic comments on the guidance by October 6, 2009. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Frank W. Perrella, Center for Drug Evaluation and Research (HFD–320), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4337, Silver Spring, MD 20993–0002, 301–796–3265; or

Brian Hasselbalch, Center for Drug Evaluation and Research (HFD–320), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4364, Silver Spring, MD 20993–0002, 301–796–3279; or

Diane Heinz, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9031.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Pharmaceutical Components at Risk for Melamine Contamination.'' This guidance provides recommendations that will help pharmaceutical manufacturers of finished products, repackers, other suppliers, and pharmacists who engage in drug compounding to better control their use of at-risk components that might be contaminated with melamine. The guidance explains that the agency is recommending that at-risk components be properly tested for melamine contamination before they are used in the manufacture or preparation of drugs or drug products. This recommendation applies to nitrogen-based components.

As discussed in the guidance, FDA has posted on its Web site methods for measuring melamine contamination in foods using liquid chromatography triple quadrupole tandem mass spectrometry (LC–MS/MS) and gas chromatography/mass spectrometry (GC–MS). Although these methods have been evaluated using dry protein materials, they can also be applicable to other material, including at-risk components. Manufacturers are encouraged to validate test methods that

are suitable for detecting melamine contamination in at-risk components down to 2.5 parts per million (ppm) to give a high degree of assurance that they are not contaminated. At this time, FDA has not established an appropriate level of melamine in drug products.

As explained in detail in the guidance, there have been repeated instances of melamine contamination in food articles, including in the U.S. market. In 2007, FDA learned that certain pet foods were sickening and killing cats and dogs. In September 2008, FDA received reports of melamine-contaminated infant formula in China. These two incidents share the following similarities:

- Melamine, a nitrogen-based compound, was apparently added to bolster the apparent protein content in foods or in ingredients used in processed food products intended to contain protein.
- The recipients of the ingredients using a test for nitrogen content would not have been able to distinguish between melamine and the desired protein.
- Melamine contamination became public only after numerous adverse health events, including deaths, were reported and associated with the use of contaminated products.

These incidents illustrate the potential for drug components to be contaminated with melamine; therefore, it is important for drug manufacturers to be diligent in assuring that no component used in the manufacture of any drug is contaminated with melamine. As of the date of this guidance, FDA is not aware of any pharmaceuticals that are contaminated with melamine. However, because of the potential risk of drug contamination, it is important that manufacturers take steps to ensure that susceptible components are not contaminated with melamine.

We are issuing this level 1 guidance for immediate implementation, consistent with FDA's good guidance practices regulation (21 CFR 10.115). The agency is not seeking comment before implementing this guidance because of the potential for a serious public health impact if melamine-contaminated pharmaceuticals were to enter the domestic market. The guidance represents the agency's current thinking on this issue. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm*, or *http://www.regulations.gov*.

Dated: July 31, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–18952 Filed 8–6–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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: Environmental Health Sciences Review Committee.

Date: August 25–26, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Chapel Hill Hotel, One Europa Drive, Chapel Hill, NC 27517.

Contact Person: Linda K Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: August 3, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–18993 Filed 8–6–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket Number DHS–2008–0159]

Privacy Act of 1974; DHS/FEMA–004 Grant Management Information Files System of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to consolidate into one new system its inventory of record systems entitled, Federal Emergency Management Agency Grant Management Information Files. This system will enable the Department of Homeland Security to better administer the Federal Emergency Management Agency Disaster Recovery Assistance Program. Many Federal Emergency Management Agency grant programs collect a minimum amount of contact and grant project proposal information. The information contained in the Federal Emergency Management Agency's Grant Management Information Files is collected in order to determine awards for both disaster and non disaster grants and for the issuance of awarded funds.

DATES: The established system of records will be effective September 8, 2009. Written comments must be submitted on or before September 8, 2009.

ADDRESSES: You may submit comments, identified by DHS–2008–0159 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information, such as email address, provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Alisa Turner (202–646–3102), Branch Chief, Disclosure Office, Federal Emergency Management Agency, Washington, DC 20472. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

The goal of FEMA's grant programs is to provide funding to enhance the capacity of state and local jurisdictions to prevent, respond to, and recover from disaster and non disaster incidents including cyber attacks. FEMA's grant programs currently provide funds to all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Commonwealth of Northern Mariana Islands, Guam, and the U.S. Virgin Islands. FEMA grant programs are directed at a broad spectrum of state and local emergency responders, including firefighters, emergency medical services, emergency management agencies, law enforcement, and public officials. The source of the information that FEMA is collecting generally comes from state, local, and tribal partners seeking grant funding. Additional sources of information may include private and non private organizations. The nature of the collected data should illustrate organizations' familiarity with the national preparedness architecture (i.e. Federal Investment Strategy), identify how elements of this architecture have been incorporated into their regional/state/local planning, operations, and investments, and the demonstrated need for the grant funds.

Many of FEMA's grant programs implement objectives addressed in a series of post-9/11 laws, strategy documents, plans, and Homeland Security Presidential Directives (HSPDs). FEMA management requirements are incorporated into the application processes and reflect changes mandated in the Implementing Recommendations of the 9/11 Commission Act of 2007 (the ''9/11 Act''), enacted in August 2007, as well as the FY 2008 Consolidated Appropriations Act.

Consistent with DHS's information sharing mission, information stored in the Grants Management Information Files may be shared with other DHS components, as well as appropriate federal, state, local, tribal, foreign, or international government agencies. This sharing will take place only after DHS determines that the receiving component or agency has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

The information contained in the FEMA Grant Management Information Files is collected in order to determine awards for both disaster and non-disaster grants and for the issuance of awarded funds.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and legal permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals to more easily find such files within the agency. Below is the description of the FEMA Grants Management Information Files system of records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this new system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS DHS/FEMA–004

SYSTEM NAME:

DHS/FEMA–004 Grant Management Information Files.

SECURITY CLASSIFICATION:

Unclassified and sensitive.

SYSTEM LOCATION:

Records are maintained at Federal Emergency Management Agency Headquarters in Washington, DC and field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of entities covered by this system include: Recipients (grantees) of grant funds. These include state, territorial, tribal officials, port authorities, transit authorities, non-profit organizations, and, in rare instances, private companies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Organizational Name;
- Employer Identification Number (EIN);
- Name of Organization's Designated Point of Contact (POC);
- POC work address;
- POC work phone number;
- POC cellphone number;
- POC fax number;
- POC work e-mail address;
- Organization's Bank Routing Number;
- Organization's Bank Account Number; and
- Grant related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Legal authority includes, but is not limited to:

- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5133

• The National Flood Insurance Act, 42 U.S.C. 4104c

• Section 2003(a) of the Homeland Security Act of 2002 (6 U.S.C. 101 *et seq.*), as amended by Section 101, Title I of the Implementing Recommendations of the 9/11 Commission Act of 2007, (Pub. L. 110–053)

• Section 2004(a) of the Homeland Security Act of 2002 (6 U.S.C. 101 *et seq.*), as amended by Section 101, Title I of the Implementing Recommendations of the 9/11 Commission Act of 2007, (Pub. L. 110–053)

• Section 1809 of the Homeland Security Act of 2002 (6 U.S.C. 571 *et seq.*), as amended by Section 301(a), Title III of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–053)

• The Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 723)

• Title III of Division D of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–329)

• Section 614 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196c), as amended by Section 202, Title II of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–053)

• Title III of Division E of the Consolidated Appropriations Act, 2008 (Pub. L. 110–161)

• Section 1406, Title XIV of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–053)

• Section 1513, Title XV of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–053)

• Section 1532(a), Title XV of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–053)

• 46 U.S.C. 70107

• Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107)

PURPOSE(S):

The purpose of this system is to assist in determining awards for both disaster and non-disaster grants and for the issuance of awarded funds and allow DHS to contact individuals to ensure completeness and accuracy of grants and applications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To an individual's employer or affiliated organization to the extent necessary to verify employment or membership status.

I. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by name of organization or contact person covered by this system.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. The system maintains a real-time auditing function of individuals who access the system. Additional safeguards may vary by component and program.

RETENTION AND DISPOSAL:

In accordance with the Federal records retention requirements, Grant administrative records and hard copies of unsuccessful grant applications files are destroyed when two years old (Government Records Schedule (GRS) No. 3, Procurement, Supply, and Grant Records, Item 14). Electronically received and processed copies of unsuccessful grant application files are destroyed three years after rejection or withdrawal (GRS No. 3, Procurement, Supply, and Grant Records, Item 13). Grant Project Records are maintained for three years after the end of the fiscal year that the grant or agreement is finalized or when no longer needed, whichever is sooner. These records are disposed of IAW FEMA Records Schedule N1–311–95–1, Item 1. Grant Final Reports are retired to the Federal Records Center three years after cutoff, and then transferred to National Archives 20 years after cutoff. These records are maintained IAW FEMA Records Schedule N1–311–95–1, Item 3. All other grant (both disaster and non disaster) records are maintained for six years and three months after the end of the fiscal year when grant or agreement is completed or closed. These records are disposed of according to IAW FEMA Records Schedule N1–311–95–1, Item 2; N1–311–01–8, Item 1; and N1–311–04–1, Item 1.

SYSTEM MANAGER AND ADDRESS:

Deputy Assistant Administrator, Grant Program Directorate, FEMA, 500 C Street, SW., Washington, DC 20472.

NOTIFICATION PROCEDURE:

Individuals or entities seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the component's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer, Department of Homeland Security, 245 Murray Drive, SW., STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you,
- Identify which component(s) of the Department you believe may have the information about you,
- Specify when you believe the records would have been created,
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records,
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) will not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are obtained by grantees, applicants for award, and grant program monitors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: July 31, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9–18931 Filed 8–6–09; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Class III Gaming; Tribal Revenue Allocation Plans; Gaming on Trust Lands

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission of information collection renewal to the Office of Management and Budget.

SUMMARY: In compliance with the Paperwork Reduction Act, the Bureau of Indian Affairs (BIA) is submitting the following information collections to the Office of Management and Budget (OMB) for renewal: Class III Gaming Procedures 25 CFR 291, 1076–0149; Tribal Revenue Allocation Plans 25 CFR 290, 1076–0152; and Gaming On Trust Lands Acquired After October 17, 1988, 25 CFR 292, 1076–0158. The current approvals for the first two collections (1076–1049 and 1076–0152) expire August 31, 2009 and the current approval for the third collection (1076–0158) expires February 28, 2010. Renewal will allow us to continue to collect the information necessary to comply with the Indian Gaming Regulatory Act (IGRA).

DATES: Submit comments on or before September 8, 2009.

ADDRESSES: Submit comments on the information collection to the Desk Officer for the Department of the Interior, OIRA, Office of Management and Budget, by fax at (202) 395–5806 or e-mail at *OIRA_DOCKET@ omb.eop.gov*.

Please send a copy of your comments to: Paula L. Hart, Office of Indian Gaming, Mail Stop 3657–MIB, 1849 C Street, NW., Washington, DC 20240, Facsimile: (202) 273–3153.

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the proposed information collection request from Paula L. Hart, Telephone: (202) 219–4066.

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection is necessary for the BIA, Office of Indian Gaming, to ensure that the applicable requirements for IGRA, 25 U.S.C. 2701

et seq., are met with regard to Class III gaming procedures, tribal revenue allocation plans, and applications for gaming on trust lands acquired after October 17, 1988.

II. Request for Comments

The BIA requests your comments on this collection concerning: (a) The necessity of this information collection 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 (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or conduct an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

OMB has up to 60 days to make a decision on the submission for renewal, but may make the decision after 30 days. Therefore, to receive the best consideration of your comments, you should submit them by the due date (see **DATES**).

It is our policy to make all comments available to the public for review at the Office of Indian Gaming, Room 3657 MIB, 1849 C Street, NW., Washington, DC during the hours of 9 a.m. to 4 p.m., EDT, Monday through Friday except for legal holidays. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

A. Class III Gaming Procedures

OMB Control Number: 1076–0149.

Title: Class III Gaming Procedures, 25 CFR 291.

Brief Description of Collection: The collection of information will ensure that the provisions of IGRA and other applicable requirements are met when federally recognized tribes submit Class III procedures for review and approval by the Secretary of the Interior. Sections 291.4, 291.10, 291.12 and 291.15 of 25 CFR Part 291, Class III Gaming Procedures, specify the information collection requirement. An Indian tribe must ask the Secretary to issue Class III gaming procedures. The information to be collected includes: The name of the tribe, the name of the State, tribal documents, State documents, regulatory schemes, the proposed procedures, and other documents deemed necessary.

Type of Review: Extension without change of a currently approved collection.

Respondents: Federally recognized Indian tribes.

Number of Respondents: 12.

Estimated Time Per Response: 320 hours on average.

Frequency of Response: One time.

Total Annual Burden to Respondents: 3,840 hours.

Total Annual Cost to Respondents: $0.

B. Tribal Revenue Allocation Plans

OMB Control Number: 1076–0152.

Title: Tribal Revenue Allocation Plans, 25 CFR Part 290.

Brief Description of Collection: An Indian tribe must ask the Secretary to approve a tribal revenue allocation plan. In order for Indian tribes to distribute net gaming revenues in the form of per capita payments, information is needed by the BIA to ensure that tribal revenue allocation plans include (1) Assurances that certain statutory requirements are met, (2) a breakdown of the specific uses to which net gaming revenues will be allocated, (3) eligibility requirements for participation, (4) tax liability notification, and (5) the assurance of the protection and preservation of the per capita share of minors and legal incompetents. Sections 290.12, 290.17, 290.24 and 290.26 of 25 CFR Part 290, Tribal Revenue Allocation Plans, specify the information collection requirement. The information to be collected includes: The name of the tribe, tribal documents, the allocation plan, and other documents deemed necessary.

Type of Review: Extension without change of a currently approved collection.

Respondents: Federally recognized Indian tribes.

Number of Respondents: 20.

Estimated Time Per Response: 100 hours.

Frequency of Response: One time.

Total Annual Burden to Respondents: 2,000 hours.

Total Annual Burden Cost to Respondents: $0.

C. Gaming on Trust Lands Acquired After October 17, 1988

OMB Control No. 1076–0158.

Title: Gaming on Trust Lands Acquired After October 17, 1988, 25 CFR part 292.

Brief Description of Collection: The collection of information will ensure that the provisions of IGRA, Federal law, and the trust obligations of the United States are met when federally recognized tribes submit an application under 25 CFR part 292. The applications covered by this OMB Control No. are those seeking a Secretarial determination that a gaming establishment on land acquired in trust after October 17, 1988 would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community.

Type of Review: Extension without change of a currently approved collection.

Respondents: Federally recognized Indian tribes.

Number of Respondents: 2.

Estimated Time Per Response: 1,000 hours.

Frequency of Response: Once.

Total Annual Burden to Respondents: 2,000 hours.

Total Annual Cost to Respondents: $0.

Dated: July 31, 2009.

Christine Cho,

Acting Chief Information Officer—Indian Affairs.

[FR Doc. E9–18886 Filed 8–6–09; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

National Park Service

Fire Management Plan, Final Environmental Impact Statement, Grand Canyon National Park, AZ

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement for the Fire Management Plan, Grand Canyon National Park.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Final Environmental Impact Statement for the Fire Management Plan for Grand Canyon National Park, Arizona. The document describes and analyzes the environmental impacts of several action alternatives, including the preferred alternative for management of fire in Grand Canyon National Park. The

preferred alternative analyzes the use of prescribed fire, wildland fire use, suppression fire and manual and mechanical thinning. A no-action alternative was also evaluated. Alternative 2 (Mixed Fire Treatment) was selected as the preferred alternative.

DATES: The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of the Notice of Availability of the Final Environmental Impact Statement.

ADDRESSES: Information will be available for public inspection online at *http://parkplanning.nps.gov/grca* (select Fire Management Plan), in the Office of the Superintendent, Steve Martin, PO Box 129, Grand Canyon, Arizona, 86023, 928–638–7945, or in the Office of Planning and Compliance, Mary Killeen, PO Box 129, Grand Canyon, Arizona, 86023, 928–638–7885.

FOR FURTHER INFORMATION CONTACT: Chris Marks, Project Lead, Fire Management Plan, PO Box 129, Grand Canyon, Arizona, 86023, 928–606–1050, *Christopher_marks@nps.gov*.

Dated: June 30, 2009.

Michael D. Snyder,

Regional Director, Intermountain Region, National Park Service.

[FR Doc. E9–18996 Filed 8–6–09; 8:45 am]

BILLING CODE 4312–ED–P

DEPARTMENT OF THE INTERIOR

National Park Service

Harpers Ferry National Historical Park, West Virginia; Notice of Availability

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice of Availability of the Draft Environmental Impact Statement for the General Management Plan, Harpers Ferry National Historical Park.

SUMMARY: The National Park Service announces the availability of the Draft Environmental Impact Statement for the General Management Plan for Harpers Ferry National Historical Park, West Virginia. This document will be available for public review and comment pursuant to Section 102(2)(C) of the National Environment Policy Act of 1969, 42 U.S.C. 4332(2)(C).

DATES: A 60-day public comment period will begin with the Environmental Protection Agency's publication of its Notice of Availability in the **Federal Register**.

ADDRESSES: Copies of the Draft Environmental Impact Statement and the General Management Plan are available at Harpers Ferry National Historical Park, P.O. Box 65, Harpers Ferry, West Virginia 25425. An electronic copy of the Draft Environmental Impact Statement and General Management Plan is also available on the National Park Service Web site at *http://parkplanning.nps.gov/hafe.*

FOR FURTHER INFORMATION CONTACT: Rebecca Harriett, Superintendent, Harpers Ferry National Historical Park, at Harpers Ferry National Historical Park, P.O. Box 65, Harpers Ferry, West Virginia 25425, or by telephone at (304) 535–6224. The responsible official for the Draft Environmental Impact Statement is Margaret O'Dell, Regional Director, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242.

SUPPLEMENTARY INFORMATION: The document provides a framework for management, use, and development options for Harpers Ferry National Historical Park by the National Park Service for the next 15 to 20 years. The document describes three management alternatives for consideration, including a no-action alternative, and analyzes the environmental impacts of those alternatives for all units of Harpers Ferry National Historical Park.

The National Park Service preferred alternative would continue the use of several buildings for park headquarters, rehabilitate the historic Shipley School, increase preservation of historic resources throughout the park, consolidate visitor information and education in a new visitor center on Cavalier Heights, provide increased bus service and new trail services, and incorporate new visitor amenities.

The public is welcome to comment on the Draft Environmental Impact Statement and General Management Plan at *http://parkplanning.nps.gov/hafe* or by mail at Harpers Ferry National Historical Park, P.O. Box 65, Harpers Ferry, West Virginia 25425.

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.

Dated: January 8, 2009.

Margaret O'Dell,

Regional Director, National Capital Region.

Editorial Note: This document was received at the Office of the Federal Register on August 4, 2009.

[FR Doc. E9–18997 Filed 8–6–09; 8:45 am]

BILLING CODE 4312–JT–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–FHC–2009–N156; 94300–1122–0000–Z2]

Wind Turbine Guidelines Advisory Committee; Announcement of Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), will host a Wind Turbine Guidelines Advisory Committee (Committee) meeting September 1–3, 2009. The meeting is open to the public. The meeting agenda will include reports from the Legal and Synthesis Subcommittees, and discussion of the current draft Recommendations to the Secretary.

DATES: The meeting is scheduled for September 1–3, 2009. The sessions will be 8 a.m. to 5:30 p.m. September 1–2, and 8 a.m. to 3:30 p.m. September 3.

ADDRESSES: We will hold the meeting at the U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Rooms 200A & B, Arlington, Virginia, 22203. For more information, see ''Meeting Location Information.''

FOR FURTHER INFORMATION CONTACT: Rachel London, Division of Habitat and Resource Conservation, U.S. Fish and Wildlife Service, (703) 358–2161.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 2007, the Secretary of the Interior (Secretary) established the Committee to provide advice and recommendations to the Secretary on developing effective measures to avoid or minimize impacts to wildlife and their habitats related to land-based wind energy facilities. The Committee is made up of 22 members representing the varied interests associated with wind energy development and its potential impacts to wildlife species and their habitats. All Committee meetings are open to the public.

Meeting Location Information

Please note that the meeting location is accessible to wheelchair users. If you require additional accommodations, please notify us at least 2 weeks in advance of the meeting.

Persons planning to attend the meeting must register at *http://www.fws.gov/habitatconservation/windpower/wind_turbine_advisory_committee.html,* by August 26, 2009. Seating is limited due to room capacity. We will give preference to registrants based on date and time of registration. Limited standing room will be available if all seats are filled.

Dated: August 4, 2009.

Rachel London,

Alternate Designated Federal Officer, Wind Turbine Guidelines Advisory Committee.

[FR Doc. E9–19009 Filed 8–6–09; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–623]

In the Matter of Certain R–134a Coolant (Otherwise Known as 1,1,1,2-Tetrafluoroethane); Notice of Commission Determination To Reverse the Remand Determination of the Presiding Administrative Law Judge and To Terminate the Investigation In Its Entirety With a Finding of No Violation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to reverse the conclusion reached in the Remand Determination (''RID'') issued by the presiding administrative law judge (''ALJ'') in the above-captioned investigation that the only remaining asserted claim of U.S. Patent No. 5,559,276 (''the '276 patent'') is not obvious. The Commission finds that the claim would have been obvious to one of ordinary skill in the art and is therefore invalid. The Commission affirms the RID's conclusion that the asserted claim was not anticipated.

FOR FURTHER INFORMATION CONTACT: Paul M. Bartkowski, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5432. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 31, 2007, based on a complaint filed by INEOS Fluor Holdings Ltd., INEOS Fluor Ltd., and INEOS Fluor Americas L.L.C. (collectively, ''Ineos''). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain R–134a coolant (otherwise known as 1,1,1,2-tetrafluoroethane) by reason of infringement of various claims of United States Patent No. 5,744,658. Complainants subsequently added allegations of infringement with regard to United States Patent Nos. 5,382,722 and the '276 patent, but only claim 1 of the '276 patent remains at issue in this investigation. The complaint named two respondents, Sinochem Modern Environmental Protection Chemicals (Xi'an) Co., Ltd. and Sinochem Ningbo Ltd. Two additional respondents were subsequently added: Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd. and Sinochem (U.S.A.) Inc. The four respondents are collectively referred to as ''Sinochem.''

On December 1, 2008, the ALJ issued his final ID, finding that Sinochem had violated section 337. He concluded that respondents' accused process infringed claim 1 of the '276 patent and that the domestic industry requirement had been met. He also found that claim 1 was not invalid and that it was not unenforceable. The Commission determined to review the ALJ's final ID with regard to the effective filing date of the asserted claim, anticipation, and obviousness. By order dated January 30, 2009, the Commission supplemented the ALJ's reasoning regarding the effective filing date, and remanded the investigation to the ALJ to conduct further proceedings related to anticipation and obviousness. To accommodate the remand, the Commission extended the target date to June 1, 2009 and instructed the ALJ to issue the RID by April 1, 2009.

The ALJ issued the RID on April 1, 2009. The RID concluded that Sinochem's arguments concerning anticipation and obviousness were waived under the ALJ's ground rules and, alternatively, that the arguments were without merit. Sinochem filed a petition for review of the RID. The Commission investigative attorney (''IA'') and Ineos opposed Sinochem's petition.

On June 1, 2009, the Commission determined to review the RID in its entirety and requested briefing on certain questions. The Commission determined to extend the target date to August 3, 2009, to accommodate its review.

Having examined the record of this investigation, including the ALJ's RID and the submissions of the parties, the Commission has determined to reverse the conclusion of nonobviousness of claim 1 of the '276 patent in the RID. In so finding, the Commission has determined to rely on certain party admissions and other evidence as to the state of the prior art. The Commission has determined to take no position on the RID's conclusions relating to obviousness arguments based on prior art references identified in the Commission's remand instructions, including the RID's conclusions on whether arguments as to those references have been waived. The Commission has also determined not to rely on the RID's conclusions as to anticipation and waiver of anticipation arguments. The Commission has further determined to deny Sinochem's motion to strike portions of Ineos's response to its written submission and for leave to file a reply to that submission. The Commission has determined also to deny Sinochem's motion to conform pleadings to evidence taken. These findings terminate the Commission's investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Rule 210.45 of the Commission's Rules of Practice and Procedure (19 CFR Part 210.45).

Issued: August 3, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–18866 Filed 8–6–09; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–682]

Notice of Investigation; In the Matter of Certain Collaborative System Products and Components Thereof

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 2, 2009, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of eInstruction Corporation of Denton, Texas. Supplements to the complaint were filed on July 10, 2009 and July 23, 2009. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain collaborative system products and components thereof by reason of infringement of certain claims of U.S. Patent No. 6,930,673. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Aarti Shah, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2657.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2008).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 3, 2009, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain collaborative system products or components thereof that infringe one or more of claims 1–3, 6–10, 13–18, and 21–24 of U.S. Patent No. 6,930,673, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—eInstruction Corporation, 308 N. Carroll Boulevard, Denton, Texas 76201.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: QOMO HiteVision, LLC, 28265 Beck Road, Suite C–1, Wixom, Michigan 48393.

(c) The Commission investigative attorney, party to this investigation, is Aarti Shah, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

Issued: August 3, 2009.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–18935 Filed 8–6–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on August 4, 2009, a proposed Consent Decree in *United States et al.* v. *Aleris International, Inc. et al.,* Civil Action No. 1:09–cv–00340, was lodged with the United States District Court for the Northern District of Ohio.

The Consent Decree would resolve claims for injunctive relief and the assessment of civil penalties asserted by the United States; the States of Idaho, Illinois, Indiana, Michigan, Ohio, Tennessee, and West Virginia; the Commonwealths of Kentucky and Virginia; the Oklahoma Department of Environmental Quality; and the Maricopa County Air Quality Department (collectively, ''Plaintiffs'') against Aleris International, Inc. and 13 of its subsidiaries (collectively, ''Aleris'') pursuant to Sections 113(b) and 304(a)(1) of the Clean Air Act, 42 U.S.C. 7413(b) and 7604(a)(1).

Aleris processes aluminum scrap and dross to produce various secondary aluminum products, a process that results in emissions of regulated air pollutants, including dioxins and furans, hydrogen chloride, particulate matter, and hydrocarbons. The Plaintiffs' Amended Complaint, filed concurrently with the Consent Decree, alleges that Aleris violated Section 112 of the Clean Air Act, 42 U.S.C. 7412; the National Emissions Standards for Hazardous Air Pollutants (''NESHAP'')

for Secondary Aluminum Production, codified at 40 CFR part 63, subparts A and RRR; and related provisions of state and local law at 15 of its secondary aluminum production facilities. Specifically, the Amended Complaint alleges that Aleris failed to demonstrate compliance with emission standards through valid performance testing, to design and install adequate capture and collection systems, to correctly establish and monitor operating parameters, and to comply with recordkeeping and reporting requirements.

The Consent Decree would require Aleris to improve its capture of emissions at each emission unit, retest every emission unit using model test protocols, adopt new monitoring practices, use model recordkeeping and reporting documents, and install an additional control device and monitoring equipment at particular facilities. The Consent Decree would also provide for a $4.6 million civil penalty, to be allowed as a prepetition general unsecured claim in Aleris's pending bankruptcy proceeding in the United States Bankruptcy Court for the District of Delaware.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States et al.* v. *Aleris International, Inc. et al.,* D.J. Ref. No. 90–5–2–1–08603.

The Consent Decree may be examined at the Office of the United States Attorney, Northern District of Ohio, 801 W. Superior Avenue, Suite 400, Cleveland, OH 44113, and at the United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $95.50 for a copy of the complete Consent Decree (25 cents per page reproduction cost), or $21.00 for a copy without appendices, payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–18972 Filed 8–6–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on August 4, 2009, a proposed Consent Decree in *United States of America et al.* v. *AK Steel Corporation, et al.,* Civil Action No. 97–1863 was lodged with the United States District Court for the Western District of Pennsylvania.

The Consent Decree is identical to one lodged on June 1, 2009, in the same matter (''original decree''), except that it eliminates one settling party, General Motors Corporation, due to its pending bankruptcy. The Consent Decree resolves the United States' claims against 35 parties at the Breslube Penn Superfund Site, located in Coraopolis, Moon Township, Pennsylvania. Those claims were brought under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607. The Settling Defendants consist of two groups, eight Performing Defendants and 27 Non-Performing Defendants. The Commonwealth of Pennsylvania has signed the Consent Decree and has filed a separate complaint.

The Consent Decree requires that Performing Defendants fund and perform the remedy selected in EPA's August 2007 Record of Decision. The estimated cost of the remedy is $8,070,000, and may increase to $12,610,000 if EPA decides two contingent remedies are necessary. The settlement also recovers past costs of the United States ($3,037,491.61), past costs of the Commonwealth ($41,356.04), and includes an agreement to pay all future response costs.

The Department of Justice published notice of the original decree in the **Federal Register** on June 8, 2009, 74 FR 27181, and the public was invited to submit comments for the thirty day period ending July 8, 2009. No comments were received. The Department of Justice will receive for an additional period of fifteen (15) days from the date of this publication comments relating to the elimination of General Motors Corporation from the settlement. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America et al. v. AK Steel Corporation, et al.,* Civil Action No. 97–1863 (W.D. PA), D.J. Ref. 90–11–3–1762.

The Decree may be examined at U.S. EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $23.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–18973 Filed 8–6–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Amendment to Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act, Clean Water Act, and the Pennsylvania Hazardous Sites Cleanup Act

Notice is hereby given that on August 3, 2009, a proposed Amendment to Consent Decree (''Amendment''), pertaining to *United States* v. *Horsehead Industries Inc.,* 3:CV–98–0654, was lodged with the United States District Court for the Middle District of Pennsylvania. The proposed Amendment amends the consent decree entered by the Court on November 21, 2003 (''2003 Decree''), which addressed

certain claims of the United States under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9606 and 9607, concerning response costs and remedial actions relating to the Palmerton Zinc Pile Superfund Site (''Site'') in Palmerton, Pennsylvania.

The proposed Amendment (1) substitutes and/or adds parties as Settling Defendants under the 2003 Decree and this Amendment, taking into account several corporate reorganizations and other transactions and events that have occurred since entry of the 2003 Decree; and (2) resolves, in a manner consistent with the ongoing remedial process at the Site, certain claims of the United States of America (''United States'') and the Commonwealth of Pennsylvania (''Commonwealth'') for Natural Resource Damages (''NRD'') under Sections 107(a)(4)(C) and 107(f) of CERCLA, 42 U.S.C. 9607(a)(4)(C) and (f), Sections 311(f)(4) and (5) of the Clean Water Act (''CWA''), 33 U.S.C. 1321(f)(4) and (5), and Section 702(a) of the Pennsylvania Hazardous Sites Cleanup Act (''HSCA''), 35 P.S. § 6020.702(a).

Under the terms of the Amendment, the Defendants will make a payment of $9.875 million to be used to restore, replace, or acquire the equivalent of natural resources injured as a result of releases of hazardous substances at the Palmerton Zinc site. The Defendants will also pay $2.5 million for damage assessment costs. In addition, the Defendants will transfer twelve hundred acres of valuable property to the Pennsylvania Game Commission and discharge a mortgage on a nature center located at the Lehigh Gap.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Amendment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Horsehead Industries Inc.,* DOJ No. 90–11–2–271/4. The proposed Amendment may be examined at the Offices of the Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103 (contact Assistant Regional Counsel Cynthia Nadolski (215) 814–2673) and at the Office of the United States Attorney for the Middle District of Pennsylvania, Harrisburg Federal Bldg. and Courthouse, 228 Walnut Street, Suite 220, P.O. Box 11754, Harrisburg, PA 17108–1754 (contact Assistant U.S. Attorney D. Brian Simpson (717) 221–4482). During the public comment period, the Amendment may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Amendment may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $33.50 (25 cents per page reproduction cost), payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–18971 Filed 8–6–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Housing Approximately 1,380 Low-Security, Adult Male Inmates, That Are Predominantly District of Columbia Sentenced Felons and Criminal Aliens at a Privately Owned Institution in Winton, NC or Princess Anne, MD

AGENCY: U.S. Department of Justice, Federal Bureau of Prisons.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 Code of Federal Regulations [CFR] parts 1500–1508), the Federal Bureau of Prisons (BOP) intends to prepare a Draft Environmental Impact Statement (DEIS) and conduct Public Scoping Meetings for the proposed housing of inmates under the District of Columbia (DC) III solicitation, at a facility in Winton, North Carolina or Princess Anne, Maryland.

SUPPLEMENTARY INFORMATION: The mission of the United States Department of Justice, BOP, is to protect society by confining offenders in the controlled environments of prison and community-based facilities that are safe, humane, cost-efficient, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens. The BOP accomplishes its mission through the appropriate use of community correction, detention, and correctional facilities that are either: federally-owned and operated; federally owned and non-federally operated; and non-federally owned and operated.

Proposed Action

The BOP is facing a period of unprecedented growth in its inmate population. Projections show the Federal inmate population increasing from approximately 201,600 inmates at the end of fiscal year 2008 to 212,000 inmates by the end of fiscal year 2010. As such, the demand for bed space within the Federal prison system continues to grow at a significant rate. To accommodate a portion of the growing inmate population, the BOP proposes to contract with a contractor owned and operated correctional facility that can house approximately 1,380 low-security, adult male inmates, that are predominantly District of Columbia sentenced felons and criminal aliens.

Proposals received by the BOP from private contractors include an existing facility in Winton, Hertford County, North Carolina and new construction at a site in Princess Anne, Somerset County, Maryland. The BOP has preliminarily evaluated these proposals and determined that the prospective facility/sites appear to be of sufficient size to provide space for inmate housing, programs, administrative services and other support facilities associated with the correctional facility. The DEIS to be prepared by the BOP will analyze the potential impacts of correctional facility construction and/or operation at these locations.

The Process

In the process of evaluating the sites, several aspects will receive detailed examination including, but not limited to: Topography, geology/soils, hydrology, biological resources, utility services, transportation services, cultural resources, land uses, socio-economics, hazardous materials, and air and noise quality, among others.

Alternatives

In developing the DEIS, the options of ''no action'' and ''alternative sites'' for the proposed facility will be fully and thoroughly examined.

Scoping Process

During the preparation of the DEIS, there will be opportunities for public involvement in order to determine the issues to be examined in the DEIS. A Public Scoping Meeting will be held at 7 p.m. August 27, 2009 at the County Commissioners Meeting Room in the County Office Building, located at 704 King Street in Winton, North Carolina.

In addition, a Public Scoping meeting will be held at 7 p.m., September 1, 2009 at the Washington Academy High School, located at 10902 Old Princess Anne Road in Princess Anne, Maryland. The meeting locations, dates, and times will be well publicized and have been arranged to allow for public involvement, as well as interested agencies and organizations to attend. The meetings are being held to allow interested persons to formally express their views on the scope and significant issues to be studied as part of the DEIS process. The meetings will provide for timely public comments and understanding of Federal plans and programs with possible environmental consequences as required by the NEPA of 1969, as amended, and the National Historic Preservation Act of 1966, as amended.

DEIS Preparation

Public notice will be given concerning the availability of the DEIS for public review and comment at a later date.

Address

All are encouraged to provide comments on the proposed action and alternatives at either Public Scoping Meetings and anytime during the 30-day public scoping period, which ends September 15, 2009. There are two ways in which comments may be submitted: (1) By attending one of the scoping meetings or (2) by mail. All written comments concerning the proposed action should be postmarked no later than September 15, 2009.

Comments submitted by mail or questions concerning the proposed action and the DEIS may be directed to: Richard A. Cohn, Chief or Issac J. Gaston, Site Selection Specialist, Capacity Planning and Site Selection Branch, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. Tel: 202–514–6470/Fax: 202–616–6024/E-mail: *racohn@bop.gov.*

Dated: August 4, 2009.

Richard A. Cohn,

Chief, Capacity Planning and Site Selection Branch.

[FR Doc. E9–19023 Filed 8–6–09; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 09–270]

NASA Advisory Council; Science Committee; Earth Science Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration (NASA) announces a meeting of the Earth Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Monday, August 31, 2009, 1 p.m. to 3 p.m

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 8R40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topic:

—Earth Science Program's Annual Performance Appraisal and Rating on Fiscal Year 2009 Government Performance and Results Act Metrics

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information no less than 7 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Marian Norris via e-mail at *mnorris@nasa.gov* or by telephone at (202) 358–4452.

Dated: July 31, 2009.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E9–18943 Filed 8–6–09; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (09–071)]

Review of U.S. Human Space Flight Plans Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Review of U.S. Human Space Flight Plans Committee. This is a contingency public meeting if required by the committee and is subject to cancellation on short notice. For the most up-to-date information, refer to the Committee Web site (*http://hsf.nasa.gov*) or contact the NASA Designated Federal Official by e-mail (*philip.mcalister@nasa.gov*) or phone (202–358–0712).

DATES: Monday, August 24, 2009, 1 p.m.–5:30 p.m.

ADDRESSES: JW Marriott Hotel, Grand Ballroom, 1331 Pennsylvania Avenue, Washington, DC 20004, phone: 202–626–6906.

FOR FURTHER INFORMATION CONTACT: Mr. Philip R. McAlister, Office of Program Analysis and Evaluation, National Aeronautics and Space Administration, Washington, DC 20546, at 202–358–0712.

SUPPLEMENTARY INFORMATION: The agenda topics for the meeting include Committee deliberations on the Final Report. The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: August 4, 2009.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E9–19003 Filed 8–6–09; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0346]

Request for Information on Low-Level Radioactive Waste Disposal and Notice of Public Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting and request for information.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff is conducting a public meeting to gather information to assess the effect of a lack of access to low-level waste (LLW) disposal facilities on those who use radioactive sources or materials in conducting research such as universities and hospitals. The purpose of this information gathering is to identify important research that has been impacted and/or stopped because of a lack of disposal options for radioactive sources or materials. This information will be provided to the Commission to inform future Commission decisionmaking. The NRC is planning to host a public meeting on this topic at its Rockville, MD Headquarters on the morning of October 7, 2009.

DATES: The public is invited to provide information related to the above topic until October 20, 2009. Comments submitted by mail should be postmarked by that date to ensure consideration. Comments received after that date will be considered to the extent practical. The NRC is planning to host a public meeting at its Rockville, MD Headquarters to solicit public input on the questions identified below on October 7, 2009. Because of anticipated interest, the meeting will be Web cast. Please check the NRC public Web site at *http://www.nrc.gov/public-involve/public-meetings/index* for the meeting and Web cast details.

ADDRESSES: Members of the public are invited and encouraged to submit comments by any of the following methods. Please include Docket ID NRC–2009–0346 in the subject line of your comments/responses. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments/responses will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0346. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov*.

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Public File Area 01 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.

Federal Rulemaking Web site: Public comments received in response to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2009–0346.

FOR FURTHER INFORMATION CONTACT: Mr. James Shaffner, Project Manager, Low-Level Waste Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: (301) 415–5496; fax number: (301) 415–5369; e-mail: *james.shaffner@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The NRC staff briefed the Commission on the status of the LLW program on April 17, 2009. External stakeholders who briefed the Commission noted that the use of radioactive material in nuclear medicine biomedical research needed cost effective disposal for low-level radioactive waste and that key radionuclide research products are no longer available due to high radiological waste disposal costs. Following the briefing, the Commission directed the staff to work with stakeholders to develop a list or catalog of important research that has been impacted and/or stopped because of a lack of disposal options for radioactive sources. In its approach to complying with Commission direction, the staff decided to expand its inquiry to include the use of other radioactive material as well. Therefore, the NRC staff is requesting information and soliciting public comment to identify and catalog important research that has been impacted or stopped because of a lack of disposal options for sealed sources or radioactive materials. The staff is requesting that persons consider and address the following 13 questions as they develop and provide their remarks.

1. Are you involved in research involving the use of radioactive sources or materials, and if so, in what specific area (medical, academic, medical administration, *etc.*)

2. If you answered yes to question no. 1, please describe the research procedure(s) that is performed, or was performed prior to disposal access limitations.

3. Have alternative technologies taken the place of radioactive materials because of LLW disposal access, and if so, what have been the impacts, both positive and negative?

4. In what State and LLW Compact is the research facility that you're addressing located?

5. What kind of licensee uses the radioactive sources or materials that are being addressed (university, hospital, private research, other)?

6. How do you or did you disposition the spent sources or radioactive materials?

a. LLW disposal facility

b. Store onsite

c. Return to manufacturer

d. Other, explain

7. Have you historically disposed of spent sources or radioactive materials at a low-level waste disposal facility?

8. If your answer to question no. 7 was yes, has your research been affected by the lack of access to a low-level waste disposal facility for either spent radioactive sources or radioactive materials? If so, please explain.

9. Are you currently storing onsite radioactive sources or materials that would have been disposed of offsite had disposal access been available?

10. Has the lack of disposal access for either radioactive sources or materials caused you to re-evaluate research needs and techniques?

11. What adaptations have you made to reduce waste volume and improve the management of low-level radioactive waste disposal?

a. Increased onsite storage capacity

b. Increased use of nonradioactive sources

c. Limit number of authorized users

d. Reduce volume of waste shipped

12. Has the cost of low-level radioactive waste disposal affected your research? If so, describe how.

13. Provide any additional comments.

In conjunction for this request for information, the NRC staff plans to enhance information gathering on this topic by providing the public with the opportunity to participate via Web cast. Please refer to NRC's public Web site, *http://www.nrc.gov/public-involve/public-meetings/index*, starting in late September for specific meeting and Web cast details.

II. Further Information

The April 17, 2009 Commission Brief can be viewed via the NRC Web cast archive: *http://video.nrc.gov/nrcArch.cfm* and the transcripts, slides, and materials from the April 17, 2009 public meeting can be found at *http://www.nrc.gov/reading-rm/doc-collections/commission/tr/2009*. For questions related to this questionnaire, please contact Gregory Suber, 301–415–8087, *gregory.suber@nrc.gov*.

Dated at Rockville, Maryland this 31st day of July 2009.

For the Nuclear Regulatory Commission.

Patrice M. Bubar,

Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E9–18947 Filed 8–6–09; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0131]

Revision of Information Collection: Combined Federal Campaign Applications

AGENCY: Office of Personnel Management.

ACTION: 30-day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for clearance to revise information collection Combined Federal Campaign Applications OMB Control No. 3206–0131, which include OPM Forms 1647 A–E. Combined Federal Campaign Eligibility Applications are used to review the eligibility of national, international, and local charitable organizations that wish to participate in the Combined Federal Campaign. The proposed revisions reflect changes in eligibility guidance from the Office of Personnel Management and recommendations from a review conducted by the Government Accountability Office. On June 5, 2009, we published a 60-day notice and request for comments. We received no comments.

We estimate 20,000 responses to this information collection annually. Each form takes approximately three hours to complete. The annual estimated burden is 60,000 hours.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the appropriate use of technological collection techniques or other forms of information technology.

DATES: Comments on this information collection should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Office of Information and Regulatory Affairs, Office of Management Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management.

or send via electronic mail to—

oira_submission@omb.eop.gov or fax to (202) 395–6974.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. E9–19000 Filed 8–6–09; 8:45 am]

BILLING CODE 6325–46–P

RAILROAD RETIREMENT BOARD

Correction to Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: The Railroad Retirement Board is making corrections to the July 23, 2009 document appearing on page 36540, FR Doc. E9–17510 titled, Agency Forms Submitted for OMB Review. Specifically, the Request for Comments for Information Collection Review (ICR); Application for Survivor Insurance Annuities (OMB 3220–0030) which was published with errors regarding the annual burden computation for the information collection.

Correction of Publication

In the table titled ''Estimate of Annual Respondent Burden'', the AA–17b total burden hours should be 204 (not 270) and the total annual responses should be 3,722 (not 4,022).

Under the Information Collection Request (ICR) heading, the ''Estimated annual number of respondents'' should be 3,722 (not 4,022) and the ''Total annual responses'' should be 3,722 (not 4,022).

Charles Mierzwa,

Clearance Officer.

[FR Doc. E9–18929 Filed 8–6–09; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor and Advocacy, Washington, DC 20549–0213.

Extension:

Form T–4, OMB Control No. 3235–0107, SEC File No. 270–124.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission

(''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for approval.

Form T–4 (17 CFR 269.4) is used to apply for an exemption pursuant to Section 304(c) (15 U.S.C. 77ddd (c)) of the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*) and is transmitted to shareholders. Form T–4 takes approximately 5 hours per response to prepare and is filed by 3 respondents. We estimate that 25% of the 5 burden hours (1 hour per response) is prepared by the filer for a total reporting burden of 3 hours (1 hour per response × 3 responses). The remaining 75% of the burden hours is attributed to outside cost.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: August 3, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–18974 Filed 8–6–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form T–1, OMB Control No. 3235–0110, SEC File No. 270–121.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for approval.

Form T–1 (17 CFR 269.1) is a statement of eligibility and qualification under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*) of a corporation designated to act as a trustee. The information is used to determine whether the corporate trustee is qualified to serve under the indenture. Form T–1 takes approximately 15 hours per response to prepare and is filed by approximately 13 respondents. We estimate that 25% of the 15 hours (4 hours per response) is prepared by the company for a total reporting burden of 52 hours (4 hours per response × 13 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: August 3, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–18979 Filed 8–6–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form T–2, OMB Control No. 3235–0111, SEC File No. 270–122.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for approval.

Form T–2 (17 CFR 269.2) is a statement of eligibility of an individual trustee to serve under an indenture relating to debt securities offered publicly. The information is used to determine whether the trustee is qualified to serve under the indenture. Form T–2 takes approximately 9 hours per response to prepare and is filed by 36 respondents. We estimate that 25% of the 9 burden hours (2 hours per responses) is prepared by the filer for a total reporting burden of 72 hours (2 hours per response × 36 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: August 3, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–18980 Filed 8–6–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Form T–3, OMB Control No. 3235–0105, SEC File No. 270–123.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for approval.

Form T–3 (17 CFR 269.3) is an application for qualification of an indenture under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*). The information provided by Form T–3 is used by the staff to decide whether to qualify an indenture relating to securities offered to the public in an offering registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Form T–3 takes approximately 43 hours per response to prepare and is filed by 78 respondents. We estimate that 25% of the 43 burden hours (11 hours per response) is prepared by the filer for a total reporting burden of 858 hours (11 hours per response × 78 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: August 3, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–18981 Filed 8–6–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Form N–6, SEC File No. 270–446, OMB Control No. 3235–0503.

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 title for the collection of information is ''Form N–6 (17 CFR 239.17c and 274.11d) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and 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 that offer variable life insurance policies.'' Form N–6 is the form used by insurance company separate accounts organized as unit investment trusts that offer variable life insurance 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–6 also permits separate accounts organized as unit investment trusts that offer variable life insurance contracts to provide investors with a prospectus containing information required in a registration statement prior to the sale or at the time of confirmation of delivery of securities.

The Commission estimates that there are approximately 250 separate accounts registered as unit investment trusts and offering variable life insurance policies that file registration statements on Form N–6. The Commission estimates that there are 95 initial registration statements on Form N–6 filed annually. The Commission estimates that approximately 813 registration statements (718 post-effective amendments plus 95 initial registration statements) are filed on Form N–6 annually. The Commission estimates that the hour burden for preparing and filing a post-effective amendment on Form N–6 is 67.5 hours. The total annual hour burden for preparing and filing post-effective amendments is 48,465 hours (718 post-effective amendments annually times 67.5 hours per amendment). The estimated hour burden per portfolio for preparing and filing an initial registration statement on Form N–6 is 770.25 hours. The estimated annual hour burden for preparing and filing initial registration statements is 73,174 hours (95 initial registration statements annually times 770.25 hours per registration statement). The frequency of response is annual. The total annual hour burden for Form N–6, therefore, is estimated to be 121,639 hours (48,465 hours for post-effective amendments plus 73,174 hours for initial registration statements).

The information collection requirements imposed by Form N–6 are mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments 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: August 3, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–18983 Filed 8–6–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, August 6, 2009 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and(10), permit consideration of the scheduled matters at the Closed Meeting.

Chairman Schapiro, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Thursday, August 6, 2009 will be:

institution and settlement of injunctive actions;

institution and settlement of an administrative proceeding; and

other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: August 5, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–19042 Filed 8–5–09; 11:15 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60407; File No. SR–NASDAQ–2009–073]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fees Related to Orders Routed to Nasdaq via the Options Intermarket Linkage

July 30, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on July 29, 2009, the NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees related to orders routed to NASDAQ via the Options Intermarket Linkage (''Linkage''). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Web site *http://nasdaq.cchwallstreet.com/.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to extend a Linkage Fee Pilot Program that is currently in place through July 31, 2009. The proposal will enable the pilot to remain effective through July 31, 2010. The proposed rule change makes no substantive changes to the pilot currently in place.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act [3], in general, and with Section 6(b)(4) [4] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among members and other persons using its facilities. The proposed rule change will continue the current pilot program on the same terms currently in place.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASDAQ Exchange 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [5] and Rule 19b–4(f)(6) thereunder.[6]

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[7] However, Rule 19b–4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[8] NASDAQ has requested that the Commission waive the 30-day operative delay. The Exchange believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest in that it would enable the Exchange to continue to assess identical fees without disruption to the marketplace. The Commission believes such waiver is consistent with the protection of investors and the public interest because it presents no new issues and would allow the Linkage Fee Pilot Program to continue operating without interruption. For this reason, the Commission designates the proposal to be operative upon filing with the Commission.[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–2009–073 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–2009–073. 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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–073 and should be submitted on or before August 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–18975 Filed 8–6–09; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 240.19b–4(f)(6).

[8] *Id.*

[9] For purposes only of waiving the 30-day pre-operative period, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60414; File No. SR–FINRA–2009–051]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Use of Multiple Market Participant Symbols When Quoting or Trading OTC Equity Securities

July 31, 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 23, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt FINRA Rule 6480 on a pilot basis to address the use of multiple Market Participant Symbols (''MPIDs'') when quoting or trading OTC Equity Securities.[4]

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

FINRA has two rules governing the use of multiple MPIDs on FINRA facilities: Rule 6160 (Multiple MPIDs for Trade Reporting Facility Participants) and Rule 6170 (Primary and Additional MPIDs for Alternative Display Facility Participants). The proposed rule change would adopt, on a pilot basis, a rule for the use of multiple MPIDs when quoting OTC Equity Securities or reporting

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] For purposes of the proposed rule, the term ''OTC Equity Security'' is defined in FINRA Rule 6420.

trades in such securities to the OTC Reporting Facility. The use of multiple MPIDs is currently permitted with respect to FINRA Trade Reporting Facilities and the Alternative Display Facility, and firms have requested that FINRA extend the use of multiple MPIDs to the OTC market so that members can use multiple MPIDs for a variety of back-office purposes that would otherwise not be possible—for example, establishing separate clearing relationships for different types of securities (*e.g.,* foreign and domestic securities). As is the case with respect to the market for exchange-listed securities, FINRA believes that there are legitimate business reasons for members to maintain multiple MPIDs in the OTC market and proposes to establish, on a pilot basis, a system whereby members can request and be granted multiple MPIDs for use in quoting and trading OTC Equity Securities. The proposed rule is substantially similar to Rule 6160 and, like that rule, would expire on January 29, 2010, unless extended.[5]

Like Rule 6160, proposed Rule 6480 provides that any member that wishes to use more than one MPID for purposes of quoting an OTC Equity Security or reporting trades to the OTC Reporting Facility must submit a written request to, and obtain approval from, FINRA Operations for such additional MPIDs. The rule also states that a member that posts a quotation in an OTC Equity Security and reports to a FINRA system a trade resulting from such posted quotation must utilize the same MPID for reporting purposes. In addition, Supplementary Material to the rule states that FINRA considers the issuance of, and trade reporting with, multiple MPIDs to be a privilege and not a right. When requesting an additional MPID(s), a member must identify the purpose(s) and system(s) for which the multiple MPIDs will be used. If FINRA determines that the use of multiple MPIDs is detrimental to the marketplace, or that a member is using one or more additional MPIDs improperly or for purposes other than the purpose(s) identified by the member, FINRA staff retains full discretion to limit or withdraw its grant of the additional MPID(s) to such member.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will create a system that will allow members to use multiple MPIDs when quoting and trading OTC Equity Securities with sufficient oversight by FINRA to ensure that the MPIDs are not being used improperly or in a way that would be detrimental to the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

FINRA has requested that the Commission waive the 30-day operative delay so that it may immediately extend the use of multiple MPIDs to the OTC market on a pilot basis. The Commission has determined that waiving the 30-day operative delay of FINRA's proposal is consistent with the protection of investors and the public interest because FINRA's proposed system for extending the use of multiple MPIDs to the OTC market is comparable to the pilot program currently in place for exchange-listed securities, which the Commission previously approved.[9] Therefore, the Commission designates the proposal operative upon filing.[10]

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–FINRA–2009–051 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–FINRA–2009–051. 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

[5] Rule 6160 was approved by the Commission in 2006 on a pilot basis. *See* Securities Exchange Act Release No. 54715 (November 6, 2006), 71 FR 66354 (November 14, 2006); *see also* Securities Exchange Act Release No. 54715A (November 14, 2006), 71 FR 67183 (November 20, 2006). The pilot period has been extended several times since the rule was originally adopted and currently expires on January 29, 2010. *See* Securities Exchange Act Release No. 59183 (December 30, 2008), 74 FR 842 (January 8, 2009); Securities Exchange Act Release No. 57217 (January 28, 2008), 73 FR 6234 (February 1, 2008); Securities Exchange Act Release No. 55206 (January 31, 2007), 72 FR 5479 (February 6, 2007).

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has met this requirement.

[9] *See supra* note 5.

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 FINRA. 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–FINRA–2009–051 and should be submitted on or before August 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–18976 Filed 8–6–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60421; File No. SR–FICC–2009–07]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Haircuts Applied to Eligible Clearing Fund Securities and Eligible Participant Fund Securities

August 3, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 13, 2009, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to modify the haircuts applied to Eligible Clearing Fund Securities and Eligible Participant Fund Securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the Rules of the Government Securities Division (''GSD'') and the Mortgage-Backed Securities Division (''MBSD'') (''Rules''), GSD Members and MBSD Participants are required to deposit to the GSD Clearing Fund and MBSD Participants Fund, respectively, the amount of each Member's or Participant's required deposit, which is established by FICC in accordance with formulas specified in the Rules (''Required Deposit'').

A Member or Participant may satisfy its Required Deposit with cash, and FICC may permit a portion of the Member's or Participant's deposit to be evidenced by an open account indebtedness secured by Eligible Clearing Fund Securities for the GSD and Eligible Participants Fund Securities for the MBSD. Eligible Clearing Fund Securities and Eligible Participants Fund Securities consist of certain Treasury, agency, and mortgage-backed securities.

For reasons set forth in a companion rule filing, FICC's affiliate, National Securities Clearing Corporation (''NSCC''), has increased haircuts on Clearing Fund collateral.[3] Given that the haircuts are applied by FICC and NSCC systemically and on a harmonized basis, these changes are also being applied by FICC.

Therefore, FICC proposes to modify the GSD's Schedule of Haircuts for Eligible Clearing Fund Securities and the MBSD's Schedule of Haircuts for Eligible Participants Fund Securities to update the correlating range of haircuts applied to the types of Eligible Clearing Fund Securities and Eligible Participants Fund Securities. Specifically, FICC proposes to increase the haircut on: (i) Interest bearing Treasuries with terms greater than 10 years but less than 15 years from the current 5 percent to 6 percent and (ii) zero coupon obligations of U.S. Treasury and Agency Securities from the current 2 to 10 percent based on term to 5 to 12 percent based on term.

A complete listing of the haircut schedule, showing modifications, is as follows (deletions are in brackets and additions are italicized):

GSD Schedule of Haircuts for Eligible Clearing Fund Securities

Security type	Remaining maturity	Haircut
1. Treasury		
Bills, Notes, Bonds, TIPS	Zero to 1 year	2.0%
	1 year to 2 years	2.0%
	2 years to 5 years	3.0%
	5 years to 10 years	4.0%
	10 years to 15 years	[5.0%] *6.0%*
	15 years or greater	6.0%
Zero Coupon	Zero to 1 year	[2.0%] *5.0%*

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by FICC.

[3] Securities Exchange Act Release No. 60368 (July 22, 2009), 74 FR 37275.

GSD SCHEDULE OF HAIRCUTS FOR ELIGIBLE CLEARING FUND SECURITIES—Continued

Security type	Remaining maturity	Haircut
	1 year to 2 years	[2.0%] *5.0%*
	2 years to 5 years	[4.0%] *5.0%*
	5 years to 10 years	[6.0%] *12.0%*
	10 years to 15 years	[7.0%] *12.0%*
	15 years or greater	[9.0%] *12.0%*
2. Agency		
Notes, Bonds	Zero to 1 year	2.0%
	1 year to 2 years	3.0%
	2 years to 5 years	4.0%
	5 years to 10 years	5.0%
	10 years to 15 years	6.0%
	15 years or greater	7.0%
Zero Coupon	Zero to 1 year	[2.0%] *5.0%*
	1 year to 2 years	[3.0%] *5.0%*
	2 years to 5 years	5.0%
	5 years to 10 years	[7.0%] *12.0%*
	10 years to 15 years	[8.0%] *12.0%*
	15 years or greater	[10.0%] *12.0%*
3. MBS Pass-throughs	Ginnie Mae	6.0%
	Fannie Mae/Freddie Mac	7.0%
4. Self-issued MBS		14% (or 21% if 25% concentration limit is exceeded).

MBSD SCHEDULE OF HAIRCUTS FOR ELIGIBLE PARTICIPANTS FUND SECURITIES

Security type	Remaining maturity	Haircut
1. Treasury		
Bills, Notes, Bonds, TIPS	Zero to 1 year	2.0%
	1 year to 2 years	2.0%
	2 years to 5 years	3.0%
	5 years to 10 years	4.0%
	10 years to 15 years	[5.0%] *6.0%*
	15 years or greater	6.0%
Zero Coupon	Zero to 1 year	[2.0%] *5.0%*
	1 year to 2 years	[2.0%] *5.0%*
	2 years to 5 years	[4.0%] *5.0%*
	5 years to 10 years	[6.0%] *12.0%*
	10 years to 15 years	[7.0%] *12.0%*
	15 years or greater	[9.0%] *12.0%*
2. Agency		
Notes, Bonds	Zero to 1 year	2.0%
	1 year to 2 years	3.0%
	2 years to 5 years	4.0%
	5 years to 10 years	5.0%
	10 years to 15 years	6.0%
	15 years or greater	7.0%
Zero Coupon	Zero to 1 year	[2.0%] *5.0%*
	1 year to 2 years	[3.0%] *5.0%*
	2 years to 5 years	5.0%
	5 years to 10 years	[7.0%] *12.0%*
	10 years to 15 years	[8.0%] *12.0%*
	15 years or greater	[10.0%] *12.0%*
3. MBS Pass-Throughs	Ginnie Mae	6.0%
	Fannie Mae/Freddie Mac	7.0%
4. Self-issued MBS		14% (or 21% if 25% concentration limit is exceeded).

These changes will become effective as of August 3, 2009.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder applicable to FICC because the proposed rule change should facilitate the prompt and accurate clearance and settlement of securities transactions by adjusting FICC's haircut levels on Eligible Clearing Fund Securities and Eligible Participant Fund Securities and facilitating FICC's ability to ensure adequate collateral levels are maintained to facilitate settlement in the event of a Member or Participant default.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact on or impose any burden on competition.

[4] 15 U.S.C. 78q–1.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act [5] and Rule 19b–4(f)(4) [6] thereunder because the proposed rule change effects a change in an existing service of FICC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of FICC or for which it is responsible and (ii) does not significantly affect the respective rights of the clearing agency or persons using the service. At any time within sixty days of the filing of such 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–FICC–2009–07 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–FICC–2009–07. 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 Section, 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 filings also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.dtcc.com/legal/rule_filings/FICC/2009.php.* 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–FICC–2009–07 and should be submitted on or before August 28, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–18977 Filed 8–6–09; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(4).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60422; File No. SR–FINRA–2009–048]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 5230 (Payments Involving Publications that Influence the Market Price of a Security) in the Consolidated FINRA Rulebook

August 3, 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 21, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to adopt NASD Rule 3330 (Payment Designed to Influence Market Prices, Other than Paid Advertising) as FINRA Rule 5230 in the consolidated FINRA rulebook, with several changes to clarify the scope of the rule.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[3] FINRA is proposing to adopt NASD Rule 3330 into the Consolidated FINRA Rulebook as FINRA Rule 5230 with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see* FINRA *Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

several changes, which are described below.[4]

NASD Rule 3330 provides that no member may, ''directly or indirectly, give, permit to be given, or offer to give, anything of value to any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any newspaper, investment service, or similar publication, of any matter which has, or is intended to have, an effect upon the market price of any security.* * *'' The rule includes an exception for any matter that is ''clearly distinguishable as paid advertising.''

As part of transferring NASD Rule 3330 into the Consolidated FINRA Rulebook, FINRA is proposing two changes to the rule to modernize its terms and clarify its scope. First, the proposed rule change updates the list of media to which the rule refers. Because NASD Rule 3330 has not been amended for over 60 years, it refers only to matters published or circulated in any ''newspaper, investment service, or similar publication.'' The proposed rule change updates this language to include electronic and other types of media, including magazines, Web sites, and television programs.

Second, the proposed rule change expands the exceptions in the rule beyond paid advertising to also include compensation paid in connection with research reports and communications published in reliance on Section 17(b) of the Securities Act of 1933.[5] FINRA is proposing these changes to clarify that the prohibitions in the rule are not intended to cover compensation paid for publications that are explicitly permitted pursuant to other rules. For example, NASD Rule 3330 could be read to prohibit a member from paying for a third-party research report if the report affected the market price of a security; however, NASD Rule 2711(h)(13) contemplates that members might pay for and distribute third-party research reports.[6] In addition, FINRA does not believe that the rule should be read to prohibit compensation paid in connection with the publication of information that is specifically permitted pursuant to Section 17(b) of the Securities Act, provided the required disclosures are made.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will clarify the scope of the rule in the new Consolidated FINRA Rulebook.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–FINRA–2009–048 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–FINRA–2009–048. 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 the filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2009–048 and should be submitted on or before August 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–18978 Filed 8–6–09; 8:45 am]

BILLING CODE 8010–01–P

[4] The proposed rule change also changes the title of the rule to ''Payments Involving Publications that Influence the Market Price of a Security.''

[5] Section 17(b) of the Securities Act of 1933 provides that no person may ''publish, give publicity to, or circulate any * * * communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.'' 15 U.S.C. 77q(b).

[6] Although the proposed rule change would exempt research reports from FINRA Rule 5230, research reports would still be subject to applicable FINRA rules and guidance governing research reports and other communications with the public. *See* NASD Rules 2711, 2210(d), IM–2210–1. Among other things, these rules require that research reports include certain disclosures, be fair and balanced, and not be misleading.

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before September 8, 2009. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer,* Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Disaster Home/Business Loan Iniquity Record.

SBA Form Number: 700.

Frequency: On occasion.

Description of Respondents: Disaster victims.

Annual Responses: 3,261.

Annual Burden: 815.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E9–18948 Filed 8–6–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11837 and #11838]

Nebraska Disaster #NE–00027

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Nebraska (FEMA–1853–DR), dated 07/31/2009.

Incident: Severe storms, tornadoes, and flooding.

Incident Period: 06/05/2009 Through 06/26/2009.

DATES: *Effective Date:* 07/31/2009.

Physical Loan Application Deadline Date: 09/29/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 05/03/2010

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 President's major disaster declaration on 07/31/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications 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: Arthur, Box Butte, Cherry, Custer, Dixon, Garden, Hamilton, Keya Paha, Morrill, Pawnee, Richardson, Rock, Scotts Bluff.

The Interest Rates are:

	Percent
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 11837B and for economic injury is 11838B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–18949 Filed 8–6–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11825 and #11826]

Florida Disaster #FL–00045

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Florida dated 07/29/2009.

Incident: Severe storms and flooding.

Incident Period: 07/11/2009.

DATES: *Effective Date:* 07/29/2009.

Physical Loan Application Deadline Date: 09/28/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 04/29/2010.

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: Osceola.

Contiguous Counties:

Florida: Brevard, Highlands, Indian River, Lake, Okeechobee, Orange, Polk.

The Interest Rates are:

	Percent
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 11825 B and for economic injury is 11826 0.

The State which received an EIDL Declaration # is Florida.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: July 29, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–18932 Filed 8–6–09; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and extensions of OMB-approved information collections and a new collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and the SSA Director for Reports Clearance to the addresses or fax numbers shown below.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov*

(SSA), Social Security Administration, DCBFM, Attn: Director, Center for Reports Clearance, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–0454, E-mail address: *OPLM.RCO@ssa.gov.*

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than October 6, 2009. Individuals can obtain copies of the collection instrument by calling the SSA Director for Reports Clearance at 410–965–0454 or by writing to the email address we list above.

1. *Employment Relationship Questionnaire—20 CFR 404.1007—0960–0040.* SSA obtains information on Form SSA–7160–F4 to determine a worker's employment status; i.e., whether, under the definition of an employee found in Section 210(j)(2) of the Act and 20 CFR 404.1007 of the Code of Federal Regulations, a worker is an employee under the ''usual common-law rules'' applicable in determining the existence of an employer-employee relationship. We use the information to develop the employment relationship, and to determine whether a beneficiary is self-employed or an employee. The respondents are individuals questioning their status as employees and their alleged employers.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 16,000.

Frequency of Response: 1.

Average Burden per Response: 25 minutes.

Estimated Annual Burden: 6,667 hours.

2. *Continuing Disability Review Report—20 CFR 404.1589, 416.989—0960–0072.* SSA may conduct a review to determine whether individuals receiving disability benefits continue to be entitled to or eligible for those benefits. SSA uses Form SSA–454 to collect the information needed to complete the review for continued disability from recipients or from their representatives. SSA conducts reviews on a periodic basis depending on the respondent's disability. We obtain information on sources of medical treatment, participation in vocational rehabilitation programs (if any), attempts to work (if any), and the opinions of individuals regarding whether their conditions have improved. The respondents are Title II and/or Title XVI disability recipients, or their representatives.

Type of Request: Revision of an OMB approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
SSA–454–BK	258,700	1	60	258,700
SSA–454–ICR	300	1	30	150
EDCS Interview	300	1	30	150
Total	259,300			259,000

3. *Authorization for the Social Security Administration To Obtain Account Records From a Financial Institution and Request for Records—20 CFR 416.200, 416.203—0960–0293.* Individuals must authorize financial institutions to disclose records to SSA by signing an SSA–4641–U2. Financial institutions use the Form to provide financial information to SSA. We need the information if an individual's records are incomplete, unavailable, or appear altered. SSA uses the records to verify the existence, ownership, and value of accounts owned by Supplemental Security Income (SSI) applicants, recipients, and deemors. The financial institution's report is used, in part, to determine whether SSI resource eligibility requirements are met. The respondents are SSI applicants', recipients', or deemors' financial institutions.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 500,000.

Frequency of Response: 1.

Average Burden per Response: 6 minutes.

Estimated Annual Burden: 50,000 hours.

1. *Internet Request for Replacement of Forms SSA–1099/SSA–1042S—20 CFR 401.45—0960–0583.* Recipients use the SSA–1099 and SSA–1042S to determine if their Social Security benefits are taxable and the amount they need to report to the Internal Revenue Service. An individual may use SSA's Internet request form to obtain a replacement SSA–1099 and SSA–1042S. SSA uses the information from the Internet request form to verify the identity of the requestor and to provide replacement copies of the forms. The Internet option eliminates the need for phone calls to the national 800 number, or visits to a local field office. The respondents are Title II recipients who wish to request a replacement SSA–1099/SSA–1042S via the Internet.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 136,455.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 22,743 hours.

II. SSA has submitted the information collections we list below to OMB for clearance. Your comments on the information collections would be most

useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than September 8, 2009. You can obtain a copy of the OMB clearance packages by calling the SSA Director for Reports Clearance at 410–965–0454 or by writing to the above email address.

1. *Questionnaire about Special Veterans Benefits—0960–NEW.* SSA must make deductions to Social Security Special Veterans benefits when an individual receives income, in excess of set limits, from an activity outside the United States. SSA collects information on Form SSA–2010 to determine continuing entitlement to Social Security Special Veterans Benefits and the proper benefit amount for beneficiaries living outside the U.S. Based on the information, SSA may increase, decrease, suspend or terminate benefits. The respondents are Special Veterans Benefits recipients.

Type of Request: Request for a new information collection.

Number of Respondents: 2,500.

Frequency of Response: 1.

Average Burden per Response: 20 minutes.

Estimated Annual Burden: 833 hours.

1. *Certificate of Election for Reduced Spouse's Benefits—20 CFR 404.421—0960–0398.* SSA will not pay reduced benefits to an already entitled spouse, at least age 62 but under full retirement age, who no longer has a child in care unless the spouse elects to receive reduced benefits. To elect reduced benefits, the spouse must complete Form SSA–25. SSA uses the information from Form SSA–25 to pay a qualified spouse a reduced benefit. Respondents are entitled spouses seeking reduced benefits.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden per Response: 2 minutes.

Estimated Annual Burden: 1,000 hours.

Dated: July 3, 2009.

Elizabeth A. Davidson,

Director, Center for Reports Clearance, Social Security Administration.

[FR Doc. E9–18937 Filed 8–6–09; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 USC 327.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project, the State Route 99 project, Tulare to Goshen Six-Lane Project between post miles 30.6 to 41.3 in Tulare County, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before February 3, 2010. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Sarah Gassner, Chief, Southern Sierra Environmental Branch, Caltrans, 2015 East Shields Avenue, Suite 100, Fresno, California 93726 Monday through Friday 8 a.m. to 5 p.m. (559) 243–8243 or *sarah_gassner@dot.ca.gov*.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California. The Tulare to Goshen Six-Lane Project would alleviate traffic congestion and delays, improve safety and operations, and attain an acceptable Level of Service to meet the existing and projected traffic volumes within the project limits. The 10.7-mile project is located on State Route 99 between the community of Goshen and the City of Tulare in Tulare County, California.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA)/Finding of No Significant Impact (FONSI) for the project, approved on October 30, 2008. The EA/FONSI and other documents are available by contacting Caltrans at the addresses provided above. The Caltrnas EA/FONSI can be viewed and downloaded from the project Web site at: *http://www.dot.ca.gov/dist6/environmental/envdocs/d6/sr99_tularegoshen6lane.pdf*.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; and Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. Air: Clean Air Act [42 U.S.C. 7401–7671(q)].

3. Land: Landscape and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. Wetlands and Water Resources: Safe Drinking Water Act [42 U.S.C. 300(f)–300(j)(6)]; and Wetlands Mitigation [23 U.S.C. 103(b)(6)(m) and 133(b)(11)].

5. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; and Migratory Bird Treaty Act [16 U.S.C. 703–712].

6. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469c]; Archaeological Resources Protection Act of 1979 [16 U.S.C. 470aa *et seq.*]; and Native American Graves Protection and Repatriation Act [25 U.S.C. 3001–3013].

7. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act [7 U.S.C. 4201–4209]; and The Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended.

8. Hazardous Materials: Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986; and Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].

9. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O.12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of the Cultural

Environment; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; and E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: August 3, 2009.

Cindy Vigue,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. E9–18938 Filed 8–6–09; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 31, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the publication date of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 8, 2009 to be assured of consideration.

Bureau of Public Debt (BPD)

OMB Number: 1535–0016.
Type of Review: Extension.
Title: Report/Appl. for relief of loss, theft, destruction of U.S. Bearer Securities.
Form: PD F 1022–1 E.
Description: Used to request relief because of the loss, theft, or destruction of bearer securities.
Respondents: Individuals or households.
Estimated Total Burden Hours: 92 hours.

OMB Number: 1535–0067.
Type of Review: Extension.
Title: Affidavit of Forgery for United States Savings Bonds.
Form: PD F 0974 E.
Description: Used to certify that signature was forged.
Respondents: Individuals or households.
Estimated Total Burden Hours: 625 hours.

OMB Number: 1535–0014.
Type of Review: Extension.
Title: Claim for lost, stolen or destroyed United States registered Securities.
Form: PD F 1025 E.
Description: Used to support request for relief of loss, stolen or destroyed U.S. Registered Securities.
Respondents: Individuals or households.
Estimated Total Burden Hours: 460 hours.

OMB Number: 1535–0015.
Type of Review: Extension.
Title: Report/Appl. for relief of loss, theft or destruction of U.S. Bearer Securities.
Form: PD F 1022 E.
Description: Used to obtain relief for lost, stolen or destroyed bearer securities.
Respondents: Businesses or other for-profits.
Estimated Total Burden Hours: 92 hours.

OMB Number: 1535–0064.
Type of Review: Extension.
Title: Description of United States Savings Bonds Series HH/H and Description of United States Bonds/Notes.
Form(s): PD F 1980, PD–F–2490.
Description: Used by owner of United States Savings Bonds/Notes to describe their holdings.
Respondents: Individuals or households.
Estimated Total Burden Hours: 2,400 hours.

OMB Number: 1535–0098.
Type of Review: Extension.
Title: Claim for Relief on Account of the Non-receipt of United States Savings Bonds.
Form: PD F 3062–4.
Description: Application by owner to request a substitute bond in lieu of bond not received.
Respondents: Individuals or households.
Estimated Total Burden Hours: 4,175 hours.

OMB Number: 1535–0004.
Type of Review: Extension.
Title: Special Form of Request for Payment of U.S. Savings and Retirement Sec. Where Use of a Detached Request is authorized.
Form: PD F 1522 E.
Description: Used to request payment of U.S. Savings Securities.
Respondents: Individuals or households.
Estimated Total Burden Hours: 14,000 hours.

Clearance Officer: Judi Owens (304) 480–8150, Bureau of the Public Debt, 200 Third Street, Parkersburg, West Virginia 26106.
OMB Reviewer: Shagufta Ahmed (202) 395–7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–18990 Filed 8–6–09; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 31, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, and 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before September 8, 2009 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–2136.
Type of Review: Extension.
Form: 8934.
Title: Form 8934—Application for Approval of a Mechanical Dye Injection System.
Description: Form 8934, an application form, will allow the IRS to evaluate whether a refinery or terminal operator that handles diesel fuel and kerosene has a properly functioning mechanical dye injection system. A mechanical dye system has to be meeting certain specifications in order to be exempt from the excise tax. A dye has to be injected into the fuel and meet certain concentration requirements. Also, the refinery must meet safety standards and maintain required records.
Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 383 hours.

OMB Number: 1545–2137.

Type of Review: Extension.

Title: Notice 2009–54—Qualified Plug-in Electric Vehicle Credit.

Description: The Energy Improvement and Extension Act of 2008 added new § 30D of the Internal Revenue Code to authorize credit for new qualified plug-in electric drive motor vehicles. This notice provides procedures for a vehicle manufacturer to certify that a motor vehicle meets certain requirements for the credit, and to certify the amount of the credit available with respect to the motor vehicle. The notice also provides guidance to taxpayers who purchase motor vehicles regarding the conditions under which they may rely on the vehicle manufacturer's certification.

Respondents: Individuals or households.

Estimated Total Burden Hours: 280 hours.

OMB Number: 1545–2138.

Type of Review: Extension.

Form: W–8CE.

Title: Form W–8CE—Notice of Expatriation and Waiver of Treaty Benefits.

Description: Information used by taxpayer to notify payer of expatriation so that proper tax treatment is applied by payer. The taxpayer is required to file this form to obtain any benefit accorded by the statute.

Respondents: Individuals or households.

Estimated Total Burden Hours: 2,840 hours.

OMB Number: 1545–2139.

Type of Review: Extension.

Form: 14039.

Title: Identity Theft Affidavit.

Description: The primary purpose of the form is to provide a method of reporting identity theft issues to the IRS so that the IRS may document situations where individuals are or may be victims of identity theft. Additional purposes include the use in the determination of proper tax liability and to relieve taxpayer burden. The information may be disclosed only as provided by 26 U.S.C 6103.

Respondents: Individuals or households.

Estimated Total Burden Hours: 25,000 hours.

Clearance Officer: R. Joseph Durbala (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Shagufta Ahmed (202) 395–7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–18991 Filed 8–6–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2009–52

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2009–52, Election of Investment Tax Credit in Lieu of Production Tax Credit; Coordination With Department of Treasury Grants for Specified Energy Property in Lieu of Tax Credits.

DATES: Written comments should be received on or before October 6, 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: Election of Investment Tax Credit in Lieu of Production Tax Credit; Coordination With Department of Treasury Grants for Specified Energy Property in Lieu of Tax Credits.

OMB Number: 1545–2145.

Form Number: Notice 2009–52.

Abstract: This notice provides a description of the procedures that taxpayers will be required to follow to make an irrevocable election to take the investment tax credit for energy property under § 48 of the Internal Revenue Code in lieu of the production tax credit under § 45. This election was created by the American Recovery and Reinvestment Act of 2009, H.R. 1, 123 STAT. 115 (the Act), which was enacted on February 17, 2009. This notice includes information about election procedures and the documentation required to complete the election. The notice also discusses the coordination of this irrevocable election with an election to take a Department of Treasury grant for specified energy property.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This notice is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 29, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–18887 Filed 8–6–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13797

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 13797, Tribal Evaluation of Filing and Accuracy Compliance (TEFAC)—Compliance Check Report.

DATES: Written comments should be received on or before October 6, 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 Dawn Bidne, (202) 622–3933, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Dawn.E.Bidne@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tribal Evaluation of Filing and Accuracy Compliance (TEFAC)—Compliance Check Report.

OMB Number: 1545–2026.

Form Number: Form 13797.

Abstract: This form will be provided to tribes who elect to perform a self compliance check on any or all of their entities. This is a VOLUNTARY program, and the entity is not penalized for non-completion of forms or withdrawal from the program. Upon completion, the information will be used by the Tribe and ITG to develop training needs, compliance strategies, and corrective actions.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations and State, Local, or Tribal Government.

Estimated Number of Respondents: 20.

Estimated Time per Respondent: 22 hours 20 minutes.

Estimated Total Annual Burden Hours: 447.

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 29, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–18889 Filed 8–6–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 5434 and 5434–A

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 5434, Application for Enrollment, and Form 5434–A, Application for Renewal of Enrollment.

DATES: Written comments should be received on or before October 6, 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 Dawn Bidne at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3933, or through the Internet at *Dawn.E.Bidne@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form 5434, Application for Enrollment, and Form 5434–A, Application for Renewal of Enrollment.

OMB Number: 1545–0951.

Form Number: 5434 and 5434–A.

Abstract: Form 5434 is used to apply for enrollment to perform actuarial services under the Employee Retirement income Security Act of 1974 (ERISA). Form 5434–A is used to renew enrollment every three years to perform actuarial services under (ERISA). The information is used by the Joint Board for the Enrollment of Actuaries to determine the eligibility of the applicant to perform actuarial services.

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.

Estimated Number of Respondents: 6,000.

Estimated Time per Respondent: 38 minutes.

Estimated Total Annual Burden Hours: 38,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 29, 2009.

R. Joseph Durbala,

IRS Reports Clearance Office.

[FR Doc. E9–18891 Filed 8–6–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5884

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 5884, Work Opportunity Credit.

DATES: Written comments should be received on or before October 6, 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, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224 or through the Internet at *Evelyn.J.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Work Opportunity Credit.

OMB Number: 1545–0219.

Form Number: 5884.

Abstract: Internal Revenue Code section 38(b)(2) allows a credit against income tax to employers hiring individuals from certain targeted groups such as welfare recipients, etc. The employer uses Form 5884 to compute this credit. The IRS uses the information on the form to verify that the correct amount of credit was claimed.

Current Actions: Changes were made to comply with legislative rulings.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations and farms.

Estimated Number of Responses: 11,677.

Estimated Time Per Respondent: 6 hours, 39 minutes.

Estimated Total Annual Burden Hours: 77,653.

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 30, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–18890 Filed 8–6–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for TD 9452

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 TD 9452, Application of Separate Limitations to Dividends From Concontrolled Section 902 Corporations.

DATES: Written comments should be received on or before October 6, 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 *Evely.J.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application of Separate Limitations to Dividends From Noncontrolled Section 902 Corporations.

OMB Number: 1545–2014.

Form Number: TD 9452.

Abstract: The final regulations require a collection of information in order for a taxpayer to make certain tax elections. The American Jobs Creation Act of 2004 amended the foreign tax credit treatment of dividends from noncontrolled section 902 corporations effective for post-2002 tax years, and the Gulf Opportunity Zone Act of 2005 permitted taxpayers to elect to defer the effective date of these amendments until post-2004 tax years (GOZA election). Treas. Reg. § 1.904–7(f)(9)(ii)(C) requires a taxpayer making the GOZA election to attach a statement to such effect to its next tax return for which the due date (with extensions) is more than 90 days after April 25, 2006. Treas. Reg. § 1.964–1(c)(3) requires certain shareholders making tax elections (section 964 elections) on behalf of a controlled foreign corporation or noncontrolled section 902 corporation to sign a jointly executed consent (that is retained by one designated shareholder) and to attach a statement to their tax returns for the election year.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households, Businesses and other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 25.

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 29, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–18888 Filed 8–6–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one individual whose property and interests in property had been unblocked pursuant to Executive Order 12978 of October 21, 1995, *Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers*.

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') of the individual identified in this notice whose property and interests in property was blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on July 30, 2009.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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

Background

On October 21, 1995, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the ''Order''). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of the Treasury, in consultation with the Attorney General and Secretary of State: (a) To play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On July 30, 2009, the Director of OFAC removed from the SDN List one individual listed below, whose property and interests in property was blocked pursuant to the Order.

The listing of the unblocked individual follows:

DUQUE JARAMILLO, German, c/o APOYOS DIAGNOSTICOS S.A., Tulua, Valle, Colombia; DOB 20 Apr 1951; POB Tulua, Valle, Colombia; citizen Colombia; nationality Colombia; Cedula No. 14972076 (Colombia) (individual) [SDNT].

Dated: July 30, 2009.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E9–18928 Filed 8–6–09; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF VETERANS AFFAIRS

Annual Pay Ranges for Physicians and Dentists of the Veterans Health Administration (VHA)

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by the ''Department of Veterans Affairs Health

Care Personnel Enhancement Act of 2004'' (Pub. L. 108–445, dated December 3, 2004) the Department of Veterans Affairs (VA) is hereby giving notice of annual pay ranges for Veterans Health Administration (VHA) physicians and dentists as prescribed by the Secretary for Department-wide applicability. These annual pay ranges are intended to enhance the flexibility of the Department to recruit, develop, and retain the most highly qualified providers to serve our Nation's veterans and maintain a standard of excellence in the VA healthcare system.

DATES: *Effective Dates:* Annual pay ranges are effective on October 11, 2009.

FOR FURTHER INFORMATION CONTACT: Lauren Kuiper-Rocha, Director, Compensation and Classification Service (055), Office of Human Resources Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7804. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 7431(e)(1)(A), not less often than once every two years, the Secretary must prescribe for Department-wide applicability the minimum and maximum amounts of annual pay that may be paid to VHA physicians and dentists. Further, 38 U.S.C. 7431(e)(1)(B) allows the Secretary to prescribe separate minimum and maximum amounts of pay for a specialty or assignment. In construction of the annual pay ranges, 38 U.S.C. 7431(c)(4)(A) requires the consultation of two or more national surveys of pay for physicians and dentists, as applicable, whether prepared by private, public, or quasi-public entities in order to make a general assessment of the range of pays payable to physicians and dentists. Lastly, 38 U.S.C. 7431(e)(1)(C) states amounts prescribed under paragraph 7431(e) shall be published in the **Federal Register**, and shall not take effect until at least 60 days after date of publication.

Background

The ''Department of Veterans Affairs Health Care Personnel Enhancement Act of 2004'' (Pub. L. 108–445) was signed by the President on December 3, 2004. The major provisions of the law established a new pay system for Veterans Health Administration (VHA) physicians and dentists consisting of base pay, market pay, and performance pay. While the base pay component is set by statute, market pay is intended to reflect the recruitment and retention needs for the specialty or assignment of a particular physician or dentist at a facility. Further, performance pay is intended to recognize the achievement of specific goals and performance objectives prescribed annually. These three components create a system of pay that is driven by both market indicators and employee performance, while recognizing employee tenure in VHA.

Discussion

VA identified and utilized salary survey data sources which most closely represent VA comparability in the areas of practice setting, employment environment, and hospital/healthcare system. The Association of American Medical Colleges (AAMC), Hospital and Healthcare Compensation Service (HHCS), Sullivan, Cotter, and Associates (S&C), Physician Executive Management Center (PEMC), and the Survey of Dental Practice published by the American Dental Association (ADA) were collectively utilized as benchmarks from which to prescribe annual pay ranges for physicians and dentists across the scope of assignments/specialties within the Department. While aggregating the data, a preponderance of weight was given to those surveys which most directly resembled the environment of the Department.

In constructing annual pay ranges to accommodate the more than thirty specialties that currently exist in the VA system, VA continued the practice of grouping specialties into consolidated pay ranges. This allows VA to use multiple sources that yield a high number of physician salary data which helps to minimize disparities and aberrations that may surface from data involving smaller numbers of physicians and dentists for comparison and from sample change from year to year. Thus, by aggregating multiple survey sources into like groupings, greater confidence exists that the average compensation reported is truly representative. In addition, aggregation of data provides for a large enough sample size and provides pay ranges with maximum flexibility for pay setting for the more than 16,000 VHA physicians and dentists.

In developing the annual pay ranges, a few distinctive principles were factored into the compensation analysis of the data. The first principle is to ensure that both the minimum and maximum salary is at a level that accommodates special employment situations, from fellowships and medical research career development awards to Nobel Laureates, high-cost areas, and internationally renowned clinicians. The second principle, to attempt to establish a rate range of ± 25 percent of the mean, is imperative to provide ranges large enough to accommodate career progression, geographic differences, sub-specialization, and special factors. This principle is also the standard recommended by World@Work for professional compensation ranges.

All clinical specialties for VHA physicians and dentists were reviewed against relevant private sector data. The specialties are grouped into five clinical pay ranges that reflect comparable complexity in salary, recruitment, and retention considerations. Two additional pay ranges apply to VHA Chiefs of Staff and physicians and dentists in executive level administrative assignments at the facility, network, or headquarters level.

PAY TABLE 1—CLINICAL SPECIALTY

Tier level	Minimum	Maximum
Tier 1	$96,539	$195,000
Tier 2	110,000	210,000
Tier 3	120,000	235,000
Tier 4	130,000	245,000

PAY TABLE 1—COVERED CLINICAL SPECIALTIES

Allergy and Immunology
Endocrinology
Family Practice
Geriatrics
Hospitalist
Infectious Diseases
Internal Medicine
Neurology
Preventive Medicine
Primary Care
Psychiatry
Rheumatology
General Practice—Dentistry
Endodontics
Periodontics
Prosthodontics
Assignments that do not require a specific specialty

PAY TABLE 2—CLINICAL SPECIALTY

Tier level	Minimum	Maximum
Tier 1	$96,539	$220,000
Tier 2	115,000	230,000
Tier 3	130,000	240,000
Tier 4	140,000	250,000

PAY TABLE 2—COVERED CLINICAL SPECIALTIES

Critical Care (board certified)
Emergency Medicine
Gynecology
Hematology—Oncology
Nephrology
Pathology
Physiatry
Pulmonary

PAY TABLE 3—CLINICAL SPECIALTY

Tier level	Minimum	Maximum
Tier 1	$96,539	$265,000
Tier 2	120,000	275,000
Tier 3	135,000	285,000
Tier 4	145,000	295,000

PAY TABLE 3—COVERED CLINICAL SPECIALTIES

Cardiology (Non-invasive)
Dermatology
Gastroenterology
Nuclear Medicine
Ophthalmology
Oral Surgery
Otolaryngology

PAY TABLE 4—CLINICAL SPECIALTY

Tier level	Minimum	Maximum
Tier 1	$96,539	$295,000
Tier 2	125,000	305,000
Tier 3	140,000	325,000
Tier 4	150,000	335,000

PAY TABLE 4—COVERED CLINICAL SPECIALTIES

Anesthesiology
General Surgery
Plastic Surgery
Radiology
Therapeutic Radiology
Urology
Vascular Surgery

PAY TABLE 5—CHIEF OF STAFF

Tier level	Minimum	Maximum
Tier 1	$150,000	$275,000
Tier 2	145,000	255,000
Tier 3	140,000	235,000

PAY TABLE 6—EXECUTIVE ASSIGNMENTS

Tier Level	Minimum	Maximum
Tier 1	$145,000	$265,000
Tier 2	145,000	245,000
Tier 3	130,000	235,000

PAY TABLE 6—COVERED EXECUTIVE ASSIGNMENTS

Principal Deputy, Deputy and Assistant Under Secretary for Health
Chief Officer and Chief Consultant
Network Director, Medical Center Director and Chief Medical Officer
National Program Manager and other VA Central Office Physician/Dentist

PAY TABLE 7—CLINICAL SPECIALTY

Tier Level	Minimum	Maximum
Tier 1	$96,539	$375,000
Tier 2	140,000	385,000

PAY TABLE 7—COVERED CLINICAL SPECIALTIES

Cardio-Thoracic Surgery
Interventional Cardiology
Interventional Radiology
Neurosurgery
Orthopedic Surgery

Dated: July 31, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. E9–18998 Filed 8–6–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
August 7, 2009

Part II

Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5280–N–30]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *COE:* Ms. Kim Shelton, Army Corps of Engineers, Office of Counsel, CECC–R, 441 G Street, NW., Washington, DC 20314; (202) 761–7696; *GSA:* Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; *VA:* Mr. George Szwarcman, Real Property Service, Department of Veterans Affairs, 811 Vermont Ave., NW., Washington, DC 20420; (202) 565–5398; (These are not toll-free numbers).

Dated: July 30, 2009.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 08/07/2009

Suitable/Available Properties

Building

California

4 Bldgs.
OTH–B Radar Site
Tulelake CA 91634
Landholding Agency: COE
Property Number: 31200840001
Status: Unutilized
Comments: most recent use—communications/vehicle maint., off-site use only

Colorado

Bldg. 2
VAMC
2121 North Avenue
Grand Junction Co: Mesa CO 81501
Landholding Agency: VA
Property Number: 97200430001
Status: Unutilized
Comments: 3298 sq. ft., needs major rehab, presence of asbestos/lead paint.

Bldg. 3
VAMC
2121 North Avenue
Grand Junction Co: Mesa CO 81501
Landholding Agency: VA
Property Number: 97200430002
Status: Unutilized
Comments: 7275 sq. ft., needs major rehab, presence of asbestos/lead paint.

Indiana

Bldg. 105, VAMC
East 38th Street
Marion Co: Grant IN 46952
Landholding Agency: VA
Property Number: 97199230006
Status: Excess
Comments: 310 sq. ft., 1 story stone structure, no sanitary or heating facilities, National Register of Historic Places.

Bldg. 10
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953
Landholding Agency: VA
Property Number: 97199810002
Status: Underutilized
Comments: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places.

Bldg. 11
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953

Landholding Agency: VA
Property Number: 97199810003
Status: Underutilized
Comments: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places.

Bldg. 18
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953
Landholding Agency: VA
Property Number: 97199810004
Status: Underutilized
Comments: 13,802 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places.

Bldg. 25
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953
Landholding Agency: VA
Property Number: 97199810005
Status: Unutilized
Comments: 32,892 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places.

Bldg. 1
N. Indiana Health Care System
Marion Co: Grant IN 46952
Landholding Agency: VA
Property Number: 97200310001
Status: Unutilized
Comments: 20,287 sq. ft., needs extensive repairs, presence of asbestos, most recent use—patient ward.

Bldg. 3
N. Indiana Health Care System
Marion Co: Grant IN 46952
Landholding Agency: VA
Property Number: 97200310002
Status: Unutilized
Comments: 20,550 sq. ft., needs extensive repairs, presence of asbestos, most recent use—patient ward

Bldg. 4
N. Indiana Health Care System
Marion Co: Grant IN 46952
Landholding Agency: VA
Property Number: 97200310003
Status: Unutilized
Comments: 20,550 sq .ft., needs extensive repairs, presence of asbestos, most recent use—patient ward

Bldg. 13
N. Indiana Health Care System
Marion Co: Grant IN 46952
Landholding Agency: VA
Property Number: 97200310004
Status: Unutilized
Comments: 8971 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office.

Bldg. 42
N. Indiana Health Care System
Marion Co: Grant IN 46952
Landholding Agency: VA
Property Number: 97200310007
Status: Unutilized
Comments: 5025 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office.

Bldg. 60
N. Indiana Health Care System
Marion Co: Grant IN 46952
Landholding Agency: VA
Property Number: 97200310008
Status: Unutilized
Comments: 18,126 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office.

Bldg. 122
N. Indiana Health Care System
Marion Co: Grant IN 46952
Landholding Agency: VA
Property Number: 97200310009
Status: Unutilized
Comments: 37,135 sq. ft., needs extensive repairs, presence of asbestos, most recent use—dining hall/kitchen.

Iowa

U.S. Army Reserve Center
904 W. Washington St.
Mount Pleasant IA 52641
Landholding Agency: GSA
Property Number: 54200920018
Status: Excess
GSA Number: 7–D–IA–0509
Comments: approx. 5811 sq. ft., presence of lead paint, most recent use—admin/maint/storage, license/easement, published incorrectly on 7/10/09.

Kansas

Bldg. 01012
Melvern Lake
Melvern KS 66510
Landholding Agency: COE
Property Number: 31200930001
Status: Excess
Comments: 640 sq. ft., metal shop bldg., off-site use only.

Kentucky

Green River Lock #3
Rochester Co: Butler KY 42273
Landholding Agency: COE
Property Number: 31199010022
Status: Unutilized
Directions: SR 70 west from Morgantown, KY., approximately 7 miles to site.
Comments: 980 sq. ft.; 2 story wood frame; two story residence; potential utilities; needs major rehab.

Mississippi

Tract No. 205
Internal Access Roadway
3849 Wisconsin Ave.
Vicksburg MS 39180
Landholding Agency: COE
Property Number: 31200920025
Status: Excess
Comments: 1200 sq. ft., needs repair, off-site use only.

Montana

Bldg. 1
Butte Natl Guard
Butte Co: Silverbow MT 59701
Landholding Agency: COE
Property Number: 31200040010
Status: Unutilized
Comments: 22799 sq. ft., presence of asbestos, most recent use—cold storage, off-site use only.

Bldg. 2
Butte Natl Guard
Butte Co: Silverbow MT 59701
Landholding Agency: COE
Property Number: 31200040011
Status: Unutilized
Comments: 3292 sq. ft., most recent use—cold storage, off-site use only.

Bldg. 3
Butte Natl Guard
Butte Co: Silverbow MT 59701
Landholding Agency: COE
Property Number: 31200040012
Status: Unutilized
Comments: 964 sq. ft., most recent use—cold storage, off-site use only.

Bldg. 4
Butte Natl Guard
Butte Co: Silverbow MT 59701
Landholding Agency: COE
Property Number: 31200040013
Status: Unutilized
Comments: 72 sq. ft., most recent use—cold storage, off-site use only.

Bldg. 5
Butte Natl Guard
Butte Co: Silverbow MT 59701
Landholding Agency: COE
Property Number: 31200040014
Status: Unutilized
Comments: 1286 sq. ft., most recent use—cold storage, off-site use only.

New York

Bldg. 3
VA Medical Center
Batavia Co: Genesee NY 14020
Landholding Agency: VA
Property Number: 97200520001
Status: Unutilized
Comments: 5840 sq. ft., needs rehab, presence of asbestos, most recent use—offices, eligible for Natl Register of Historic Places.

Ohio

Barker Historic House
Willow Island Locks and Dam
Newport Co: Washington OH 45768–9801
Landholding Agency: COE
Property Number: 31199120018
Status: Unutilized
Directions: Located at lock site, downstream of lock and dam structure
Comments: 1600 sq. ft. bldg. with ½ acre of land, 2 story brick frame, needs rehab, on Natl Register of Historic Places, no utilities, off-site use only.

Pennsylvania

Mahoning Creek Reservoir
New Bethlehem Co: Armstrong PA 16242
Landholding Agency: COE
Property Number: 31199210008
Status: Unutilized
Comments: 1015 sq. ft., 2 story brick residence, off-site use only.

Dwelling
Lock 6, Allegheny River, 1260 River Rd.
Freeport Co: Armstrong PA 16229–2023
Landholding Agency: COE
Property Number: 31199620008
Status: Unutilized
Comments: 2652 sq. ft., 3-story brick house, in close proximity to Lock and Dam, available for interim use for nonresidential purposes.

Dwelling
Lock 4, Allegheny River
Natrona Co: Allegheny PA 15065–2609
Landholding Agency: COE

Property Number: 31199710009
Status: Unutilized
Comments: 1664 sq. ft., 2-story brick residence, needs repair, off-site use only.

Dwelling #1
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Landholding Agency: COE
Property Number: 31199740002
Status: Excess
Comments: 2030 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Landholding Agency: COE
Property Number: 31199740003
Status: Excess
Comments: 3045 sq. ft., most recent use—residential, good condition, off-site use only.

Govt Dwelling
East Branch Lake
Wilcox Co: Elk PA 15870–9709
Landholding Agency: COE
Property Number: 31199740005
Status: Underutilized
Comments: approx. 5299 sq. ft., 1-story, most recent use—residence, off-site use only.

Dwelling #1
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Landholding Agency: COE
Property Number: 31199740006
Status: Excess
Comments: 1996 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #2
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Landholding Agency: COE
Property Number: 31199740007
Status: Excess
Comments: 1996 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #1
Woodcock Creek Lake
Saegertown Co: Crawford PA 16433–0629
Landholding Agency: COE
Property Number: 31199740008
Status: Excess
Comments: 2106 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #2
Lock 6, 1260 River Road
Freeport Co: Armstrong PA 16229–2023
Landholding Agency: COE
Property Number: 31199740009
Status: Excess
Comments: 2652 sq. ft., most recent use—residential, good condition, off-site use only.

Residence A
2045 Pohopoco Drive
Lehighton Co: Carbon PA 18235
Landholding Agency: COE
Property Number: 31200410007
Status: Unutilized
Comments: 1200 sq. ft., presence of asbestos, off-site use only.

Wisconsin

Bldg. 8
VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660
Landholding Agency: VA
Property Number: 97199010056
Status: Underutilized
Comments: 2200 sq. ft., 2 story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab.

Land

Alabama

VA Medical Center
VAMC
Tuskegee Co: Macon AL 36083
Landholding Agency: VA
Property Number: 97199010053
Status: Underutilized
Comments: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped.

Land

California

Quincy Scaling Station
1495 E. Main St.
Quincy CA 95971
Landholding Agency: GSA
Property Number: 54200930004
Status: Surplus
GSA Number: 9–A–CA–1679–1
Comments: 0.98 acre.

Land
4150 Clement Street
San Francisco Co: San Francisco CA 94121
Landholding Agency: VA
Property Number: 97199240001
Status: Underutilized
Comments: 4 acres; landslide area.

Iowa

40.66 acres
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138
Landholding Agency: VA
Property Number: 97199740002
Status: Unutilized
Comments: golf course, easement requirements.

Kentucky

Tract 2625
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211
Landholding Agency: COE
Property Number: 31199010025
Status: Excess
Directions: Adjoining the village of Rockcastle.
Comments: 2.57 acres; rolling and wooded.

Tract 2709–10 and 2710–2
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211
Landholding Agency: COE
Property Number: 31199010026
Status: Excess
Directions: 2½ miles in a southerly direction from the village of Rockcastle.
Comments: 2.00 acres; steep and wooded.

Tract 2708–1 and 2709–1
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211
Landholding Agency: COE
Property Number: 31199010027
Status: Excess
Directions: 2½ miles in a southerly direction from the village of Rockcastle.
Comments: 3.59 acres; rolling and wooded; no utilities.

Tract 2800
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211
Landholding Agency: COE
Property Number: 31199010028
Status: Excess
Directions: 4½ miles in a southeasterly direction from the village of Rockcastle.
Comments: 5.44 acres; steep and wooded.

Tract 2915
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211
Landholding Agency: COE
Property Number: 31199010029
Status: Excess
Directions: 6½ miles west of Cadiz.
Comments: 5.76 acres; steep and wooded; no utilities.

Tract 2702
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211
Landholding Agency: COE
Property Number: 31199010031
Status: Excess
Directions: 1 mile in a southerly direction from the village of Rockcastle.
Comments: 4.90 acres; wooded; no utilities.

Tract 4318
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Landholding Agency: COE
Property Number: 31199010032
Status: Excess
Directions: Trigg Co. adjoining the city of Canton, KY, on the waters of Hopson Creek.
Comments: 8.24 acres; steep and wooded.

Tract 4502
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Landholding Agency: COE
Property Number: 31199010033
Status: Excess
Directions: 3½ miles in a southerly direction from Canton, KY.
Comments: 4.26 acres; steep and wooded.

Tract 4611
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Landholding Agency: COE
Property Number: 31199010034
Status: Excess
Directions: 5 miles south of Canton, KY.
Comments: 10.51 acres; steep and wooded; no utilities.

Tract 4619
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Landholding Agency: COE
Property Number: 31199010035
Status: Excess
Directions: 4½ miles south from Canton, KY.
Comments: 2.02 acres; steep and wooded; no utilities.

Tract 4817
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Landholding Agency: COE

Property Number: 31199010036
Status: Excess
Directions: 6½ miles south of Canton, KY.
Comments: 1.75 acres; wooded.

Tract 1217
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Landholding Agency: COE
Property Number: 31199010042
Status: Excess
Directions: On the north side of the Illinois Central Railroad.
Comments: 5.80 acres; steep and wooded.

Tract 1906
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Landholding Agency: COE
Property Number: 31199010044
Status: Excess
Directions: Approximately 4 miles east of Eddyville, KY.
Comments: 25.86 acres; rolling steep and partially wooded; no utilities.

Tract 1907
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038
Landholding Agency: COE
Property Number: 31199010045
Status: Excess
Directions: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY
Comments: 8.71 acres; rolling steep and wooded; no utilities.

Tract 2001 #1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Landholding Agency: COE
Property Number: 31199010046
Status: Excess
Directions: Approximately 4½ miles east of Eddyville, KY.
Comments: 47.42 acres; steep and wooded; no utilities.

Tract 2001 #2
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Landholding Agency: COE
Property Number: 31199010047
Status: Excess
Directions: Approximately 4½ miles east of Eddyville, KY.
Comments: 8.64 acres; steep and wooded; no utilities.

Tract 2005
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Landholding Agency: COE
Property Number: 31199010048
Status: Excess
Directions: Approximately 5½ miles east of Eddyville, KY.
Comments: 4.62 acres; steep and wooded; no utilities.

Tract 2307
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Landholding Agency: COE
Property Number: 31199010049
Status: Excess
Directions: Approximately 7½ miles southeasterly of Eddyville, KY.
Comments: 11.43 acres; steep; rolling and wooded; no utilities.

Tract 2403
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Landholding Agency: COE
Property Number: 31199010050
Status: Excess
Directions: 7 miles southeasterly of Eddyville, KY.
Comments: 1.56 acres; steep and wooded; no utilities.

Tract 2504
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Landholding Agency: COE
Property Number: 31199010051
Status: Excess
Directions: 9 miles southeasterly of Eddyville, KY.
Comments: 24.46 acres; steep and wooded; no utilities.

Tract 214
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Landholding Agency: COE
Property Number: 31199010052
Status: Excess
Directions: South of the Illinois Central Railroad, 1 mile east of the Cumberland River.
Comments: 5.5 acres; wooded; no utilities.

Tract 215
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Landholding Agency: COE
Property Number: 31199010053
Status: Excess
Directions: 5 miles southwest of Kuttawa
Comments: 1.40 acres; wooded; no utilities.

Tract 241
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Landholding Agency: COE
Property Number: 31199010054
Status: Excess
Directions: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Comments: 1.26 acres; steep and wooded; no utilities.

Tracts 306, 311, 315 and 325
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Landholding Agency: COE
Property Number: 31199010055
Status: Excess
Directions: 2.5 miles southwest of Kuttawa, KY, on the waters of Cypress Creek.
Comments: 38.77 acres; steep and wooded; no utilities.

Tracts 2305, 2306, and 2400–1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Landholding Agency: COE
Property Number: 31199010056
Status: Excess
Directions: 6½ miles southeasterly of Eddyville, KY.
Comments: 97.66 acres; steep rolling and wooded; no utilities.

Tracts 5203 and 5204
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212
Landholding Agency: COE
Property Number: 31199010058
Status: Excess
Directions: Village of Linton, KY state highway 1254.
Comments: 0.93 acres; rolling, partially wooded; no utilities.

Tract 5240
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212
Landholding Agency: COE
Property Number: 31199010059
Status: Excess
Directions: 1 mile northwest of Linton, KY.
Comments: 2.26 acres; steep and wooded; no utilities.

Tract 4628
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Landholding Agency: COE
Property Number: 31199011621
Status: Excess
Directions: 4½ miles south from Canton, KY.
Comments: 3.71 acres; steep and wooded; subject to utility easements.

Tract 4619–B
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Landholding Agency: COE
Property Number: 31199011622
Status: Excess
Directions: 4½ miles south from Canton, KY.
Comments: 1.73 acres; steep and wooded; subject to utility easements.

Tract 2403–B
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038
Landholding Agency: COE
Property Number: 31199011623
Status: Unutilized
Directions: 7 miles southeasterly from Eddyville, KY.
Comments: 0.70 acres; wooded; subject to utility easements.

Tract 241–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Landholding Agency: COE
Property Number: 31199011624
Status: Excess
Directions: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Comments: 11.16 acres; steep and wooded; subject to utility easements.

Tracts 212 and 237
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Landholding Agency: COE
Property Number: 31199011625
Status: Excess
Directions: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Comments: 2.44 acres; steep and wooded; subject to utility easements.

Tract 215–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Landholding Agency: COE
Property Number: 31199011626
Status: Excess
Directions: 5 miles southwest of Kuttawa, KY
Comments: 1.00 acres; wooded; subject to utility easements.

Tract 233
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Landholding Agency: COE
Property Number: 31199011627
Status: Excess

Directions: 5 miles southwest of Kuttawa, KY
Comments: 1.00 acres; wooded; subject to utility easements.

Tract N–819
Dale Hollow Lake Project
Illwill Creek, Hwy 90
Hobart Co: Clinton KY 42601
Landholding Agency: COE
Property Number: 31199140009
Status: Underutilized
Comments: 91 acres, most recent use—hunting, subject to existing easements.

Louisiana

Raceland Radio Tower
State 652
Raceland LA
Landholding Agency: GSA
Property Number: 54200930005
Status: Surplus
GSA Number: 7–D–LA–573
Comments: 1.8 acres.

Maine

0.23 acres
Webster Ave.
Bangor ME
Landholding Agency: COE
Property Number: 31200930011
Status: Excess
Comments: limited access, zoned ''Parks and Open Space''.

Oklahoma

Pine Creek Lake
Section 27
(See County) Co: McCurtain OK
Landholding Agency: COE
Property Number: 31199010923
Status: Unutilized
Comments: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3.

Pennsylvania

Mahoning Creek Lake
New Bethlehem Co: Armstrong PA 16242–9603
Landholding Agency: COE
Property Number: 31199010018
Status: Excess
Directions: Route 28 north to Belknap, Road #4
Comments: 2.58 acres; steep and densely wooded.

Tracts 610, 611, 612
Shenango River Lake
Sharpsville Co: Mercer PA 16150
Landholding Agency: COE
Property Number: 31199011001
Status: Excess
Directions: I–79 North, I–80 West, Exit Sharon. R18 North 4 miles, left on R518, right on Mercer Avenue.
Comments: 24.09 acres; subject to flowage easement.

Tracts L24, L26
Crooked Creek Lake
null Co: Armstrong PA 03051
Landholding Agency: COE
Property Number: 31199011011
Status: Unutilized
Directions: Left bank—55 miles downstream of dam.
Comments: 7.59 acres; potential for utilities.

Portion of Tract L–21A
Crooked Creek Lake, LR 03051
Ford City Co: Armstrong PA 16226
Landholding Agency: COE
Property Number: 31199430012
Status: Unutilized
Comments: Approximately 1.72 acres of undeveloped land, subject to gas rights.

Tennessee

Tract 6827
Barkley Lake
Dover Co: Stewart TN 37058
Landholding Agency: COE
Property Number: 31199010927
Status: Excess
Directions: 2½ miles west of Dover, TN.
Comments: .57 acres; subject to existing easements.

Tracts 6002–2 and 6010
Barkley Lake
Dover Co: Stewart TN 37058
Landholding Agency: COE
Property Number: 31199010928
Status: Excess
Directions: 3½ miles south of village of Tabaccoport.
Comments: 100.86 acres; subject to existing easements.

Tract 11516
Barkley Lake
Ashland City Co: Dickson TN 37015
Landholding Agency: COE
Property Number: 31199010929
Status: Excess
Directions: ½ mile downstream from Cheatham Dam
Comments: 26.25 acres; subject to existing easements.

Tract 2319
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130
Landholding Agency: COE
Property Number: 31199010930
Status: Excess
Directions: West of Buckeye Bottom Road
Comments: 14.48 acres; subject to existing easements.

Tract 2227
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130
Landholding Agency: COE
Property Number: 31199010931
Status: Excess
Directions: Old Jefferson Pike
Comments: 2.27 acres; subject to existing easements.

Tract 2107
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130
Landholding Agency: COE
Property Number: 31199010932
Status: Excess
Directions: Across Fall Creek near Fall Creek camping area.
Comments: 14.85 acres; subject to existing easements.

Tracts 2601, 2602, 2603, 2604
Cordell Hull Lake and Dam Project
Doe Row Creek
Gainesboro Co: Jackson TN 38562
Landholding Agency: COE
Property Number: 31199010933
Status: Unutilized
Directions: TN Highway 56
Comments: 11 acres; subject to existing easements.

Tract 1911
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130
Landholding Agency: COE
Property Number: 31199010934
Status: Excess
Directions: East of Lamar Road
Comments: 6.92 acres; subject to existing easements.

Tract 7206
Barkley Lake
Dover Co: Stewart TN 37058
Landholding Agency: COE
Property Number: 31199010936
Status: Excess
Directions: 2½ miles SE of Dover, TN.
Comments: 10.15 acres; subject to existing easements.

Tracts 8813, 8814
Barkley Lake
Cumberland Co: Stewart TN 37050
Landholding Agency: COE
Property Number: 31199010937
Status: Excess
Directions: 1½ miles East of Cumberland City.
Comments: 96 acres; subject to existing easements.

Tract 8911
Barkley Lake
Cumberland City Co: Montgomery TN 37050
Landholding Agency: COE
Property Number: 31199010938
Status: Excess
Directions: 4 miles east of Cumberland City.
Comments: 7.7 acres; subject to existing easements.

Tract 11503
Barkley Lake
Ashland City Co: Cheatham TN 37015
Landholding Agency: COE
Property Number: 31199010939
Status: Excess
Directions: 2 miles downstream from Cheatham Dam.
Comments: 1.1 acres; subject to existing easements.

Tracts 11523, 11524
Barkley Lake
Ashland City Co: Cheatham TN 37015
Landholding Agency: COE
Property Number: 31199010940
Status: Excess
Directions: 2½ miles downstream from Cheatham Dam.
Comments: 19.5 acres; subject to existing easements.

Tract 6410
Barkley Lake
Bumpus Mills Co: Stewart TN 37028
Landholding Agency: COE
Property Number: 31199010941
Status: Excess
Directions: 4½ miles SW. of Bumpus Mills.
Comments: 17 acres; subject to existing easements.

Tract 9707
Barkley Lake
Palmyer Co: Montgomery TN 37142
Landholding Agency: COE
Property Number: 31199010943
Status: Excess
Directions: 3 miles NE of Palmyer, TN. Highway 149.

Comments: 6.6 acres; subject to existing easements.

Tract 6949
Barkley Lake
Dover Co: Stewart TN 37058
Landholding Agency: COE
Property Number: 31199010944
Status: Excess
Directions: 1½ miles SE of Dover, TN.
Comments: 29.67 acres; subject to existing easements.

Tracts 6005 and 6017
Barkley Lake
Dover Co: Stewart TN 37058
Landholding Agency: COE
Property Number: 31199011173
Status: Excess
Directions: 3 miles south of Village of Tobaccoport.
Comments: 5 acres; subject to existing easements.

Tracts K–1191, K–1135
Old Hickory Lock and Dam
Hartsville Co: Trousdale TN 37074
Landholding Agency: COE
Property Number: 31199130007
Status: Underutilized
Comments: 54 acres, (portion in floodway), most recent use—recreation.

Tract A–102
Dale Hollow Lake Project
Canoe Ridge, State Hwy 52
Celina Co: Clay TN 38551
Landholding Agency: COE
Property Number: 31199140006
Status: Underutilized
Comments: 351 acres, most recent use—hunting, subject to existing easements.

Tract A–120
Dale Hollow Lake Project
Swann Ridge, State Hwy No. 53
Celina Co: Clay TN 38551
Landholding Agency: COE
Property Number: 31199140007
Status: Underutilized
Comments: 883 acres, most recent use—hunting, subject to existing easements.

Tract D–185
Dale Hollow Lake Project
Ashburn Creek, Hwy No. 53
Livingston Co: Clay TN 38570
Landholding Agency: COE
Property Number: 31199140010
Status: Underutilized
Comments: 97 acres, most recent use—hunting, subject to existing easements.

Texas

Land
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504
Landholding Agency: VA
Property Number: 97199010079
Status: Underutilized
Comments: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities.

Wisconsin

VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660
Landholding Agency: VA
Property Number: 97199010054
Status: Underutilized
Comments: 12.4 acres, serves as buffer between center and private property, no utilities.

Suitable/Unavailable Properties

Building

Illinois

Bldg. 7
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Landholding Agency: COE
Property Number: 31199010001
Status: Unutilized
Directions: Ohio River Locks and Dam No. 53 at Grand Chain
Comments: 900 sq. ft.; 1 floor wood frame; most recent use—residence.

Bldg. 6
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Landholding Agency: COE
Property Number: 31199010002
Status: Unutilized
Directions: Ohio River Locks and Dam No. 53 at Grand Chain
Comments: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 5
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Landholding Agency: COE
Property Number: 31199010003
Status: Unutilized
Directions: Ohio River Locks and Dam No. 53 at Grand Chain
Comments: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 4
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Landholding Agency: COE
Property Number: 31199010004
Status: Unutilized
Directions: Ohio River Locks and Dam No. 53 at Grand Chain
Comments: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 3
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Landholding Agency: COE
Property Number: 31199010005
Status: Unutilized
Directions: Ohio River Locks and Dam No. 53 at Grand Chain
Comments: 900 sq. ft.; one floor wood frame.

Bldg. 2
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Landholding Agency: COE
Property Number: 31199010006
Status: Unutilized
Directions: Ohio River Locks and Dam No. 53 at Grand Chain
Comments: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 1
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Landholding Agency: COE
Property Number: 31199010007
Status: Unutilized
Directions: Ohio River Locks and Dam No. 53 at Grand Chain
Comments: 900 sq. ft.; one floor wood frame; most recent use—residence.

Montana

VA MT Healthcare
210 S. Winchester
Miles City Co: Custer MT 59301
Landholding Agency: VA
Property Number: 97200030001
Status: Underutilized
Comments: 18 buildings, total sq. ft. = 123,851, presence of asbestos, most recent use—clinic/office/food production.

Ohio

Bldg.—Berlin Lake
7400 Bedell Road
Berlin Center Co: Mahoning OH 44401–9797
Landholding Agency: COE
Property Number: 31199640001
Status: Unutilized
Comments: 1420 sq. ft., 2-story brick w/ garage and basement, most recent use—residential, secured w/alternate access.

Bldg. 116
VA Medical Center
Dayton Co: Montgomery OH 45428
Landholding Agency: VA
Property Number: 97199920002
Status: Unutilized
Comments: 3 floors, potential utilities, needs major rehab, presence of asbestos/lead paint, historic property.

Pennsylvania

Tract 403A
Grays Landing Lock Project
Greensboro Co: Greene PA 15338
Landholding Agency: COE
Property Number: 31199430021
Status: Unutilized
Comments: 620 sq. ft., 2-story, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site.

Tract 403B
Grays Landing Lock Project
Greensboro Co: Greene PA 15338
Landholding Agency: COE
Property Number: 31199430022
Status: Unutilized
Comments: 1600 sq. ft., 2-story, brick structure, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site.

Tract 403C
Grays Landing Lock Project
Greensboro Co: Greene PA 15338
Landholding Agency: COE
Property Number: 31199430023
Status: Unutilized
Comments: 672 sq. ft., 2-story carriage house/ stable barn type structure, needs repair, most recent use—storage/garage, if used for habitation must be flood proofed or removed.

Wisconsin

Bldg. 2
VA Medical Center
5000 West National Ave.
Milwaukee WI 53295
Landholding Agency: VA
Property Number: 97199830002
Status: Underutilized

Comments: 133,730 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage.

Land

Illinois

Lake Shelbyville
Shelbyville Co: Shelby IL 62565–9804
Landholding Agency: COE
Property Number: 31199240004
Status: Unutilized
Comments: 5 parcels of land equalling 0.70 acres, improved w/4 small equipment storage bldgs. and a small access road, easement restrictions.

Iowa

38 acres
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138
Landholding Agency: VA
Property Number: 97199740001
Status: Unutilized
Comments: golf course.

Michigan

VA Medical Center
5500 Armstrong Road
Battle Creek Co: Calhoun MI 49016
Landholding Agency: VA
Property Number: 97199010015
Status: Underutilized
Comments: 20 acres, used as exercise trails and storage areas, potential utilities.

Pennsylvania

East Branch Clarion River Lake
Wilcox Co: Elk PA
Landholding Agency: COE
Property Number: 31199011012
Status: Underutilized
Directions: Free camping area on the right bank off entrance roadway.
Comments: 1 acre; most recent use—free campground.

Dashields Locks and Dam
(Glenwillard, PA)
Crescent Twp. Co: Allegheny PA 15046–0475
Landholding Agency: COE
Property Number: 31199210009
Status: Unutilized
Comments: 0.58 acres, most recent use—baseball field.

VA Medical Center
New Castle Road
Butler Co: Butler PA 16001
Landholding Agency: VA
Property Number: 97199010016
Status: Underutilized
Comments: Approx. 9.29 acres, used for patient recreation, potential utilities.

Land No. 645
VA Medical Center
Highland Drive
Pittsburgh Co: Allegheny PA 15206
Landholding Agency: VA
Property Number: 97199010080
Status: Unutilized
Directions: Between Campania and Wiltsie Streets.
Comments: 90.3 acres, heavily wooded, property includes dump area and numerous site storm drain outfalls.

Land—34.16 acres
VA Medical Center
1400 Black Horse Hill Road
Coatesville Co: Chester PA 19320
Landholding Agency: VA
Property Number: 97199340001
Status: Underutilized
Comments: 34.16 acres, open field, most recent use—recreation/buffer.

Suiitable/To Be Excessed

Land

Georgia

Lake Sidney Lanier
null Co: Forsyth GA 30130
Landholding Agency: COE
Property Number: 31199440010
Status: Unutilized
Directions: Located on Two Mile Creek adj. to State Route 369
Comments: 0.25 acres, endangered plant species.

Lake Sidney Lanier-3 parcels
Gainesville Co: Hall GA 30503
Landholding Agency: COE
Property Number: 31199440011
Status: Unutilized
Directions: Between Gainesville H.S. and State Route 53 By-Pass
Comments: 3 parcels totalling 5.17 acres, most recent use—buffer zone, endangered plant species.

Massachusetts

Buffumville Dam
Flood Control Project
Gale Road
Carlton Co: Worcester MA 01540–0155
Landholding Agency: COE
Property Number: 31199010016
Status: Excess
Directions: Portion of tracts B–200, B–248, B–251, B–204, B–247, B–200 and B–256
Comments: 1.45 acres.

Tennessee

Tract D–456
Cheatham Lock and Dam
Ashland Co: Cheatham TN 37015
Landholding Agency: COE
Property Number: 31199010942
Status: Excess
Directions: Right downstream bank of Sycamore Creek.
Comments: 8.93 acres; subject to existing easements.

Texas

Corpus Christi Ship Channel
Corpus Christi Co: Neuces TX
Landholding Agency: COE
Property Number: 31199240001
Status: Unutilized
Directions: East side of Carbon Plant Road, approx. 14 miles NW of downtown Corpus Christi
Comments: 4.4 acres, most recent use—farm land.

Unsuitable Properties

Building

Alabama

Comfort Station
Clailborne Lake
Camden AL 36726
Landholding Agency: COE
Property Number: 31200540001
Status: Unutilized
Reasons: Extensive deterioration

Pumphouse
Dannelly Reservoir
Camden AL 36726
Landholding Agency: COE
Property Number: 31200540002
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 7
VA Medical Center
Tuskegee Co: Macon AL 36083
Landholding Agency: VA
Property Number: 97199730001
Status: Underutilized
Reasons: Secured Area

Bldg. 8
VA Medical Center
Tuskegee Co: Macon AL 36083
Landholding Agency: VA
Property Number: 97199730002
Status: Underutilized
Reasons: Secured Area

Arkansas

Dwelling
Bull Shoals Lake/Dry Run Road
Oakland Co: Marion AR 72661
Landholding Agency: COE
Property Number: 31199820001
Status: Unutilized
Reasons: Extensive deterioration

Helena Casting Plant
Helena Co: Phillips AR 72342
Landholding Agency: COE
Property Number: 31200220001
Status: Unutilized
Reasons: Extensive deterioration

BSHOAL–43560
Mountain Home Project
Mountain Home AR 72653
Landholding Agency: COE
Property Number: 31200630001
Status: Unutilized
Reasons: Extensive deterioration

BSHOAL–43561
Mountain Home Project
Mountain Home AR 72653
Landholding Agency: COE
Property Number: 31200630002
Status: Unutilized
Reasons: Extensive deterioration

BSHOAL–43652
Mountain Home Project
Mountain Home AR 72653
Landholding Agency: COE
Property Number: 31200630003
Status: Unutilized
Reasons: Extensive deterioration

NRFORK–48769
Mountain Home Project
Mountain Home AR 72653
Landholding Agency: COE
Property Number: 31200630004
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 43336, 44910, 44949
Nimrod-Blue Mountain Project
Plainview AR 72858
Landholding Agency: COE
Property Number: 31200630005
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 44913, 44925

Nimrod-Blue Mountain Project
Plainview AR 72857
Landholding Agency: COE
Property Number: 31200630006
Status: Unutilized
Reasons: Extensive deterioration

Well House
Mountain Home Project
Mountain Home AR 72653
Landholding Agency: COE
Property Number: 31200820001
Status: Unutilized
Reasons: Secured Area

California

Soil Testing Lab
Sausalito CA 00000
Landholding Agency: COE
Property Number: 31199920002
Status: Excess
Reasons: Other—contamination

Bldg. S 00108
Sharpe
Lathrop CA 95231
Landholding Agency: COE
Property Number: 31200820002
Status: Underutilized
Reasons: Secured Area

Connecticut

Hezekiah S. Ramsdell Farm
West Thompson Lake
North Grosvenordale Co: Windham CT 06255–9801
Landholding Agency: COE
Property Number: 31199740001
Status: Unutilized
Reasons: Extensive deterioration; Floodway

Florida

Bldg. SF–17
Sub-Office Operations
Clewiston Co: Hendry FL 33440
Landholding Agency: COE
Property Number: 31200430005
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. SF–33
Franklin Lock
Alva Co: Lee FL 33920
Landholding Agency: COE
Property Number: 31200620008
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 25
(f) Richmond Naval Air Station
15810 SW 129th Ave.
Miami Co: Dade FL 33177
Landholding Agency: COE
Property Number: 31200620031
Status: Excess
Reasons: Extensive deterioration

Bldg. SF–14
S. Florida Operations Ofc. Reservation
Clewiston Co: Hendry FL 33440
Landholding Agency: COE
Property Number: 31200710001
Status: Unutilized
Reasons: Secured Area

Bldg. L–10
Jim Woodruff Reservoir
Chattachoochee FL 32324
Landholding Agency: COE
Property Number: 31200820003
Status: Unutilized
Reasons: Extensive deterioration

Bldg. SF–78
Lock & Dam
Moore Haven FL
Landholding Agency: COE
Property Number: 31200920026
Status: Unutilized
Reasons: Extensive deterioration

Georgia

Bldg. #WRSH18
West Point Lake
West Point GA 31833
Landholding Agency: COE
Property Number: 31200430006
Status: Unutilized
Reasons: Secured Area

Bldg. W03
West Point Lake
West Point GA 31833
Landholding Agency: COE
Property Number: 31200430007
Status: Unutilized
Reasons: Secured Area; Within 2000 ft. of flammable or explosive material; Extensive deterioration

Gatehouse #W03
West Point Lake
West Point GA 31833–9517
Landholding Agency: COE
Property Number: 31200510001
Status: Unutilized
Reasons: Extensive deterioration

WRSH14, WRSH15, WRSH18
West Point Lake
West Point GA 31833–9517
Landholding Agency: COE
Property Number: 31200510002
Status: Unutilized
Reasons: Extensive deterioration

Pumphouse
Carters Lake
Oakman GA 30732
Landholding Agency: COE
Property Number: 31200520002
Status: Unutilized
Reasons: Extensive deterioration

Vault Toilet
Lake Sidney Lanier
Buford GA 30518
Landholding Agency: COE
Property Number: 31200540003
Status: Unutilized
Reasons: Extensive deterioration

Bldg. WC–19
Walter F. George Lake
Fort Gaines GA 39851
Landholding Agency: COE
Property Number: 31200630007
Status: Unutilized
Reasons: Extensive deterioration

Radio Room
Walter F. George Lake
Ft. Gaines GA 39851
Landholding Agency: COE
Property Number: 31200640004
Status: Unutilized
Reasons: Extensive deterioration

Bldg. JST–16711
Hesters Ferry Campground
Lincoln GA
Landholding Agency: COE
Property Number: 31200710002
Status: Unutilized
Reasons: Extensive deterioration

4 Bldgs.
West Point Lake
WH16, WH18, WR02, WA03
West Point GA 31833
Landholding Agency: COE
Property Number: 31200820004
Status: Unutilized
Reasons: Extensive deterioration

Pumphouse
Carters Lake
Oakman GA 30732
Landholding Agency: COE
Property Number: 31200820005
Status: Unutilized
Reasons: Extensive deterioration

4 Stables
Di-Lane Plantation
Elberton GA 30635
Landholding Agency: COE
Property Number: 31200820006
Status: Unutilized
Reasons: Extensive deterioration

9 Comfort Stations
Hartwell Lake & Dam
Hartwell GA 30643
Landholding Agency: COE
Property Number: 31200920001
Status: Unutilized
Directions: HAR 16099, 16100, 16102, 16555, 16920, 16838, 18482, 18483
Reasons: Extensive deterioration

RBR–19069
Richard B. Russell Lake
Elberton GA 30635
Landholding Agency: COE
Property Number: 31200920002
Status: Unutilized
Reasons: Extensive deterioration

5 Comfort Stations
Hartwell Lake & Dam
Hartwell GA 30643
Landholding Agency: COE
Property Number: 31200920027
Status: Unutilized
Directions: HAR–16113, 18157, 18172, 18357, 18524
Reasons: Extensive deterioration

Well House #3
JST–15732
McCormick GA
Landholding Agency: COE
Property Number: 31200920028
Status: Unutilized
Reasons: Extensive deterioration

Idaho

Bldg. AFD0070
Albeni Falls Dam
Oldtown Co: Bonner ID 83822
Landholding Agency: COE
Property Number: 31199910001
Status: Unutilized
Reasons: Extensive deterioration

Illinois

Bldg. CB562–7141
Wilborn Creek
Shelbyville IL 62565
Landholding Agency: COE
Property Number: 31200620009
Status: Excess
Reasons: Extensive deterioration

Bldg. CB562–7153
Wilborn Creek
Shelbyville IL 62565

Landholding Agency: COE
Property Number: 31200620010
Status: Excess
Reasons: Extensive deterioration

Bldg. CB562–7162
Bo Wood
Shelbyville IL 62565
Landholding Agency: COE
Property Number: 31200620011
Status: Excess
Reasons: Extensive deterioration

Bldg. CB562–7163
Bo Wood
Shelbyville IL 62565
Landholding Agency: COE
Property Number: 31200620012
Status: Excess
Reasons: Extensive deterioration

Bldg. CB562–7164
Bo Wood
Shelbyville IL 62565
Landholding Agency: COE
Property Number: 31200620013
Status: Excess
Reasons: Extensive deterioration

Bldg. CB562–7165
Bo Wood
Shelbyville IL 62565
Landholding Agency: COE
Property Number: 31200620014
Status: Excess
Reasons: Extensive deterioration

Bldg. CB562–7196
Whitley Creek
Shelbyville IL 62565
Landholding Agency: COE
Property Number: 31200620015
Status: Excess
Reasons: Extensive deterioration

Bldg. CB562–7197
Whitley Creek
Shelbyville IL 62565
Landholding Agency: COE
Property Number: 31200620016
Status: Excess
Reasons: Extensive deterioration

Bldg. CB562–7199
Whitley Creek
Shelbyville IL 62565
Landholding Agency: COE
Property Number: 31200620017
Status: Excess
Reasons: Extensive deterioration

Bldg. CB562–7200
Whitley Creek
Shelbyville IL 62565
Landholding Agency: COE
Property Number: 31200620018
Status: Excess
Reasons: Extensive deterioration

Bldg. CB562–9042
Whitley Creek
Shelbyville IL 62565
Landholding Agency: COE
Property Number: 31200620019
Status: Excess
Reasons: Extensive deterioration

Bldg. CB639–7876
Rend Lake
Benton IL 62812
Landholding Agency: COE
Property Number: 31200620020
Status: Excess
Reasons: Extensive deterioration

Fee Booth
Bo Wood Recreation Area
Shelbyville IL 62565
Landholding Agency: COE
Property Number: 31200630008
Status: Unutilized
Reasons: Extensive deterioration

Comfort Station
Rend Lake
Benton IL 62812
Landholding Agency: COE
Property Number: 31200710004
Status: Excess
Reasons: Extensive deterioration

Comfort Station
Rend Lake Project
Benton IL 62812
Landholding Agency: COE
Property Number: 31200740001
Status: Excess
Reasons: Extensive deterioration

Repair Unit Land
400 Old Rock Rd.
Granite City IL 62040
Landholding Agency: COE
Property Number: 31200920005
Status: Unutilized
Reasons: Extensive deterioration

22 Comfort Stations
Carlyle Lake Project
Carlyle IL 62231
Landholding Agency: COE
Property Number: 31200920032
Status: Unutilized
Directions: CB561–7908, 7909, 7911, 7926, 7927, 7997, 7998, 7999, 8016, 8035, 8037, 8038, 8039, 8040, 8041, 8042, 8078, 8079, 8081, 8097, 8106, 8126
Reasons: Extensive deterioration

8 Bldgs.
Lake Shelbyville Project
Shelbyville IL 62565
Landholding Agency: COE
Property Number: 31200920033
Status: Excess
Directions: CB562–7062, 7087, 7088, 7089, 7106, 7140, 7166, 9038
Reasons: Extensive deterioration

23 Bldgs.
Rend Lake Project
Benton IL 62812
Landholding Agency: COE
Property Number: 31200920034
Status: Excess
Directions: CB639–7750, 8771, 7757, 7800, 7801, 7811, 7824, 7833, 7834, 7835, 7836, 7838, 7842, 7840, 7839, 7841, 7850, 7870, 7874, 7875, 7877, 7878, 7891
Reasons: Extensive deterioration

Indiana

Bldg. 62, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952
Landholding Agency: VA
Property Number: 97199230003
Status: Excess
Reasons: Extensive deterioration

Iowa

Treatment Plant
South Fork Park
Mystic Co: Appanoose IA 52574
Landholding Agency: COE
Property Number: 31200220002
Status: Excess
Reasons: Extensive deterioration

Storage Bldg.
Rathbun Project
Moravia Co: Appanoose IA 52571
Landholding Agency: COE
Property Number: 31200330001
Status: Excess
Reasons: Extensive deterioration

Bldg.
Island View Park
Rathbun Project
Centerville Co: Appanoose IA 52544
Landholding Agency: COE
Property Number: 31200330002
Status: Excess
Reasons: Extensive deterioration

Tract 137
Camp Dodge
Johnston Co: Polk IA 50131–1902
Landholding Agency: COE
Property Number: 31200410001
Status: Excess
Reasons: Extensive deterioration

Rathbun 29369, 29368
Island View Park
Centerville Co: Appanoose IA 52544
Landholding Agency: COE
Property Number: 31200510003
Status: Excess
Reasons: Extensive deterioration

RTHBUN–79326
Buck Creek Park
Centerville Co: Appanoose IA 52544
Landholding Agency: COE
Property Number: 31200520004
Status: Excess
Reasons: Extensive deterioration

Bldg.
Buck Creek Park
Centerville Co: Appanoose IA 52544
Landholding Agency: COE
Property Number: 31200610001
Status: Excess
Reasons: Extensive deterioration

4 Bldgs.
Island View Park
Centerville IA 52544
Landholding Agency: COE
Property Number: 31200920003
Status: Excess
Directions: RTHBUN 29375, 29371, 29366, 29364
Reasons: Extensive deterioration

Bldg. RTHBUN 29308
Bridge View Park
Melrose IA 52569
Landholding Agency: COE
Property Number: 31200920004
Status: Excess
Reasons: Extensive deterioration

8 Double Vault Privies
Rathbun Project
Appanoose IA 52544
Landholding Agency: COE
Property Number: 31200920030
Status: Excess
Directions: RTHBUN#29305, 29334, 29363, 29365, 29367, 29372, 29374, 29383
Reasons: Extensive deterioration

Double Vault Privy
Island View Park
Centerville IA 52544
Landholding Agency: COE
Property Number: 31200920031

Status: Excess
Reasons: Extensive deterioration

Kansas

No. 01017
Kanopolis Project
Marquette Co: Ellsworth KS 67456
Landholding Agency: COE
Property Number: 31200210001
Status: Unutilized
Reasons: Extensive deterioration

No. 01020
Kanopolis Project
Marquette Co: Ellsworth KS 67456
Landholding Agency: COE
Property Number: 31200210002
Status: Unutilized
Reasons: Extensive deterioration

No. 61001
Kanopolis Project
Marquette Co: Ellsworth KS 67456
Landholding Agency: COE
Property Number: 31200210003
Status: Unutilized
Reasons: Extensive deterioration

Bldg. #1
Kanopolis Project
Marquette Co: Ellsworth KS 67456
Landholding Agency: COE
Property Number: 31200220003
Status: Excess
Reasons: Extensive deterioration

Bldg. #2
Kanopolis Project
Marquette Co: Ellsworth KS 67456
Landholding Agency: COE
Property Number: 31200220004
Status: Excess
Reasons: Extensive deterioration

Bldg. #4
Kanopolis Project
Marquette Co: Ellsworth KS 67456
Landholding Agency: COE
Property Number: 31200220005
Status: Excess
Reasons: Extensive deterioration

Comfort Station
Clinton Lake Project
Lawrence Co: Douglas KS 66049
Landholding Agency: COE
Property Number: 31200220006
Status: Excess
Reasons: Extensive deterioration

Privy
Perry Lake
Perry Co: Jefferson KS 66074
Landholding Agency: COE
Property Number: 31200310004
Status: Unutilized
Reasons: Extensive deterioration

Shower
Perry Lake
Perry Co: Jefferson KS 66073
Landholding Agency: COE
Property Number: 31200310005
Status: Unutilized
Reasons: Extensive deterioration

Tool Shed
Perry Lake
Perry Co: Jefferson KS 66073
Landholding Agency: COE
Property Number: 31200310006
Status: Unutilized
Reasons: Extensive deterioration

Bldg. M37
Minooka Park
Sylvan Grove Co: Russell KS 67481
Landholding Agency: COE
Property Number: 31200320002
Status: Excess
Reasons: Extensive deterioration

Bldg. M38
Minooka Park
Sylvan Grove Co: Russell KS 67481
Landholding Agency: COE
Property Number: 31200320003
Status: Excess
Reasons: Extensive deterioration

Bldg. L19
Lucas Park
Sylvan Grove Co: Russell KS 67481
Landholding Agency: COE
Property Number: 31200320004
Status: Unutilized
Reasons: Extensive deterioration

2 Bldgs.
Tuttle Creek Lake
Near Shelters #3 & #4
Riley KS 66502
Landholding Agency: COE
Property Number: 31200330003
Status: Excess
Reasons: Extensive deterioration

6 Bldgs.
Cottonwood Point/Hillsboro Cove
Marion Co: Coffey KS 66861
Landholding Agency: COE
Property Number: 31200340001
Status: Excess
Reasons: Extensive deterioration

20 Bldgs.
Riverside
Burlington Co: Coffey KS 66839–8911
Landholding Agency: COE
Property Number: 31200340002
Status: Excess
Reasons: Extensive deterioration

2 Bldgs.
Canning Creek/Richey Cove
Council Grove Co: Morris KS 66846–9322
Landholding Agency: COE
Property Number: 31200340003
Status: Excess
Reasons: Extensive deterioration

6 Bldgs.
Santa Fe Trail/Outlet Channel
Council Grove Co: Morris KS 66846
Landholding Agency: COE
Property Number: 31200340004
Status: Excess
Reasons: Extensive deterioration

Residence
Melvern Lake Project
Melvern Co: Osage KS 66510
Landholding Agency: COE
Property Number: 31200340005
Status: Excess
Reasons: Extensive deterioration

2 Bldgs.
Management Park
Vassar KS 66543
Landholding Agency: COE
Property Number: 31200340006
Status: Excess
Reasons: Extensive deterioration

Bldg.
Hickory Campground
Lawrence KS 66049
Landholding Agency: COE
Property Number: 31200340007
Status: Excess
Reasons: Extensive deterioration

Bldg.
Rockhaven Park Area
Lawrence KS 66049
Landholding Agency: COE
Property Number: 31200340008
Status: Excess
Reasons: Extensive deterioration

Bldg.
Overlook Park Area
Lawrence KS 66049
Landholding Agency: COE
Property Number: 31200340009
Status: Excess
Reasons: Extensive deterioration

Bldg.
Walnut Campground
Lawrence KS 66049
Landholding Agency: COE
Property Number: 31200340010
Status: Excess
Reasons: Extensive deterioration

Bldg.
Cedar Ridge Campground
Lawrence KS 66049
Landholding Agency: COE
Property Number: 31200340011
Status: Excess
Reasons: Extensive deterioration

Bldg.
Woodridge Park Area
Lawrence KS 66049
Landholding Agency: COE
Property Number: 31200340012
Status: Excess
Reasons: Extensive deterioration

8 Bldgs.
Tuttle Cove Park
Manhattan Co: Riley KS 66502
Landholding Agency: COE
Property Number: 31200410002
Status: Unutilized
Reasons: Extensive deterioration

2 Bldgs.
Old Garrison Campground
Pottawatomie KS
Landholding Agency: COE
Property Number: 31200410003
Status: Unutilized
Reasons: Extensive deterioration

2 Bldgs.
School Creek ORV Area
Junction City KS 66441
Landholding Agency: COE
Property Number: 31200410004
Status: Excess
Reasons: Extensive deterioration

Bldg.
Slough Creek Park
Perry Co: Jefferson KS 66073
Landholding Agency: COE
Property Number: 31200410005
Status: Excess
Reasons: Extensive deterioration

Bldg.
Spillway Boat Ramp
Sylvan Grove KS 67481
Landholding Agency: COE
Property Number: 31200430008
Status: Excess
Reasons: Extensive deterioration

Bldg.

Minooka Park Area
Sylvan Grove KS 67481
Landholding Agency: COE
Property Number: 31200430009
Status: Excess
Reasons: Extensive deterioration

Bldg.
Lucas Park Area
Sylvan Grove KS 67481
Landholding Agency: COE
Property Number: 31200430010
Status: Excess
Reasons: Extensive deterioration

Bldg.
Sylvan Park Area
Sylvan Grove KS 67481
Landholding Agency: COE
Property Number: 31200430011
Status: Excess
Reasons: Extensive deterioration

Bldg.
North Outlet Area
Junction City KS 66441
Landholding Agency: COE
Property Number: 31200430012
Status: Excess
Reasons: Extensive deterioration

3 Vault Toilets
West Rolling Hills
Milford Lake
Junction City KS 66441
Landholding Agency: COE
Property Number: 31200440003
Status: Excess
Reasons: Extensive deterioration

Vault Toilet
East Rolling Hills
Milford Lake
Junction City KS 66441
Landholding Agency: COE
Property Number: 31200440004
Status: Excess
Reasons: Extensive deterioration

Bldgs. 25002, 35012
Lucas Park
Sylvan Grove KS 67481
Landholding Agency: COE
Property Number: 31200510004
Status: Excess
Reasons: Extensive deterioration

Bldgs. 25006, 25038
Lucas Group Camp
Sylvan Grove KS 67481
Landholding Agency: COE
Property Number: 31200510005
Status: Excess
Reasons: Extensive deterioration

Bldgs. L37, L38
Lucas Park
Sylvan Grove KS 67481
Landholding Agency: COE
Property Number: 31200520005
Status: Excess
Reasons: Extensive deterioration

2 Bldgs.
Mann's Cove PUA
Fall River Co: Greenwood KS 67047
Landholding Agency: COE
Property Number: 31200530002
Status: Excess
Reasons: Extensive deterioration

16 Bldgs.
Cottonwood Point
Marion KS
Landholding Agency: COE
Property Number: 31200530003
Status: Excess
Reasons: Extensive deterioration

3 Bldgs.
Damsite PUA
Fall River Co: Greenwood KS 67047
Landholding Agency: COE
Property Number: 31200530004
Status: Excess
Reasons: Extensive deterioration

2 Bldgs.
Damsite PUA
Fall River Co: Greenwood KS 67047
Landholding Agency: COE
Property Number: 31200530005
Status: Excess
Reasons: Extensive deterioration

Bldgs. L05, L06
Lucas Park Overlook
Sylvan Grove KS 67481
Landholding Agency: COE
Property Number: 31200530006
Status: Excess
Reasons: Extensive deterioration

Bldg. 29442
Admin. Area
Perry KS 66073
Landholding Agency: COE
Property Number: 31200610002
Status: Excess
Reasons: Extensive deterioration

Bldgs. 29475, 29476
Thompsonville Park
Perry KS 66073
Landholding Agency: COE
Property Number: 31200610003
Status: Excess
Reasons: Extensive deterioration

Bldg. 39661
Old Town Park
Perry KS 66073
Landholding Agency: COE
Property Number: 31200610004
Status: Excess
Reasons: Extensive deterioration

Bldg. 29455
Rock Creek Park
Perry KS 66073
Landholding Agency: COE
Property Number: 31200610005
Status: Excess
Reasons: Extensive deterioration

Bldg. 29415
Longview Park
Perry KS 66073
Landholding Agency: COE
Property Number: 31200610006
Status: Excess
Reasons: Extensive deterioration

Bldg. 29464
Slough Creek Park
Perry KS 66073
Landholding Agency: COE
Property Number: 31200610007
Status: Excess
Reasons: Extensive deterioration

Bldgs. 35015, 35011
Minooka Park
Sylvan Grove KS 67481
Landholding Agency: COE
Property Number: 31200620021
Status: Excess
Reasons: Extensive deterioration

Bldgs.
Canning Creek
Council Grove Co: Morris KS 66846
Landholding Agency: COE
Property Number: 31200620022
Status: Excess
Reasons: Extensive deterioration

4 Bldgs.
East Rolling Hills Park
Junction City KS 66441
Landholding Agency: COE
Property Number: 31200630009
Status: Unutilized
Reasons: Extensive deterioration

Storage Bldg.
Perry Wildlife Area
Perry KS 66073
Landholding Agency: COE
Property Number: 31200640005
Status: Excess
Reasons: Extensive deterioration

Water Treatment Plant
Old Town Area
Perry KS 66073
Landholding Agency: COE
Property Number: 31200640006
Status: Excess
Reasons: Extensive deterioration

Water Treatment Plant
Sunset Ridge Area
Perry KS 66073
Landholding Agency: COE
Property Number: 31200640007
Status: Excess
Reasons: Extensive deterioration

Water Treatment Plant
Perry Area
Perry KS 66073
Landholding Agency: COE
Property Number: 31200640008
Status: Excess
Reasons: Extensive deterioration

Water Treatment Plant
Longview Park Area
Perry KS 66073
Landholding Agency: COE
Property Number: 31200640009
Status: Excess
Reasons: Extensive deterioration

Shower
Longview Park Area
Perry KS 66073
Landholding Agency: COE
Property Number: 31200640010
Status: Excess
Reasons: Extensive deterioration

Shower
Slough Creek Park Area
Perry KS 66073
Landholding Agency: COE
Property Number: 31200640011
Status: Excess
Reasons: Extensive deterioration

Shower
Thompsonville Area
Perry KS 66073
Landholding Agency: COE
Property Number: 31200640012
Status: Excess
Reasons: Extensive deterioration

Bldgs. 28370, 28373, 28298
Melvern Lake
Melvern Co: Osage KS 66510
Landholding Agency: COE

Property Number: 31200710006
Status: Excess
Reasons: Extensive deterioration

Bldg. 29773
Melvern Lake
Melvern Co: Osage KS 66510
Landholding Agency: COE
Property Number: 31200710007
Status: Excess
Reasons: Extensive deterioration

Bldgs. 29785, 29786, 29788
Melvern Lake
Melvern Co: Osage KS 66510
Landholding Agency: COE
Property Number: 31200710008
Status: Excess
Reasons: Extensive deterioration

Bldg. 39070
Melvern Lake
Melvern Co: Osage KS 66510
Landholding Agency: COE
Property Number: 31200710009
Status: Excess
Reasons: Extensive deterioration

Bldg.
South Outlet Park Area
Lawrence KS
Landholding Agency: COE
Property Number: 31200710010
Status: Excess
Reasons: Extensive deterioration

2 Bldgs.
School Creek Boat Ramp
Junction City KS
Landholding Agency: COE
Property Number: 31200720001
Status: Excess
Reasons: Extensive deterioration

2 Bldgs.
School Creek A Loop
Junction City KS 66441
Landholding Agency: COE
Property Number: 31200720002
Status: Excess
Reasons: Extensive deterioration

Bldg. 11001
West Dam Access Area
Sylvan Grove KS 67481
Landholding Agency: COE
Property Number: 31200730001
Status: Excess
Reasons: Extensive deterioration

8 Bldgs.
Melvern Lake Project
Osage KS 66510
Landholding Agency: COE
Property Number: 31200730002
Status: Excess
Directions: 28370, 28373, 28398, 29773, 29785, 29786, 29788, 39070
Reasons: Extensive deterioration

Bldg. 39663
Perry Boat Ramp Area
Perry KS 66073
Landholding Agency: COE
Property Number: 31200730003
Status: Excess
Reasons: Extensive deterioration

5 Bldgs.
Slough Creek Area
Perry KS 66073
Landholding Agency: COE
Property Number: 31200730004
Status: Excess
Directions: 39671, 39672, 39673, 39674, 39675
Reasons: Extensive deterioration

7 Bldgs.
Slough Creek Area
Perry KS 66073
Landholding Agency: COE
Property Number: 31200730005
Status: Excess
Directions: 29462, 29463, 29465, 29466, 29467, 29472, 29473
Reasons: Extensive deterioration

Bldgs. 29452, 29453, 29454
Rock Creek Area
Perry KS 66073
Landholding Agency: COE
Property Number: 31200730006
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 29416, 29417
Longview Park Area
Perry KS 66073
Landholding Agency: COE
Property Number: 31200730007
Status: Excess
Reasons: Extensive deterioration

Bldgs. 29421, 29422, 29423
Old Military Trail
Perry KS 66073
Landholding Agency: COE
Property Number: 31200730008
Status: Excess
Reasons: Extensive deterioration

Bldgs. 29428, 29431
Old Town Area
Perry KS 66073
Landholding Agency: COE
Property Number: 31200730009
Status: Excess
Reasons: Extensive deterioration

Bldgs. 29434, 29435
Outlet Area
Perry KS 66073
Landholding Agency: COE
Property Number: 31200730010
Status: Excess
Reasons: Extensive deterioration

Bldgs. 29477, 29478
Thompsonville Area
Perry KS 66073
Landholding Agency: COE
Property Number: 31200730011
Status: Excess
Reasons: Extensive deterioration

Bldgs. 29387, 28390
Melvern Lake Project
Osage KS 66510
Landholding Agency: COE
Property Number: 31200730021
Status: Excess
Reasons: Extensive deterioration

Vault Toilet
Farnum Creek Boat Ramp
Junction City KS 66441
Landholding Agency: COE
Property Number: 31200740002
Status: Excess
Reasons: Extensive deterioration

Vault Toilet
North Overlook Park
Junction City KS 66441
Landholding Agency: COE
Property Number: 31200740003
Status: Excess
Reasons: Extensive deterioration

Vault Toilet
Curtis Creek Boat Ramp
Junction City KS 66441
Landholding Agency: COE
Property Number: 31200740004
Status: Excess
Reasons: Extensive deterioration

House
Pomona Lake Project
Vassar KS 66453
Landholding Agency: COE
Property Number: 31200740005
Status: Excess
Reasons: Extensive deterioration

Bldg. 25034
Lucas Park
Sylvan Grove KS 67481
Landholding Agency: COE
Property Number: 31200740006
Status: Excess
Reasons: Extensive deterioration

2 Vault Toilets
Tuttle Creek
Manhattan KS 66502
Landholding Agency: COE
Property Number: 31200740007
Status: Excess
Reasons: Extensive deterioration

Fee Booth #35006
Minooka Park
Sylvan Grove KS 67481
Landholding Agency: COE
Property Number: 31200820007
Status: Excess
Reasons: Extensive deterioration

Bldgs. 40013, 51004
Milford Lake
Junction City KS 66441
Landholding Agency: COE
Property Number: 31200840007
Status: Excess
Reasons: Extensive deterioration

14 Bldgs.
Elk City Lake
Cherryvale KS 67335
Landholding Agency: COE
Property Number: 31200920006
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 25007, 25035, 25036
Lucas Park
Sylvan Grove KS 67481
Landholding Agency: COE
Property Number: 31200920007
Status: Excess
Reasons: Extensive deterioration

Bldgs. 29016, 29017
Tuttle Creek
Riley KS 66502
Landholding Agency: COE
Property Number: 31200920035
Status: Excess
Reasons: Extensive deterioration

8 Bldgs.
Melvern Lake Project
Melvern KS 66510
Landholding Agency: COE
Property Number: 31200920036
Status: Unutilized
Directions: 05005, 23008, 40010, 40013, 60001, 60002, 81006, 81009
Reasons: Extensive deterioration

5 Bldgs.

Wilson Lake
Sylvan Grove KS 67481
Landholding Agency: COE
Property Number: 31200920037
Status: Excess
Directions: 25003, 35003, 35014, 35043, 35058
Reasons: Extensive deterioration

13 Privies
Clinton Lake Project
Lawrence KS 66049
Landholding Agency: COE
Property Number: 31200920038
Status: Excess
Reasons: Extensive deterioration

18 Privies
Milford Project Office
Junction City KS 66441
Landholding Agency: COE
Property Number: 31200920039
Status: Excess
Directions: 10016, 10017, 10018, 10019, 20009, 40011, 50006, 51001, 51002, 51003, 51022, 51023, 60006, 60007, 70003, 70004, 70005, 70006
Reasons: Extensive deterioration

5 Bldgs.
Pomona Project Office
Vassar KS
Landholding Agency: COE
Property Number: 31200920040
Status: Excess
Directions: 10001, 10015, 10016, 12008, 27005
Reasons: Extensive deterioration

10 Bldgs.
Pomona Project Office
Vassar KS 66543
Landholding Agency: COE
Property Number: 31200920041
Status: Excess
Directions: 30007, 30010, 30011, 30012, 30014, 30021, 30034, 30037, 30039, 30040
Reasons: Extensive deterioration

5 Bldgs.
Pomona Project Office
Vassar KS 66543
Landholding Agency: COE
Property Number: 31200920042
Status: Excess
Directions: 39001, 39002, 39003, 39004, 39005
Reasons: Extensive deterioration

7 Bldgs.
Pomona Project Office
Vassar KS 66543
Landholding Agency: COE
Property Number: 31200920043
Status: Excess
Directions: 42004, 42005, 42006, 42010, 42017, 42019, 50002
Reasons: Extensive deterioration

11 Bldgs.
Pomona Project Office
Vassar KS 66543
Landholding Agency: COE
Property Number: 31200920044
Status: Excess
Directions: 80005, 80006, 80007, 80008, 80021, 80023, 80024, 80031, 80033, 80034, 80035
Reasons: Extensive deterioration

Bldgs. 61002, 61004
Venango Are
Marquette KS 67454
Landholding Agency: COE
Property Number: 31200930002
Status: Excess
Reasons: Extensive deterioration

Greenthumb Workshop
Milford Lake
Junction City KS 66441
Landholding Agency: COE
Property Number: 31200930003
Status: Excess
Reasons: Extensive deterioration

Bldgs. L50004–L50007
Wilson Lake
Sylvan Grove KS 67481
Landholding Agency: COE
Property Number: 31200930004
Status: Excess
Reasons: Extensive deterioration

Kentucky

Spring House
Kentucky River Lock and Dam No. 1
Highway 320
Carrollton Co: Carroll KY 41008
Landholding Agency: COE
Property Number: 21199040416
Status: Unutilized
Reasons: Other—Spring House

6-Room Dwelling
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273
Landholding Agency: COE
Property Number: 31199120010
Status: Unutilized
Directions: Off State Hwy 369, which runs off of Western Ky. Parkway
Reasons: Floodway

2-Car Garage
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273
Landholding Agency: COE
Property Number: 31199120011
Status: Unutilized
Directions: Off State Hwy 369, which runs off of Western Ky. Parkway
Reasons: Floodway

Office and Warehouse
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273
Landholding Agency: COE
Property Number: 31199120012
Status: Unutilized
Directions: Off State Hwy 369, which runs off of Western Ky. Parkway
Reasons: Floodway

2 Pit Toilets
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273
Landholding Agency: COE
Property Number: 31199120013
Status: Unutilized
Reasons: Floodway

Tract 1379
Barkley Lake
Eddyville Co: Lyon KY 42038
Landholding Agency: COE
Property Number: 31200420001
Status: Unutilized
Reasons: Other—landlocked

Tract 4300
Barkley Lake
Cadiz Co: Trigg KY 42211
Landholding Agency: COE
Property Number: 31200420002
Status: Unutilized
Reasons: Floodway

Tracts 317, 318, 319
Barkley Lake
Grand Rivers Co: Lyon KY 42045
Landholding Agency: COE
Property Number: 31200420003
Status: Unutilized
Reasons: Floodway

Steel Structure
Mcalpine Locks
Louisville KY 40212
Landholding Agency: COE
Property Number: 31200440006
Status: Excess
Reasons: Floodway; Within 2000 ft. of flammable or explosive material

Comfort Station
Mcalpine Locks
Louisville KY 40212
Landholding Agency: COE
Property Number: 31200440007
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Floodway

Shelter
Mcalpine Locks
Louisville KY 40212
Landholding Agency: COE
Property Number: 31200440008
Status: Excess
Reasons: Floodway; Within 2000 ft. of flammable or explosive material

Parking Lot
Mcalpine Locks
Louisville KY 40212
Landholding Agency: COE
Property Number: 31200440009
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Floodway

Loading Docks
Nolin Lake
Bee Spring KY 42007
Landholding Agency: COE
Property Number: 31200540006
Status: Unutilized
Reasons: Extensive deterioration

Sewage Treatment Plant
Smith Ridge Rec Area
Campbellsville KY 42718
Landholding Agency: COE
Property Number: 31200740008
Status: Excess
Reasons: Extensive deterioration

Sewage Treatment Plant
Carr Creek Lake
Sassafras KY 41759
Landholding Agency: COE
Property Number: 31200920029
Status: Unutilized
Reasons: Floodway; Extensive deterioration

Sewage Plant, Pump Station
Nolin River Lake
Bee Spring KY
Landholding Agency: COE
Property Number: 31200930005
Status: Excess
Reasons: Extensive deterioration

Massachusetts

Lee House
Knightville Dam Project
Huntington MA
Landholding Agency: COE

Property Number: 31200720003
Status: Unutilized
Reasons: Extensive deterioration

Westview Street Wells
Lexington MA 02173
Landholding Agency: VA
Property Number: 97199920001
Status: Unutilized
Reasons: Extensive deterioration

Mississippi

Bldg. CB–70
Columbus Lake
Columbus MS 39701
Landholding Agency: COE
Property Number: 31200820009
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 3053
ERDC
Vicksburg MS 39180
Landholding Agency: COE
Property Number: 31200930008
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 6, Boiler Plant
Biloxi VA Medical Center
Gulfport Co: Harrison MS 39531
Landholding Agency: VA
Property Number: 97199410001
Status: Unutilized
Reasons: Floodway

Bldg. 67
Biloxi VA Medical Center
Gulfport Co: Harrison MS 39531
Landholding Agency: VA
Property Number: 97199410008
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 68
Biloxi VA Medical Center
Gulfport Co: Harrison MS 39531
Landholding Agency: VA
Property Number: 97199410009
Status: Unutilized
Reasons: Extensive deterioration

Missouri

Rec Office
Harry S. Truman Dam
Osceola Co: St. Clair MO 64776
Landholding Agency: COE
Property Number: 31200110001
Status: Unutilized
Reasons: Extensive deterioration

Privy/Nemo Park
Pomme de Terre Lake
Hermitage MO 65668
Landholding Agency: COE
Property Number: 31200120001
Status: Excess
Reasons: Extensive deterioration

Privy No. 1/Bolivar Park
Pomme de Terre Lake
Hermitage MO 65668
Landholding Agency: COE
Property Number: 31200120002
Status: Excess
Reasons: Extensive deterioration

Privy No. 2/Bolivar Park
Pomme de Terre Lake
Hermitage MO 65668
Landholding Agency: COE
Property Number: 31200120003
Status: Excess
Reasons: Extensive deterioration

#07004, 60006, 60007
Crabtree Cove/Stockton Area
Stockton MO 65785
Landholding Agency: COE
Property Number: 31200220007
Status: Excess
Reasons: Extensive deterioration

Bldg.
Old Mill Park Area
Stockton MO 65785
Landholding Agency: COE
Property Number: 31200310007
Status: Excess
Reasons: Extensive deterioration

Stockton Lake Proj. Ofc.
Stockton Co: Cedar MO 65785
Landholding Agency: COE
Property Number: 31200330004
Status: Unutilized
Reasons: Extensive deterioration

House
Tract 1105
Thurnau Mitigation Site
Craig Co: Holt MO 64437
Landholding Agency: COE
Property Number: 31200420005
Status: Unutilized
Reasons: Extensive deterioration

30x36 Barn
Tract 1105
Thurnau Mitigation Site
Craig Co: Holt MO 64437
Landholding Agency: COE
Property Number: 31200420006
Status: Unutilized
Reasons: Extensive deterioration

30x26 Barn
Tract 1105
Thurnau Mitigation Site
Craig Co: Holt MO 64437
Landholding Agency: COE
Property Number: 31200420007
Status: Unutilized
Reasons: Extensive deterioration

30x10 Shed
Tract 1105
Thurnau Mitigation Site
Craig Co: Holt MO 64437
Landholding Agency: COE
Property Number: 31200420008
Status: Unutilized
Reasons: Extensive deterioration

30x26 Shed
Tract 1105
Thurnau Mitigation Site
Craig Co: Holt MO 64437
Landholding Agency: COE
Property Number: 31200420009
Status: Unutilized
Reasons: Extensive deterioration

9x9 Shed
Tract 1105
Thurnau Mitigation Site
Craig Co: Holt MO 64437
Landholding Agency: COE
Property Number: 31200420010
Status: Unutilized
Reasons: Extensive deterioration

Tract 1111
Thurnau Mitigation Site
Craig Co: Holt MO 64437
Landholding Agency: COE
Property Number: 31200420011
Status: Excess
Reasons: Extensive deterioration

Shower
Pomme de Terre Lake
Hermitage Co: Polk MO 65668
Landholding Agency: COE
Property Number: 31200420012
Status: Unutilized
Reasons: Extensive deterioration

11 Bldgs.
Warsaw MO 65355
Landholding Agency: COE
Property Number: 31200430013
Status: Excess
Directions: Fairfield, Tally Bend, Cooper Creek, Shawnee Bend
Reasons: Extensive deterioration

2 Storage Bldgs.
District Service Base
St. Louis MO
Landholding Agency: COE
Property Number: 31200430014
Status: Excess
Reasons: Extensive deterioration

Privy
Pomme de Terre Lake
Wheatland Co: Hickory MO
Landholding Agency: COE
Property Number: 31200440010
Status: Underutilized
Reasons: Floodway

Vault Toilet
Ruark Bluff
Stockton MO
Landholding Agency: COE
Property Number: 31200440011
Status: Excess
Reasons: Extensive deterioration

Comfort Station
Overlook Area
Stockton MO
Landholding Agency: COE
Property Number: 31200440012
Status: Excess
Reasons: Extensive deterioration

Maintenance Building
Missouri River Area
Napoleon Co: Lafayette MO 64074
Landholding Agency: COE
Property Number: 31200510007
Status: Excess
Reasons: Floodway

Bldg. 34001
Orleans Trail Park
Stockton MO 65785
Landholding Agency: COE
Property Number: 31200510008
Status: Excess
Reasons: Extensive deterioration

Bldgs. 34016, 34017
Orleans Trail Park
Stockton MO 65785
Landholding Agency: COE
Property Number: 31200510009
Status: Excess
Reasons: Extensive deterioration

Bldg.
Pomme de Terre Lake
Hermitage MO 65668
Landholding Agency: COE
Property Number: 31200610008
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 43841, 43919

Clearwater Project
Piedmont MO 63957
Landholding Agency: COE
Property Number: 31200630010
Status: Unutilized
Reasons: Extensive deterioration

Dwelling
Harry S. Truman Project
Roscoe MO
Landholding Agency: COE
Property Number: 31200640013
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 50005
Ruark Bluff East
Stockton MO 65785
Landholding Agency: COE
Property Number: 31200710011
Status: Excess
Reasons: Extensive deterioration

Bldg. 07002
Crabtree Cove Park
Stockton MO 65785
Landholding Agency: COE
Property Number: 31200710012
Status: Excess
Reasons: Extensive deterioration

Comfort Station
Riverlands Way Access
West Alton MO 63386
Landholding Agency: COE
Property Number: 31200710013
Status: Excess
Reasons: Extensive deterioration

Bldg. #55001 Cooper Creek
Warsaw MO 65355
Landholding Agency: COE
Property Number: 31200720005
Status: Excess
Reasons: Extensive deterioration

Bldgs. 40006, 40007
Pomme de Terre Lake
Pittsburg MO 65724
Landholding Agency: COE
Property Number: 31200730012
Status: Excess
Reasons: Extensive deterioration

3 Facilities
Wappapello Lake Project
Wayne MO 63966
Landholding Agency: COE
Property Number: 31200730013
Status: Excess
Reasons: Extensive deterioration

Bldgs. 05004, 05008
Cedar Ridge Park
Stockton MO 65785
Landholding Agency: COE
Property Number: 31200740009
Status: Excess
Reasons: Extensive deterioration

Bldg. 11002
Greenfield Access
Stockton MO 65785
Landholding Agency: COE
Property Number: 31200740010
Status: Excess
Reasons: Extensive deterioration

Bldgs. 14008, 14009, 14010
Hawker Point Park
Stockton MO 65785
Landholding Agency: COE
Property Number: 31200740011
Status: Excess
Reasons: Extensive deterioration

Bldg. 34006
Orleans Trail Park
Stockton MO 65785
Landholding Agency: COE
Property Number: 31200740012
Status: Excess
Reasons: Extensive deterioration

Bldg. ES801–8319
Wappapello Lake Project
Wayne MO 63966
Landholding Agency: COE
Property Number: 31200740013
Status: Excess
Reasons: Extensive deterioration

Bldg. 14004
Hawker Point Park
Stockton MO 65785
Landholding Agency: COE
Property Number: 31200820008
Status: Excess
Reasons: Extensive deterioration

Picnic Shelter
ES801–8357, 009R31
Wappapello MO 63966
Landholding Agency: COE
Property Number: 31200830001
Status: Excess
Reasons: Extensive deterioration

Picnic Shelter
ES801–8358, 009R32
Wappapello MO 63966
Landholding Agency: COE
Property Number: 31200830002
Status: Excess
Reasons: Extensive deterioration

Bldgs. 23002, 23006
Masters Park
Stockton MO 65785
Landholding Agency: COE
Property Number: 31200840009
Status: Excess
Reasons: Extensive deterioration

Bldgs. 50014, 50015
Ruark Bluff West
Stockton MO 65785
Landholding Agency: COE
Property Number: 31200840010
Status: Excess
Reasons: Extensive deterioration

Bldg. 13018
Harry S. Truman Reservoir
Clinton MO 64735
Landholding Agency: COE
Property Number: 31200920008
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 2300Z
Masters Park
Stockton MO 65785
Landholding Agency: COE
Property Number: 31200920009
Status: Excess
Reasons: Extensive deterioration

10 Vault Comfort Station
Mark Twain Lake
Monroe City MO 63456
Landholding Agency: COE
Property Number: 31200920045
Status: Excess
Directions: CC302–7388, 7396, 7413, 7486, 7535, 7536, 7542, 7543, 7552, 7553
Reasons: Extensive deterioration

Picnic Shelter ES801–8343
Wappapello Lake Project
Wappapello MO 63966
Landholding Agency: COE
Property Number: 31200920046
Status: Excess
Reasons: Extensive deterioration

42 Privies
Stockton Project Office
Stockton MO 65785
Landholding Agency: COE
Property Number: 31200920047
Status: Excess
Directions: Cedar Ridge, Crabtree Cove, Hawker Point, High Point, Masters, Mutton Creek, Orleans Trail, Ruark Bluff East, Ruark Bluff West, Stockton Area
Reasons: Extensive deterioration

Bldgs. 47005, 47018
Pomme de Terre Lake
Hermitage MO 65724
Landholding Agency: COE
Property Number: 31200920048
Status: Unutilized
Reasons: Extensive deterioration

30 Bldgs.
Harry S. Truman Reservoir
Warsaw MO 65355
Landholding Agency: COE
Property Number: 31200920049
Status: Unutilized
Directions: 13012, 13014, 13015, 31005, 31006, 31007, 40005, 40006, 40007, 51008, 51009, 60005, 60006, 60007, 60008, 60009, 60010, 70004, 70005, 70006, 13013, 51006, 51007, 51010, 63009, 63011, 70003, 07010, 60016, 63030
Reasons: Extensive deterioration

Bldg. 34010
Orleans Trail Park
Stockton MO
Landholding Agency: COE
Property Number: 31200930006
Status: Excess
Reasons: Extensive deterioration

8 Bldgs.
Harry Truman Reservoir
Warsaw MO 65355
Landholding Agency: COE
Property Number: 31200930007
Status: Unutilized
Directions: #07007, 07008, 07009, 05011, 49008, 49009, 63004, 63005
Reasons: Extensive deterioration

Bldg. 3
VA Medical Center
Jefferson Barracks Division
St. Louis MO 63125
Landholding Agency: VA
Property Number: 97200340001
Status: Underutilized
Reasons: Secured Area

Bldg. 4
VA Medical Center
Jefferson Barracks Division
St. Louis MO 63125
Landholding Agency: VA
Property Number: 97200340002
Status: Underutilized
Reasons: Secured Area

Bldg. 27
VA Medical Center
Jefferson Barracks Division
St. Louis MO 63125
Landholding Agency: VA

Property Number: 97200340003
Status: Underutilized
Reasons: Secured Area

Bldg. 28
VA Medical Center
Jefferson Barracks Division
St. Louis MO 63125
Landholding Agency: VA
Property Number: 97200340004
Status: Underutilized
Reasons: Secured Area

Bldg. 29
VA Medical Center
Jefferson Barracks Division
St. Louis MO 63125
Landholding Agency: VA
Property Number: 97200340005
Status: Underutilized
Reasons: Secured Area

Bldg. 50
VA Medical Center
Jefferson Barracks Division
St. Louis MO 63125
Landholding Agency: VA
Property Number: 97200340006
Status: Underutilized
Reasons: Secured Area

Nebraska

Vault Toilets
Harlan County Project
Republican NE 68971
Landholding Agency: COE
Property Number: 31200210006
Status: Unutilized
Reasons: Extensive deterioration

Patterson Treatment Plant
Harlan County Project
Republican NE 68971
Landholding Agency: COE
Property Number: 31200210007
Status: Unutilized
Reasons: Extensive deterioration

#30004
Harlan County Project
Republican Co: Harlan NE 68971
Landholding Agency: COE
Property Number: 31200220008
Status: Unutilized
Reasons: Extensive deterioration

#3005, 3006
Harlan County Project
Republican Co: Harlan NE 68971
Landholding Agency: COE
Property Number: 31200220009
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 70001, 70002
South Outlet Park
Republican City NE
Landholding Agency: COE
Property Number: 31200510010
Status: Excess
Reasons: Extensive deterioration

Bldgs. 40002, 40003, 40006
Harlan County Lake
Republican City NE 68971
Landholding Agency: COE
Property Number: 31200610009
Status: Excess
Reasons: Extensive deterioration

Bldg. 40020
Harlan County Lake
Republican City NE 68971
Landholding Agency: COE
Property Number: 31200610010
Status: Excess
Reasons: Extensive deterioration

4 Bldgs.
43004, 43007, 43008, 43009
Republican City NE 68971
Landholding Agency: COE
Property Number: 31200610011
Status: Excess
Reasons: Extensive deterioration

6 Bldgs.
Harlan County Lake
Republican City NE 68971
Landholding Agency: COE
Property Number: 31200610012
Status: Excess
Directions: 50003, 50004, 50005, 50006, 50007, 50008
Reasons: Extensive deterioration

New York

Warehouse
Whitney Lake Project
Whitney Point Co: Broome NY 13862–0706
Landholding Agency: COE
Property Number: 31199630007
Status: Unutilized
Reasons: Extensive deterioration

North Carolina

Preston Clark USARC
1301 N. Memorial Dr.
Greenville Co: Pitt NC 27834
Landholding Agency: COE
Property Number: 31200620032
Status: Unutilized
Reasons: Extensive deterioration

Bldg. MC–A01
Morehead City NC
Landholding Agency: COE
Property Number: 31200740014
Status: Excess
Reasons: Extensive deterioration

Bldg. 9
VA Medical Center
1100 Tunnel Road
Asheville Co: Buncombe NC 28805
Landholding Agency: VA
Property Number: 97199010008
Status: Unutilized
Reasons: Extensive deterioration

Ohio

Installation 39875
Hayes Reserve Center
Fremont OH 43420
Landholding Agency: COE
Property Number: 31200740016
Status: Excess
Reasons: Extensive deterioration

Bldg. 105
VA Medical Center
Dayton Co: Montgomery OH 45428
Landholding Agency: VA
Property Number: 97199920005
Status: Unutilized
Reasons: Extensive deterioration

Oklahoma

Comfort Station
LeFlore Landing PUA
Sallisaw Co: LeFlore OK 74955–9445
Landholding Agency: COE
Property Number: 31200240008
Status: Excess
Reasons: Extensive deterioration

Comfort Station
Braden Bend PUA
Sallisaw Co: LeFlore OK 74955–9445
Landholding Agency: COE
Property Number: 31200240009
Status: Excess
Reasons: Extensive deterioration

Water Treatment Plant
Salt Creek Cove
Sawyer Co: Choctaw OK 74756–0099
Landholding Agency: COE
Property Number: 31200240010
Status: Excess
Reasons: Extensive deterioration

Water Treatment Plant
Wilson Point
Sawyer Co: Choctaw OK 74756–0099
Landholding Agency: COE
Property Number: 31200240011
Status: Excess
Reasons: Extensive deterioration

2 Comfort Stations
Landing PUA/Juniper Point PUA
Stigler Co: McIntosh OK 74462–9440
Landholding Agency: COE
Property Number: 31200240012
Status: Excess
Reasons: Extensive deterioration

Filter Plant/Pumphouse
South PUA
Stigler Co: McIntosh OK 74462–9440
Landholding Agency: COE
Property Number: 31200240013
Status: Excess
Reasons: Extensive deterioration

Filter Plant/Pumphouse
North PUA
Stigler Co: McIntosh OK 74462–9440
Landholding Agency: COE
Property Number: 31200240014
Status: Excess
Reasons: Extensive deterioration

Filter Plant/Pumphouse
Juniper Point PUA
Stigler Co: McIntosh OK 74462–9440
Landholding Agency: COE
Property Number: 31200240015
Status: Excess
Reasons: Extensive deterioration

Comfort Station
Juniper Point PUA
Stigler Co: McIntosh OK 74462–9440
Landholding Agency: COE
Property Number: 31200240016
Status: Excess
Reasons: Extensive deterioration

Comfort Station
Brooken Cove PUA
Stigler Co: McIntosh OK 74462–9440
Landholding Agency: COE
Property Number: 31200240017
Status: Excess
Reasons: Extensive deterioration

2 Bldgs.
Outlet Channel/Walker Creek
Waurika OK 73573–0029
Landholding Agency: COE
Property Number: 31200340013
Status: Excess
Reasons: Extensive deterioration

2 Bldgs.
Damsite South
Stigler OK 74462–9440
Landholding Agency: COE

Property Number: 31200340014
Status: Excess
Reasons: Extensive deterioration

19 Bldgs.
Kaw Lake
Ponca City OK 74601–9962
Landholding Agency: COE
Property Number: 31200340015
Status: Excess
Reasons: Extensive deterioration

30 Bldgs.
Keystone Lake
Sand Springs OK 74063–9338
Landholding Agency: COE
Property Number: 31200340016
Status: Excess
Reasons: Extensive deterioration

13 Bldgs.
Oologah Lake
Oologah OK 74053–0700
Landholding Agency: COE
Property Number: 31200340017
Status: Excess
Reasons: Extensive deterioration

14 Bldgs.
Pine Creek Lake
Valliant OK 74764–9801
Landholding Agency: COE
Property Number: 31200340018
Status: Excess
Reasons: Extensive deterioration

6 Bldgs.
Sardis Lake
Clayton OK 74536–9729
Landholding Agency: COE
Property Number: 31200340019
Status: Excess
Reasons: Extensive deterioration

22 Bldgs.
Skiatook Lake
Skiatook OK 74070–9803
Landholding Agency: COE
Property Number: 31200340020
Status: Excess
Reasons: Extensive deterioration

40 Bldgs.
Eufaula Lake
Stigler OK 74462–5135
Landholding Agency: COE
Property Number: 31200340021
Status: Excess
Reasons: Extensive deterioration

2 Bldgs.
Holiday Cove
Stigler OK 74462–5135
Landholding Agency: COE
Property Number: 31200340022
Status: Excess
Reasons: Extensive deterioration

18 Bldgs.
Fort Gibson
Ft. Gibson Co: Wagoner OK 74434–0370
Landholding Agency: COE
Property Number: 31200340023
Status: Excess
Reasons: Extensive deterioration

2 Bldgs.
Fort Supply
Ft. Supply Co: Woodward OK 73841–0248
Landholding Agency: COE
Property Number: 31200340024
Status: Excess
Reasons: Extensive deterioration

Game Bird House
Fort Supply Lake
Ft. Supply Co: Woodward OK 73841–0248
Landholding Agency: COE
Property Number: 31200340025
Status: Excess
Reasons: Extensive deterioration

11 Bldgs.
Hugo Lake
Sawyer OK 74756–0099
Landholding Agency: COE
Property Number: 31200340026
Status: Excess
Reasons: Extensive deterioration

5 Bldgs.
Birch Cove/Twin Cove
Skiatook OK 74070–9803
Landholding Agency: COE
Property Number: 31200340027
Status: Excess
Reasons: Extensive deterioration

2 Bldgs.
Fairview Group Camp
Canton OK 73724–0069
Landholding Agency: COE
Property Number: 31200340028
Status: Excess
Reasons: Extensive deterioration

2 Bldgs.
Chouteau Bluff
Gore Co: Wagoner OK 74935–9404
Landholding Agency: COE
Property Number: 31200340029
Status: Excess
Reasons: Extensive deterioration

2 Bldgs.
Newt Graham L
Gore OK 74935–9404
Landholding Agency: COE
Property Number: 31200340030
Status: Excess
Reasons: Extensive deterioration

2 Bldgs.
Damsite/Fisherman's Landing
Sallisaw OK 74955–9445
Landholding Agency: COE
Property Number: 31200340031
Status: Excess
Reasons: Extensive deterioration

10 Bldgs.
Webbers Falls Lake
Gore OK 74435–5541
Landholding Agency: COE
Property Number: 31200340032
Status: Excess
Reasons: Extensive deterioration

Bldg.
Lower Storage Yard
Skiatook Co: Osage OK 74070
Landholding Agency: COE
Property Number: 31200530007
Status: Excess
Reasons: Extensive deterioration

3 Bldgs.
Birch Cove PUA
Skiatook Co: Osage OK 74070
Landholding Agency: COE
Property Number: 31200530008
Status: Excess
Reasons: Extensive deterioration

Bldg.
Canadian Public Use Area
Canton Co: Blaine OK 73724
Landholding Agency: COE
Property Number: 31200530009
Status: Excess
Reasons: Extensive deterioration

3 Bldgs.
Porum Landing PUA
Stigler Co: McIntosh OK 74462
Landholding Agency: COE
Property Number: 31200530010
Status: Excess
Reasons: Extensive deterioration

2 Bldgs.
Bluff/Afton Landing
Ft. Gibson Co: Wagoner OK 74434
Landholding Agency: COE
Property Number: 31200530012
Status: Excess
Reasons: Extensive deterioration

Bldg.
Lake Office
Ft. Supply Co: Woodward OK 73841
Landholding Agency: COE
Property Number: 31200530013
Status: Excess
Reasons: Extensive deterioration

4 Bldgs.
Overlook PUA
Ft. Supply Co: Texas OK 73841
Landholding Agency: COE
Property Number: 31200530014
Status: Excess
Reasons: Extensive deterioration

Bldg.
Hugo Lake
Sawyer Co: Chocktaw OK 74756
Landholding Agency: COE
Property Number: 31200530015
Status: Excess
Reasons: Extensive deterioration

2 Bldgs.
Sarge Creek PUA
Ponca City Co: Kay OK 74601
Landholding Agency: COE
Property Number: 31200530016
Status: Excess
Reasons: Extensive deterioration

5 Bldgs.
Hawthorne Bluff
Oologah Co: Rogers OK 74053
Landholding Agency: COE
Property Number: 31200530017
Status: Excess
Reasons: Extensive deterioration

12 Bldgs.
Trout Stream PUAs
Gore Co: Sequoyah OK 74435
Landholding Agency: COE
Property Number: 31200530018
Status: Excess
Reasons: Extensive deterioration

14 Bldgs.
Chicken Creek PUAs
Gore Co: Cherokee OK 74435
Landholding Agency: COE
Property Number: 31200530019
Status: Excess
Reasons: Extensive deterioration

4 Bldgs.
Snake Creek Area
Gore Co: Sequoyah OK 74435
Landholding Agency: COE
Property Number: 31200530020
Status: Excess
Reasons: Extensive deterioration

3 Bldgs.
Brewer's Bend

Gore Co: Muskogee OK 74435
Landholding Agency: COE
Property Number: 31200530021
Status: Excess
Reasons: Extensive deterioration

Facility
Hulah Lake
Copan Co: Osage OK 74022
Landholding Agency: COE
Property Number: 31200620025
Status: Excess
Reasons: Extensive deterioration

Bldg.
Webbers Falls
Muskogee OK 74435
Landholding Agency: COE
Property Number: 31200620026
Status: Excess
Reasons: Extensive deterioration

24 Bldgs.
Hulah Lake
Copan OK
Landholding Agency: COE
Property Number: 31200630011
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 44760, 44707
Canton Lake
Canton OK 73724
Landholding Agency: COE
Property Number: 31200630012
Status: Unutilized
Reasons: Extensive deterioration

Bldg.
Skiatook Lake
Skiatook OK 74070
Landholding Agency: COE
Property Number: 31200630013
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 43263, 42364
Oologah Lake
Oologah OK 74053
Landholding Agency: COE
Property Number: 31200630015
Status: Unutilized
Reasons: Extensive deterioration

Bldg.
Webbers Falls Lake
Webbers Falls OK
Landholding Agency: COE
Property Number: 31200630016
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 43523, 43820
Hugo Lake
Sawyer OK 74756
Landholding Agency: COE
Property Number: 31200630017
Status: Unutilized
Reasons: Extensive deterioration

Bldg.
Newt Graham Lock 18
Inola OK
Landholding Agency: COE
Property Number: 31200640014
Status: Unutilized
Reasons: Extensive deterioration

4 Bldgs.
Gore OK 74435
Landholding Agency: COE
Property Number: 31200640016
Status: Unutilized
Directions: Afton Landing or Bluff Landing
Reasons: Extensive deterioration

Pinecr-58321
Pine Creek Lake
Valiant OK
Landholding Agency: COE
Property Number: 31200710015
Status: Unutilized
Reasons: Extensive deterioration

KAW—58649
Garrett's Landing
Kaw City OK
Landholding Agency: COE
Property Number: 31200710016
Status: Unutilized
Reasons: Extensive deterioration

Bldg.
Sizemore Landing
Gore OK 74435
Landholding Agency: COE
Property Number: 31200720007
Status: Unutilized
Reasons: Extensive deterioration

Bldg.
Taylor Ferry
Fort Gibson OK 74434
Landholding Agency: COE
Property Number: 31200720008
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 42670, 42634
Tenkiller Lake
Gore OK 74435
Landholding Agency: COE
Property Number: 31200730014
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 41946
Webbers Falls Lake
Webbers Lake OK
Landholding Agency: COE
Property Number: 31200730015
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 44760, 44707
Canton Lake
Canton OK
Landholding Agency: COE
Property Number: 31200730016
Status: Unutilized
Reasons: Extensive deterioration

6 Bldgs.
Hugo Lake
Sawyer OK
Landholding Agency: COE
Property Number: 31200730017
Status: Unutilized
Directions: 43803, 43802, 43827, 43760, 43764, 43763
Reasons: Extensive deterioration

Gatehouse
Porum Landing
Stigler OK 75562
Landholding Agency: COE
Property Number: 31200740017
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 42008, 55088
Webbers Falls Lake
Webbers Falls OK
Landholding Agency: COE
Property Number: 31200740019
Status: Unutilized
Reasons: Extensive deterioration

4 Bldgs.
Optima Lake
Texas OK
Landholding Agency: COE
Property Number: 31200820010
Status: Unutilized
Directions: 43119, 43192, 43193, 43262
Reasons: Extensive deterioration

Bldg. FTGIBS–57431
Fort Gibson
Fort Gibson OK
Landholding Agency: COE
Property Number: 31200840011
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 43446, Keystone
Washington Irving Rec Area
Sand Springs OK 74063
Landholding Agency: COE
Property Number: 31200920010
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 43611, 43612, 43545
Kaw Lake
Coon Creek
Ponca City OK 74604
Landholding Agency: COE
Property Number: 31200920011
Status: Unutilized
Reasons: Extensive deterioration

9 Bldgs.
Eufaula Lake
Stigler OK 74462
Landholding Agency: COE
Property Number: 31200920012
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 44065
Fort Gibson
Taylor Ferry South
Ft. Gibson OK 74434
Landholding Agency: COE
Property Number: 31200920013
Status: Unutilized
Reasons: Extensive deterioration

10 Bldgs.
Flat Rock Creek
Fort Gibson OK 74434
Landholding Agency: COE
Property Number: 31200920014
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 44763
Canton Lake
Canton OK 73724
Landholding Agency: COE
Property Number: 31200920015
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 43302, 43303
Newt Graham Lock & Dam
Inola OK 74036
Landholding Agency: COE
Property Number: 31200920016
Status: Unutilized
Reasons: Extensive deterioration

5 Bldgs.
Eufaula Lake
Stigler OK 74462
Landholding Agency: COE
Property Number: 31200920050
Status: Unutilized
Directions: EUFUAL–44237, 44147, 56608, 56609, 56570
Reasons: Extensive deterioration

61 Structures
Newt Graham Lock & Dam
Inola OK 74036
Landholding Agency: COE
Property Number: 31200920051
Status: Unutilized
Reasons: Extensive deterioration

19 Structures
Tenkiller Lake
Webber Falls
Gore OK 74435
Landholding Agency: COE
Property Number: 31200920052
Status: Unutilized
Reasons: Extensive deterioration

40 Structures
Tenkiller Lake
Gore OK 74435
Landholding Agency: COE
Property Number: 31200920053
Status: Unutilized
Reasons: Extensive deterioration

Bldg. RSKERR–42811
Kerr Lock & Dam
Sallisaw OK 74955
Landholding Agency: COE
Property Number: 31200930009
Status: Unutilized
Reasons: Extensive deterioration

Oregon

2 Floating Docks
Rogue River
Gold Beach Co: Curry OR 97444
Landholding Agency: COE
Property Number: 31200430015
Status: Excess
Reasons: Floodway

2 Trailers
John Day Project
#1 West Marine Drive
Boardman Co: Morrow OR 97818
Landholding Agency: COE
Property Number: 31200510012
Status: Unutilized
Reasons: Extensive deterioration

Pennsylvania

Bldgs. TIO 12328, 12333
Tionesta PA 16353
Landholding Agency: COE
Property Number: 31200820011
Status: Unutilized
Reasons: Extensive deterioration

South Carolina

36 Bldgs.
J. Strom Thurmond Lake
Clarks Hill SC 29821
Landholding Agency: COE
Property Number: 31200920017
Status: Unutilized
Reasons: Extensive deterioration

Bldg. JST 17244
J. Strom Thurmond Lake
Clarks Hill SC 29821
Landholding Agency: COE
Property Number: 31200920018
Status: Unutilized
Reasons: Extensive deterioration

South Dakota

Mobile Home
Tract L–1295
Oahe Dam
Potter SD 00000
Landholding Agency: COE
Property Number: 31200030001
Status: Excess
Reasons: Extensive deterioration

Tennessee

Bldg. 204
Cordell Hull Lake and Dam Project
Defeated Creek Recreation Area
Carthage Co: Smith TN 37030
Landholding Agency: COE
Property Number: 31199011499
Status: Unutilized
Directions: US Highway 85
Reasons: Floodway

Tract 2618 (Portion)
Cordell Hull Lake and Dam Project
Roaring River Recreation Area
Gainesboro Co: Jackson TN 38562
Landholding Agency: COE
Property Number: 31199011503
Status: Underutilized
Directions: TN Highway 135
Reasons: Floodway

Water Treatment Plant
Dale Hollow Lake Project
Obey River Park, State Hwy 42
Livingston Co: Clay TN 38351
Landholding Agency: COE
Property Number: 31199140011
Status: Excess
Reasons: Other—water treatment plant

Water Treatment Plant
Dale Hollow Lake Project
Lillydale Recreation Area, State Hwy 53
Livingston Co: Clay TN 38351
Landholding Agency: COE
Property Number: 31199140012
Status: Excess
Reasons: Other—water treatment plant

Water Treatment Plant
Dale Hollow Lake Project
Willow Grove Recreational Area, Hwy No. 53
Livingston Co: Clay TN 38351
Landholding Agency: COE
Property Number: 31199140013
Status: Excess
Reasons: Other—water treatment plant

Comfort Station/Land
Cook Campground
Nashville Co: Davidson TN 37214
Landholding Agency: COE
Property Number: 31200420024
Status: Unutilized
Reasons: Floodway

Tracts 915, 920, 931C–1
Cordell Hull Dam/Reservoir
Cathage Co: Smith TN 37030
Landholding Agency: COE
Property Number: 31200430016
Status: Unutilized
Reasons: Other—landlocked; Floodway

Residence #5
5050 Dale Hollow Dam Rd.
Celina Co: Clay TN 38551
Landholding Agency: COE
Property Number: 31200540010
Status: Unutilized
Reasons: Other—landlocked

Bldg.
Dale Hollow Lake Dam
Celina Co: Clay TN 38551
Landholding Agency: COE
Property Number: 31200610013
Status: Unutilized
Reasons: Extensive deterioration

Texas

Comfort Station
Overlook PUA
Powderly Co: Lamar TX 75473–9801
Landholding Agency: COE
Property Number: 31200240018
Status: Excess
Reasons: Extensive deterioration

148 Bldgs.
Texoma Lake
Denison TX
Landholding Agency: COE
Property Number: 31200740018
Status: Unutilized
Reasons: Extensive deterioration

18 Bldgs.
Texoma Lake
Denison TX
Landholding Agency: COE
Property Number: 31200820012
Status: Unutilized
Reasons: Extensive deterioration

Bldg.
Stilling Basin
Pat Mayes Lake
Powderly TX 75473
Landholding Agency: COE
Property Number: 31200820013
Status: Unutilized
Reasons: Extensive deterioration

4 Bldgs. Burns Run Area
Texoma Lake
57667, 42562, 42486, 42568
Denison TX
Landholding Agency: COE
Property Number: 31200840012
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 42466, 42508
Johnson Creek/Caney Creek
Denison TX
Landholding Agency: COE
Property Number: 31200920019
Status: Unutilized
Reasons: Extensive deterioration

4 Bldgs.
Lake Texoma
42558, 42473, 42543, 42496
Denison TX
Landholding Agency: COE
Property Number: 31200920020
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 42479
Texoma Lake
Denison TX
Landholding Agency: COE
Property Number: 31200930010
Status: Unutilized
Reasons: Extensive deterioration

Virginia

Bldgs. JHK–17433, JHK–17446
John H. Kerr Project
Boydton VA
Landholding Agency: COE
Property Number: 31200740020
Status: Unutilized
Reasons: Extensive deterioration

Bldg. JHK–16754
Henderson Point
Mecklenburg VA 23917
Landholding Agency: COE

Property Number: 31200840013
Status: Unutilized
Reasons: Extensive deterioration

4 Bldgs.
Philpott Lake
16232, 16233, 16234, 16235
Bassett VA 24055
Landholding Agency: COE
Property Number: 31200920021
Status: Unutilized
Reasons: Extensive deterioration

6 Bldgs.
John H. Kerr Lake & Dam
Mecklenburg VA 23917
Landholding Agency: COE
Property Number: 31200920022
Status: Unutilized
Directions: ID# JHK 15776, 16754, 16810, 17051, 17845, 18244
Reasons: Extensive deterioration

3 Comfort Stations
John H. Kerr Lake & Dam
Mecklenburg VA 23917
Landholding Agency: COE
Property Number: 31200920054
Status: Unutilized
Directions: JHK–17450, 17451, 17457
Reasons: Extensive deterioration

Washington

Madame Dorion Vault Toilet
McNary Lock & Dam
Walla Walla WA
Landholding Agency: COE
Property Number: 31200920023
Status: Unutilized
Reasons: Extensive deterioration

Chiawana Park Restroom
McNary Lock & Dam
Pasco WA 99301
Landholding Agency: COE
Property Number: 31200920024
Status: Unutilized
Reasons: Extensive deterioration

Land

Arizona

58 acres
VA Medical Center
500 Highway 89 North
Prescott Co: Yavapai AZ 86313
Landholding Agency: VA
Property Number: 97190630001
Status: Unutilized
Reasons: Floodway

20 acres
VA Medical Center
500 Highway 89 North
Prescott Co: Yavapai AZ 86313
Landholding Agency: VA
Property Number: 97190630002
Status: Underutilized
Reasons: Floodway

Florida

Wildlife Sanctuary, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504
Landholding Agency: VA
Property Number: 97199230004
Status: Underutilized
Reasons: Other—Inaccessible

Kentucky

Tract 4626
Barkley Lake, Kentucky and Tennessee
Donaldson Creek Launching Area
Cadiz Co: Trigg KY 42211
Landholding Agency: COE
Property Number: 31199010030
Status: Underutilized
Directions: 14 miles from US Highway 68.
Reasons: Floodway

Tract AA–2747
Wolf Creek Dam and Lake Cumberland
US HWY. 27 to Blue John Road
Burnside Co: Pulaski KY 42519
Landholding Agency: COE
Property Number: 31199010038
Status: Underutilized
Reasons: Floodway

Tract AA–2726
Wolf Creek Dam and Lake Cumberland
KY HWY. 80 to Route 769
Burnside Co: Pulaski KY 42519
Landholding Agency: COE
Property Number: 31199010039
Status: Underutilized
Reasons: Floodway

Tract 1358
Barkley Lake, Kentucky and Tennessee
Eddyville Recreation Area
Eddyville Co: Lyon KY 42038
Landholding Agency: COE
Property Number: 31199010043
Status: Excess
Directions: US Highway 62 to State Highway 93
Reasons: Floodway

Barren River Lock No. 1
Richardsville Co: Warren KY 42270
Landholding Agency: COE
Property Number: 31199120008
Status: Unutilized
Reasons: Floodway

Green River Lock No. 3
Rochester Co: Butler KY 42273
Landholding Agency: COE
Property Number: 31199120009
Status: Unutilized
Directions: Off State Hwy. 369, which runs off of Western Ky. Parkway
Reasons: Floodway

Green River Lock No. 4
Woodbury Co: Butler KY 42288
Landholding Agency: COE
Property Number: 31199120014
Status: Underutilized
Directions: Off State Hwy 403, which is off State Hwy 231
Reasons: Floodway

Green River Lock No. 5
Readville Co: Butler KY 42275
Landholding Agency: COE
Property Number: 31199120015
Status: Unutilized
Directions: Off State Highway 185
Reasons: Floodway

Green River Lock No. 6
Brownsville Co: Edmonson KY 42210
Landholding Agency: COE
Property Number: 31199120016
Status: Underutilized
Directions: Off State Highway 259
Reasons: Floodway

Vacant land west of locksite
Greenup Locks and Dam
5121 New Dam Road
Rural Co: Greenup KY 41144
Landholding Agency: COE
Property Number: 31199120017
Status: Unutilized
Reasons: Floodway

Maryland

Tract 131R
Youghiogheny River Lake, Rt. 2, Box 100
Friendsville Co: Garrett MD
Landholding Agency: COE
Property Number: 31199240007
Status: Underutilized
Reasons: Floodway

Minnesota

3.85 acres (Area #2)
VA Medical Center
4801 8th Street
St. Cloud Co: Stearns MN 56303
Landholding Agency: VA
Property Number: 97199740004
Status: Unutilized
Reasons: Other—landlocked

7.48 acres (Area #1)
VA Medical Center
4801 8th Street
St. Cloud Co: Stearns MN 56303
Landholding Agency: VA
Property Number: 97199740005
Status: Underutilized
Reasons: Secured Area

Mississippi

Parcel 1
Grenada Lake
Section 20
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 31199011018
Status: Underutilized
Reasons: Within airport runway clear zone

Missouri

Ditch 19, Item 2, Tract No. 230
St. Francis Basin Project
2½ miles west of Malden
Null Co: Dunklin MO
Landholding Agency: COE
Property Number: 31199130001
Status: Unutilized
Reasons: Floodway

Montana

Sewage Lagoons/40 acres
VA Center
Ft. Harrison MT 59639
Landholding Agency: VA
Property Number: 97200340007
Status: Excess
Reasons: Floodway

New York

Tract 1
VA Medical Center
Bath Co: Steuben NY 14810
Landholding Agency: VA
Property Number: 97199010011
Status: Unutilized
Directions: Exit 38 off New York State Route 17
Reasons: Secured Area

Tract 2
VA Medical Center
Bath Co: Steuben NY 14810
Landholding Agency: VA
Property Number: 97199010012
Status: Underutilized
Directions: Exit 38 off New York State Route 17

Reasons: Secured Area

Tract 3
VA Medical Center
Bath Co: Steuben NY 14810
Landholding Agency: VA
Property Number: 97199010013
Status: Underutilized
Directions: Exit 38 off New York State Route 17
Reasons: Secured Area

Tract 4
VA Medical Center
Bath Co: Steuben NY 14810
Landholding Agency: VA
Property Number: 97199010014
Status: Unutilized
Directions: Exit 38 off New York State Route 17
Reasons: Secured Area

Ohio

Mosquito Creek Lake
Everett Hull Road Boat Launch
Cortland Co: Trumbull OH 44410–9321
Landholding Agency: COE
Property Number: 31199440007
Status: Underutilized
Reasons: Floodway

Mosquito Creek Lake
Housel-Craft Rd., Boat Launch
Cortland Co: Trumbull OH 44410–9321
Landholding Agency: COE
Property Number: 31199440008
Status: Underutilized
Reasons: Floodway

36 Site Campground
German Church Campground
Berlin Center Co: Portage OH 44401–9707
Landholding Agency: COE
Property Number: 31199810001
Status: Unutilized
Reasons: Floodway

Pennsylvania

Lock and Dam #7
Monongahela River
Greensboro Co: Greene PA
Landholding Agency: COE
Property Number: 31199011564
Status: Unutilized
Directions: Left hand side of entrance roadway to project
Reasons: Floodway

Mercer Recreation Area
Shenango Lake
Transfer Co: Mercer PA 16154
Landholding Agency: COE
Property Number: 31199810002
Status: Unutilized
Reasons: Floodway

Tract No. B–212C
Upstream from Gen. Jadwin Dam
Honesdale Co: Wayne PA 18431
Landholding Agency: COE
Property Number: 31200020005
Status: Unutilized
Reasons: Floodway

Tennessee

Brooks Bend
Cordell Hull Dam and Reservoir
Highway 85 to Brooks Bend Road
Gainesboro Co: Jackson TN 38562
Landholding Agency: COE
Property Number: 21199040413
Status: Underutilized
Directions: Tracts 800, 802–806, 835–837, 900–902, 1000–1003, 1025
Reasons: Floodway

Cheatham Lock and Dam
Highway 12
Ashland City Co: Cheatham TN 37015
Landholding Agency: COE
Property Number: 21199040415
Status: Underutilized
Directions: Tracts E–513, E–512–1 and E–512–2
Reasons: Floodway

Tract 2321
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130
Landholding Agency: COE
Property Number: 31199010935
Status: Excess
Directions: South of Old Jefferson Pike
Reasons: Other—landlocked

Tract 6737
Blue Creek Recreation Area
Barkley Lake, Kentucky and Tennessee
Dover Co: Stewart TN 37058
Landholding Agency: COE
Property Number: 31199011478
Status: Underutilized
Directions: U.S. Highway 79/TN Highway 761
Reasons: Floodway

Tracts 3102, 3105, and 3106
Brimstone Launching Area
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562
Landholding Agency: COE
Property Number: 31199011479
Status: Excess
Directions: Big Bottom Road
Reasons: Floodway

Tract 3507
Proctor Site
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551
Landholding Agency: COE
Property Number: 31199011480
Status: Unutilized
Directions: TN Highway 52
Reasons: Floodway

Tract 3721
Obey
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551
Landholding Agency: COE
Property Number: 31199011481
Status: Unutilized
Directions: TN Highway 53
Reasons: Floodway

Tracts 608, 609, 611 and 612
Sullivan Bend Launching Area
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030
Landholding Agency: COE
Property Number: 31199011482
Status: Underutilized
Directions: Sullivan Bend Road
Reasons: Floodway

Tracts 1710, 1716 and 1703
Flynns Lick Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562
Landholding Agency: COE
Property Number: 31199011484
Status: Underutilized
Directions: Whites Bend Road
Reasons: Floodway

Tract 1810
Wartrace Creek Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551
Landholding Agency: COE
Property Number: 31199011485
Status: Underutilized
Directions: TN Highway 85
Reasons: Floodway

Tract 2524
Jennings Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562
Landholding Agency: COE
Property Number: 31199011486
Status: Unutilized
Directions: TN Highway 85
Reasons: Floodway

Tracts 2905 and 2907
Webster
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551
Landholding Agency: COE
Property Number: 31199011487
Status: Unutilized
Directions: Big Bottom Road
Reasons: Floodway

Tracts 2200 and 2201
Gainesboro Airport
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562
Landholding Agency: COE
Property Number: 31199011488
Status: Underutilized
Directions: Big Bottom Road
Reasons: Within airport runway clear zone; Floodway

Tracts 710C and 712C
Sullivan Island
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030
Landholding Agency: COE
Property Number: 31199011489
Status: Unutilized
Directions: Sullivan Bend Road
Reasons: Floodway

Tract 2403, Hensley Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562
Landholding Agency: COE
Property Number: 31199011490
Status: Unutilized
Directions: TN Highway 85
Reasons: Floodway

Tracts 2117C, 2118 and 2120
Cordell Hull Lake and Dam Project
Trace Creek
Gainesboro Co: Jackson TN 38562
Landholding Agency: COE
Property Number: 31199011491
Status: Unutilized
Directions: Brooks Ferry Road
Reasons: Floodway

Tracts 424, 425 and 426
Cordell Hull Lake and Dam Project
Stone Bridge
Carthage Co: Smith TN 37030
Landholding Agency: COE
Property Number: 31199011492
Status: Unutilized
Directions: Sullivan Bend Road
Reasons: Floodway

Tract 517

J. Percy Priest Dam and Reservoir
Suggs Creek Embayment
Nashville Co: Davidson TN 37214
Landholding Agency: COE
Property Number: 31199011493
Status: Underutilized
Directions: Interstate 40 to S. Mount Juliet Road
Reasons: Floodway

Tract 1811
West Fork Launching Area
Smyrna Co: Rutherford TN 37167
Landholding Agency: COE
Property Number: 31199011494
Status: Underutilized
Directions: Florence road near Enon Springs Road
Reasons: Floodway

Tract 1504
J. Perry Priest Dam and Reservoir
Lamon Hill Recreation Area
Smyrna Co: Rutherford TN 37167
Landholding Agency: COE
Property Number: 31199011495
Status: Underutilized
Directions: Lamon Road
Reasons: Floodway

Tract 1500
J. Perry Priest Dam and Reservoir
Pools Knob Recreation
Smyrna Co: Rutherford TN 37167
Landholding Agency: COE
Property Number: 31199011496
Status: Underutilized
Directions: Jones Mill Road
Reasons: Floodway

Tracts 245, 257, and 256
J. Perry Priest Dam and Reservoir
Cook Recreation Area
Nashville Co: Davidson TN 37214
Landholding Agency: COE
Property Number: 31199011497
Status: Underutilized
Directions: 2.2 miles south of Interstate 40 near Saunders Ferry Pike
Reasons: Floodway

Tracts 107, 109 and 110
Cordell Hull Lake and Dam Project
Two Prong
Carthage Co: Smith TN 37030
Landholding Agency: COE
Property Number: 31199011498
Status: Unutilized
Directions: U.S. Highway 85
Reasons: Floodway

Tracts 2919 and 2929
Cordell Hull Lake and Dam Project
Sugar Creek
Gainesboro Co: Jackson TN 38562
Landholding Agency: COE
Property Number: 31199011500
Status: Unutilized
Directions: Sugar Creek Road
Reasons: Floodway

Tracts 1218 and 1204
Cordell Hull Lake and Dam Project
Granville—Alvin Yourk Road
Granville Co: Jackson TN 38564
Landholding Agency: COE
Property Number: 31199011501
Status: Unutilized
Reasons: Floodway

Tract 2100
Cordell Hull Lake and Dam Project
Galbreaths Branch
Gainesboro Co: Jackson TN 38562
Landholding Agency: COE
Property Number: 31199011502
Status: Unutilized
Directions: TN Highway 53
Reasons: Floodway

Tract 104 et al.
Cordell Hull Lake and Dam Project
Horshoe Bend Launching Area
Carthage Co: Smith TN 37030
Landholding Agency: COE
Property Number: 31199011504
Status: Underutilized
Directions: Highway 70 N
Reasons: Floodway

Tracts 510, 511, 513 and 514
J. Percy Priest Dam and Reservoir Project
Lebanon Co: Wilson TN 37087
Landholding Agency: COE
Property Number: 31199120007
Status: Underutilized
Directions: Vivrett Creek Launching Area, Alvin Sperry Road
Reasons: Floodway

Tract A–142, Old Hickory Beach
Old Hickory Blvd.
Old Hickory Co: Davidson TN 37138
Landholding Agency: COE
Property Number: 31199130008
Status: Underutilized
Reasons: Floodway

Tract D, 7 acres
Cheatham Lock
Nashville Co: Davidson TN 37207
Landholding Agency: COE
Property Number: 31200020006
Status: Underutilized
Reasons: Floodway

Tract F–608
Cheatham Lock
Ashland Co: Cheatham TN 37015
Landholding Agency: COE
Property Number: 31200420021
Status: Unutilized
Reasons: Floodway

Tracts G702–G706
Cheatham Lock
Ashland Co: Cheatham TN 37015
Landholding Agency: COE
Property Number: 31200420022
Status: Unutilized
Reasons: Floodway

6 Tracts
Shutes Branch Campground
Lakewood Co: Wilson TN
Landholding Agency: COE
Property Number: 31200420023
Status: Unutilized
Reasons: Floodway

Tracts 104, 105–1, 105–2
Joe Pool Lake
Null Co: Dallas TX
Landholding Agency: COE
Property Number: 31199010397
Status: Underutilized
Reasons: Floodway

Part of Tract 201–3
Joe Pool Lake
Null Co: Dallas TX
Landholding Agency: COE
Property Number: 31199010398
Status: Underutilized
Reasons: Floodway

Part of Tract 323
Joe Pool Lake
Null Co: Dallas TX
Landholding Agency: COE
Property Number: 31199010399
Status: Underutilized
Reasons: Floodway

Tract 702–3
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530–9801
Landholding Agency: COE
Property Number: 31199010401
Status: Unutilized
Reasons: Floodway

Tract 706
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530–9801
Landholding Agency: COE
Property Number: 31199010402
Status: Unutilized
Reasons: Floodway

West Virginia

Morgantown Lock and Dam
Box 3 RD #2
Morgantown Co: Monongahelia WV 26505
Landholding Agency: COE
Property Number: 31199011530
Status: Unutilized
Reasons: Floodway

London Lock and Dam
Route 60 East
Rural Co: Kanawha WV 25126
Landholding Agency: COE
Property Number: 31199011690
Status: Unutilized
Directions: 20 miles east of Charleston, W. Virginia
Reasons: Other—.03 acres; very narrow strip of land

Portion of Tract #101
Buckeye Creek
Sutton Co: Braxton WV 26601
Landholding Agency: COE
Property Number: 31199810006
Status: Excess
Reasons: Other—inaccessible

[FR Doc. E9–18622 Filed 8–6–09; 8:45 am]

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Federal Register

Friday,
August 7, 2009

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2010; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1538–F]

RIN 0938–AP56

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2010

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule updates the payment rates for inpatient rehabilitation facilities (IRFs) for Federal fiscal year (FY) 2010 (for discharges occurring on or after October 1, 2009 and on or before September 30, 2010) as required under section 1886(j)(3)(C) of the Social Security Act (the Act). Section 1886(j)(5) of the Act requires the Secretary to publish in the **Federal Register** on or before the August 1 that precedes the start of each fiscal year, the classification and weighting factors for the IRF prospective payment system's (PPS) case-mix groups and a description of the methodology and data used in computing the prospective payment rates for that fiscal year.

We are revising existing policies regarding the IRF PPS within the authority granted under section 1886(j) of the Act.

DATES: *Effective Date.* The provisions of the final rule are effective October 1, 2009, except for the amendments to § 412.23, § 412.29, and § 412.622 which are effective January 1, 2010.

Applicability Date. The amendments to § 412.23, § 412.29, and § 412.622 are applicable to IRF discharges occurring on or after January 1, 2010. The updated IRF prospective payment rates are applicable for IRF discharges occurring on or after October 1, 2009 and on or before September 30, 2010 (FY 2010).

FOR FURTHER INFORMATION CONTACT: Susanne Seagrave, (410) 786–0044, for information regarding the payment policies.

Julie Stankivic, (410) 786–5725, for general information regarding the proposed rule.

Jeanette Kranacs, (410) 786–9385, for information regarding the wage index.

SUPPLEMENTARY INFORMATION:

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Because of the many terms to which we refer by acronym in this final rule, we are listing the acronyms used and their corresponding terms in alphabetical order below.

ADC Average Daily Census
ASCA Administrative Simplification Compliance Act, Public Law 107–105
BBA Balanced Budget Act of 1997, Public Law 105–33
BBRA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999, Public Law 106–113
BIPA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Benefits Improvement and Protection Act of 2000, Public Law 106–554
CBSA Core-Based Statistical Area
CCR Cost-to-Charge Ratio
CFR Code of Federal Regulations
CMG Case-Mix Group
DRG Diagnostic Related Group
DSH Disproportionate Share Hospital
FI Fiscal Intermediary
FR Federal Register
FTE Full-time Equivalent
FY Federal Fiscal Year
HCFA Health Care Financing Administration
HHH Hubert H. Humphrey Building
HIPAA Health Insurance Portability and Accountability Act, Public Law 104–191
IOM Internet Only Manual
IPF Inpatient Psychiatric Facility
IPPS Inpatient Prospective Payment System
IRF Inpatient Rehabilitation Facility
IRF–PAI Inpatient Rehabilitation Facility—Patient Assessment Instrument
IRF PPS Inpatient Rehabilitation Facility Prospective Payment System
IRVEN Inpatient Rehabilitation Validation and Entry
LTCH Long Term Care Hospital
LIP Low-Income Percentage
MA Medicare Advantage
MAC Medicare Administrative Contractor
MBPM Medicare Benefit Policy Manual
MMSEA Medicare, Medicaid, and SCHIP Extension Act of 2007, Public Law 110–173
OMB Office of Management and Budget
PAI Patient Assessment Instrument
PPS Prospective Payment System
QIC Qualified Independent Contractors
RAC Recovery Audit Contractors
RAND RAND Corporation
RFA Regulatory Flexibility Act, Public Law 96–354
RIA Regulatory Impact Analysis
RIC Rehabilitation Impairment Category
RPL Rehabilitation, Psychiatric, and Long-Term Care Hospital Market Basket
SCHIP State Children's Health Insurance Program

I. Background

A. Historical Overview of the Inpatient Rehabilitation Facility Prospective Payment System (IRF PPS)

Section 4421 of the Balanced Budget Act of 1997 (BBA), Public Law 105–33, as amended by section 125 of the Medicare, Medicaid, and SCHIP (State Children's Health Insurance Program) Balanced Budget Refinement Act of 1999 (BBRA), Public Law 106–113, and by section 305 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), Public Law 106–554, provides for the implementation of a per discharge prospective payment system (PPS) under section 1886(j) of the Social Security Act (the Act) for inpatient rehabilitation hospitals and inpatient rehabilitation units of a hospital (hereinafter referred to as IRFs).

Payments under the IRF PPS encompass inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine, ancillary, and capital costs) but not direct graduate medical education costs, costs of approved nursing and allied health education activities, bad debts, and other services or items outside the scope of the IRF PPS. Although a complete discussion of the IRF PPS provisions appears in the original FY 2002 IRF PPS final rule (66 FR 41316) and the FY 2006 IRF PPS final rule (70 FR 47880), we are providing below a general description of the IRF PPS for fiscal years (FYs) 2002 through 2009.

Under the IRF PPS from FY 2002 through FY 2005, as described in the FY 2002 IRF PPS final rule (66 FR 41316), the Federal prospective payment rates were computed across 100 distinct case-mix groups (CMGs). We constructed 95 CMGs using rehabilitation impairment categories (RICs), functional status (both motor and cognitive), and age (in some cases, cognitive status and age may not be a factor in defining a CMG). In addition, we constructed five special CMGs to account for very short stays and for patients who expire in the IRF.

For each of the CMGs, we developed relative weighting factors to account for a patient's clinical characteristics and expected resource needs. Thus, the weighting factors accounted for the relative difference in resource use across all CMGs. Within each CMG, we created tiers based on the estimated effects that certain comorbidities would have on resource use.

We established the Federal PPS rates using a standardized payment conversion factor (formerly referred to as the budget neutral conversion factor). For a detailed discussion of the budget neutral conversion factor, please refer to our FY 2004 IRF PPS final rule (68 FR 45684 through 45685). In the FY 2006 IRF PPS final rule (70 FR 47880), we discussed in detail the methodology for determining the standard payment conversion factor.

We applied the relative weighting factors to the standard payment conversion factor to compute the unadjusted Federal prospective payment rates under the IRF PPS from FYs 2002 through 2005. Within the structure of the payment system, we then made adjustments to account for interrupted stays, transfers, short stays, and deaths. Finally, we applied the applicable adjustments to account for geographic variations in wages (wage index), the percentage of low-income patients, location in a rural area (if applicable), and outlier payments (if applicable) to the IRF's unadjusted Federal prospective payment rates.

For cost reporting periods that began on or after January 1, 2002 and before October 1, 2002, we determined the final prospective payment amounts using the transition methodology prescribed in section 1886(j)(1) of the Act. Under this provision, IRFs transitioning into the PPS were paid a blend of the Federal IRF PPS rate and the payment that the IRF would have received had the IRF PPS not been implemented. This provision also allowed IRFs to elect to bypass this blended payment and immediately be paid 100 percent of the Federal IRF PPS rate. The transition methodology expired as of cost reporting periods beginning on or after October 1, 2002 (FY 2003), and payments for all IRFs now consist of 100 percent of the Federal IRF PPS rate.

We established a CMS Web site as a primary information resource for the IRF PPS. The Web site URL is *http://www.cms.hhs.gov/InpatientRehabFacPPS/* and may be accessed to download or view publications, software, data specifications, educational materials, and other information pertinent to the IRF PPS.

Section 1886(j) of the Act confers broad statutory authority upon the Secretary to propose refinements to the IRF PPS. In the FY 2006 IRF PPS final rule (70 FR 47880) and in correcting amendments to the FY 2006 IRF PPS final rule (70 FR 57166) that we published on September 30, 2005, we finalized a number of refinements to the IRF PPS case-mix classification system (the CMGs and the corresponding relative weights) and the case-level and facility-level adjustments. These refinements included the adoption of OMB's Core-Based Statistical Area (CBSA) market definitions, modifications to the CMGs, tier comorbidities, and CMG relative weights, implementation of a new teaching status adjustment for IRFs, revision and rebasing of the IRF market basket, and updates to the rural, low-income percentage (LIP), and high-cost outlier adjustments. Any reference to the FY 2006 IRF PPS final rule in this proposed rule also includes the provisions effective in the correcting amendments. For a detailed discussion of the final key policy changes for FY 2006, please refer to the FY 2006 IRF PPS final rule (70 FR 47880 and 70 FR 57166).

In the FY 2007 IRF PPS final rule (71 FR 48354), we further refined the IRF PPS case-mix classification system (the CMG relative weights) and the case-level adjustments, to ensure that IRF PPS payments would continue to reflect as accurately as possible the costs of care. For a detailed discussion of the FY 2007 policy revisions, please refer to the FY 2007 IRF PPS final rule (71 FR 48354).

In the FY 2008 IRF PPS final rule (72 FR 44284), we updated the Federal prospective payment rates and the outlier threshold, revised the IRF wage index policy, and clarified how we determine high-cost outlier payments for transfer cases. For more information on the policy changes implemented for FY 2008, please refer to the FY 2008 IRF PPS final rule (72 FR 44284), in which we published the final FY 2008 IRF Federal prospective payment rates.

After publication of the FY 2008 IRF PPS final rule (72 FR 44284), section 115 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, Public Law 110–173 (MMSEA), amended section 1886(j)(3)(C) of the Act to apply a zero percent increase factor for FYs 2008 and 2009, effective for IRF discharges occurring on or after April 1, 2008. Section 1886(j)(3)(C) of the Act requires the Secretary to develop an increase factor to update the IRF Federal prospective payment rates for each FY. Based on the legislative change to the increase factor, we revised the FY 2008 Federal prospective payment rates for IRF discharges occurring on or after April 1, 2008. Thus, the final FY 2008 IRF Federal prospective payment rates that were published in the FY 2008 IRF PPS final rule (72 FR 44284) were effective for discharges occurring on or after October 1, 2007 and on or before March 31, 2008; and the revised FY 2008 IRF Federal prospective payment rates were effective for discharges occurring on or after April 1, 2008 and on or before September 30, 2008. The

revised FY 2008 Federal prospective payment rates are available on the CMS Web site at *http://www.cms.hhs.gov/InpatientRehabFacPPS/07_DataFiles.asp#TopOfPage.*

In the FY 2009 IRF PPS final rule (73 FR 46370), we updated the CMG relative weights, the average length of stay values, and the outlier threshold; clarified IRF wage index policies regarding the treatment of ''New England deemed'' counties and multi-campus hospitals; and revised the regulation text in response to section 115 of the MMSEA to set the IRF compliance percentage at 60 percent (''the 60 percent rule'') and continue the practice of including comorbidities in the calculation of compliance percentages. We also applied a zero percent increase factor for FY 2009. For more information on the policy changes implemented for FY 2009, please refer to the FY 2009 IRF PPS final rule (73 FR 46370), in which we published the final FY 2009 IRF Federal prospective payment rates.

B. Operational Overview of the Current IRF PPS

As described in the FY 2002 IRF PPS final rule, upon the admission and discharge of a Medicare Part A fee-for-service patient, the IRF is required to complete the appropriate sections of a patient assessment instrument (PAI), the Inpatient Rehabilitation Facility-Patient Assessment Instrument (IRF–PAI). All required data must be electronically encoded into the IRF–PAI software product. Generally, the software product includes patient classification programming called the GROUPER software. The GROUPER software uses specific IRF–PAI data elements to classify (or group) patients into distinct CMGs and account for the existence of any relevant comorbidities.

The GROUPER software produces a five-digit CMG number. The first digit is an alpha-character that indicates the comorbidity tier. The last four digits represent the distinct CMG number. Free downloads of the Inpatient Rehabilitation Validation and Entry (IRVEN) software product, including the GROUPER software, are available on the CMS Web site at *http://www.cms.hhs.gov/InpatientRehabFacPPS/06_Software.asp.*

Once a patient is discharged, the IRF submits a Medicare claim as a Health Insurance Portability and Accountability Act (HIPAA), Public Law 104–191, compliant electronic claim or, if the Administrative Simplification Compliance Act (ASCA), Public Law 107–105, permits, a paper claim (a UB–04 or a CMS–1450 as appropriate) using the five-digit CMG number and sends it to the appropriate Medicare fiscal intermediary (FI) or Medicare Administrative Contractor (MAC). Claims submitted to Medicare must comply with both ASCA and HIPAA.

Section 3 of the ASCA amends section 1862(a) of the Act by adding paragraph (22) which requires the Medicare program, subject to section 1862(h) of the Act, to deny payment under Part A or Part B for any expenses for items or services ''for which a claim is submitted other than in an electronic form specified by the Secretary.'' Section 1862(h) of the Act, in turn, provides that the Secretary shall waive such denial in situations in which there is no method available for the submission of claims in an electronic form or the entity submitting the claim is a small provider. In addition, the Secretary also has the authority to waive such denial ''in such unusual cases as the Secretary finds appropriate.'' For more information we refer the reader to the final rule, ''Medicare Program; Electronic Submission of Medicare Claims'' (70 FR 71008, November 25, 2005). CMS instructions for the limited number of Medicare claims submitted on paper are available at: *http://www.cms.hhs.gov/manuals/downloads/clm104c25.pdf.*

Section 3 of the ASCA operates in the context of the administrative simplification provisions of HIPAA, which include, among others, the requirements for transaction standards and code sets codified in 45 CFR parts 160 and 162, subparts A and I through R (generally known as the Transactions Rule). The Transactions Rule requires covered entities, including covered healthcare providers, to conduct covered electronic transactions according to the applicable transaction standards. (*See* the program claim memoranda issued and published by CMS at: *http://www.cms.hhs.gov/ElectronicBillingEDITrans/* and listed in the addenda to the Medicare Intermediary Manual, Part 3, section 3600).

The Medicare FI or MAC processes the claim through its software system. This software system includes pricing programming called the ''PRICER'' software. The PRICER software uses the CMG number, along with other specific claim data elements and provider-specific data, to adjust the IRF's prospective payment for interrupted stays, transfers, short stays, and deaths, and then applies the applicable adjustments to account for the IRF's wage index, percentage of low-income patients, rural location, and outlier payments. For discharges occurring on or after October 1, 2005, the IRF PPS payment also reflects the new teaching status adjustment that became effective as of FY 2006, as discussed in the FY 2006 IRF PPS final rule (70 FR 47880).

II. Summary of Provisions of the Proposed Rule

As discussed in the FY 2010 IRF PPS proposed rule (74 FR 21052), we proposed updates to the IRF PPS, revisions to existing regulations text for the purpose of providing greater clarity, new regulations text to improve calculation of compliance with the ''60 percent'' rule, and rescission of an outdated Health Care Financing Administration (HFCA) Ruling (HCFAR 85–2–1). These proposals are as follows:

A. Proposed Updates to the IRF PPS for Federal Fiscal Year (FY) 2010

- Update the FY 2010 IRF PPS relative weights and average length of stay values using the most current and complete Medicare claims and cost report data in a budget neutral manner, as discussed in section III of the FY 2010 IRF PPS proposed rule (74 FR 21052, 21055 through 21059).
- Update the FY 2010 IRF facility-level adjustments (rural, LIP, and teaching status adjustments) using the most current and complete Medicare claims and cost report data in a budget neutral manner, as discussed in section IV of the FY 2010 IRF PPS proposed rule (74 FR 21052, 21059 through 21062).
- Update the FY 2010 IRF PPS payment rates by the proposed market basket, as discussed in section V.A of the FY 2010 IRF PPS proposed rule (74 FR 21052 at 21062).
- Update the FY 2010 IRF PPS payment rates by the proposed wage index and the labor-related share in a budget neutral manner, as discussed in section V.A and V.B of the FY 2010 IRF PPS proposed rule (74 FR 21052, 21062 through 21063).
- Update the outlier threshold amount for FY 2010, as discussed in section VI.A of the FY 2010 IRF PPS proposed rule (74 FR 21052 at 21066).

B. Proposed Revisions to Existing Regulation Text

- Relocate and revise the criteria for admission to an inpatient rehabilitation hospital found at existing § 412.23(b)(3) through (b)(7) that describe requirements relating to preadmission screening, close medical supervision, a director of rehabilitation, the plan of care, and a coordinated multidisciplinary team approach. Redesignate paragraphs (b)(8) and (b)(9) of § 412.23 as paragraphs (b)(3) and

(b)(4) and revise newly redesignated paragraph (b)(4), as described in section VII of the FY 2010 IRF PPS proposed rule (74 FR 21052, 21067 through 21071).

- Revise the section heading at § 412.29 to include inpatient rehabilitation hospitals, as described in section VII of the FY 2010 IRF PPS proposed rule (74 FR 21052, 21067 through 21071).
- Relocate and revise the existing requirements at § 412.29(b) through (f) that describe the admission requirements relating to preadmission screening, close medical supervision, a director of rehabilitation, the plan of care, and a coordinated multidisciplinary team approach, as described in section VII of the FY 2010 IRF PPS proposed rule (74 FR 21052, 21067 through 21071).
- Revise the section heading at § 412.30, as described in section VII of the FY 2010 IRF PPS proposed rule (74 FR 21052, 21067 through 21071).
- Revise the regulation text in § 412.604, § 412.606, § 412.610. § 412.614 and § 412.618 to require the collection of inpatient rehabilitation facility patient assessment instrument data on Medicare Part C (Medicare Advantage) patients in IRFs for use in the 60 percent rule compliance percentage calculations, as described in section VIII of the FY 2010 IRF PPS proposed rule (74 FR 21052, 21071 through 21073).
- Remove § 412.614(a)(3) that provides for an exception in the transmission of IRF–PAI data to CMS, as described in section VIII of the FY 2010 IRF PPS proposed rule (74 FR 21052, 21071 through 21073).
- Revise the heading at § 412.614(d) to ''Consequences of failure to submit complete and timely IRF–PAI data, as required under paragraph (c) of this section,'' as described in section VIII of the FY 2010 IRF PPS proposed rule (74 FR 21052, 21071 through 21073).
- Revise the heading at § 412.614(d)(1) to ''Medicare Part A fee-for-service data,'' as described in section VIII of the FY 2010 IRF PPS proposed rule (74 FR 21052, 21071 through 21073).
- Make a technical correction to the paragraph formerly designated as § 412.614(d)(1) and assign the revised language to a new paragraph § 412.614(d)(1)(a), as described in section VIII of the FY 2010 IRF PPS proposed rule (74 FR 21052, 21071 through 21073).
- Redesignate paragraph § 412.614(d)(2) as § 412.614(d)(1)(b), as described in section VIII of the FY 2010 IRF PPS proposed rule (74 FR 21052, 21071 through 21073).

C. Proposed New Regulation Text

- Revise § 412.29, as described in section VII of the FY 2010 IRF PPS proposed rule (74 FR 21052, 21067 through 21071), to include the requirements for admission to an IRF.
- Add a new introductory paragraph at § 412.30 that includes the requirements previously found in § 412.29(a) (describing the admission requirements for new and converted rehabilitation units), as described in section VII of the FY 2010 IRF PPS proposed rule (74 FR 21052, 21067 through 21071).
- Revise § 412.610(f) to require that the IRF provide a copy of the electronic computer file format of the IRF–PAI to the contractor upon request, as described in section VII of the FY 2010 IRF PPS proposed rule (74 FR 21052, 21067 through 21071).
- Add a new paragraph § 412.614(d)(2) to indicate that failure of an IRF to submit IRF–PAI data on all of its Medicare Part C (Medicare Advantage) patients will result in forfeiture of the IRF's ability to have any of its Medicare Part C (Medicare Advantage) data used in the compliance calculations, as described in section VIII of the FY 2010 IRF PPS proposed rule (74 FR 21052, 21071 through 21073).

D. Proposed Rescission of Outdated HCFAR–85–2–1

Rescind HCFA Ruling 85–2–1 entitled ''Medicare Criteria for Medicare Coverage of Inpatient Hospital Rehabilitation Services'' and set forth new coverage guidance to implement the new regulations adopted under this final rule, as described in section VII of the FY 2010 IRF PPS proposed rule (74 FR 21052 at 21071).

III. Analysis of and Responses to Public Comments

We received approximately 686 timely responses, many of which contained multiple comments on the FY 2010 IRF PPS proposed rule (74 FR 21052) from the public. We received comments from various trade associations, inpatient rehabilitation facilities, individual physicians, therapists, clinicians, health care industry organizations, and health care consulting firms. The following section, arranged by subject area, includes a summary of the public comments that we received, and our responses.

IV. Update to the Case-Mix Group (CMG) Relative Weights and Average Length of Stay Values for FY 2010

As specified in 42 CFR 412.620(b)(1), we calculate a relative weight for each CMG that is proportional to the resources needed by an average inpatient rehabilitation case in that CMG. For example, cases in a CMG with a relative weight of 2, on average, will cost twice as much as cases in a CMG with a relative weight of 1. Relative weights account for the variance in cost per discharge due to the variance in resource utilization among the payment groups, and their use helps to ensure that IRF PPS payments support beneficiary access to care as well as provider efficiency.

In the FY 2010 IRF PPS proposed rule (74 FR 21052, 21055 through 21059), we proposed to update the CMG relative weights and average length of stay values for FY 2010 using the most recent available data (at that time, FY 2007 IRF claims and cost report data) to ensure that IRF PPS payments fully reflect recent changes in IRF utilization due to the 60 percent rule and medical review activities. To ensure that IRF PPS payments continue to reflect as accurately as possible the current costs of care in IRFs, we are updating the CMG relative weights and average length of stay values for FY 2010 in this final rule using FY 2008 IRF claims and FY 2007 IRF cost report data. These data are the most current and complete data available at this time. At this time, only about 20 percent of the FY 2008 IRF cost report data are available for analysis, but the majority of the FY 2008 IRF claims data are available for analysis.

We have used the same methodology that we used to update the CMG relative weights and average length of stay values in the FY 2009 IRF PPS final rule (73 FR 46370). In calculating the CMG relative weights, we use a hospital-specific relative value method to estimate operating (routine and ancillary services) and capital costs of IRFs. The process used to calculate the CMG relative weights for this final rule follows below:

Step 1. We calculate the CMG relative weights by estimating the effects that comorbidities have on costs.

Step 2. We adjust the cost of each Medicare discharge (case) to reflect the effects found in the first step.

Step 3. We use the adjusted costs from the second step to calculate CMG relative weights, using the hospital-specific relative value method.

Step 4. We normalize the FY 2010 CMG relative weights to the same average CMG relative weight from the

CMG relative weights implemented in the FY 2009 IRF PPS final rule (73 FR 46370).

Consistent with the way we implemented changes to the IRF classification system in the FY 2006 IRF PPS final rule (70 FR 47880 and 70 FR 57166), the FY 2007 IRF PPS final rule (71 FR 48354), and the FY 2009 IRF PPS final rule (73 FR 46370), we are revising the CMG relative weights for FY 2010 in such a way that total estimated aggregate payments to IRFs for FY 2010 are estimated to be the same with or without the changes (that is, in a budget neutral manner) by applying a budget neutrality factor to the standard payment amount. To calculate the appropriate budget neutrality factor for use in updating the FY 2010 CMG relative weights, we use the following steps:

Step 1. Calculate the estimated total amount of IRF PPS payments for FY 2010 (with no changes to the CMG relative weights).

Step 2. Apply the changes to the CMG relative weights (as discussed above) to calculate the estimated total amount of IRF PPS payments for FY 2010.

Step 3. Divide the amount calculated in step 1 by the amount calculated in step 2 to determine the budget neutrality factor (1.0020) that maintains the same total estimated aggregate payments in FY 2010 with and without the changes to the CMG relative weights.

Step 4. Apply the budget neutrality factor (1.0020) to the FY 2009 IRF PPS standard payment amount after the application of the budget-neutral wage adjustment factor.

In section VI.C of this final rule, we discuss the methodology for calculating the standard payment conversion factor for FY 2010.

Note that the budget neutrality factor that we use to update the CMG relative weights for FY 2010 changed from 1.0004 in the proposed rule to 1.0020 in this final rule due to the use of updated FY 2008 IRF claims data in this final rule.

We received 7 comments on the proposed updates to the CMG relative weights and average length of stay values, which are summarized below.

Comment: The vast majority of commenters supported the proposed update to the CMG relative weights and average length of stay values. However, most suggested that CMS use FY 2008 IRF claims and cost report data in updating the CMG relative weights and average length of stay values for the final rule, saying that the effects of recent changes in the 60 percent rule and the IRF medical necessity review activities are continuing to be realized through FY 2008 and early FY 2009. Several commenters said that we should continue to update the CMG relative weights and average length of stay values annually to reflect changes in IRF costs and utilization that occur over time.

Response: We appreciate the commenters' suggestions for updating the data used in the analysis of the CMG relative weights for FY 2010, and we agree that we should continue to use the most recent available data for our analyses of the CMG relative weights. However, only about 20 percent of the FY 2008 IRF cost reports are available for analysis at this time, and we do not believe that 20 percent is a large enough or representative enough sample of all IRFs on which to base our updates. Thus, for this final rule, we have continued to use the most recent available data, which are the FY 2008 IRF claims and FY 2007 IRF cost report data. We will continue to update the CMG relative weights and average length of stay values in the future, as appropriate, using the most recent available data.

Comment: One commenter requested that CMS seek additional sources of cost information, such as the Cost Resource Utilization (CRU) Tool data from the Post Acute Care Payment Reform Demonstration (PAC PRD), to address issues of relative weight compression in future updates to the CMG relative weights.

Response: We appreciate the commenter's suggestion, and will consider this suggestion for future analyses once the CRU data are complete and available for analysis.

Comment: One commenter stated a concern that the proposed update to the CMG relative weights for FY 2010 would result in a slight decrease in the average payment per case for IRFs and would increase payments for certain diagnoses while decreasing payments for other diagnoses.

Response: Consistent with the way that we applied updates to the CMG relative weights and average length of stay values in the FY 2006 IRF PPS final rule (70 FR 47880 and 70 FR 57166), the FY 2007 IRF PPS final rule (71 FR 48354), and the FY 2009 IRF PPS final rule (73 FR 46370), we are updating the CMG relative weights and average length of stay values in this final rule in a budget-neutral manner, so that estimated aggregate payments to IRFs do not increase or decrease as a result of these updates. Thus, we apply a budget-neutrality factor of 1.0020 to increase the standard payment conversion factor (as described in section VI.C of this final rule) to counteract any estimated decrease in aggregate IRF payments as a result of the updates to the CMG relative weights and average length of stay values.

Further, as we stated in the FY 2010 IRF PPS proposed rule (74 FR 21052 at 21059), the updates are generally expected to result in some increases and some decreases to the CMG relative weight values. Changes in the relative weights are, by definition, distributional and, therefore, the fact that the updates shown in Table 1 increase IRF payments to some diagnoses and decrease IRF payments to other diagnoses is to be expected. The intent of these changes is to ensure that the relative payments assigned to the CMGs and tiers continue to reflect the relative costs of caring for different types of patients in IRFs.

Comment: Several commenters requested that we reiterate that the average length of stay values are not intended to be used as clinical guidelines for patient care, but are only used to determine when an IRF discharge meets the definition of a short-stay transfer, which results in a per diem case level adjustment.

Response: We agree with this comment, and we already stated that the purpose of the average length of stay values is to determine when an IRF discharge meets the definition of a short-stay transfer in the FY 2010 IRF PPS proposed rule (74 FR 21052 at 21056). As the commenter notes, the average length of stay values are not intended to be used as clinical guidelines for patient care.

Comment: One commenter suggested that we consider alternative methodologies for updating the CMG relative weights in the future to improve their ability to predict IRFs' cost per case, and expressed a concern about the need to update the weighted motor score methodology used to classify IRF patients into CMGs that was finalized in the FY 2006 IRF PPS final rule (70 FR 47880 at 47900).

Response: We appreciate the commenter's suggestions regarding alternative methodologies for analyzing future updates to the CMG relative weights, and will review them carefully. We will also take into account the commenter's suggestion that we update the weights used in the motor score calculation in the future.

Final Decision: After carefully considering all of the comments that we received on the proposed updates to the CMG relative weights and average length of stay values, we are implementing the FY 2010 updates to the CMG relative weights and average length of stay values presented in Table

1 below (which are different from the relative weights and average length of stay values that we had proposed because these final values are based on analysis of updated FY 2008 data).

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Table 1: Relative Weights and Average Length of Stay Values for Case-Mix Groups

CMG	CMG Description (M=motor, C=cognitive, A=age)	Relative weight				Average length of stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
0101	Stroke M>51.05	0.7547	0.7070	0.6484	0.6128	9	11	9	9
0102	Stroke M>44.45 and M<51.05 and C>18.5	0.9248	0.8663	0.7945	0.7509	11	12	11	10
0103	Stroke M>44.45 and M<51.05 and C<18.5	1.0798	1.0115	0.9277	0.8768	12	14	12	12
0104	Stroke M>38.85 and M<44.45	1.1632	1.0897	0.9993	0.9446	13	14	13	13
0105	Stroke M>34.25 and M<38.85	1.3697	1.2831	1.1767	1.1122	16	17	15	14
0106	Stroke M>30.05 and M<34.25	1.5778	1.4780	1.3555	1.2812	18	18	17	17
0107	Stroke M>26.15 and M<30.05	1.8232	1.7079	1.5663	1.4805	20	20	19	19
0108	Stroke M<26.15 and A>84.5	2.2072	2.0677	1.8963	1.7923	28	27	23	23
0109	Stroke M>22.35 and M<26.15 and A<84.5	2.0752	1.9440	1.7828	1.6851	21	23	22	21
0110	Stroke M<22.35 and A<84.5	2.6145	2.4492	2.2462	2.1230	30	30	27	26
0201	Traumatic brain injury M>53.35 and C>23.5	0.7044	0.6324	0.5749	0.5228	10	10	7	8
0202	Traumatic brain injury M>44.25 and M<53.35 and C>23.5	0.9464	0.8496	0.7724	0.7024	13	12	10	10
0203	Traumatic brain injury M>44.25 and C<23.5	1.1598	1.0412	0.9466	0.8608	15	15	13	13
0204	Traumatic brain injury M>40.65 and M<44.25	1.2420	1.1150	1.0137	0.9218	14	15	14	12

CMG	CMG Description (M=motor, C=cognitive, A=age)	Relative weight				Average length of stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
0205	Traumatic brain injury M>28.75 and M<40.65	1.5061	1.3521	1.2292	1.1178	17	17	16	15
0206	Traumatic brain injury M>22.05 and M<28.75	1.9079	1.7128	1.5571	1.4160	22	21	20	18
0207	Traumatic brain injury M<22.05	2.5472	2.2867	2.0789	1.8905	37	31	26	23
0301	Non-traumatic brain injury M>41.05	1.0683	0.9575	0.8477	0.7721	12	12	11	11
0302	Non-traumatic brain injury M>35.05 and M<41.05	1.3496	1.2096	1.0709	0.9754	14	14	13	13
0303	Non-traumatic brain injury M>26.15 and M<35.05	1.6614	1.4890	1.3183	1.2007	17	19	16	15
0304	Non-traumatic brain injury M<26.15	2.2573	2.0231	1.7911	1.6313	27	25	22	20
0401	Traumatic spinal cord injury M>48.45	0.8379	0.8379	0.8024	0.6847	13	15	12	10
0402	Traumatic spinal cord injury M>30.35 and M<48.45	1.1895	1.1895	1.1391	0.9721	16	19	15	13
0403	Traumatic spinal cord injury M>16.05 and M<30.35	2.0099	2.0099	1.9247	1.6425	26	28	23	21
0404	Traumatic spinal cord injury M<16.05 and A>63.5	3.8858	3.8858	3.7211	3.1755	56	42	43	38
0405	Traumatic spinal cord injury M<16.05 and A<63.5	3.1262	3.1262	2.9937	2.5547	55	32	35	30
0501	Non-traumatic spinal cord injury M>51.35	0.7616	0.6599	0.5838	0.5179	10	0	8	8
0502	Non-traumatic spinal cord injury M>40.15 and M<51.35	1.0612	0.9195	0.8135	0.7215	14	12	11	10
0503	Non-traumatic spinal cord injury M>31.25 and M<40.15	1.3894	1.2039	1.0651	0.9447	17	16	14	13

CMG	CMG Description (M=motor, C=cognitive, A=age)	Relative weight				Average length of stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
0504	Non-traumatic spinal cord injury M>29.25 and M<31.25	1.6460	1.4262	1.2618	1.1192	15	18	17	15
0505	Non-traumatic spinal cord injury M>23.75 and M<29.25	1.9416	1.6824	1.4884	1.3202	22	21	19	17
0506	Non-traumatic spinal cord injury M<23.75	2.6752	2.3181	2.0507	1.8190	33	29	25	23
0601	Neurological M>47.75	0.9079	0.7936	0.7252	0.6526	10	10	10	9
0602	Neurological M>37.35 and M<47.75	1.1964	1.0457	0.9557	0.8600	13	13	12	12
0603	Neurological M>25.85 and M<37.35	1.5487	1.3537	1.2371	1.1133	16	17	15	15
0604	Neurological M<25.85	2.0568	1.7978	1.6430	1.4785	23	21	20	18
0701	Fracture of lower extremity M>42.15	0.8702	0.7747	0.7379	0.6601	10	12	10	9
0702	Fracture of lower extremity M>34.15 and M<42.15	1.1408	1.0155	0.9672	0.8654	13	14	13	12
0703	Fracture of lower extremity M>28.15 and M<34.15	1.3841	1.2322	1.1736	1.0499	15	16	15	14
0704	Fracture of lower extremity M<28.15	1.7922	1.5954	1.5195	1.3595	19	20	19	18
0801	Replacement of lower extremity joint M>49.55	0.6603	0.5680	0.5186	0.4679	8	8	7	7
0802	Replacement of lower extremity joint M>37.05 and M<49.55	0.8900	0.7656	0.6990	0.6306	10	10	9	9
0803	Replacement of lower extremity joint M>28.65 and M<37.05 and A>83.5	1.2404	1.0670	0.9742	0.8789	13	13	13	12

CMG	CMG Description (M=motor, C=cognitive, A=age)	Relative weight				Average length of stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
0804	Replacement of lower extremity joint M>28.65 and M<37.05 and A<83.5	1.1147	0.9589	0.8755	0.7899	12	13	11	11
0805	Replacement of lower extremity joint M>22.05 and M<28.65	1.3882	1.1942	1.0903	0.9837	15	15	14	13
0806	Replacement of lower extremity joint M<22.05	1.7094	1.4704	1.3425	1.2112	21	19	16	15
0901	Other orthopedic M>44.75	0.8744	0.7256	0.6690	0.5945	10	10	10	9
0902	Other orthopedic M>34.35 and M<44.75	1.1750	0.9751	0.8990	0.7990	13	13	12	11
0903	Other orthopedic M>24.15 and M<34.35	1.5357	1.2743	1.1749	1.0442	17	16	15	14
0904	Other orthopedic M<24.15	2.0218	1.6777	1.5469	1.3747	21	21	19	18
1001	Amputation, lower extremity M>47.65	0.9314	0.9162	0.7703	0.6994	12	12	10	10
1002	Amputation, lower extremity M>36.25 and M<47.65	1.2475	1.2272	1.0317	0.9368	14	15	13	12
1003	Amputation, lower extremity M<36.25	1.8395	1.8096	1.5214	1.3814	19	22	19	17
1101	Amputation, non-lower extremity M>36.35	1.1323	1.1323	0.9618	0.9618	12	13	12	12
1102	Amputation, non-lower extremity M<36.35	1.6810	1.6810	1.4278	1.4278	18	16	18	17
1201	Osteoarthritis M>37.65	1.2737	0.9024	0.8095	0.7219	13	12	11	10
1202	Osteoarthritis M>30.75 and M<37.65	1.6740	1.1860	1.0640	0.9488	17	15	13	13

CMG	CMG Description (M=motor, C=cognitive, A=age)	Relative weight				Average length of stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
1203	Osteoarthritis M<30.75	2.0644	1.4626	1.3121	1.1701	19	19	16	15
1301	Rheumatoid, other arthritis M>36.35	1.1201	0.9897	0.8552	0.7627	11	13	11	10
1302	Rheumatoid, other arthritis M>26.15 and M<36.35	1.5625	1.3806	1.1930	1.0639	19	16	15	14
1303	Rheumatoid, other arthritis M<26.15	1.9952	1.7629	1.5234	1.3586	21	21	19	17
1401	Cardiac M>48.85	0.8543	0.7306	0.6525	0.5844	9	11	9	8
1402	Cardiac M>38.55 and M<48.85	1.1508	0.9843	0.8790	0.7872	13	13	11	11
1403	Cardiac M>31.15 and M<38.55	1.4297	1.2227	1.0920	0.9779	15	15	14	13
1404	Cardiac M<31.15	1.8388	1.5726	1.4045	1.2578	21	20	17	16
1501	Pulmonary M>49.25	0.8881	0.7955	0.7220	0.6810	11	11	9	9
1502	Pulmonary M>39.05 and M<49.25	1.1946	1.0700	0.9712	0.9160	13	13	12	11
1503	Pulmonary M>29.15 and M<39.05	1.4919	1.3363	1.2129	1.1440	19	16	14	14
1504	Pulmonary M<29.15	1.9427	1.7401	1.5794	1.4896	24	21	19	17
1601	Pain syndrome M>37.15	1.0011	0.8966	0.7933	0.7037	11	11	11	10
1602	Pain syndrome M>26.75 and M<37.15	1.3455	1.2051	1.0662	0.9458	17	15	13	13
1603	Pain syndrome M<26.75	1.7719	1.5870	1.4041	1.2455	20	21	17	16
1701	Major multiple trauma without brain or spinal cord injury M>39.25	1.0866	0.8833	0.8509	0.7390	12	12	12	10
1702	Major multiple trauma without brain or spinal cord injury M>31.05 and M<39.25	1.4057	1.1427	1.1008	0.9561	16	14	15	13

CMG	CMG Description (M=motor, C=cognitive, A=age)	Relative weight				Average length of stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
1703	Major multiple trauma without brain or spinal cord injury M>25.55 and M<31.05	1.7152	1.3942	1.3431	1.1666	18	16	16	15
1704	Major multiple trauma without brain or spinal cord injury M<25.55	2.1965	1.7855	1.7201	1.4939	26	24	21	19
1801	Major multiple trauma with brain or spinal cord injury M>40.85	1.0498	0.9320	0.8596	0.7669	13	13	12	11
1802	Major multiple trauma with brain or spinal cord injury M>23.05 and M<40.85	1.6516	1.4663	1.3524	1.2065	19	18	18	16
1803	Major multiple trauma with brain or spinal cord injury M<23.05	2.9807	2.6463	2.4407	2.1775	40	28	32	26
1901	Guillain Barre M>35.95	1.2102	1.1999	0.9860	0.9111	13	13	13	12
1902	Guillain Barre M>18.05 and M<35.95	2.2177	2.1989	1.8068	1.6696	23	21	20	22
1903	Guillain Barre M<18.05	3.7532	3.7214	3.0578	2.8255	45	28	38	35
2001	Miscellaneous M>49.15	0.8572	0.7395	0.6649	0.5994	10	9	9	8
2002	Miscellaneous M>38.75 and M<49.15	1.1403	0.9838	0.8846	0.7974	12	13	11	11
2003	Miscellaneous M>27.85 and M<38.75	1.4695	1.2678	1.1399	1.0277	15	16	14	13
2004	Miscellaneous M<27.85	1.9848	1.7124	1.5396	1.3880	23	21	19	17
2101	Burns M>0	2.8551	2.8551	2.0858	1.5110	35	28	25	16
5001	Short-stay cases, length of stay is 3 days or fewer				0.1429				3

CMG	CMG Description (M=motor, C=cognitive, A=age)	Relative weight				Average length of stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
5101	Expired, orthopedic, length of stay is 13 days or fewer				0.6001				8
5102	Expired, orthopedic, length of stay is 14 days or more				1.5188				20
5103	Expired, not orthopedic, length of stay is 15 days or fewer				0.6998				8
5104	Expired, not orthopedic, length of stay is 16 days or more				1.8258				24

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V. Updates to the Facility-Level Adjustment Factors for FY 2010

A. Updates to the Adjustment Factors for FY 2010

Section 1886(j)(3)(A)(v) of the Act confers broad authority upon the Secretary to adjust the per unit payment rate ''by such * * * factors as the Secretary determines are necessary to properly reflect variations in necessary costs of treatment among rehabilitation facilities.'' For example, we adjust the Federal prospective payment amount associated with a CMG to account for facility-level characteristics such as an IRF's LIP percentage, teaching status, and location in a rural area, if applicable, as described in § 412.624(e).

In the FY 2010 IRF PPS proposed rule (74 FR 21052, 21059 through 21062), we proposed to update the adjustment factors for calculating the rural, LIP, and teaching status adjustments based on the most recent three years worth of IRF claims data (at that time, FY 2005, FY 2006, and FY 2007) and the most recent available corresponding IRF cost report data. Note that, for each IRF claim, we used the corresponding year's cost report data, when available. In the rare instances in which the corresponding year's cost report data were not available, we used the most recent available cost report data. For example, since cost report years are determined by the start date of the cost report, a hypothetical IRF's cost reporting period from July 1, 2007 through June 30, 2008 would be referred to as an ''FY 2007'' cost report. However, the data from this FY 2007 cost report would appropriately be matched to IRF discharges occurring from October 1, 2007 through June 30, 2008 (i.e., during FY 2008) because these claims would fall during the period of time covered by the IRF's ''FY 2007'' cost report year. In the case of FY 2008 claims that would appropriately match to an IRF's FY 2008 cost report year, we used the FY 2008 cost report data when available. In instances in which the matching FY 2008 cost report data were not available, we used the most recent available data, which in these cases was the FY 2007 cost report data.

For this final rule, as many commenters suggested, we are updating the rural, LIP, and teaching status adjustment factors using more recent data (FY 2006, FY 2007, and FY 2008 claims data and the corresponding year's cost report data or, if unavailable, the most recent available cost report data). We note, however, that we only have about 20 percent of the IRF cost reports from FY 2008 available for analysis at this time, so although we did use the FY 2008 cost report data that we had available, in some cases we had to use a prior year's cost report data to match to some of the FY 2008 IRF claims, as discussed above. Although the adjustment factors for the rural and LIP adjustments that we estimate in this final rule using updated data (18.4 percent and 0.4613, respectively) do not differ substantially from the adjustment factors that we calculated using the methods set forth in the proposed rule (18.27 percent and 0.4372, respectively), the teaching status adjustment factor that we calculate in this final rule using updated data (0.6876) is significantly lower than the teaching status adjustment factor that we calculated in the proposed rule (1.0494). This is due to the relatively large year-to-year fluctuations in the teaching status adjustment factor noted in the proposed rule (74 FR 21052 at 21061).

We believe that it is necessary to update these adjustment factors at this time because the adjustment factors that are being used currently to calculate the rural, LIP, and teaching status adjustments are based on FY 2003 data (as finalized in the FY 2006 IRF PPS final rule (70 FR 47880, 47928 through 47934)), and the FY 2003 data do not reflect recent changes in IRF patient populations resulting from the 60 percent rule and medical review activities.

The current adjustment factors for the rural, LIP, and teaching status adjustments in the FY 2006 IRF PPS final rule (70 FR 47928 through 47934) are based on regression analysis by the RAND Corporation (RAND) using FY 2003 IRF claims and cost report data. In the FY 2010 IRF PPS proposed rule (74 FR 21052, 21059 through 21062), we proposed to use the same methodology RAND used in computing these

adjustment factors. However, we proposed to compute the adjustment factors using three consecutive years of claims data and the corresponding year's cost report data or, when not available, the most recent available cost report data and to average the calculated adjustment factors for all three years to develop the proposed rural, LIP, and teaching status adjustment factors for FY 2010. As discussed in the FY 2010 IRF PPS proposed rule (74 FR 21052, 21059 through 21061), we received a comment on the FY 2009 IRF PPS proposed rule (73 FR 22674) suggesting that we consider a three-year moving average approach because it would provide a more stable adjustment factor, enabling IRFs to project their future Medicare payments more accurately. We analyzed the suggestion and agree that a three year average of the adjustment factors would promote more stability in the adjustment factors over time, which we believe will benefit IRFs by ensuring reduced variation from year to year and facilitating IRFs' long-term budgetary planning processes.

We received 12 comments on the proposed updates to the rural, LIP, and teaching status adjustment factors for FY 2010, which are summarized below.

Comment: The commenters overwhelmingly supported the proposed three-year moving average approach to updating the rural, LIP, and teaching status adjustment factors, saying that this approach makes payments to IRFs more stable and predictable over time. The commenters further requested that CMS continue to use this methodology to update these facility-level adjustment factors annually in the future to ensure that they continue to reflect the costs of care in IRFs.

Response: We agree that using the three-year moving average approach will provide greater stability and predictability of Medicare payments for IRFs, and will finalize this methodology to update the facility-level adjustment factors for FY 2010 and future years.

Comment: One commenter expressed concerns about the proposed decrease in the rural adjustment factor for FY 2010 and asked us to explain what cost factors we believe may have caused the estimated decrease in the rural adjustment factor.

Response: We believe that it is important to adjust payments for rural IRFs to reflect the higher costs that IRFs in rural areas incur for providing services in these areas. However, the results of our analysis using the most recent available data and the three-year moving average approach indicate that a rural adjustment factor of 18.4 percent more accurately reflects the current costs of providing IRF services in rural areas.

Further, we believe that the estimated decrease in the rural adjustment factor for FY 2010 (from 21.3 percent to 18.4 percent) is, in part, the result of improvements we made to the IRF classification system in the FY 2006 and FY 2007 IRF PPS final rules (70 FR 47880, 47886 through 47904 and 71 FR 48354, 48373 through 48374). Those improvements were designed to account more appropriately for the variation in costs among different types of IRF patients. To the extent that some of the differences in costs that we previously observed between rural and urban IRFs were the result of differences in patient populations, better accounting for the variations in costs among patients may have reduced the need to account for differences in costs between rural and urban IRFs.

Comment: The Medicare Payment Advisory Commission (MedPAC) suggested that CMS conduct research on the IRF teaching status adjustment to determine why the teaching status adjustment factor appears to vary so much from year to year, and to evaluate the accuracy and reliability of the adjustment. In the meantime, MedPAC suggested that CMS consider alternatives to the 3-year moving average approach, such as maintaining the IRF teaching adjustment at its FY 2009 level, capping the adjustment at the level currently in place for IPPS hospitals or inpatient psychiatric facilities (IPFs), or capping the adjustment at a level equal to MedPAC's estimate of the empirically justified IME adjustment for IPPS hospitals. MedPAC notes that the purpose of these alternatives would be to either maintain the teaching status adjustment at its current level or reduce the adjustment.

Response: As we reported in the FY 2010 IRF PPS proposed rule (74 FR 21052 at 21061), we estimate that the teaching status adjustment factors would be 1.5155, 0.6732, and 1.0451 using FY 2005, FY 2006, and FY 2007 data, respectively. In addition, for this final rule, we estimate that the teaching status adjustment factor would be 0.4045 using FY 2008 data. We are still analyzing the reasons for such large fluctuations in the teaching status adjustment factors from year to year. However, we believe that it may be due, in part, to relatively large fluctuations in the teaching variable (number of interns and residents divided by the average daily census) that we observe in the data between FY 2005 and FY 2008. On average, the teaching variable for all teaching IRFs was 0.1164, 0.1207, 0.1160, and 0.1295 in FYs 2005, 2006, 2007, and 2008, respectively. We believe that this variation may reflect provider responses to the implementation of the IRF teaching status adjustment in FY 2006, and that we may see less variation over time as IRFs adjust to this new payment adjustment.

However, to mitigate the impact on payments of annual fluctuations in the facility-level adjustment factors, we have proposed to use and, by this rule, adopt a three-year moving average approach instead of using only one year's worth of data to calculate the rural, LIP, and teaching status adjustment factors for FY 2010. Using the 3-year moving average approach and updated IRF claims data from FYs 2006 through 2008, we calculate a teaching status adjustment factor for this final rule of 0.6876, which is less than the factor 0.9012 that was applied to IRF PPS payments from FY 2006 through FY 2009. Since the teaching status adjustment factor for this final rule is lower than the current factor, we do not believe that it is necessary to consider the alternative ''capping'' methodologies suggested by MedPAC at this time. However, we will continue to monitor the data and work with MedPAC to analyze the reasons for the year-to-year fluctuations.

Comment: Several commenters requested that we use FY 2008 IRF claims and cost report data to update the facility-level adjustment factors for FY 2010.

Response: We appreciate the commenters' suggestions for updating the data used in the analysis of the IRF facility-level adjustment factors for FY 2010, and we agree that we should continue to use the most recent available data for these analyses. However, only about 20 percent of the FY 2008 IRF cost reports are available for analysis at this time. Thus, for this final rule, we have continued to use the most recent available data, which are the FY 2006, FY 2007, and FY 2008 IRF claims data and the corresponding year's cost report data or, if unavailable, the most recent available cost report data.

Final Decision: After carefully considering all of the comments that we received on the proposed updates to the rural, LIP, and teaching status adjustment factors for FY 2010, including the overwhelming support for the proposed use of a three-year moving average approach to calculating these adjustment factors, we are finalizing the following updates to the rural, LIP, and teaching status adjustment factors for FY 2010. Note that these updated

adjustment factors were calculated using the same methodology RAND used in calculating the current adjustment factors but using updated FY 2006, FY 2007, and 2008 IRF claims data and the corresponding year's cost report data or, if unavailable, the most recent available cost report data. IRF PPS payments to IRFs in rural areas will be increased by 18.4 percent for FY 2010. IRF PPS payments will be adjusted for FY 2010 to account for the percentage of low-income patients that an IRF treats using the updated LIP adjustment formula of (1 + disproportionate share hospital (DSH) patient percentage) raised to the power of (0.4613), where the DSH patient percentage for each IRF =

$$\frac{\text{Medicare SSI Days}}{\text{Total Medicare Days}} + \frac{\text{Medicaid, Non-Medicare Days}}{\text{Total Days}}$$

Finally, IRF PPS payments to eligible IRFs that qualify for the teaching status adjustment will be adjusted by the following updated formula for FY 2010: (1 + full-time equivalent (FTE) residents/average daily census) raised to the power of (0.6876). Note that the rural, LIP, and teaching status adjustment factors for FY 2010 differ from those proposed in the FY 2010 IRF PPS proposed rule (74 FR 21052, 21060 through 21061) due to the use of updated data in this final rule.

To calculate the updates to the rural, LIP, and teaching status adjustment factors for FY 2010, we used the following steps:

[Steps 1 and 2 are performed independently for each of three years of IRF claims data: FY 2006, FY 2007, and FY 2008]

Step 1. Calculate the average cost per case for each IRF in the IRF claims data using the corresponding year's cost report data or, if unavailable, the most recent available cost report data, as described above.

Step 2. Use logarithmic regression analysis on average cost per case to compute the coefficients for the rural, LIP, and teaching status adjustments.

Step 3. Calculate a simple mean for each of the coefficients across the three years of data using logarithms for the LIP and teaching status adjustment coefficients (because they are continuous variables) but not using logarithms for the rural adjustment coefficient (because the rural variable is 1 if the facility is rural and zero otherwise). To compute the LIP and teaching status adjustment factors, we convert these factors back out of the logarithmic form.

B. Budget Neutrality Methodology for the Updates to the IRF Facility-Level Adjustment Factors

Consistent with the way that we implemented changes to the IRF facility-level adjustment factors (the rural, LIP, and teaching status adjustment factors) in the FY 2006 IRF PPS final rule (70 FR 47880 and 70 FR 57166), which was the only year in which we updated these adjustment factors, we are updating the rural, LIP, and teaching status adjustment factors for FY 2010 in such a way that total estimated aggregate payments to IRFs for FY 2010 will be the same with or without the updates (that is, in a budget neutral manner) by applying budget neutrality factors for each of these three changes to the standard payment amount. To calculate the budget neutrality factors used to update the rural, LIP, and teaching status adjustment factors, we used the following steps:

Step 1. Using the most recent available data (currently FY 2008), calculate the estimated total amount of IRF PPS payments that would be made in FY 2010 (without applying the update to the rural, LIP, or teaching status adjustment factors).

Step 2. Calculate the estimated total amount of IRF PPS payments that would be made in FY 2010 if the update to the rural adjustment factor were applied.

Step 3. Divide the amount calculated in step 1 by the amount calculated in step 2 to determine the budget neutrality factor (1.0023) that would maintain the same total estimated aggregate payments in FY 2010 with and without the update to the rural adjustment factor.

Step 4. Calculate the estimated total amount of IRF PPS payments that would be made in FY 2010 if the update to the LIP adjustment factor were applied.

Step 5. Divide the amount calculated in step 1 by the amount calculated in step 4 to determine the budget neutrality factor (1.0192) that would maintain the same total estimated aggregate payments in FY 2010 with and without the update to the LIP adjustment factor.

Step 6. Calculate the estimated total amount of IRF PPS payments that would be made in FY 2010 if the update to the teaching status adjustment factor were applied.

Step 7. Divide the amount calculated in step 1 by the amount calculated in step 6 to determine the budget neutrality factor (1.0037) that would maintain the same total estimated aggregate payments in FY 2010 with and without the update to the teaching status adjustment factor.

Step 8. Apply the budget neutrality factors for the updates to the rural, LIP, and teaching status adjustment factors to the FY 2009 IRF PPS standard payment amount after the application of the budget neutrality factors for the wage adjustment and the CMG relative weights.

The budget neutrality factors for the updates to the rural, LIP, and teaching status adjustment factors in this final rule differ from those described in the proposed rule (74 FR 21052, 21061 through 21062) due to the use of updated data for the analysis in this final rule.

In section VI.C of this final rule, we discuss the methodology for calculating the final standard payment conversion factor for FY 2010.

VI. FY 2010 IRF PPS Federal Prospective Payment Rates

A. Market Basket Increase Factor and Labor-Related Share for FY 2010

Section 1886(j)(3)(C) of the Act requires the Secretary to establish an increase factor that reflects changes over time in the prices of an appropriate mix of goods and services included in the covered IRF services, which is referred to as a market basket index. According to section 1886(j)(3)(A)(i) of the Act, the increase factor shall be used to update the IRF Federal prospective payment rates for each FY. Section 115 of the MMSEA amended section 1886(j)(3)(C) of the Act to apply a zero percent increase factor for FYs 2008 and 2009, effective for IRF discharges occurring on or after April 1, 2008. In the absence of any such amendment for FY 2010, we are updating IRF PPS payments by a market basket increase factor based upon the most current data available in accordance with section 1886(j)(3)(A)(i) of the Act.

Beginning with the FY 2006 IRF PPS final rule (70 FR 47908 through 47917), the market basket index used to update IRF payments is a 2002-based market basket reflecting the operating and

capital cost structures for freestanding IRFs, freestanding inpatient psychiatric facilities (IPFs), and long-term care hospitals (LTCHs) (hereafter referred to as the rehabilitation, psychiatric, and long-term care (RPL) market basket).

For this final rule, we have used the same methodology described in the FY 2006 IRF PPS Final Rule (70 FR 47908 through 47917) to compute the FY 2010 market basket increase factor and labor-related share. Using this method and the IHS Global Insight, Inc. forecast for the second quarter of 2009 of the 2002-based RPL market basket, the FY 2010 IRF market basket increase factor is 2.5 percent. IHS Global Insight is an economic and financial forecasting firm that contracts with CMS to forecast the components of providers' market baskets.

Also, using the methodology described in the FY 2006 IRF PPS final rule (70 FR 47880, 47908 through 47917), we are updating the IRF labor-related share for FY 2010. Using this method and the IHS Global Insight, Inc. forecast for the second quarter of 2009 of the 2002-based RPL market basket, the IRF labor-related share for FY 2010 is the sum of the FY 2010 relative importance of each labor-related cost category. This figure reflects the different rates of price change for these cost categories between the base year (FY 2002) and FY 2010. Consistent with our proposal to update the labor-related share with the most recent available data, the labor-related share for this final rule reflects IHS Global Insight's second quarter 2009 forecast of the 2002-based RPL market basket. As shown in Table 2, the FY 2010 labor-related share is 75.779 percent.

TABLE 2—FY 2010 IRF RPL LABOR-RELATED SHARE RELATIVE IMPORTANCE

Cost category	FY 2010 IRF labor-related share relative importance
Wages and salaries	52.892
Employee benefits	13.949
Professional fees	2.873
All other labor intensive services	2.127
Subtotal	71.841
Labor-related share of capital costs (.46)	3.938
Total	75.779

Source: IHS GLOBAL INSIGHT, INC, 2nd QTR, 2009; @USMACRO/CONTROL0609 @CISSIM/TL0509.SIM Historical Data through 1st QTR, 2009.

We received 10 comments on the proposed updates to the IRF market basket increase factor and labor-related share for FY 2010, which are summarized below.

Comment: One commenter supported the creation of a stand-alone IRF market basket based on both freestanding and hospital-based cost report data. The commenter offered the following suggestions that CMS could pursue in order to account for the differences in costs between the two facility types.

Those suggestions included:

1. To survey a random sample of facilities to assess the presence of the array of rehabilitation services that may be available through the freestanding IRF as compared to a hospital-based IRF.

2. To conduct detailed interviews of the Chief Financial Officers (CFOs) of freestanding versus hospital based units to understand the differences in the ways IRF costs are accounted for in cost reports.

Response: We appreciate the commenter's response concerning the stand-alone IRF market basket and the suggestions that were provided. CMS will take the suggestions into consideration as we continue to research the differences between hospital-based and freestanding facilities.

Comment: Several commenters noted that the use of 2002 data is inappropriate because of major changes to IRF case mix and patient severity and requested CMS update the cost weights of the existing RPL market basket to a more recent base year.

Response: We recognize the commenters' concerns regarding the continued use of 2002 data in the RPL market basket. We have focused our recent efforts on comparing and contrasting the costs and cost structures of freestanding and hospital-based IRFs, including the effects of changes to case mix and patient severity over the last several years. We will consider the suggestions that we received during the comment period to better understand those differences (and further investigate the appropriateness of creating a stand-alone IRF market basket), as well as examine the appropriateness of rebasing and revising the RPL market basket.

Comment: One commenter noted that the data used to calculate the RPL market basket are obtained from freestanding IRFs, freestanding IPFs, and LTCHs. The commenter expressed the concern that each facility type requires different resources and thus combining the three types of facilities distorts the cost structures of IRFs. This commenter also suggested incorporating the most recent available data into the market basket.

Response: CMS recognizes the existence of differences in cost structures across freestanding IPFs, freestanding IRFs, and LTCHs. However, pending further research into the viability of creating a stand-alone IRF market basket, we feel that it is appropriate to continue to use the current 2002-based RPL market basket to update IRF payments. We will examine the appropriateness of rebasing and revising the RPL market basket for the future.

Comment: Several commenters offered that one reason for the difference between freestanding and hospital-based IRFs cost structures is that most hospital-based units are smaller than freestanding IRFs. For example, one commenter indicated that hospital-based IRFs have nearly two-thirds fewer discharges than freestanding IRFs. Thus, the commenters claimed that hospital-based IRFs may be unable to achieve the same level of economies of scale as freestanding IRFs can.

Response: We have noted that cost differences between hospital-based and freestanding IRFs may be due to the volume of care that hospital-based facilities provide relative to freestanding facilities. In an attempt to control for differences in the volume of services, we have compared costs per discharge and costs per day between the two facility types and continue to find differences in their overall cost levels. Notably, CMS feels that, all other things held constant, differing volumes may not necessarily explain differing cost structures as the cost weights reflect the relative expense of one category to another within a facility. We will continue to evaluate our findings related to these metrics with new data as it becomes available.

Comment: One commenter mentioned that one contributing cause of the difference in cost structures between freestanding and hospital-based IRFs is the issue of costs being allocated down from the IPPS hospital to the hospital-based IRF unit.

Response: We share the commenter's concern that overhead costs from the host hospital may be skewing the hospital-based unit's costs and cost structure. One of the main reasons why CMS has historically relied on Medicare cost report data from freestanding facilities to construct the market baskets is our concern over the distribution of the host hospital's overhead costs to the sub-provider units. We will continue to investigate the allocation of overhead

costs from the host hospital to the hospital-based IRF unit.

Comment: One commenter acknowledged that seeking outside input regarding differences in cost structures between hospital-based and freestanding IRFs is appropriate. However, the commenter urged CMS to proceed with caution as it may be difficult for CMS to confirm that the methods used to collect outside data are sound and that the data are representative of the industry as a whole. The commenter also stated that CMS should ultimately determine whether the market basket should in fact be based on the cost structure of hospital-based and freestanding IRFs instead of just one type of facility if the higher costs cannot be explained by differences in case mix and other patient characteristics.

Response: As stated in the proposed rule, we do not feel it is appropriate to move forward on the creation of a stand-alone IRF market basket until such time that we can adequately explain the differences in costs and cost structures between hospital-based IRFs and freestanding IRFs. We agree with the commenter that any information from the public should be carefully examined. We reached out to the public for information to help us better understand these differences, but we agree with the commenter that regardless of the information we receive, we will have to evaluate thoroughly the appropriateness and independent nature of any data provided.

Comment: A couple of commenters stated that hospital-based IRFs experience different levels of costs due to the types of patients admitted and services that occur during the IRF hospitalization. They commented that hospital-based IRFs receive more medically fragile patients due to the unit's immediate access to a variety of physician specialties and specialized treatments. The commenter suggested investigating the ICD–9 code differences between hospital-based and freestanding IRFs.

Response: We have looked into case mix differences between free-standing and hospital-based facilities. The average case mix is lower in hospital-based units than in freestanding units for the years we examined (2005–2007). We will continue to monitor differences in case mix (as we believe case-mix indexes for freestanding and hospital-based facilities account for the differences in patient severity). We will also explore the viability of an ICD–9 code analysis.

Comment: One commenter supports CMS in the endeavor of creating a stand-alone IRF market basket to replace the RPL market basket. The commenter expressed willingness to assist the agency in its analysis. The commenter provided the following recommendations for future research:

- To examine the cost differences between freestanding and hospital-based IRFs, as well as the differences between IRFs and other hospitals such as Inpatient Psychiatric Hospitals (IPFs) and Long Term Care Facilities.
- To determine to what extent fewer economies-of-scale and cost allocation differences account for cost differences between freestanding and hospital-based IRFs.
- To determine whether different classes of IRFs have different provider-to-patient ratios.
- To investigate if differences in patient severity exist between the two classes of facilities and if so, to what extent does higher severity correlate with higher nursing and rehabilitation costs.

Response: We appreciate the response concerning the stand-alone IRF market basket and the suggestions the commenter provided. We will be continuing our efforts to study cost differences between hospital-based and freestanding IRFs, as well as differences between IRFs, IPFs, and Long-Term Care Hospitals. We have attempted to control for differences in volume between the freestanding and hospital-based IRFs by analyzing costs per discharge and costs per day. As yet, controlling for patient volume using these metrics has not yielded very much insight into the differences. We will continue to examine other ways to determine if economies of scale are able to provide explanatory information on the differences we observe. Finally, we will look more in-depth at the commenter's additional suggestions.

Comment: One commenter had concerns regarding the lower than usual increase in the 2010 market basket update. The commenter asserts that health care organizations are still required to provide the same care to patients as in more economically stable periods and feels that it is unsafe to assume that hospitals can operate at a lower level of costs while providing the same high level of care simply because the inflation indicators predict a slowing economy.

The commenter supports the American Hospital Association's (AHA's) suggestion that CMS should make the required market basket adjustments without revising the price proxies used in the calculation which indicate potentially lower costs to the hospitals.

Response: The 2.5 percent update found in this final rule does not assume a lower cost level from the prior year for the IRF industry. The intent of the RPL market basket is to estimate the input price pressures that providers will face in their respective payment years. The projected RPL market basket of 2.5 percent, then, reflects our most recent price projections for the various goods and services that IRF providers require in order to provide inpatient rehabilitation services in FY 2010.

Additionally, the commenter noted that IRFs have more patients without insurance and are likely to incur a higher level of bad debt. This comment is outside the scope of the market basket update, since bad debt is reimbursed outside of the market basket update factor.

Lastly, we think the commenter may have confused the AHA comments with regard to the IPPS market basket and the revision of various price proxies. IRF facilities will continue to receive a market basket update based on the RPL market basket. We have not made any technical changes to the composition of the RPL market basket. As such, the commenter's request that CMS should not revise the price proxies for this market basket is not applicable.

Comment: One commenter noted concern with the way CMS estimates the labor-related share for IRF facilities. The commenter specifically expressed concern that the price proxies are based on FY 2002 data and prior to that were last updated in FY 1992. This commenter feels that the 2002 data do not reflect the effects of the 60-percent rule, implemented in CY 2004, and recommends that CMS update the price proxies more frequently to ensure the labor share is accurately calculated.

Response: We believe the commenter may be confusing the term price proxy with the term cost weight. We will assume for purposes of this response that the commenter intended to use the word cost weight rather than price proxy. We assume this confusion because the price proxies are not based on FY 2002 data, and, while the LRS is based on the relative importance (a combination of the cost weight and price proxies), it is not based solely on price proxies. Our price proxy projections are updated on a quarterly basis. Price proxies are subject to revision under limited circumstances. A revision to a price proxy in a market basket could occur if the price index is discontinued or if the agency producing the price proxy (usually the Bureau of Labor Statistics) pulls an index from publication for statistical viability reasons. If an index is discontinued,

then CMS would have to find a replacement price proxy. Normally, revisions to the price indexes included in a market basket are only made when the market basket is rebased.

Regarding the 60-percent rule, we are sensitive to the potential impact that the implementation of this rule may have on the cost structures of certain providers. As noted in a previous comment, we have focused our recent efforts on comparing and contrasting the costs and cost structures of freestanding and hospital-based IRFs. We will be continuing that analysis, as well as exploring the appropriateness of rebasing and revising the market basket used to update IRF payments whether that is in the form of the RPL market basket or a stand-alone IRF market basket.

Final Decision: We will update IRF PPS payments by a market basket increase factor (of 2.5 percent for FY 2010) based upon the most current data available, in accordance with section 1886(j)(3)(A)(i) of the Act. Further, we will update the IRF labor-related share using our current methodology and the most recent available data. Thus, for this final rule, the labor-related share is 75.779 percent. This is based on the IHS Global Insight Inc. forecast for the second quarter of 2009 (2009Q2) with historical data through the first quarter of 2009 (2009Q1).

As we noted in the proposed rule (74 FR 21052 at 21062), we are interested in exploring the possibility of creating a stand-alone IRF market basket that reflects the cost structures of only IRF providers. As part of our consideration of a stand-alone IRF market basket, we solicited information from the public in the proposed rule that might help us to better understand the underlying reasons for the variations in cost structure between freestanding and hospital-based IRFs. Due to the need for further research regarding the differences in costs and cost structures between hospital-based IRFs and freestanding IRFs, we are not pursuing a stand-alone IRF market basket at this time.

B. Area Wage Adjustment

Section 1886(j)(6) of the Act requires the Secretary to adjust the proportion (as estimated by the Secretary from time to time) of rehabilitation facilities' costs attributable to wages and wage-related costs by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for those facilities. The Secretary is required to update the IRF PPS wage index on the basis of information available to the Secretary on the wages and wage-related costs to furnish rehabilitation services. Any adjustments or updates made under section 1886(j)(6) of the Act for a FY are made in a budget neutral manner.

In the FY 2009 IRF PPS final rule (73 FR 46370 at 46378), we maintained the methodology described in the FY 2006 IRF PPS final rule to determine the wage index, labor market area definitions, and hold harmless policy consistent with the rationale outlined in the FY 2006 IRF PPS final rule (70 FR 47880, 47917 through 47933).

In the FY 2010 IRF PPS proposed rule (74 FR 21052, 21062 through 21063), we proposed to maintain the policies and methodologies described in the FY 2009 IRF PPS final rule relating to the labor market area definitions and the wage index methodology for areas with wage data. Thus, we proposed to use the CBSA labor market area definitions and the pre-reclassification and pre-floor hospital wage index data based on 2005 cost report data.

The labor market designations made by the Office of Management and Budget (OMB) include some geographic areas where there are no hospitals and, thus, no hospital wage index data on which to base the calculation of the IRF PPS wage index. We proposed to continue to use the same methodology discussed in the FY 2008 IRF PPS final rule (72 FR 44284 at 44299) to address those geographic areas where there are no hospitals and, thus, no hospital wage index data on which to base the calculation of the FY 2010 IRF PPS wage index.

Additionally, we proposed to incorporate the CBSA changes published in the most recent OMB bulletin that applies to the hospital wage data used to determine the current IRF PPS wage index. The changes were nominal and did not represent substantive changes to the CBSA-based designations. Specifically, OMB added or deleted certain CBSA numbers and revised certain titles. The OMB bulletins are available online at *http://www.whitehouse.gov/omb/bulletins/index.html.*

To calculate the wage-adjusted facility payment for the payment rates set forth in this final rule, we multiply the unadjusted Federal payment rate for IRFs by the FY 2010 RPL labor-related share (75.779 percent) to determine the labor-related portion of the standard payment amount. We then multiply the labor-related portion by the applicable IRF wage index from the tables in the addendum to this final rule. Table 1 is for urban areas, and Table 2 is for rural areas.

Adjustments or updates to the IRF wage index made under section 1886(j)(6) of the Act must be made in a budget neutral manner. We calculate a budget neutral wage adjustment factor as established in the FY 2004 IRF PPS final rule (68 FR 45674 at 45689), codified at § 412.624(e)(1), as described in the steps below. We use the listed steps to ensure that the FY 2010 IRF standard payment conversion factor reflects the update to the wage indexes (based on the FY 2005 hospital cost report data) and the labor-related share in a budget neutral manner:

Step 1. Determine the total amount of the estimated FY 2009 IRF PPS rates, using the FY 2009 standard payment conversion factor and the labor-related share and the wage indexes from FY 2009 (as published in the FY 2009 IRF PPS final rule (73 FR 46370 at 44301, 44298, and 44312 through 44335, respectively)).

Step 2. Calculate the total amount of estimated IRF PPS payments using the FY 2009 standard payment conversion factor and the FY 2010 labor-related share and CBSA urban and rural wage indexes.

Step 3. Divide the amount calculated in step 1 by the amount calculated in step 2. The resulting quotient is the FY 2010 budget neutral wage adjustment factor of 1.0011.

Step 4. Apply the FY 2010 budget neutral wage adjustment factor from step 3 to the FY 2009 IRF PPS standard payment conversion factor after the application of the estimated market basket update to determine the FY 2010 standard payment conversion factor.

We received 3 comments on the proposed FY 2010 IRF PPS wage index, which are summarized below.

Comment: Several commenters recommended that we consider wage index policies under the current IPPS because IRFs compete in a similar labor pool as acute care hospitals. The IPPS wage index policies would allow IRFs to benefit from the IPPS reclassification and/or floor policies. Several commenters also recommended that CMS conduct further analysis of the wage index methodology to ensure that fluctuations in the annual wage index for hospitals are minimized, that all future updates match the costs of labor in the market, that IRF's occupational mix is appropriately recognized, and that payments are ''smoothed'' across geography and across time.

Response: We note that the IRF PPS does not account for geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act and does not apply the ''rural floor'' under section 4410 of Public Law 105–33

(BBA). Because we do not have an IRF specific wage index, we are unable to determine at this time the degree, if any, to which a geographic reclassification adjustment under the IRF PPS is appropriate. Furthermore, we believe the ''rural floor'' is applicable only to the acute care hospital payment system. The rationale for our current wage index policies is fully described in the FY 2006 final rule (70 FR 47880, 47926 through 47928).

In addition, we reviewed the Medicare Payment Advisory Commission's (MedPAC) wage index recommendations as discussed in MedPAC's June 2007 report titled, ''Report to Congress: Promoting Greater Efficiency in Medicare.'' Although some commenters recommended that we adopt the IPPS wage index policies such as reclassification and floor policies, we note that MedPAC's June 2007 report to Congress recommends that Congress ''repeal the existing hospital wage index statute, including reclassification and exceptions, and give the Secretary authority to establish new wage index systems.'' We believe that adopting the IPPS wage index policies, such as reclassification or floor, would not be prudent at this time because MedPAC suggests that the reclassification and exception policies in the IPPS wage index alters the wage index values for one-third of IPPS hospitals. In addition, MedPAC found that the exceptions may lead to anomalies in the wage index. By adopting the IPPS reclassifications and exceptions at this time, the IRF PPS wage index could be vulnerable to similar issues that MedPAC identified in the June 2007 Report to Congress. However, we will continue to review and consider MedPAC's recommendations on a refined or an alternative wage index methodology for the IRF PPS in future years.

In addition, we have research currently under way to examine alternatives to the wage index methodology, including the issues the commenters mentioned about ensuring that the wage index minimizes fluctuations, matches the costs of labor in the market, and provides for a single wage index policy. Section 106(b)(2) of the MIEA–TRHCA instructed the Secretary of Health and Human Services to take into account MedPAC's recommendations on the Medicare wage index classification system and to include in the FY 2009 IPPS proposed rule one or more proposals to revise the wage index adjustment applied under section 1886(d)(3)(E) of the Act for purposes of the IPPS. The proposal (or proposals) were to consider each of the following:

- Problems associated with the definition of labor markets for the wage index adjustments.
- The modification or elimination of geographic reclassifications and other adjustments.
- The use of Bureau of Labor Statistics data or other data or methodologies to calculate relative wages for each geographic area.
- Minimizing variations in wage index adjustments between and within MSAs and statewide rural areas.
- The feasibility of applying all components of CMS's proposal to other settings.
- Methods to minimize the volatility of wage index adjustments while maintaining the principle of budget neutrality.
- The effect that the implementation of the proposal would have on health care providers in each region of the country.
- Methods for implementing the proposal(s), including methods to phase in such implementations.
- Issues relating to occupational mix, such as staffing practices and any evidence on quality of care and patient safety, including any recommendations for alternative calculations to the occupational mix.

To assist us in meeting the requirements of section 106(b)(2) of Public Law 109–432, in February 2008 we awarded a contract to Acumen, LLC. The contractor conducted a study of both the current methodology used to construct the Medicare wage index and the recommendations reported to Congress by MedPAC. Part 1 of Acumen's final report, which analyses the strengths and weaknesses of the data sources used to construct the CMS and MedPAC indexes, is available online at *http://www.acumenllc.com/reports/cms*. MedPAC's recommendations were presented in the FY 2009 IPPS final rule (*http://edocket.access.gpo.gov/2008/pdf/E8-17914.pdf*). We plan to monitor these efforts and the impact or influence they may have to the IRF PPS wage index.

Final Decision: We will continue to use the policies and methodologies described in the FY 2009 IRF PPS final rule relating to the labor market area definitions and the wage index methodology for areas with wage data. Therefore, this final rule continues to use the Core-Based Statistical Area (CBSA) labor market area definitions and the pre-reclassification and pre-floor hospital wage index data based on 2005 cost report data. We discuss the final standard payment conversion factor for FY 2010 in the next section.

C. Description of the Final IRF Standard Payment Conversion Factor and Payment Rates for FY 2010

To calculate the final standard payment conversion factor for FY 2010, as illustrated in Table 4 below, we begin by applying the estimated market basket increase factor for FY 2010 (2.5 percent) to the standard payment conversion factor for FY 2009 ($12,958), which would equal $13,282. Then, we apply the budget neutrality factor for the FY 2010 wage index and labor related share of 1.0011, which would result in a standard payment amount of $13,297. Then, we apply the budget neutrality factor for the revised CMG relative weights of 1.0020, which would result in a standard payment amount of $13,324. Finally, we apply the budget neutrality factors for the updates to the rural, LIP, and IRF teaching status adjustments of 1.0023, 1.0192, and 1.0037, respectively, which would result in the final FY 2010 standard payment conversion factor of $13,661.

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Table 3: Calculations to Determine the Final FY 2010 Standard Payment Conversion Factor

Explanation for Adjustment	Calculations
Standard Payment Conversion Factor for FY 2009	$12,958
Estimated Market Basket Increase Factor for FY 2010	x 1.0250
Budget Neutrality Factor for the Wage Index and Labor-Related Share	x 1.0011
Budget Neutrality Factor for the Revisions to the CMG Relative Weights	x 1.0020
Budget Neutrality Factor for the Update to the Rural Adjustment Factor	x 1.0023
Budget Neutrality Factor for the Update to the LIP Adjustment Factor	X 1.0192
Budget Neutrality Factor for the Update to the Teaching Status Adjustment Factor	x 1.0037
Final FY 2010 Standard Payment Conversion Factor	= $13,661

After the application of the CMG relative weights described in section IV of this final rule, the resulting unadjusted IRF prospective payment rates for FY 2010 are shown below in Table 4, ''FY 2010 Payment Rates.''

Table 4: FY 2010 Payment Rates

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
0101	$10,309.96	$ 9,658.33	$ 8,857.79	$ 8,371.46
0102	$12,633.69	$11,834.52	$10,853.66	$10,258.04
0103	$14,751.15	$13,818.10	$12,673.31	$11,977.96
0104	$15,890.48	$14,886.39	$13,651.44	$12,904.18
0105	$18,711.47	$17,528.43	$16,074.90	$15,193.76
0106	$21,554.33	$20,190.96	$18,517.49	$17,502.47
0107	$24,906.74	$23,331.62	$21,397.22	$20,225.11
0108	$30,152.56	$28,246.85	$25,905.35	$24,484.61
0109	$28,349.31	$26,556.98	$24,354.83	$23,020.15
0110	$35,716.68	$33,458.52	$30,685.34	$29,002.30
0201	$9,622.81	$ 8,639.22	$ 7,853.71	$ 7,141.97
0202	$12,928.77	$11,606.39	$10,551.76	$ 9,595.49
0203	$15,844.03	$14,223.83	$12,931.50	$11,759.39
0204	$16,966.96	$15,232.02	$13,848.16	$12,592.71
0205	$20,574.83	$18,471.04	$16,792.10	$15,270.27
0206	$26,063.82	$23,398.56	$21,271.54	$19,343.98
0207	$34,797.30	$31,238.61	$28,399.85	$25,826.12
0301	$14,594.05	$13,080.41	$11,580.43	$10,547.66
0302	$18,436.89	$16,524.35	$14,629.56	$13,324.94
0303	$22,696.39	$20,341.23	$18,009.30	$16,402.76
0304	$30,836.98	$27,637.57	$24,468.22	$22,285.19
0401	$11,446.55	$11,446.55	$10,961.59	$ 9,353.69
0402	$16,249.76	$16,249.76	$15,561.25	$13,279.86

Table 4: FY 2010 Payment Rates

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
0403	$27,457.24	$27,457.24	$26,293.33	$22,438.19
0404	$53,083.91	$53,083.91	$50,833.95	$43,380.51
0405	$42,707.02	$42,707.02	$40,896.94	$34,899.76
0501	$10,404.22	$9,014.89	$7,975.29	$7,075.03
0502	$14,497.05	$12,561.29	$11,113.22	$9,856.41
0503	$18,980.59	$16,446.48	$14,550.33	$12,905.55
0504	$22,486.01	$19,483.32	$17,237.45	$15,289.39
0505	$26,524.20	$22,983.27	$20,333.03	$18,035.25
0506	$36,545.91	$31,667.56	$28,014.61	$24,849.36
0601	$12,402.82	$10,841.37	$ 9,906.96	$ 8,915.17
0602	$16,344.02	$14,285.31	$13,055.82	$11,748.46
0603	$21,156.79	$18,492.90	$16,900.02	$15,208.79
0604	$28,097.94	$24,559.75	$22,445.02	$20,197.79
0701	$11,887.80	$10,583.18	$10,080.45	$ 9,017.63
0702	$15,584.47	$13,872.75	$13,212.92	$11,822.23
0703	$18,908.19	$16,833.08	$16,032.55	$14,342.68
0704	$24,483.24	$21,794.76	$20,757.89	$18,572.13
0801	$9,020.36	$ 7,759.45	$ 7,084.59	$ 6,391.98
0802	$12,158.29	$10,458.86	$ 9,549.04	$ 8,614.63
0803	$16,945.10	$14,576.29	$13,308.55	$12,006.65
0804	$15,227.92	$13,099.53	$11,960.21	$10,790.82
0805	$18,964.20	$16,313.97	$14,894.59	$13,438.33
0806	$23,352.11	$20,087.13	$18,339.89	$16,546.20
0901	$11,945.18	$ 9,912.42	$ 9,139.21	$ 8,121.46

Table 4: FY 2010 Payment Rates

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
0902	$16,051.68	$13,320.84	$12,281.24	$10,915.14
0903	$20,979.20	$17,408.21	$16,050.31	$14,264.82
0904	$27,619.81	$22,919.06	$21,132.20	$18,779.78
1001	$12,723.86	$12,516.21	$10,523.07	$ 9,554.50
1002	$17,042.10	$16,764.78	$14,094.05	$12,797.62
1003	$25,129.41	$24,720.95	$20,783.85	$18,871.31
1101	$15,468.35	$15,468.35	$13,139.15	$13,139.15
1102	$22,964.14	$22,964.14	$19,505.18	$19,505.18
1201	$17,400.02	$12,327.69	$11,058.58	$ 9,861.88
1202	$22,868.51	$16,201.95	$14,535.30	$12,961.56
1203	$28,201.77	$19,980.58	$17,924.60	$15,984.74
1301	$15,301.69	$13,520.29	$11,682.89	$10,419.24
1302	$21,345.31	$18,860.38	$16,297.57	$14,533.94
1303	$27,256.43	$24,082.98	$20,811.17	$18,559.83
1401	$11,670.59	$ 9,980.73	$ 8,913.80	$ 7,983.49
1402	$15,721.08	$13,446.52	$12,008.02	$10,753.94
1403	$19,531.13	$16,703.30	$14,917.81	$13,359.09
1404	$25,119.85	$21,483.29	$19,186.87	$17,182.81
1501	$12,132.33	$10,867.33	$ 9,863.24	$ 9,303.14
1502	$16,319.43	$14,617.27	$13,267.56	$12,513.48
1503	$20,380.85	$18,255.19	$16,569.43	$15,628.18
1504	$26,539.22	$23,771.51	$21,576.18	$20,349.43
1601	$13,676.03	$12,248.45	$10,837.27	$ 9,613.25
1602	$18,380.88	$16,462.87	$14,565.36	$12,920.57

Table 4: FY 2010 Payment Rates

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
1603	$24,205.93	$21,680.01	$19,181.41	$17,014.78
1701	$14,844.04	$12,066.76	$11,624.14	$10,095.48
1702	$19,203.27	$15,610.42	$15,038.03	$13,061.28
1703	$23,431.35	$19,046.17	$18,348.09	$15,936.92
1704	$30,006.39	$24,391.72	$23,498.29	$20,408.17
1801	$14,341.32	$12,732.05	$11,743.00	$10,476.62
1802	$22,562.51	$20,031.12	$18,475.14	$16,482.00
1803	$40,719.34	$36,151.10	$33,342.40	$29,746.83
1901	$16,532.54	$16,391.83	$13,469.75	$12,446.54
1902	$30,296.00	$30,039.17	$24,682.69	$22,808.41
1903	$51,272.47	$50,838.05	$41,772.61	$38,599.16
2001	$11,710.21	$10,102.31	$ 9,083.20	$ 8,188.40
2002	$15,577.64	$13,439.69	$12,084.52	$10,893.28
2003	$20,074.84	$17,319.42	$15,572.17	$14,039.41
2004	$27,114.35	$23,393.10	$21,032.48	$18,961.47
2101	$39,003.52	$39,003.52	$28,494.11	$20,641.77
5001	$ -	$ -	$ -	$ 1,952.16
5101	$ -	$ -	$ -	$ 8,197.97
5102	$ -	$ -	$ -	$20,748.33
5103	$ -	$ -	$ -	$ 9,559.97
5104	$ -	$ -	$ -	$24,942.25

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We received 4 comments on the proposed standard payment conversion factor and payment rates for FY 2010, which are summarized below.

Comment: Several commenters suggested that we add the estimated market basket increases for FYs 2008 and 2009 back into the standard payment conversion factor before we update it for FY 2010.

Response: We do not believe that this is the intent of the statute. As discussed above, section 115 of the MMSEA amended section 1886(j)(3)(C) of the Act to apply a zero percent increase factor for FYs 2008 and 2009, effective for IRF discharges occurring on or after April 1, 2008. For subsequent fiscal years, section 1886(j)(3)(C) of the Act requires the Secretary to establish an increase factor that reflects changes over time in the prices of an appropriate mix of goods and services included in the covered IRF services, which is referred to as a market basket index. According to section 1886(j)(3)(A)(i) of the Act, this increase factor shall be used to update the IRF Federal prospective payment rates for each FY. In accordance with these provisions of the statute, we will update IRF PPS payments by a market basket increase factor for FY 2010 based upon the most current available data.

D. Example of the Methodology for Adjusting the Federal Prospective Payment Rates

Table 5 illustrates the methodology for adjusting the Federal prospective payments (as described in sections VI.A through VI.C of this final rule). The examples below are based on two hypothetical Medicare beneficiaries, both classified into CMG 0110 (without comorbidities). The unadjusted Federal prospective payment rate for CMG 0110 (without comorbidities) appears in Table 4 above.

One beneficiary is in Facility A, an IRF located in rural Spencer County, Indiana, and another beneficiary is in Facility B, an IRF located in urban Harrison County, Indiana. Facility A, a rural non-teaching hospital has a DSH percentage of 5 percent (which would result in a LIP adjustment of 1.0228), a wage index of 0.8473, and a rural adjustment of 18.4 percent. Facility B, an urban teaching hospital, has a DSH percentage of 15 percent (which would result in a LIP adjustment of 1.0666), a wage index of 0.9249, and a teaching status adjustment of 0.0610.

To calculate each IRF's labor and non-labor portion of the Federal prospective payment, we begin by taking the unadjusted Federal prospective payment rate for CMG 0110 (without comorbidities) from Table 4 above. Then, we multiply the estimated labor-related share (75.779) described in section VI.A of this final rule by the unadjusted Federal prospective payment rate. To determine the non-labor portion of the Federal prospective payment rate, we subtract the labor portion of the Federal payment from the unadjusted Federal prospective payment.

To compute the wage-adjusted Federal prospective payment, we multiply the labor portion of the Federal payment by the appropriate wage index found in the addendum in Tables 1 and 2. The resulting figure is the wage-adjusted labor amount. Next, we compute the wage-adjusted Federal payment by adding the wage-adjusted labor amount to the non-labor portion.

Adjusting the wage-adjusted Federal payment by the facility-level adjustments involves several steps. First, we take the wage-adjusted Federal prospective payment and multiply it by the appropriate rural and LIP adjustments (if applicable). Second, to determine the appropriate amount of additional payment for the teaching status adjustment (if applicable), we multiply the teaching status adjustment (1.0706, in this example) by the wage-adjusted and rural-adjusted amount (if applicable). Finally, we add the additional teaching status payments (if applicable) to the wage, rural, and LIP-adjusted Federal prospective payment rates. Table 5 illustrates the components of the adjusted payment calculation.

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Table 5: Example of Computing the IRF FY 2010 Federal Prospective Payment

Steps		Rural Facility A (Spencer Co., IN)		Urban Facility B (Harrison Co., IN)	
1	Unadjusted Federal Prospective Payment		$29,002.30		$ 29,002.30
2	Labor Share	X	0.75779	X	0.75779
3	Labor Portion of Federal Payment	=	$21,977.65	=	$21,977.65
4	CBSA Based Wage Index (shown in the Addendum , Tables 1 and 2)	X	0.8473	X	0.9249
5	Wage-Adjusted Amount	=	$18,621.67	=	$20,327.13
6	Nonlabor Amount	+	$7,024.65	+	$7,024.65
7	Wage-Adjusted Federal Payment	=	$25,646.31	=	$27,351.78
8	Rural Adjustment	X	1.184	X	1.000
9	Wage- and Rural- Adjusted Federal Payment	=	$30,365.23	=	$27,351.78
10	LIP Adjustment	X	1.0228	X	1.0666
11	FY 2010 Wage-, Rural- and LIP-Adjusted Federal Prospective Payment Rate	=	$31,057.56	=	$29,173.41
12	FY 2010 Wage- and Rural-Adjusted Federal Prospective Payment		$30,365.23		$27,351.78
13	Teaching Status Adjustment	X	0.000	X	0.0610
14	Teaching Status Adjustment Amount	=	$0.00	=	$1,668.46
15	FY2010 Wage-, Rural-, and LIP-Adjusted Federal Prospective Payment Rate	+	$31,057.56	+	$29,173.41
16	Total FY 2010 Adjusted Federal Prospective Payment	=	$31,057.56	=	$30,841.87

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Thus, the adjusted payment for Facility A would be $31,057.56 and the adjusted payment for Facility B would be $30,841.87.

VII. Update to Payments for High-Cost Outliers Under the IRF PPS

A. Update to the Outlier Threshold Amount for FY 2010

Section 1886(j)(4) of the Act provides the Secretary with the authority to make payments in addition to the basic IRF prospective payments for cases incurring extraordinarily high costs. A case qualifies for an outlier payment if the estimated cost of the case exceeds the adjusted outlier threshold. We calculate the adjusted outlier threshold by adding the IRF PPS payment for the case (that is, the CMG payment adjusted by all of the relevant facility-level adjustments) and the adjusted threshold amount (also adjusted by all of the relevant facility-level adjustments). Then, we calculate the estimated cost of a case by multiplying the IRF's overall cost-to-charge ratio (CCR) by the Medicare allowable covered charge. If the estimated cost of the case is higher than the adjusted outlier threshold, we make an outlier payment for the case equal to 80 percent of the difference between the estimated cost of the case and the outlier threshold.

In the FY 2002 IRF PPS final rule (66 FR 41316, 41362 through 41363), we discussed our rationale for setting the outlier threshold amount for the IRF PPS so that estimated outlier payments would equal 3 percent of total estimated payments. For the 2002 IRF PPS final rule, we analyzed various outlier policies using 3, 4, and 5 percent of the total estimated payments, and we concluded that an outlier policy set at 3 percent of total estimated payments would optimize the extent to which we could reduce the financial risk to IRFs of caring for high-cost patients, while still providing for adequate payments for all other (non-high cost outlier) cases.

Subsequently, we updated the IRF outlier threshold amount in the FYs 2006, 2007, 2008, and 2009 IRF PPS final rules (70 FR 47880, 70 FR 57166,

71 FR 48354, 72 FR 44284, and 73 FR 46370, respectively) to maintain estimated outlier payments at 3 percent of total estimated payments. We also stated in the FY 2009 final rule (FR 73 46287) that we would continue to analyze the estimated outlier payments for subsequent years and adjust the outlier threshold amount as appropriate to maintain the 3 percent target.

In the FY 2010 IRF PPS proposed rule (74 FR 21052 at 21066), we proposed to use updated data for calculating the high-cost outlier threshold amount. Specifically, we proposed to use FY 2007 claims data using the same methodology that we used to set the initial outlier threshold amount in the FY 2002 IRF PPS final rule (66 FR 41316, 41362 through 41363), which is also the same methodology that we used to update the outlier threshold amounts for FYs 2006 through 2009.

Updated analysis of FY 2008 claims data using the same methodology that we used to set the initial outlier threshold amount in FY 2002 shows that IRF outlier payments as a percentage of total estimated payments are 3 percent in FY 2009. Therefore, since we estimate that we have achieved the target percentage in FY 2009, we are adjusting the outlier threshold amount in this final rule solely to account for the 2.5 percent market basket adjustment for FY 2010 (as discussed in section VI.A of this rule) and the FY 2010 updates to the facility-level adjustments (as discussed in section V of this rule) so that we will continue to maintain estimated outlier payments at 3 percent of total estimated aggregate IRF payments for FY 2010.

B. Update to the IRF Cost-to-Charge Ratio Ceilings

In accordance with the methodology stated in the FY 2004 IRF PPS final rule (68 FR 45674, 45692 through 45694), we apply a ceiling to IRFs' cost-to-charge ratios (CCRs). Using the methodology described in that final rule, we proposed in the FY 2010 IRF PPS proposed rule (74 FR 21052, 21066 through 21067) to update the national urban and rural CCRs for IRFs, as well as the national CCR ceiling for FY 2010, based on analysis of the most recent data that is available. We apply the national urban and rural CCRs in the following situations:

- New IRFs that have not yet submitted their first Medicare cost report.
- IRFs whose overall CCR is in excess of the national CCR ceiling for FY 2010, as discussed below.
- Other IRFs for which accurate data to calculate an overall CCR are not available.

Specifically, for FY 2010, we estimated a national average CCR of 0.622 for rural IRFs, which we calculate by taking an average of the CCRs for all rural IRFs using their most recently submitted cost report data. Similarly, we estimate a national CCR of 0.494 for urban IRFs, which we calculate by taking an average of the CCRs for all urban IRFs using their most recently submitted cost report data. We apply weights to both of these averages using the IRFs' estimated costs, meaning that the CCRs of IRFs with higher costs factor more heavily into the averages than the CCRs of IRFs with lower costs. For this final rule, we have used the most recent available cost report data (FY 2007). This includes all IRFs whose cost reporting periods begin on or after October 1, 2006, and before October 1, 2007. If, for any IRF, the FY 2007 cost report was missing or had an ''as submitted'' status, we used data from a previous fiscal year's settled cost report for that IRF. However, we do not use cost report data from before FY 2004 for any IRF because changes in IRF utilization since FY 2004 resulting from the 60 percent rule and IRF medical review activities suggest that these older data do not adequately reflect the current cost of care.

In addition, in light of the analysis described below, we are setting the national CCR ceiling at 3 standard deviations above the mean CCR. The national CCR ceiling is set at 1.61 for FY 2010. This means that, if an individual IRF's CCR exceeds this ceiling of 1.61 for FY 2010, we would replace the IRF's CCR with the appropriate national average CCR (either rural or urban, depending on the geographic location of the IRF). We calculated the national CCR ceiling by:

Step 1. Taking the national average CCR (weighted by each IRF's total costs, as discussed above) of all IRFs for which we have sufficient cost report data (both rural and urban IRFs combined);

Step 2. Estimating the standard deviation of the national average CCR computed in step 1;

Step 3. Multiplying the standard deviation of the national average CCR computed in step 2 by a factor of 3 to compute a statistically significant reliable ceiling; and

Step 4. Adding the result from step 3 to the national average CCR of all IRFs for which we have sufficient cost report data, from step 1.

We received 4 comments on the proposed update to payments for high-cost outliers under the IRF PPS, which are summarized below.

Comment: The majority of commenters said that they support maintaining estimated outlier payments at 3 percent of total estimated payments for FY 2010. However, one commenter suggested that we reduce the estimated percentage of outlier payments to 1.5 percent or that we ''hold back'' a proportion of outlier payments from certain IRFs, particularly those IRFs that might have higher costs because of decreases in patient volumes. This commenter expressed concerns that the IRF outlier policy may be inadvertently rewarding IRFs for inefficiencies and suggested that we conduct an analysis of the distribution of outlier payments among IRFs.

Response: We will continue to monitor our IRF outlier policies to ensure that they continue to compensate IRFs for treating unusually high-cost patients and, thereby, promote access to care for patients who are likely to require unusually high-cost care. At this time, however, we do not have any indications to suggest that the outlier pool would be better set at 1.5 percent than at 3 percent, or that it would be appropriate to ''hold back'' outlier payments from individual IRFs. To the extent that patient volumes in some IRFs have been declining due to recent changes in the 60 percent rule and increased medical review activities, and that such declines in patient volumes may have led to temporary cost increases (due to the allocation of fixed costs across a smaller number of patients), we believe that the patient volumes will soon stabilize and that fixed costs will decline once IRFs have had time to adapt to the changes. However, we will carefully consider this commenter's suggestions, and will consider proposing additional refinements to the IRF outlier policies in the future if we find that such refinements are necessary.

Comment: Several commenters suggested that we use the FY 2008 IRF claims data to estimate the IRF outlier threshold amount for FY 2010.

Response: We agree that we should use the most recent available data to estimate the IRF outlier threshold amount for FY 2010, and have therefore used the FY 2008 IRF claims data in the analysis for this final rule.

Comment: One commenter requested that CMS provide additional information to the public in the future to allow the IRF industry and external researchers to conduct a more thorough review of CMS's proposed updates to the outlier threshold amount and to verify our estimates of outlier payments

as a percentage of total payments for FY 2010. This commenter also requested that we report the actual outlier payments and outlier payments as a percentage of total payments for each FY in this final rule.

Response: We will continue to provide as much information as possible to allow the public to analyze and evaluate our proposed updates to the IRF outlier threshold amount. In Table 6 below, we provide the requested information, by FY.

TABLE 6—IRF OUTLIER PAYMENTS AND OUTLIER PAYMENTS AS A PERCENTAGE OF TOTAL PAYMENTS

Fiscal year	Outlier payments	Outlier payments as a percentage of total payments
2003	204,193,300	3.3
2004	127,308,080	1.9
2005	116,534,084	1.8
2006	247,632,386	4.0
2007	267,474,895	4.5
2008	248,047,991	4.2

Comment: One commenter suggested that we adopt the same methodology for modeling charge increases and cost-to-charge ratio (CCR) changes in the IRF PPS that we are currently using for IPPS hospitals.

Response: As we noted in the FY 2008 IRF PPS final rule (72 FR 44284 at 44304), we considered adopting the same methodology described in the FY 2007 IPPS final rule (71 FR 47870, 48150 though 48151) for projecting cost and charge growth for IRFs. However, we discovered that the accuracy of the projections depends on the case mix of patients in the facilities remaining similar from year to year, as it does in IPPS hospitals. As many of the commenters on the FY 2009 IRF PPS proposed rule noted, the case mix of patients in IRFs was continuing to change through at least the middle of FY 2008 in response to the 60 percent rule and recent medical review activities. In analyzing the data, we discovered that we could get inaccurate results if we based future projections of cost and charge growth on data from years in which IRFs were experiencing fluctuations in case mix. Thus, since the most recent available IRF claims data for analysis in this final rule are the FY 2008 IRF claims data, and since we are still seeing evidence of case mix changes in these data, we do not believe that adopting the suggested methodology would be prudent at this time. We believe that a better approach would be to wait until the IRF case mix has stabilized before we attempt to project cost and charge growth using the suggested methodology. Otherwise, the changes occurring in IRFs all at once, including changes in IRFs' charges, costs, and case mix, could compromise the accuracy of our results. For the reasons described above, our analysis shows that using the same methodology we used previously for updating the outlier threshold amount for FY 2010 is the best approach at this time. However, we will carefully consider the commenter's suggestions as we investigate alternative approaches for projecting IRF cost and charge growth in estimating future updates to the IRF outlier threshold amount.

Final Decision: Based on careful consideration of the comments that we received on the proposed update to the outlier threshold amount for FY 2010 and based on updated analysis of the FY 2008 data, we are finalizing our decision to update the outlier threshold amount for FY 2010 to $10,652. In addition, we did not receive any comments on the IRF cost-to-charge ratio ceiling. Based on our proposed policy and the reasons set forth in the proposed rule (74 FR 21052, 21066 through 21067), we are finalizing the national average urban CCR at 0.494 and the national average rural CCR at 0.622. We are also finalizing our estimate of the IRF national CCR ceiling at 1.61 for FY 2010.

VIII. Inpatient Rehabilitation Facility (IRF) Coverage Requirements

In the FY 2010 proposed rule (74 FR 21052, 21067 through 21071), we proposed IRF coverage requirements and technical revisions to certain other IRF requirements to reflect changes that have occurred in medical practice during the past 25 years and the implementation of the IRF PPS. In light of those proposals, we also proposed to rescind the outdated HCFA Ruling 85–2. We also noted that we anticipated issuing new manual provisions to provide further guidance on the proposed rules if the changes were ultimately finalized, and expressly welcomed comments on the draft of those manual provisions on our Web site.

As we discussed in the proposed rule, the policies that currently govern IRFs were developed more than 25 years ago, and were designed to provide coverage criteria for a small subset of providers furnishing intensive and complex therapy services in a fee-for-service environment to a small segment of patients whose rehabilitation needs could only be safely furnished at a hospital level of care. In recognition of the need to provide new coverage criteria, CMS assembled an internal workgroup in June 2007 to determine how best to clarify the criteria. The workgroup enlisted the advice of medical directors from within CMS, from several of the fiscal intermediaries, from one of the qualified independent contractors (QICs), and from the National Institutes of Health. These individuals, including general physicians, physiatrists, and therapists, considered how best to identify those patients for whom IRF coverage was intended (that is, patients who both require complex rehabilitation in a hospital environment and could most reasonably be expected to benefit from IRF services). We also considered comments that we received from industry groups in response to the FY 2009 IRF PPS proposed rule (73 FR 22674) and in response to industry input solicited by CMS contractors who are preparing the IRF Report to Congress mandated by section 115(c)(1) of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA), Public Law 110–173.

After carefully considering all of the input that we received from the workgroup and from stakeholders, we proposed a number of changes to the regulation text in § 412.23 and § 412.29, which were designed to clarify our expectations regarding IRF coverage criteria. We discussed our proposals and suggested regulatory text to implement those proposals.

Unfortunately, though we never intended for these criteria to be used in determining whether facilities could be classified as IRFs, the combining of § 412.23 and § 412.29 and the placement of the proposed IRF coverage requirements in § 412.29, which discusses the requirements for rehabilitation units to be excluded from the IPPS and instead be paid under the IRF PPS, led several commenters to incorrectly conclude that the proposed coverage requirements would affect classification of an IRF. This was not our intent. To respond to these comments and to eliminate confusion on this point, we are creating a new regulatory section at newly created § 412.622(a)(3), § 412.622(a)(4), and § 412.622(a)(5), in which we will place the new IRF coverage requirements that will be used to determine whether individual IRF claims are for reasonable and necessary services under section 1862(a)(1) of the Act. These new coverage requirements will not be used to determine whether a facility can be paid under the IRF PPS. However, certain of the requirements in the newly created § 412.622(a)(3), § 412.622(a)(4), and § 412.622(a)(5) mirror the concepts

in the long-standing facility classification requirements in the existing § 412.23 and § 412.29, such as the need to have a preadmission screening process in place for all IRF patients, the need to provide close medical supervision by qualified personnel, the need to have a plan of treatment for all IRF patients, and the need to use a ''multidisciplinary'' approach to care. In this final rule, we will only make technical corrections to those provisions governing facility classification at § 412.23 and § 412.29 to resolve any inconsistencies between the new IRF coverage criteria applicable to individual claims and the existing IRF classification requirements. The facility classification requirements at § 412.23 and § 412.29 will not be used to review individual IRF claims. The details of the regulatory changes that we are making in this final rule are in the section labeled ''Final Decision'' below.

We received 58 comments on our overall approach to updating the IRF coverage requirements, which are summarized below.

Comment: Several commenters supported our efforts to clarify the IRF coverage criteria, with the Medicare Payment Advisory Commission (MedPAC) indicating that the new criteria are a ''positive step forward'' in providing a clearer set of expectations and placing the focus more on patients' functional needs. However, several commenters expressed concerns about the regulatory text that had been proposed to implement these proposals, and the authorities that we had cited in the proposed rule. They especially noted that, despite having proposed coverage criteria, we had failed to include section 1862 of the Act in our list of authorities. Other commenters suggested, due to a misunderstanding of our statements about our intent to issue manual guidance to implement the proposed regulations once they were finalized, that we had not met the requirements of the Administrative Procedure Act in our proposal to rescind HCFAR 85–2.

Response: We believe the commenters have misunderstood the approach that we are using to make these updates to the IRF coverage criteria. We are not rescinding HCFAR 85–2 and replacing it with revised manual provisions (in Chapter 1, Section 110 of the MBPM). Rather, we are using standard rulemaking procedures to replace HCFAR 85–2 with updated regulatory provisions that contain the substantive changes to the coverage criteria. Consistent with the APA requirements, we will rescind the prior standard (HCFAR 85–2) in a future notice to be issued prior to implementation of the new legal standards that are established under this final rule. Once the updated regulatory provisions are in effect, we will issue revised manual provisions that interpret the new regulatory provisions. The revised manual provisions will not contain substantive requirements beyond those that are in the regulations. We do, however, agree that we should have included section 1862 of the Act in our list of authorities in the proposed rule. We appreciate the commenters bringing this inadvertent omission to our attention. We have corrected this omission in the authorities list in this final rule.

Comment: Several commenters expressed concerns that an IRF's failure to meet the proposed coverage criteria would not only result in denial of an individual claim, but would also possibly result in a facility not being eligible for classification as an IRF. Some commenters questioned whether we were, in effect, changing the ''60 percent rule.'' If so, they suggested that CMS consider alternative ways of amending the ''60 percent rule'' and distinguishing IRFs from IPPS hospitals. These commenters also suggested that we clarify that the IRF classification requirements are based on different statutory authority than the IRF coverage criteria and that the IRF coverage criteria are not used to determine IRF classifications.

Response: As noted above, we did not intend for any of the proposed coverage criteria to have any bearing on the exclusion of facilities from the IPPS, the requirements for the classification of facilities as IRFs, or the 60 percent rule. The proposed regulatory coverage criteria were intended to update IRF coverage criteria, not IRF classification criteria. Unfortunately, the placement of these draft coverage criteria in the proposed regulatory text, especially in concert with some words that were inadvertently used in the preamble discussion (we did, unfortunately, make a reference to ''exclusion'' and ''classification requirements'' in our discussion of the proposed coverage criteria; however, we believe the majority of the discussion conveys that we were discussing coverage, not classification) led many commenters to incorrectly conclude that we were proposing to make compliance with coverage criteria a component of the IRF classification requirements.

To eliminate any further confusion regarding this point, we are creating § 412.622(a)(3), § 412.622(a)(4), and § 412.622(a)(5), which contain the new coverage criteria regulations that are adopted under this rule.

Further, we agree with the commenters that the IRF coverage criteria and the IRF classification requirements are different and are based on different statutory authority. We also agree that the IRF coverage criteria are not used to determine IRF classification. To be clear, in this final rule we are adopting new regulatory IRF coverage criteria. We do not intend for any IRF to lose its classification status because an individual patient does not meet the IRF coverage criteria. Failure to meet the coverage criteria in a particular case will only result in the denial of the IRF's claim for the services provided to that patient, not in a change in the classification of the facility.

Comment: Several commenters suggested that we delay implementation of the new regulations and manual instructions regarding the IRF medical necessity criteria to give IRFs adequate time to adapt their internal processes to the changes. These commenters also suggested that the additional time would allow CMS to conduct training on the changes, to hold provider education conference calls similar to the conference calls that we conducted in 2002 when the IRF PPS went into effect, and to hold additional meetings with stakeholders to further refine the regulations.

Response: We believe that it is critical to adopt regulatory IRF coverage criteria as quickly as possible to provide clear and updated rules that all stakeholders can easily understand and follow. However, we agree that a delay in the implementation of the new regulations, and the manual instructions that will be issued to provide further guidance on the substantive requirements contained therein, until January 1, 2010 is reasonable. This would allow IRFs more time to adjust their internal processes and procedures to accommodate the new rules. The delayed implementation would also allow time for CMS to conduct thorough training and education outreach on the new regulations, which will benefit all stakeholders by promoting a shared understanding of the new regulations.

Although we understand the commenters' concerns about the need for stakeholder input into these policies, we have already incorporated substantial input from the public in the development of these policies. As we noted in the FY 2010 proposed rule (74 FR 21052 at 21067), we received substantial input from the public on the medical necessity criteria from a town hall meeting and Technical Expert Panel that we conducted in February 2009 in response to the mandated analysis of IRF access and utilization issues

contained in the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA), Public Law 110–173, section 155(c)(1). Even though the town hall meeting and the Technical Expert Panel were supposed to be focused on developing alternatives to the criteria for classifying an IRF, particularly refinements to the 60 percent rule, in many cases participants instead provided CMS with information and suggestions concerning the criteria for establishing the medical necessity of IRF admissions, which we considered in the development of the proposed updates to the regulation. In addition, we received additional input from the public in the comments that we received on the FY 2010 IRF PPS proposed rule. Thus, we do not believe that it is necessary to conduct further meetings prior to finalizing the proposed regulations. However, we will continue to conduct additional meetings with stakeholders and provide training and education to promote a shared understanding of the new regulations. We appreciate the suggestions regarding the provider education conference calls and plan to include these calls as part of our training and public outreach on these new regulations.

Comment: Several commenters expressed concern that rescinding HCFAR 85–2 prior to issuing manual revisions would negatively affect IRF claims denials that are currently being reviewed by Administrative Law Judges (ALJs).

Response: To alleviate the commenters' concerns, we will rescind HCFAR 85–2 in a future notice that will be issued prior to implementation of the new regulatory provisions. We plan to issue new manual guidance that will interpret the new regulations at that time as well. The new regulatory provisions will become effective for IRF discharges occurring on or after January 1, 2010. Thus, HCFAR 85–2 will continue to apply for all IRF discharges that occur prior to January 1, 2010. Once the updated regulations become effective, ALJs will be able to use the new, clarified regulations. We believe that simplifying and clarifying the rules will make the rules easier for all stakeholders, including ALJs, IRFs, and Medicare contractors, to understand and to follow. In so doing, we believe that the updated regulations will reduce the number of disputed IRF claims denials that will be appealed to the ALJ level.

Comment: Several commenters suggested that we provide the scientific bases for the new regulations and a list of the people with whom we consulted in developing the new regulations.

Response: As the new regulations are intended merely to update and clarify the prior IRF medical review policies, we focused on updating the regulations to reflect current industry practices that we believe enhance the quality of care for patients, not on establishing the scientific basis for medical treatment.

We do not publish comprehensive lists of the numerous employees who participate in the collaborative policy development process. We do, however, indicate the names of the lead analysts. Please see the section labeled ''For Further Information Contact'' at the beginning of this final rule for the names and contact information of the lead analysts on this rule. Please contact the lead analysts for further information.

Comment: One commenter suggested that we include all IRF medical necessity requirements in both the regulation text and the manual instructions, so that the regulation text and the manual instructions would both be revised together through rulemaking.

Response: As we indicated above, we are using standard rulemaking procedures to implement regulatory provisions governing the coverage criteria for IRF services. Once the regulatory provisions are finalized, we will issue revised manual provisions that provide detailed guidance on the new regulatory provisions. As these manual provisions will not contain substantive requirements, there is no need to promulgate the manual provisions through the rulemaking process. As noted in the proposed rule, however, we solicited and carefully considered comments on the draft manual provisions submitted outside of this APA rulemaking process.

Comment: One commenter suggested that, given the complexity of the proposed changes to the regulation, we should provide for an additional 60-day comment period to allow the public an additional opportunity to comment on the changes.

Response: We do not believe that the proposed changes to the regulation were extraordinarily complex, relative to the regulations that we typically issue for IRFs and other Medicare payment systems. Thus, we believe that one 60-day comment period was adequate to provide for public comment on these issues.

Comment: One commenter suggested that we provide ''justifiable exceptions'' to all of the required timelines for the preadmission screening, the post-admission physician evaluation, and the overall individualized plan of care.

Response: We agree that there should be exceptions to these timelines in the case of extraordinary events, such as natural disasters or other states of emergency, that are beyond the control of the IRF. In such instances, we would consider the appropriateness of using established mechanisms for waiving or modifying certain Medicare requirements such as section 1135 of the Act (under which the Secretary might permit a temporary modification of the timeline during the ''emergency period'' under section 1135 (g)(1) of the Act). The preadmission screenings, post-admission physician evaluations, and individualized overall plans of care are part of an IRF's standard operating procedures. Thus, in non-emergency situations, we expect that each IRF will develop its own protocols to ensure timely completion of these documents.

A. Requirements for the Preadmission Screening

As discussed in the FY 2010 proposed rule, we believe that a comprehensive preadmission screening process is the key factor in initially identifying appropriate candidates for IRF care. For this reason, we proposed to clarify our expectations regarding the scope of the preadmission assessment and to require documentation of the clinical evaluation process that forms the basis of the admission decision.

In addition, to ensure that IRF patients receive close medical supervision, we proposed to require an evaluation of each patient's risk for clinical and rehabilitation complications as part of the preadmission screening.

To capture the preadmission screening information as close as possible to the actual time of the IRF admission, we proposed to require that the preadmission screening be conducted by qualified clinicians designated by a rehabilitation physician within the 48 hours immediately preceding the IRF admission, and we proposed to require that the preadmission screening documentation be retained in the patient's medical record.

We also proposed to require that a rehabilitation physician review and document his or her concurrence with the findings and results of the preadmission screening.

Finally, we proposed to eliminate the 3 to 10 day post-admission assessment, which was used under the guidance documents that predated the regulations adopted under this rule for after-the-fact proof of medical necessity.

We received 27 comments on the proposed requirement for the preadmission screening, which are summarized below.

Comment: While several commenters expressed support for the proposed preadmission screening requirement, a few commenters said that the level of detail that we are proposing for this requirement exceeds what is typically included in a preadmission screening. One commenter indicated that acute care hospital staff generally are not trained to assess all of the components of the patient's condition that we proposed to require be included in the preadmission screening, and that the level of evaluation that we are suggesting is best performed by the rehabilitation physician in the IRF.

Response: As noted in the FY 2010 proposed rule (74 FR 21052 at 21068), we believe that a comprehensive preadmission screening process is the key factor in initially identifying appropriate candidates for IRF care. As we are placing more weight on the rehabilitation physician's decision to admit the patient to the IRF, we believe that it is important to require that the rehabilitation physician document the reasoning behind this decision, to enable medical reviewers to understand the rationale for the decision. We realize that this level of detail may exceed what some IRFs may have included in the patient's medical record in the past, but we believe that it will benefit both the IRFs and the Medicare contractors who are reviewing IRF claims to have the rationale for the reasoning behind the admission decision recorded in each patient's medical record.

We agree that the assessment would best be performed by the rehabilitation physician or IRF clinical staff designated by the rehabilitation physician. We believe that the commenter may have misunderstood our proposal in that we do not expect the acute care hospital staff to be performing the preadmission screenings for the IRF.

Comment: Several commenters suggested that the clinical staff performing the preadmission screenings should be ''qualified and competent,'' but not ''licensed,'' because State licensure laws differ and preadmission screenings are generally not included in clinicians' scopes of practice. Several commenters also suggested that we allow non-clinical personnel to conduct the preadmission screening, as is the current practice in some IRFs. Further, several commenters suggested that we allow any licensed physician to review and document his or her concurrence with the results of the preadmission screening.

Response: We disagree. Given the complexity and the comprehensive nature of the preadmission screenings that are required to determine the appropriateness of an IRF admission, we believe that a comprehensive preadmission screening process is the key factor in initially identifying appropriate candidates for IRF care. As such, we believe that the IRF personnel involved in collecting the information for the preadmission screening must be appropriately trained and qualified to assess the patient's medical and functional status, assess the risk for clinical and rehabilitation complications, and assess other aspects of the patient's condition both medically and functionally. We do not agree that non-clinical personnel can adequately perform these assessments. Further, we believe that only a licensed rehabilitation physician with training and experience in medical rehabilitation should be making the IRF admission decision.

Comment: Several commenters expressed concerns that the requirement for the preadmission screening to be conducted within the 48 hours immediately preceding the IRF admission would preclude IRFs from performing the preadmission screening on the patients earlier in their acute care hospital stay, as is the practice in some IRFs. They suggested that we allow for the possibility that IRFs could update their preadmission screenings within the 48 hours immediately preceding the IRF admission and have this count toward meeting the preadmission screening requirement. One commenter suggested that we require that the preadmission screening be conducted within the 96 hours immediately preceding the IRF admission, rather than 48 hours.

Response: We agree with the commenters that the requirement as proposed could preclude IRFs from performing preadmission screenings on patients earlier in their acute care hospital stays, and we agree that performing these preadmission screenings earlier in the acute care hospital stays could, in some cases, be beneficial to the patients. For this reason, we are changing the requirement to allow for a comprehensive preadmission screening that includes all of the required elements to be performed more than 48 hours immediately preceding the IRF admission, as long as an update is conducted in person or by telephone within 48 hours prior to the admission and documented in the patient's medical record to update the patient's medical and functional status. To be clear, a comprehensive preadmission screening conducted entirely by telephone without transmission of the patient's acute care hospital records (if the patient is being transferred from the acute care hospital) and a review of those records by licensed clinical staff in the IRF is not acceptable. However, if the comprehensive preadmission screening is completed more than 48 hours prior to the IRF admission, the required update within 48 hours of the admission may be completed by telephone.

We do not believe that permitting the entire preadmission screening to be conducted within the 96 hours immediately preceding the IRF admission, without the benefit of a more recent update, would provide sufficiently current information on the patient's medical and functional status to allow the rehabilitation physician to make an appropriate admission decision.

Comment: Several commenters expressed concerns about eliminating the 3-day to 10-day inpatient assessment period for determining whether an IRF admission is appropriate, indicating that IRFs often require several days after an IRF admission to assess whether the patient can participate in and benefit from the intensive rehabilitation therapy provided in IRFs.

Response: We disagree. The current average length of stay for IRF patients is only about 13 days, and the average length of stay for many orthopedic patients treated in IRFs is only about 8 days. Given this, we believe that it is no longer appropriate to allow up to 10 days in an IRF merely to assess the patient. At that point, the average IRF patient would already be preparing to be discharged.

In addition, we believe that, in today's clinical environment, licensed physicians with training and experience in rehabilitation are able to assess a patient prior to admission to an IRF and determine whether there is a reasonable expectation that the patient can participate in and benefit from treatment in an IRF. In the unusual instance that the rehabilitation physician's reasonable expectation prior to admission is not realized once the patient is admitted to the IRF, we are allowing the IRF to begin making arrangements to transfer the patient to another setting of care and to receive the short stay outlier payment for IRF stays of 3 days or less (instead of having the entire claim denied), as long as the reasons for the change in the patient's status before and after admission are well-documented in the patient's medical record.

B. Requirement for a Post-Admission Physician Evaluation

We proposed to add a requirement for a post-admission evaluation by a rehabilitation physician within 24 hours of admission. The purpose of the proposed post-admission evaluation would be to document the patient's status on admission to the IRF, compare it to that noted in the preadmission screening documentation, and begin development of the patient's expected course of treatment that would be completed with input from all of the interdisciplinary team members in the overall plan of care. We also proposed to require that this document be retained in the patient's medical record.

We received 21 comments on the proposed requirement for a post-admission physician evaluation, which are summarized below.

Comment: Several commenters suggested that we allow the physician's history and physical (H&P) to satisfy the requirement for the post-admission physician evaluation.

Response: While the H&P is a significant component of the admission process, the post-admission evaluation performed by the rehabilitation physician is meant to include additional information that goes beyond that typically found in an H&P. Not only is the post-admission evaluation intended to provide a review of the medical history of the patient and validate the patient's condition on admission, it also provides guidance as to whether or not it is safe to initiate the patient's therapy program and it supports the medical necessity of the IRF admission. For example, it would be useful for the post-admission physician evaluation to (1) describe the clinical rehabilitation complications for which the patient is at risk, and the specific plan to avoid them, (2) describe the adverse medical conditions that might be created due to the patient's comorbidities and the rigours of the intensive rehabilitation program, and the methods that might be used to avoid them, and (3) predict the functional goals to be achieved within the medical limitations of the patient. As such, it is a combination medical/functional resource for all team members in the care of the patient as they prepare to contribute to the individualized overall plan of care.

Comment: Several commenters suggested that other licensed independent practitioners (LIPs), other than the rehabilitation physician, be allowed to complete the post-admission evaluation.

Response: Although LIPs, in many instances, complete H&Ps on IRF patients upon admission to the IRF in order to write the medical orders, the post-admission physician evaluation requirements go beyond an H&P (as discussed above). Thus, we believe that the post-admission physician evaluation requires the unique training and experience of the rehabilitation physician, as he or she performs a hands-on evaluation of the patient.

Comment: Several commenters expressed concerns that the post-admission physician evaluation would be difficult to complete with input from the interdisciplinary team within 24 hours of the patient's admission to the IRF, and that we should therefore extend the requirement for completion to either 36 hours or 3 days after the patient's admission to the IRF. Additionally, one commenter suggested that there is no need for a post-admission physician evaluation simply to document that there have been no changes in the patient since the preadmission screening, and that the post-admission evaluation would therefore not be beneficial or cost-effective.

Response: We agree with the commenters that it may be difficult for the rehabilitation physician to obtain input from all of the interdisciplinary team members in time to incorporate this information into the post-admission physician evaluation. For this reason, we are removing the requirement that the rehabilitation physician obtain input from the interdisciplinary team in completing the post-admission physician evaluation. However, we continue to believe that it would be in the best interest of the patient for the rehabilitation physician to consider any input that is available from the interdisciplinary team members in completing the post-admission physician evaluation.

As we indicated in the FY 2010 proposed rule (74 FR 21052 at 21070), we believe that rehabilitation therapy services should begin as soon as possible after a patient is admitted to an IRF, thereby increasing the patient's potential for achieving functional goals. For this reason, we believe that it is necessary for a patient to be seen by a rehabilitation physician within 24 hours of the patient's admission. Therefore, we disagree that the post-admission physician evaluation should be allowed to occur 36 hours or 3 days later. If there are no changes in the patient since the preadmission screening, then the patient's condition should be relatively easy for the rehabilitation physician to document. However, if there have been changes in the patient's medical or functional status, or any other changes in the patient's condition or status, from that noted in the preadmission screening, documentation of these changes and the reasons for these changes is important in determining the continued appropriateness of the IRF admission.

Comment: One commenter asked for clarification regarding whether the post-admission physician evaluation requirement affects the IRF–PAI assessment reference date or the requirements for completing the IRF–PAI. Specifically, the commenter asked whether the IRF–PAI must now be completed prior to the patient's admission to the IRF.

Response: The post-admission physician evaluation requirement does not affect the IRF–PAI assessment reference date or the requirements for completing the IRF–PAI (as described in § 412.610(a)(1)). The IRF–PAI cannot be completed prior to the patient's admission to the IRF. The IRF–PAI must be completed by the end of the fourth day after the patient's admission to the IRF, and should be based on information obtained during the first 3 days following the IRF admission.

C. Requirement for an Individualized Overall Plan of Care

The overall plan of care is essential to providing high-quality care in IRFs. Comprehensive planning of the patient's course of treatment in the early stages of the IRF stay leads to a more coordinated delivery of services to the patient, and such coordinated care is a critical aspect of the care provided in IRFs. Thus, we proposed to require that an individualized overall plan of care be developed for each IRF admission by a rehabilitation physician with input from the interdisciplinary team within 72 hours of the patient's admission to the IRF, and be retained in the patient's medical record.

We received 17 comments on the proposed requirement for an individualized overall plan of care, which are summarized below.

Comment: Several commenters suggested that requiring the individualized overall plan of care to be completed within 72 hours of the patient's admission to the IRF was unrealistic, especially given that IRFs are required to complete the IRF patient assessment instruments (IRF–PAIs) for each patient by the end of the patient's fourth day in the IRF. Several commenters suggested alternative requirements, such as adopting the same timing for the individualized overall plan of care that we require for completing the IRF–PAI (as described in § 412.610(a)(1)), extending the period of

time for completing the overall plan of care to 96 hours and requiring it to be finalized at the first interdisciplinary team meeting, and requiring the overall plan of care to be finalized within the first 5 days of admission.

Response: We agree that requiring the individualized overall plan of care to be completed by the end of the fourth day following the patient's admission to the IRF would allow all of the information from the IRF–PAI to be incorporated into the patient's overall plan of care, thereby enriching the patient's overall plan of care. Thus, we are adopting the timeline suggested by several of the commenters and are requiring that the overall plan of care be completed by the end of the fourth day following the patient's admission to the IRF. We believe that the commenters' suggestions for longer timeframes would unnecessarily delay the initiation of treatment in the IRF and would, thereby, limit patients' potential for achieving functional outcomes.

Comment: Several commenters suggested that we require the first interdisciplinary team meeting to be conducted within the first 4 days following the patient's admission to the IRF to develop the individualized overall plan of care and to adequately reflect the importance of the contributions of the interdisciplinary team to the care planning process.

Response: Although we believe that conducting the first interdisciplinary team meeting for each IRF patient within the first 4 days of admission to develop the overall plan of care would be a good practice in IRFs, we do not believe that a team meeting is the only way to develop an overall plan of care. As long as all of the required elements for the overall plan of care are present in the patient's medical record, we believe that it should be left up to each individual IRF to determine the best method for developing the patient's overall plan of care.

Comment: One commenter suggested that we provide examples of overall individualized plans of care for patients with specific conditions.

Response: We believe that it is important to note that the overall plan of care for each IRF patient should be individualized to that patient's unique care needs. Thus, we do not believe that it is appropriate to provide such examples.

D. Requirements for Evaluating the Appropriateness of an IRF Admission

In the FY 2010 proposed rule (74 FR 21052 at 21069), we also proposed to require that the comprehensive preadmission screening include an evaluation of the following proposed requirements that a patient must meet to be admitted to an IRF:

1. Whether the patient's condition is sufficiently stable to allow the patient to actively participate in an intensive rehabilitation program.

2. Whether the patient has the appropriate therapy needs for placement in an IRF, meaning that the patient requires the active and ongoing therapeutic intervention of at least two therapy disciplines (physical therapy, occupational therapy, speech-language pathology, or prosthetics/orthotics therapy), one of which must be physical or occupational therapy.

3. Whether the patient requires the intensive services of an inpatient rehabilitation setting, which is typically measured by whether the patient generally requires and can reasonably be expected to actively participate in at least 3 hours of therapy per day at least 5 days per week, and be expected to make measurable improvement that will be of practical value to improve the patient's functional capacity or adaptation to impairments.

We received 58 comments on the proposed requirements for evaluating the appropriateness of an IRF admission, which are summarized below.

Comment: Several commenters suggested that we further define what we mean by a patient's condition being ''sufficiently stable'' to actively participate in an intensive rehabilitation program. Many of these commenters expressed concerns that we may not be adequately recognizing that IRFs provide an inpatient level of care, similar to that provided in acute care hospitals. In addition, one commenter expressed the concern that the new regulations would mean that patients would have to remain in the acute care hospital longer until their conditions stabilized, which would delay the initiation of therapy services. Another commenter expressed the concern that the new regulations would inappropriately penalize IRFs for fluctuations in a patient's condition. One commenter suggested that we revise the regulation to require that a patient's condition be sufficiently stable ''at the time that rehabilitation services are provided,'' while another commenter suggested that we require that all services that are considered part of the acute care hospital's Medical Severity-Diagnostic Related Group (MS–DRG) payment bundle be completed prior to transfer to the IRF. A third commenter suggested that the determining factor of medical stability should be whether the patient can participate in the intensive rehabilitation therapy program provided in an IRF, at the same time that the IRF manages the patient's medical issues.

Response: We agree with the commenters that IRFs provide a hospital-level of care, with a focus on providing post-acute rehabilitation therapy services. However, we do not believe that patients should be transferred to IRFs before their medical conditions are sufficiently stable to enable them to participate in the intensive rehabilitation therapy program provided in IRFs. Specifically, we mean that, at the time of admission to the IRF, there must be a reasonable expectation that the patient is able to tolerate and benefit from the intensive rehabilitation services as generally prescribed in this rule so that he or she can progressively make the improvements needed to achieve results of practical value towards his or her functional capacity or adaptation to impairment. However, we note that this does not mean that patients' medical conditions will be fully resolved when they are admitted to IRFs. As one of the commenters summarized, we are requiring that a patient's medical condition be such that it can be successfully managed in the IRF setting *at the same time* that the patient is participating in the intensive rehabilitation therapy program provided in an IRF.

Comment: Several commenters expressed concerns that we would be imposing too high a standard in requiring the IRF to demonstrate that each patient it admits meets the IRF coverage criteria ''at the time of admission.'' The commenters suggested, instead, that we require the IRF to demonstrate a *reasonable expectation* at the time of admission that the patients would meet the IRF coverage criteria. Alternatively, several commenters suggested that we instead require that the patient meet the IRF coverage criteria by the assessment reference date for the IRF–PAI (that is, by the fourth day following admission to the IRF) or by the time that therapy is initiated.

Response: We agree with several of the commenters that a reasonable expectation that the patient meets the IRF coverage criteria at the time of admission is sufficient, and are therefore clarifying the language to read, ''The facility must ensure that there is a reasonable expectation that each patient it admits meets the following requirements at the time of admission—.'' This language better reflects our intention in proposing this policy. We note that the detailed reasoning behind this reasonable expectation must be documented in the

preadmission screening, and that it must be supported by the information in the post-admission physician evaluation and the overall individualized plan of care. We do not believe that it is appropriate to provide 4 days (at which point the IRF would generally receive a full CMG payment for the patient) or an undefined amount of time for the IRF to determine whether the patient meets the IRF medical necessity criteria. This determination should be made at the time of admission to the IRF.

Comment: Several commenters expressed concerns that the ''3-hour rule'' could preclude access to IRF care for certain patients who, for one reason or another, cannot participate in at least 3 hours of intensive therapy at least 5 days per week, but who nonetheless could benefit from treatment in an IRF. Several of these commenters suggested that this rule would violate *Hooper* v. *Sullivan,* No H–80–99 (PCD) (D Conn. July 20, 1989). For this reason, some commenters suggested that we allow exceptions to this rule for patients who need other rehabilitation services, but cannot tolerate 3 hours per day of physical therapy, occupational therapy, speech-language pathology, or prosthetics/orthotics therapy. Some commenters also suggested that we allow for exceptions to this rule for patients who require a lower intensity of therapy services but for whom an IRF admission is the only way that they can participate in a lower intensity of therapy services. In addition, one of the commenters suggested that, in some cases, we should provide more flexibility for meeting the needs of the individual patient by requiring instead that the IRF provide intensive therapy at least 15 hours per week, to be averaged over the week as necessary.

Response: We believe that patients admitted to IRFs should generally require and be reasonably expected to benefit from the *intensive* rehabilitation therapy services that are uniquely provided in IRFs. If patients do not need the intensity of services uniquely provided in IRFs, or benefit from them, then it is not clear to us why they would be admitted to an IRF.

By order of the Court in *Hooper* v. *Sullivan,* rules of thumb cannot serve as the basis of a coverage denial. In keeping with this ruling, the reasonable and necessary test for coverage of an IRF stay is whether the patient received, and could be expected to benefit from, ''intensive rehabilitation services.'' Please refer to section 110 of the Medicare Benefit Policy Manual, once the revisions that we anticipate issuing on January 1, 2010 have been published, for more specific guidance on what type of information to include when documenting an individualized overall plan of care. Although the intensity of rehabilitation services can be reflected in various ways, the generally-accepted standard by which the intensity of these services is typically demonstrated in IRFs is by the provision of intensive therapies at least 3 hours per day at least 5 days per week. However, we do not intend for this to be the only way such intensity can be demonstrated (that is, we do not intend for this measure to be used as a ''rule of thumb'' for denying an IRF claim). Rather, we suggest that this is one generally accepted way of demonstrating the intensity of services provided in an IRF.

We agree with several of the commenters that the intensity of therapy provided in IRFs could also be demonstrated by the provision of 15 hours of therapy per week (that is, in a 7-consecutive day period starting from the date of admission). For example, if a hypothetical IRF patient was admitted to an IRF for a hip fracture, but was also undergoing chemotherapy for an unrelated issue, the patient might not be able to tolerate therapy on a predictable basis due to the chemotherapy. Thus, this hypothetical patient might be more effectively served by the provision of 4 hours of therapy 3 days per week and 1½ hours of therapy on 2 (or more) other days per week in order to accommodate his or her chemotherapy schedule. Thus, IRFs may also demonstrate a patient's need for intensive rehabilitation therapy services by showing that the patient required and could reasonably be expected to benefit from at least 15 hours of therapy per week (defined as a 7 consecutive day period starting from the date of admission), as long as the reasons for the patient's periodic need for this program of intensive rehabilitation is well-documented in the patient's medical record and the overall amount of therapy is ''intensive'' and can reasonably be expected to benefit the patient. We will monitor the appropriateness of instances where IRFs demonstrate the required level of intensity in this way.

In addition, we note that we will provide guidance in our manuals on additional instances in which we might find that the patient is receiving intensive rehabilitation therapy services despite not receiving the generally expected intensity of therapy services for a brief period of time.

Comment: Several commenters suggested that we include other services, such as recreational therapy, music therapy, respiratory therapy, psychology, and neuropsychology, on the list of therapy services that IRFs must provide, as needed, under § 412.23(b)(4) and § 412.29(c). These commenters also suggested that we specify in the new requirements whether ''other rehabilitative services,'' such as recreational therapy, music therapy, or respiratory therapy, can be used to meet the intensity of therapy requirements, if they are medical necessary and ordered by a physician.

Response: While we believe that IRFs should provide, as needed, psychological and neuropsychological services to IRF patients, these services are separately billable under Medicare Part B, as described in § 411.15(m)(3)(i) and § 411.15(m)(3)(v), and are not included in the IRF PPS payment. Thus, while we would expect the IRF to provide appropriate medical oversight of any medical or psychiatric problem that is present on admission or develops during the stay (in accordance with the overall hospital Conditions of Participation at § 482.12(c)(1)(i), (c)(1)(vi), and (c)(4)), psychological and neuropsychological services furnished pursuant to this responsibility would not be considered part of the required intensity of therapy services that Medicare pays for under the Part A benefit that includes payment for IRF PPS services.

Further, we do not believe that it is appropriate to mandate that all IRFs provide recreational therapy, music therapy, or respiratory therapy services to all IRF patients, as such services may be beneficial to some, but not all, patients as an *adjunct* to other, primary types of therapy services provided in an IRF (physical therapy, occupational therapy, speech-language pathology, and prosthetics/orthotics therapy). However, we do not believe that they should replace the provision of these four core skilled therapy services. Thus, we believe that it should be left to each individual IRF to determine whether offering recreational therapy, music therapy, or respiratory therapy is the best way to achieve the desired patient care outcomes. While we are not adding these therapies to the list of required therapy services in IRFs, we do recognize that they are Medicare-covered services in IRFs if the medical necessity is well documented by the rehabilitation physician in the medical record and is ordered by the rehabilitation physician as part of the overall plan of care for the patient. However, consistent with our long-standing policies and standard practices, these therapy activities are not used to demonstrate that a patient has received intensive therapy services.

Comment: Several commenters indicated that the term ''of practical value to the patient'' when referring to the level of functional improvement that a patient may be expected to attain in an IRF is subjective, and suggested that we address improvement in the patient's ''quality of life'' instead.

Response: We believe that it will generally be apparent from the documentation by the rehabilitation physician whether there is a reasonable expectation that a particular functional improvement or adaptation to impairment will be of practical value to the patient, within the context of his or her individual situation. Quality of life, a more global term, is influenced by many factors that are unique to the patient, but which may or may not be able to be fully addressed during an IRF stay.

E. Requirements for the Interdisciplinary Team Meetings

Since an interdisciplinary approach to care is such a hallmark of the care provided in the IRF setting, we proposed to modify the terminology that we use throughout the IRF requirements to specify an ''interdisciplinary'' approach to care rather than a ''multidisciplinary'' approach. Further, since the length of many IRF stays has decreased significantly in recent years, we proposed to require that the interdisciplinary team meetings occur at least once per week throughout each IRF stay (instead of at least once every two weeks, as the previous regulations stated).

Also, to improve the effectiveness and coordination of the care provided to IRF patients and to better reflect best practices in IRFs, we proposed to broaden the requirements regarding the professional personnel that are expected to participate in the interdisciplinary team meetings. We proposed that, at a minimum, the interdisciplinary team must consist of professionals from the following disciplines (each of whom must have current knowledge of the beneficiary as documented in the medical record):

- A rehabilitation physician with specialized training and experience in rehabilitation services;
- A registered nurse with specialized training or experience in rehabilitation;
- A social worker or a case manager (or both); and
- A licensed or certified therapist from each therapy discipline involved in treating the patient.

Although the purpose of the proposed requirement for interdisciplinary team meetings is to allow the exchange of information from all of the different disciplines involved in the patient's care, we indicated in the proposed rule that we believe that it is important to designate one person, specifically the rehabilitation physician, to be responsible for making the final decisions regarding the patient's IRF care. Thus, we proposed to require that the rehabilitation physician document concurrence with all decisions made by the interdisciplinary team at each meeting.

As discussed above, we also proposed to require that the interdisciplinary team include registered nurses with specialized training or experience in rehabilitation. However, we proposed to eliminate the requirement that IRFs demonstrate that the patients need 24-hour rehabilitation nursing care because we believe that the patient's need for this care would already be identified by the clinical risk factors documented in the patient's medical record. However, as discussed below, several of the commenters misinterpreted our proposed elimination of this admission criterion as an indication that CMS was no longer valuing rehabilitation nursing in IRFs. We emphasize that it was not our intention to diminish the value of rehabilitation nursing in IRFs; we merely believe that this requirement should be a facility requirement rather than an IRF admission criterion.

We received 10 comments on the proposed requirements for the interdisciplinary team meetings, which are summarized below.

Comment: The majority of commenters agreed that weekly interdisciplinary team meetings were the standard of care in IRFs today, and therefore supported this policy. However, one commenter suggested that this requirement would remove the flexibility and individualization in IRFs. This commenter indicated that communication among disciplines in an IRF is ongoing and often informal, and that the requirement for a representative of every treating discipline to be present at every team meeting is excessive. The commenter suggested that the presence of one appointed therapist with knowledge of the patient's progress would be sufficient for the team meeting.

Response: As discussed in the FY 2010 proposed rule (74 FR 21052 at 21070), the purpose of the interdisciplinary team meeting is to foster communication among disciplines to establish, prioritize, and achieve treatment goals. Though we agree that informal communications among the disciplines on a daily basis are beneficial for the patient, we believe that it is important to require that all treating disciplines meet formally at least once per week to maximize the patient's potential for meeting the treatment goals.

Comment: Several commenters expressed concerns about the removal of the 24-hour rehabilitation nursing requirement from the IRF coverage criteria, indicating that we were not sufficiently recognizing the value of rehabilitation nursing in IRFs.

Response: As discussed above, we proposed to require that the interdisciplinary team include registered nurses with specialized training or experience in rehabilitation. However, we proposed to eliminate this as a coverage criterion because we believe that this criterion should be a facility-level requirement rather than a patient admission criterion. As a coverage criterion, the patient's need for this care would already be identified by the clinical risk factors documented in the patient's medical record.

Comment: One commenter asked for clarification regarding whether the first team conference would be required to be conducted within the first 72 hours of the patient's admission to the IRF in order to develop the overall individualized plan of care, or whether it would be required to be conducted within the first four days of admission to correspond with the completion of the IRF–PAI.

Response: We are merely requiring the first team conference to occur within the first week of the patient's admission to the IRF. While we believe that it may be good practice to conduct the first team meeting within the first 4 days to develop the overall individualized plan of care, we believe that there may be other ways of developing the overall individualized plan of care, and we believe that IRFs should have the flexibility to develop this documentation using whatever internal processes they believe are most appropriate.

F. Requirement for Physician Supervision

One of the primary reasons for a patient to receive rehabilitation therapy services in an inpatient hospital (that is, IRF) setting is that the patient's medical conditions require close medical supervision. In the past, the definition of close medical supervision has been vague. During the past 25 years, it was often assumed that ''close medical supervision'' was demonstrated by frequent changes in orders due to a patient's fluctuating medical status. Currently, however, patients' medical conditions can be more effectively managed so that they are less likely to

fluctuate and interfere with the rigorous program of therapies provided in an IRF.

In addition, the medical complexity of rehabilitation patients has increased over time and they often require the services of multiple physicians to manage their medical conditions and ensure that they are able to maximize their rehabilitation potential in the IRF. Therefore, while multiple specialists may visit the patient at the IRF, we believe that it is the unique responsibility of the rehabilitation physician to coordinate the patient's medical needs with his or her functional rehabilitation needs while in the facility. Thus, we proposed to require that a rehabilitation physician conduct face-to-face visits with the patient at least 3 days per week throughout the patient's IRF stay to assess the patient both medically and functionally, as well as to modify the course of treatment as needed to maximize the patient's capacity to benefit from the intensive rehabilitation program provided in the IRF.

We received 7 comments on the proposed requirement for physician supervision, which are summarized below.

Comment: Several commenters stated that the requirement for a minimum of 3 face-to-face visits with the rehabilitation physician per week was reasonable. However, several commenters noted further that a reasonable standard of care would require physicians to see an IRF patient on a more frequent basis.

Response: We believe that each patient in an IRF requires an individualized standard of care. We also acknowledge that each IRF can develop its own standards as to what specialists are available to provide medical services to its patients and the frequency of their visitation that supports patient safety. However, our proposal refers only to our belief that a rehabilitation physician is that professional who is uniquely qualified to assess all aspects of the patient's medical condition (with input from others as needed) and apply this knowledge to modify or advance the program of therapies that the patient is receiving in the IRF to provide for a desirable functional outcome. We believe that consideration or reassessment of the patient's functional goals at least 3 times per week by the rehabilitation physician and his or her documentation of these visits in the medical record is the minimum standard that should be applied in an IRF. All IRFs may increase the frequency of the physician visits as they believe best serves their patient populations.

G. Requirement Regarding Initiation of Therapy Services

In addition to the proposed regulatory changes discussed above, we proposed to require that the required therapy treatments begin within 36 hours after the patient's admission to the IRF.

We received 9 comments on the proposed requirement regarding the initiation of therapy services, which are summarized below.

Comment: Several commenters expressed concerns about the requirement that therapies be initiated within 36 hours of admission to the IRF. They indicated that this would require therapies to be initiated by 4 a.m. on Sunday for patients admitted to the IRF at 4 p.m. on Friday, and that this would be unrealistic. They also indicated that therapy staff generally do not treat patients on weekends, and that this provision would create staffing problems for IRFs. For this reason, the commenters suggested that we either leave it to the physician's judgment to determine when therapy treatments should begin, require therapy to be initiated within a ''reasonable period of time'' from admission to the IRF, or require that therapy be initiated within 36 or 48 hours from midnight of the day of admission.

Response: IRFs are a specialized type of hospital and, like acute care hospitals, are supposed to provide services 7 days a week. Therefore, just as we do not believe that patients who are admitted to acute care hospitals on Friday should have to wait until Monday to have their acute care needs met, we also do not believe that IRF patients who are admitted to IRFs on Friday should have to wait until Monday to have their rehabilitation therapy needs met. Given that the average length of stay in IRFs is only about 13 days, and that the average length of stay for certain orthopedic patients is only about 8 days, we believe that it would be unreasonable for an IRF not to provide rehabilitation therapies to patients on the weekend, as this would mean that patients would not be participating in therapies for a significant portion of their stay in the IRF. Further, since patients' potential for functional recovery often depends on initiating rehabilitation therapies as early as possible, we believe that it is essential that IRFs provide rehabilitation therapy on weekends to ensure that patients are able to maximize their functional goals.

Thus, our intent is to require IRFs to initiate rehabilitation therapies as soon as possible after admission to the IRF. We had proposed to require that IRFs initiate therapy no later than 36 hours after a patient's admission to the IRF. However, some commenters suggested that this would mean that patients admitted to IRFs at 4 p.m. on Friday would need to being therapy by 4 a.m. on Sunday, and that this would effectively require IRFs to begin therapies on Saturday. As it was not our intention to be this restrictive, we are instead requiring that IRFs initiate therapies for all patients within 36 hours from midnight of the day of admission. So, for example, a hypothetical patient admitted to the IRF at 4 p.m. on Friday would need to begin therapies by noon on Sunday.

Comment: Several commenters suggested that we specify whether therapy evaluations would satisfy the requirement for the initiation of therapy.

Response: Therapy evaluations would satisfy the requirement for therapy to be initiated within 36 hours from midnight of the day of admission.

H. Provision of Group Therapies in IRFs

As we discussed in the FY 2010 proposed rule (74 FR 21052, 21070 through 21071), another critical aspect of IRF care is that rehabilitation therapy services are generally provided to each patient by a licensed or certified therapist working directly with the patient, more commonly known as one-on-one therapy. It has come to our attention that some IRFs are providing essentially all ''group therapy'' to their patients. We believe that group therapies may have a role in patient care in an IRF, but that they should be used in IRFs primarily as an adjunct to one-on-one therapy services which should be the standard of care in therapy service provided to IRF patients. We believe that group therapy should be considered as a supplement to the intensive individual therapy services generally provided in an IRF. To improve our understanding of when group therapy may be appropriate in IRFs, we specifically solicited comments on the types of patients for which group therapy may be appropriate, and the specific amounts of group therapies instead of one-on-one therapies that may be beneficial for these types of patients. We stated that we anticipated using this information to assess the appropriate use of group therapies in IRFs and that we might create standards for group therapies in IRFs.

We received 32 comments regarding our request for comments on the types of patients for which group therapy may be appropriate, and the specific

amounts of group instead of one-on-one therapies that may be beneficial for these types of patients.

Comment: A majority of the commenters stated that group therapies do have an important role in the provision of therapies in IRFs, but they also suggested that the amount of group therapies provided in IRFs should be limited in some way. Many commenters agreed that group therapies are a good adjunct to one-on-one therapies, but should not be the primary source of therapy services provided in IRFs. Several commenters suggested that the size of the groups should not exceed 2 to 4 patients for every one licensed therapist, and that the groups should be comprised of patients with similar diagnoses. Commenters generally suggested that we conduct further research and consult with experts before proposing standards for the provision of group therapies in IRFs.

Response: As we have stated, the standard of care for IRF patients is individualized therapy. Group therapies serve as an adjunct to individual therapies. In those instances in which group therapy better meets the patient's needs on a limited basis, the situation/rationale that justifies group therapy should be specified in the patient's medical record. We plan to consider the adoption of specific standards on the use of group therapies at a future date. We appreciate the information that the commenters provided.

I. Clarifying and Conforming Amendments

In the FY 2010 proposed rule (74 FR 21052, 21080 through 21081), we proposed revisions to § 412.23 and § 412.29 to combine the facility classification requirements for rehabilitation hospitals and rehabilitation units of acute care hospitals into one section at § 412.29, and to add the new coverage requirements to § 412.29. However, upon reviewing the comments that we received on the proposed rule, we realized that combining the requirements for hospital-based and freestanding IRFs into one section, and including coverage requirements in that same section, resulted in some confusion about whether and to what extent the facility requirements were being altered, and whether we were making coverage criteria a classification requirement. To eliminate this confusion, we are retaining the separate sections at § 412.23 and § 412.29 (governing facility requirements for rehabilitation hospitals and rehabilitation units, respectively) and making conforming changes to these two sections to mirror the new coverage criteria, which appear in the new sections § 412.622(a)(3), § 412.622(a)(4), and § 412.622(a)(5). However, the facility criteria requirements, as modified, will be retained in § 412.23 and § 412.29. These facility criteria will not be used to determine whether individual IRF claims are for services that are reasonable and necessary under section 1862(a)(1) of the Act. The conforming changes, which we are making to the identical text in both § 412.23 and § 412.29 are:

- To remove the words ''or assessment'' from § 412.23(b)(3) and § 412.29(b) to indicate that we are no longer providing for a 3 to 10 day inpatient assessment period after admission to assess the appropriateness of the IRF admission, as discussed above.
- To amend paragraphs § 412.23(b)(4) and § 412.29(c) to require that IRFs ''furnish, through the use of qualified personnel, rehabilitation nursing, physical therapy, and occupational therapy, plus, as needed, speech-language pathology, social services, psychological services (including neuropsychological services), and orthotic and prosthetic services.'' This amendment is in response to comments, as discussed above. To replace the word ''multidisciplinary'' with the word ''interdisciplinary'' in § 412.23(b)(7) and § 412.29(e) to make the terminology consistent with the new IRF coverage criteria in the newly created § 412.622(a)(3), § 412.622(a)(4), and § 412.622(a)(5). To require, in both § 412.23(b)(7) and § 412.29(e), that the interdisciplinary team meetings occur at least once per week to be consistent with the new IRF coverage criteria in the newly created § 412.622(a)(3), § 412.622(a)(4), and § 412.622(a)(5).

To eliminate any further confusion about whether we are promulgating new IRF coverage requirements or new facility classification requirements in this final rule, we are withdrawing all other proposed changes to § 412.23 and § 412.29 at this time.

J. HCFAR 85–2 Ruling

As noted previously, the HCFAR is outdated and inconsistent with the IRF PPS. The adoption of the proposed coverage criteria would establish a new legal framework. These new regulatory requirements would not mirror the provisions in HCFAR 85–2. Therefore, to prevent further confusion over which document provides instructions on the IRF PPS regulations, we proposed that HCFAR 85–2 would be rescinded and new manual provisions offering guidance on the new regulatory coverage criteria would be issued. In light of the adoption of a new regulatory framework under this final rule, it is appropriate to rescind HCFAR 85–2. We now realize, however, that the rescission needs to be done through issuance of a notice in the **Federal Register**. Thus, we will issue a notice in the **Federal Register** at a future date to notify the public of the rescission of HCFAR 85–2, effective for IRF discharges occurring on or after January 1, 2010. We anticipate that the new regulatory requirements that are adopted by this rule, once implemented, will be further interpreted by new manual provisions that will be placed in Chapter 1, Section 110 of the MBPM.

We received 14 comments on the proposed rescission of HCFAR 85–2, which are summarized below.

Comment: Several commenters expressed concern that rescinding HCFAR 85–2 prior to issuing manual revisions would negatively affect IRF claims denials that are currently being reviewed by ALJs.

Response: We will rescind HCFAR 85–2 in a future notice issued in the **Federal Register** prior to the implementation of the new regulatory provisions. We anticipate issuing manual guidance that will interpret the new regulations. The new regulatory provisions will become effective for IRF discharges occurring on or after January 1, 2010. Thus, as we will discuss in a future notice to be issued in the **Federal Register**, HCFAR 85–2 will continue to apply for all IRF discharges that occur prior to January 1, 2010. Once the updated regulations become effective, ALJs will be able to use the new, clarified regulations. We believe that simplifying and clarifying the rules will make the rules easier for all stakeholders, including ALJs, IRFs, and Medicare contractors, to understand and to follow. In so doing, we believe that the updated regulations will reduce the number of disputed IRF claims denials that will be appealed to the ALJ level.

Final Decision: After carefully considering all of the comments we received on the proposed updates to the IRF coverage requirements, we are finalizing the regulation text changes as proposed, except for the revisions in response to comment indicated below. In addition, to eliminate any confusion that these coverage requirements are requirements for determining whether an IRF claim meets the reasonable and necessary provision of the statute rather than facility classification requirements, we are moving these coverage requirements to a newly created § 412.622(a)(3), § 412.622(a)(4), and § 412.622(a)(5). Finally, we will rescind

HCFAR 85–2 in a future notice to be issued in the **Federal Register**.

We are adding requirements to § 412.622(a) as shown in the regulatory text of this final rule.

IX. Revisions to the Regulation Text To Require IRFs To Submit Patient Assessments on Medicare Advantage Patients for Use in the ''60 Percent Rule'' Calculations

A. Background on the ''60 Percent Rule'' Calculations

In order to be excluded from the acute care inpatient hospital PPS specified in § 412.1(a)(1) and instead be paid under the IRF PPS, rehabilitation hospitals and units must meet, among other things, the requirements in § 412.23(b)(2). According to this section, at least 60 percent of an IRF's total inpatient population must require intensive rehabilitative services for treatment of one or more of 13 specified conditions.

The instructions that we provide to Medicare contractors in Chapter 3, section 140 of the Medicare Claims Processing Manual, Internet-Only Manual (IOM) Pub. 100–04, provide for two methodologies that Medicare contractors may use to determine whether an IRF's patient population meets the requirements in § 412.23(b)(2). We refer to the first of these two methodologies as the ''presumptive methodology.'' This methodology uses the IRF–PAI information that is submitted for Medicare Part A fee-for-service inpatients under § 412.604 and § 412.618. It is ''presumptive'' in that, while § 412.23(b)(2) specifies that an IRF's total inpatient population must meet the 60 percent rule requirements, this method examines only the Medicare patient data and extrapolates from this the compliance percentage for the IRF's entire inpatient population. The presumptive methodology uses computer software to examine each IRF–PAI for the presence of particular diagnostic codes that indicate whether a patient has one of the 13 medical conditions listed in § 412.23(b)(2)(ii). If the computer software determines that the patient has one or more of the diagnostic codes that represent one of the 13 medical conditions listed in § 412.23(b)(2)(ii), then that patient is counted in the presumptive methodology calculation of that IRF's compliance percentage; otherwise, the patient is not counted. Once the computer software has examined all of the IRF–PAIs submitted by a particular IRF, the computer software computes the presumptive compliance percentage for that IRF. The percentage that the software computes is equal to the total number of IRF–PAIs with one or more diagnostic codes representing the 13 medical conditions listed in § 412.23(b)(2)(ii) divided by the total number of IRF–PAIs submitted by the IRF. This becomes the IRF's presumptive compliance percentage, which is then compared with the required minimum compliance percentage to determine whether the IRF has met the required minimum compliance percentage for the designated compliance review period.

In accordance with IOM instructions in Chapter 3, section 140 of the Medicare Claims Processing Manual, the presumptive methodology described above is used when the Medicare contractor has verified that the IRF's Medicare Part A fee-for-service inpatient population is representative of the facility's total inpatient population. For this to be the case, the IOM instructions specify that the IRF's Medicare Part A fee-for-service inpatient population must be at least 50 percent or more of the IRF's total inpatient population. If the IRF's Medicare Part A fee-for-service inpatient population is less than 50 percent of the IRF's total inpatient population, then we cannot verify that the IRF–PAI data are representative of the IRF's total inpatient population. Therefore, in these situations, we require the Medicare contractors to use the second of the 2 methodologies to determine the IRF's compliance percentage.

The second methodology is commonly known as the ''medical review'' methodology. This methodology requires the Medicare contractor to review a sample of medical records from the IRF's total inpatient population (which may consist of all of the IRF's medical records if the IRF has 100 or fewer inpatients during the review period) to determine the IRF's compliance percentage. The medical review methodology may be used at any time at the discretion of the Medicare contractor, but we specifically require its use if the IRF's Medicare Part A fee-for-service inpatient population is less than 50 percent of the IRF's total inpatient population (as described above) or if the IRF fails to meet the minimum compliance percentage using the presumptive methodology.

B. Requirement To Submit Assessment Data on Medicare Advantage Patients

As described above, the presumptive methodology relies on the IRF–PAI data that is submitted under § 412.604 and § 412.618. To use the presumptive methodology, the Medicare Part A fee-for-service inpatient population must make up at least 50 percent or more of the IRF's total inpatient population.

Since 2004, however, increasing numbers of Medicare beneficiaries in many areas of the country have been enrolling in Medicare Advantage (MA) plans rather than remaining in the traditional Medicare Part A fee-for-service program. This, in turn, has led to decreases in the number of Medicare Part A fee-for-service inpatients in certain IRFs across the country and has resulted in a reduction in the number of IRFs for whom the presumptive methodology can be used.

Thus, although we have not required IRFs to submit IRF–PAI data on MA patients until now, we proposed in the FY 2010 IRF PPS proposed rule (74 FR 21052, 21071 through 21073) to revise the regulation text in § 412.604, § 412.606, § 412.610, § 412.614, and § 412.618 to require that IRFs submit IRF–PAI data on all of their MA patients to facilitate better calculations under the 60 percent rule. Where an IRF fails to submit all MA IRF PAIs, we proposed that CMS would not count the MA patients in the compliance percentage for that IRF. In addition, to ensure that we receive all IRF–PAI data for all Medicare patients, whether Part A or Part C, we proposed to remove § 412.614(a)(3) of the regulations that formerly allowed IRFs not to submit IRF–PAI's for Medicare patients for whom they were not seeking payment from Medicare. However, we specifically solicited comments on whether requiring IRFs to submit IRF–PAI data on all of their MA patients would be the best way to ensure the integrity of the compliance review process.

Requiring IRFs to submit IRF–PAIs for all of their MA inpatients, in addition to all of their Medicare Part A fee-for-service inpatients, will allow Medicare contractors to begin using the presumptive methodology to determine IRFs' compliance percentages when the Part A fee-for-service and MA inpatient populations combined are more than 50 percent of their total inpatient populations. We proposed to preserve the long-standing 5-year record retention requirement for the IRF–PAIs completed on Medicare Part A fee-for-service patients, as currently required in § 412.610(f), but we proposed a 10-year record retention requirement for IRF–PAIs completed on Medicare Part C (Medicare Advantage) patients to maintain consistency with the record retention requirements for Medicare Part C data specified in § 422.504(d).

We received 21 comments on the proposed revisions to the regulation text to require IRFs to submit patient

assessments on MA patients for use in the 60 percent rule calculations, which are summarized below.

Comment: The majority of commenters supported the proposed change to the regulation text to allow Medicare Advantage patients to be counted in the 60 percent rule calculations. However, individual commenters offered differing suggestions regarding the effective date of the proposed change. One commenter suggested that CMS delay implementing the new reporting requirements until at least FY 2011; another commenter suggested rapid implementation of this requirement so that the MA IRF–PAIs could be used in the 60 percent compliance calculations for current compliance review periods that are already underway as of October 1, 2009; and a third commenter suggested that the change should be made effective for compliance review periods beginning on or after October 1, 2009.

Response: We agree with the commenters that it is important to recognize the increasing population of MA patients in many areas. We also agree that this change will make the compliance reviews easier for certain IRFs with high percentages of MA patients and for the fiscal intermediaries or Medicare Administrative Contractors that review these IRFs' compliance with the 60 percent rule. Further, we agree with one of the commenter's suggestions that the change should be made effective for compliance review periods beginning on or after October 1, 2009 and we are adopting this effective date.

Comment: Several commenters suggested that the proposed policy to not use any of an IRF's MA IRF–PAIs in the compliance calculations if the IRF does not submit all of them is overly strict, and that we should allow for some reasonable exceptions. Many of these commenters also objected to the proposed removal of the exception for submission of IRF–PAIs on Part A fee-for-service patients. However, one commenter supported the proposed requirements for submitting all of the MA IRF–PAIs, indicating that it was a ''fair and equitable'' policy that would avoid ''cherry-picking'' and reduce the creation of unfair advantages among IRFs.

Response: As we did not receive any specific suggestions regarding a better way of ensuring the integrity of the compliance review process, we believe that requiring IRFs to submit IRF–PAIs on all of their MA patients and not including MA patients in the compliance calculations for those IRFs that do not submit all of their MA IRF–PAIs is the only way to ensure the integrity of the compliance review process.

Comment: One commenter said that IRFs might not always know the Medicare identification numbers for their MA patients, and suggested that we provide a way for IRFs to send the IRF–PAI data on MA patients without the Medicare identification number.

Response: To preserve the integrity of the compliance percentage review process, we believe that it is important to require that the patient's Medicare identification number be recorded on the IRF–PAI for MA patients. Having the Medicare identification numbers on the IRF–PAIs will allow us to verify the information that we obtain from the MA IRF–PAIs with the MA claims that hospitals are required to submit to CMS for informational purposes. Currently, all IPPS hospitals, IRFs, and long-term care hospitals (LTCHs) are required to submit abbreviated Medicare claims on their MA patients for use in the DSH and LIP adjustment calculations. To enable IRFs to submit the required MA claims, the Medicare managed care organizations are already providing IRFs with the Medicare beneficiary identification numbers anytime an MA patient is admitted to the IRF. Since IRFs are already obtaining this information for the MA claims, we do not believe that it will be a problem for IRFs to record this same information on the IRF–PAIs.

Comment: One commenter suggested that we change the wording in § 412.606(c)(1) to recognize that multiple clinicians may provide information for completing an IRF–PAI, rather than specifying that only a single clinician may complete it.

Response: We agree with the commenter and are making the suggested change.

Comment: One commenter suggested that we revise the presumptive methodology calculation to include non-Medicare patients, including patients that pay for their own IRF care.

Response: We will consider the commenter's suggestion. However, we do not believe that we have the authority to require IRFs to submit IRF–PAIs on non-Medicare patients.

Comment: Several commenters objected to the different record retention requirements for the IRF–PAIs on Part A fee-for-service patients and those on MA patients.

Response: As noted previously, we proposed to preserve the long-standing 5-year record retention requirement for the IRF–PAIs completed on Medicare Part A fee-for-service patients, as currently required in § 412.610(f), but we proposed a 10-year record retention requirement for IRF–PAIs completed on Medicare Part C (Medicare Advantage) patients to maintain consistency with the record retention requirements for Medicare Part C data specified in § 422.504(d). We believe that the proposed IRF–PAI record retention requirements are the only way to maintain consistency with the different record retention requirements in each of these two sections of the regulation.

Comment: Several commenters suggested that we consider exceptions to the proposed penalty for late submission of the Medicare Advantage IRF–PAIs and that the exceptions should apply to both Medicare and Medicare Advantage patients. One commenter indicated that it would be completely unreasonable for CMS to impose the penalty of total exclusion of the Medicare Advantage IRF–PAI data based on one late submission.

Response: We understand the concerns expressed by the commenters and agree that a limited exception to this policy is warranted. We currently provide for a limited exception to the application of the IRF–PAI penalty for late submission under § 412.614(e). In this final rule, we will amend section 412.614(e) to include late transmission of MA IRF–PAIs, thereby providing for a limited exception to the penalty for late transmission of the MA IRF–PAIs due to extraordinary situations that are beyond the control of the IRF.

Final Decision: After carefully considering the comments that we received on the proposed revisions to the regulation text to require IRFs to submit patient assessments on Medicare Advantage patients for use in the 60 percent rule calculations, we are finalizing the following revisions to the regulation text in § 412.604, § 412.606, § 412.610, § 412.614, and § 412.618. Specifically, we are adding Medicare Part C (Medicare Advantage) patients to the patients for whom IRFs must complete and submit an IRF–PAI, removing the paragraph that allows IRFs not to submit IRF PAI data in instances in which the IRF does not submit a claim to Medicare, and rejecting MA IRF–PAI data that is not complete. Thus, we are finalizing the changes to the regulation text as follows:

- In § 412.604(c), we are adding the following sentence to the end of the paragraph: ''IRFs must also complete a patient assessment instrument in accordance with § 412.606 for each Medicare Part C (Medicare Advantage) patient admitted to or discharged from an IRF on or after October 1, 2009.'' Thus, the paragraph would read as follows: ''For each Medicare Part A fee-for-service patient admitted to or

discharged from an IRF on or after January 1, 2002, the inpatient rehabilitation facility must complete a patient assessment instrument in accordance with § 412.606. IRFs must also complete a patient assessment instrument in accordance with § 412.606 for each Medicare Part C (Medicare Advantage) patient admitted to or discharged from an IRF on or after October 1, 2009.''

• In § 412.606(b), we are adding the phrase ''and Medicare Part C (Medicare Advantage)'' after ''fee-for-service'' and before ''inpatients.'' The paragraph reads as follows: ''An inpatient rehabilitation facility must use the CMS inpatient rehabilitation facility patient assessment instrument to assess Medicare Part A fee-for-service and Medicare Part C (Medicare Advantage) inpatients who—''

• In § 412.606(c)(1), we are adding a sentence at the end of the existing paragraph that reads as follows: ''IRFs must also complete a patient assessment instrument in accordance with § 412.606 for each Medicare Part C (Medicare Advantage) patient admitted to or discharged from an IRF on or after October 1, 2009.''

• In § 412.610(a), we are adding the phrase ''and Medicare Part C (Medicare Advantage)'' after ''fee-for-service'' and before ''inpatient.'' The paragraph reads as follows: ''For each Medicare Part A fee-for-service or Medicare Part C (Medicare Advantage) inpatient, an inpatient rehabilitation facility must complete a patient assessment instrument as specified in § 412.606 that covers a time period that is in accordance with the assessment schedule specified in paragraph (c) of this section.''

• In § 412.610(b), we are adding the phrase ''or Medicare Part C (Medicare Advantage)'' after ''fee-for-service'' and before ''inpatient.'' The paragraph reads as follows: ''The first day that the Medicare Part A fee-for-service or Medicare Part C (Medicare Advantage) inpatient is furnished Medicare-covered services during his or her current inpatient rehabilitation facility hospital stay is counted as day one of the patient assessment schedule.''

• In § 412.610(c), we are adding the phrase ''or Medicare Part C (Medicare Advantage)'' after ''fee-for-service'' and before ''patient's.'' The paragraph reads as follows: ''The inpatient rehabilitation facility must complete a patient assessment instrument upon the Medicare Part A fee-for-service or Medicare Part C (Medicare Advantage) patient's admission and discharge as specified in paragraphs (c)(1) and (c)(2) of this section.''

• In § 412.610(c)(1)(i)(A), we are adding the phrase ''or Medicare Part C (Medicare Advantage)'' after ''fee-for-service'' and before ''hospitalization.'' The paragraph reads as follows: ''Time period is a span of time that covers calendar days 1 through 3 of the patient's current Medicare Part A fee-for-service or Medicare Part C (Medicare Advantage) hospitalization; * * *''

• In § 412.610(c)(2)(ii)(B), we are adding the phrase ''or Medicare Part C (Medicare Advantage)'' after ''fee-for-service'' and before ''inpatient,'' so that the resulting paragraph reads as follows: ''The patient stops being furnished Medicare Part A fee-for-service or Medicare Part C (Medicare Advantage) inpatient rehabilitation services.''

• In § 412.610(f), we are adding the phrase ''and Medicare Part C (Medicare Advantage) patients within the previous 10 years'' after ''5 years'' and before ''either,'' and also adding the phrase ''and produce upon request to CMS or its contractors'' after ''obtain.'' The paragraph reads as follows: ''An inpatient rehabilitation facility must maintain all patient assessment data sets completed on Medicare Part A fee-for-service patients within the previous 5 years and Medicare Part C (Medicare Advantage) patients within the previous 10 years either in a paper format in the patient's clinical record or in an electronic computer file format that the inpatient rehabilitation facility can easily obtain and produce upon request to CMS or its contractors.'' This maintains consistency with the 5-year record retention requirements for IRF–PAIs completed on Medicare Part A fee-for-service patients specified in § 412.610(f) and the 10-year record retention requirements for Medicare Part C (Medicare Advantage) records specified in § 422.504(d)(1)(ii).

• In § 412.614(a), we are adding the phrase ''and Medicare Part C (Medicare Advantage)'' after ''fee-for-service'' and before ''inpatient,'' the paragraph reads as follows: ''The inpatient rehabilitation facility must encode and transmit data for each Medicare Part A fee-for-service and Medicare Part C (Medicare Advantage) inpatient—''

• We are removing § 412.614(a)(3).

• In § 412.614(b)(1), we are adding the phrase ''and Medicare Part C (Medicare Advantage)'' after ''fee-for-service'' and before ''inpatient,'' the paragraph reads as follows: ''Electronically transmit complete, accurate, and encoded data from the patient assessment instrument for each Medicare Part A fee-for-service and Medicare Part C (Medicare Advantage) inpatient to our patient data system in accordance with the data format specified in paragraph (a) of this section; and * * *''

• We are revising § 412.614(d) to read, ''Consequences of failure to submit complete and timely IRF–PAI data, as required under paragraph (c) of this section.''

• We are revising § 412.614(d)(1) to read, ''Medicare Part A fee-for-service data.''

• We are making a technical correction to the paragraph formerly designated as § 412.614(d)(1) and assigning the revised language to a new paragraph § 412.614(d)(1)(a), which reads as follows: ''We assess a penalty when an inpatient rehabilitation facility does not transmit all of the required data from the patient assessment instrument for its Medicare Part A fee-for-service patients to our patient data system in accordance with the transmission timeline in paragraph (c) of this section.''

• We are redesignating paragraph § 412.614(d)(2) as § 412.614(d)(1)(b).

• We are adding a new paragraph § 412.614(d)(2), which reads as follows: ''Medicare Part C (Medicare Advantage) data. Failure of the inpatient rehabilitation facility to transmit all of the required patient assessment instrument data for its Medicare Part C (Medicare Advantage) patients to our patient data system in accordance with the transmission timeline in paragraph (c) of this section will result in a forfeiture of the facility's ability to have any of its Medicare Part C (Medicare Advantage) data used in the calculations for determining the facility's compliance with the regulations at § 412.23(b)(2).''

• We are revising the second sentence in paragraph § 412.614(e). The sentence reads as follows ''Only CMS can determine if a situation encountered by an inpatient rehabilitation facility is extraordinary and qualifies as a situation for waiver of the penalty specified in paragraph (d)(1)(ii) of this section or for waiver of the forfeiture specified in paragraph (d)(2) of this section.''

• In the introductory paragraph of § 412.618, we are adding the phrase ''or Medicare Part C (Medicare Advantage)'' after ''fee-for-service'' and before ''patient.'' The paragraph reads as follows: ''For purposes of the patient assessment process, if a Medicare Part A fee-for-service or Medicare Part C (Medicare Advantage) patient has an interrupted stay, as defined under § 412.602, the following applies: * * *''

X. Miscellaneous Comments

Comment: A commenter indicated that posting extensive changes to the

long-standing policies in the Medicare Benefit Policy Manual on our Web site for comment may violate the APA, and they specifically cited *Alaska Professional Hunters Association, Inc.* v. *Federal Aviation Administration,* 177 F.3d 1030 (June 4, 1999).

Response: We disagree with the commenter that the procedures used to seek the public's input on the new draft manual provisions that will, when finalized, be placed in Section 110 of MBPM, and the proposal to rescind HCFAR 85–2, violate the APA. We proposed regulatory changes related to IRF coverage policy through the FY 2010 IRF proposed rule. These regulatory changes are being finalized through this final rule with an implementation date of January 1, 2010. These regulatory provisions replace the policies outlined in HCFAR 85–2. We will therefore issue a notice in the **Federal Register** at a future date to rescind HCFAR 85–2, effective on the date on which the replacement regulations will take effect. While we anticipate release of new manual provisions that will interpret the new regulations on that same date, the substantive provisions in the regulations, not the interpretive guidance in the manuals, will replace HCFAR 85–2. Full notice and comment rulemaking was used to adopt these regulations, in accordance with the APA.

Thus, we believe that, in rescinding the prior standard (HCFAR 85–2) in a future notice to be issued in the **Federal Register** and replacing it with new legal standards in regulations, and promulgating updated manual provisions after consideration of public comments to the proposed rule, we are in compliance with all applicable and necessary notice and comment processes. Furthermore, by accepting comments on the draft manual through our Web site, and publicizing our interest in receiving comments through that mechanism in the proposed rule, we exceeded the legal requirements for seeking public comment on our draft policies.

Comment: Several commenters expressed concerns that the proposed rule did not include a requirement for rehabilitation nursing. They stated that the importance of the rehabilitation nursing staff to carry out medical management interventions, repetition of functional mobility techniques as taught by the licensed therapists throughout the patient's stay, education in disease management and illness prevention related to a patient's unique presentation of diagnosis, family training, and education cannot be underestimated in the IRF patient's potential for functional improvement. One commenter suggested that CMS revise the existing requirement to require the use of certified registered rehabilitation nurses.

Response: While we agree with the commenters on the importance of rehabilitation nursing, as well as the need to ensure that patients are attended to by licensed staff with experience in rehabilitation nursing, we do not agree that the requirements for rehabilitation nursing should be included as an IRF admission criterion. Instead, we believe that the use of rehabilitation nurses is a staffing requirement that would be included in Conditions of Participation for IRFs. We are actively working on such Conditions and expect to release a proposed rule in the near future.

Comment: One commenter requested clarification on whether payments to an IRF are reduced when patients are transferred to a SNF. The commenter stated that, occasionally, a patient will be making steady progress toward goals even up to four weeks after admission, when family members suddenly change their minds about their ability to care for their loved one at home. The commenter suggested that, if the IRF keeps the patient beyond the average length of stay for that CMG with the intention of discharging the patient to a home or community-based setting, the IRF payment for the patient should not be reduced.

Response: In the scenario that the commenter described, the IRF payment for the patient would not be reduced, as long as the patient meets the IRF coverage criteria. According to the regulations, if the patient meets the IRF coverage criteria and the patient's length of stay in the IRF is longer than the average length of stay for the patient's CMG and tier, the IRF will receive the full CMG payment for the patient regardless of whether the patient is discharged to a SNF.

Comment: One commenter suggested that we clarify the composition of prosthetic and orthotic services as well as the specific qualifications of those individuals that provide these services.

Response: An IRF is required to meet the Hospital Conditions of Participation. This means that, among other things, a governing body is required to be responsible for the services furnished in an IRF, including prosthetic and orthotic services, whether or not they are furnished under contract. These services must meet the general Medicare requirements, which include requirements for the professional standards for those providing the service.

Comment: One commenter suggested that CMS clarify the appeals process for challenging removal of a facility from the IRF PPS. The commenter proposed removing IRFs only for the cost reporting period following an unfavorable decision by the Provider Reimbursement Review Board (PRRB) or the CMS Administrator.

Response: It is the responsibility of the CMS Regional Office to notify the IRF prior to the beginning of its next cost reporting period if the facility has failed to meet the IRF classification requirements. This determination may be appealed to the PRRB. However, an IRF does not retain its IRF classification status during the appeal process. The process for appealing an IRF declassification is described in 42 CFR section 405, in Subpart R of the regulations.

Comment: The Commission on Accreditation of Rehabilitation Facilities (CARF) indicated that, due to the thoroughness of the CARF survey procedure involving peer review and the presumption that a facility with such accreditation meets the majority of the classification criteria (with the ability to adjust the required criteria), it would be appropriate for CMS to give accreditation a more robust role in determining IRF classification. Therefore, they suggested that CMS should give the CARF (and other accrediting bodies as appropriate) the responsibility for evaluating a facility's full compliance with the exclusion criteria through its ongoing on-site survey and peer review processes. In the CARF's view, any facility that is able to obtain and maintain CARF accreditation should be deemed to qualify as an IRF for purposes of reimbursement under the IRF PPS. Otherwise, the CARF suggested that the current guidance in the State Operations Manual, which creates a presumption of satisfaction of the exclusion criteria for accredited facilities and programs, should be maintained.

Response: The regulations at § 412.23(b) set forth the criteria used by Medicare's contractors to determine if a hospital is excluded from the IPPS for purposes of payment under the Medicare program. One of these criteria, commonly known as the ''60 percent rule,'' focuses on the medical conditions of patients admitted to an IRF. The CARF accreditation criteria serve a different function in that they define the facility's capacity to deliver services rather than describing the patients being served. As we have stated above, we are actively working on Conditions of Participation for IRFs and expect to release a proposed rule in the near

future. Thus, we believe that any role that the CARF might assume in determining IRF classifications in the future would be related to deeming authority under these ''Conditions.''

Comment: One commenter suggested that we clarify whether the services of aides may, in some instances, be used to satisfy the ''3 hour rule'' in IRFs. The commenter stated that, in other Medicare programs such as therapy reimbursed under Part B or through the SNF PPS, aides cannot provide skilled therapy, and the role of aides is limited to the provision of support services.

Response: Therapy aides are authorized to perform support services for licensed and/or certified skilled therapy practitioners. Services performed by aides may be a useful adjunct to the overall rehabilitation program. However, therapy aide services are not considered skilled, and would not meet the IRF intensity of therapy criterion used to evaluate the appropriateness of IRF care.

Comment: One commenter suggested that we clarify, with examples, when Medicare coverage for an IRF stay is no longer considered reasonable and necessary.

Response: Under the IRF PPS, we generally make one CMG payment to an IRF for each Medicare discharge that is considered reasonable and necessary under section 1862(a)(1) of the Act. This per discharge payment covers the inpatient operating and capital costs of furnishing covered rehabilitation services to a Medicare patient throughout the patient's entire IRF stay. Thus, defining the formal end of an IRF stay is less important than it would be if we were making payments by the day. However, we believe that an IRF stay should generally end when the patient no longer requires or can reasonably be expected to benefit significantly from the services provided in an IRF. This typically, though not in all cases, occurs when the patient is ready to return home or to a community-based environment. We recognize that, in certain limited instances, the patient may need to be discharged to another institutional setting of care, but we believe that this would be a rare occurrence.

Comment: One commenter suggested that we clarify whether IRF claim denials can be made exclusively by non-physician reviewers, without a final determination being made by a physician reviewer.

Response: Medicare's contractors (including, but not limited to, fiscal intermediaries, Medicare Administrative Contractors (MACs), and Recovery Audit Contractors (RACs)) are responsible for reviewing IRF claims to ensure that they meet the reasonable and necessary requirements for payment of Medicare services under section 1862(a)(1) of the Act. Medicare's contractors typically use non-physician reviewers, such as nurses or therapists, to review Medicare claims, under the supervision of physician medical directors. Though we do not have a formal process for the physician medical directors to make the ''final determinations'' on all IRF claims denials, they are actively involved in overseeing the reviews and ensuring the integrity of the medical review process.

XI. Provisions in the Final Rule

In this final rule, we are adopting the provisions as set forth in the FY 2010 IRF proposed rule (74 FR 21052), except as noted elsewhere in the preamble. Specifically:

A. Payment Provision Changes

- We will update the FY 2010 IRF PPS relative weights and average length of stay values using the most current and complete Medicare claims and cost report data in a budget neutral manner, as discussed in section IV of this final rule.
- We will update the FY 2010 IRF facility level adjustments (rural, LIP, and teaching status adjustments) using the most current and complete Medicare claims and cost report data in a budget neutral manner, as discussed in section V of this final rule.
- We will update the FY 2010 IRF PPS payment rates by the proposed market basket, as discussed in section VI.A of this final rule.
- We will update the FY 2010 IRF PPS payment rates by the wage index and labor-related share in a budget neutral manner, as discussed in sections VI.A and B of this final rule.
- We will update the outlier threshold amount for FY 2010, as discussed in section VII.A of this final rule.
- We will update the cost-to-charge ratio ceiling and the national average urban and rural cost-to-charge ratios for purposes of determining the outlier payments under the IRF PPS for FY 2010, as discussed in section VII.B of this final rule.

B. Regulatory Text Changes

- We will remove the words ''or assessment'' from § 412.23(b)(3) and § 412.29(b) to indicate that we are no longer providing for a 3 to 10 day inpatient assessment period after admission to an IRF to assess the appropriateness of the IRF admission, as discussed in section VIII.A of this final rule.
- We will amend paragraphs § 412.23(b)(4) and § 412.29(c) to require that IRFs ''furnish, through the use of qualified personnel, rehabilitation nursing, physical therapy, and occupational therapy, plus, as needed, speech-language pathology, social services, psychological services (including neuropsychological services), and orthotic and prosthetic services,'' as discussed in section VIII.I of this final rule.
- We will replace the word ''multidisciplinary'' with the word ''interdisciplinary'' in § 412.23(b)(7) and § 412.29(e) to make the terminology consistent with the new IRF coverage criteria in § 412.622(a), as discussed in section VIII.E of this final rule.
- We will require, in both § 412.23(b)(7) and § 412.29(e), that the interdisciplinary team meetings occur at least once per week (rather than once every two weeks) to be consistent with the new IRF coverage criteria in § 412.622(a), as discussed in section VIII.E of this final rule.
- We will add new paragraphs (3), (4), and (5) to § 412.622(a) to implement new IRF coverage requirements, as discussed in section VIII of this final rule.
- With respect to § 412.604, § 412.606, § 412.610, § 412.614 and § 412.618, we will revise the regulation text as described in section IX.B of this final rule.
- With respect to § 412.614(a), we will remove subparagraph (3) as described in section IX.B of this final rule.
- With respect to § 412.614(d), we are making a technical correction to the paragraph formerly designated as paragraph (1) and assigning the revised language to a new paragraph (1)(a), redesignating paragraph (2) as (1)(b), and adding a new paragraph (2), as described in section IX.B of this final rule.

XII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

Section 412.604 Conditions for Payment Under the Prospective Payment System for Inpatient Rehabilitation Facilities

Section 412.604(c) states that for each Medicare Part A fee-for-service patient admitted to or discharged from an IRF on or after January 1, 2002, the IRF must complete a patient assessment instrument in accordance with § 412.606. IRFs must also complete a patient assessment instrument in accordance with § 412.606 for each Medicare Part C (Medicare Advantage) patient admitted to or discharged from an IRF on or after October 1, 2009.

The burden associated with this requirement is the time and effort put forth by each IRF to complete an average of approximately 38 additional patient assessment instruments each year associated with its Medicare Part C patients. We obtained the estimated average number of Medicare Part C patients in each IRF from the American Medical Rehabilitation Providers Association (AMRPA), based on AMRPA's own analysis of the eRehabData® policy database. CMS currently estimates that it takes the IRF 0.75 of an hour to complete a single patient assessment instrument. Therefore, the annual hour burden for each IRF to complete approximately 38 additional patient assessment instruments is 28.5 hours (38 × 0.75). The total annual hour burden for all 1,205 IRFs is 34,342.5 hours (28.5 hours × 1,205 IRFs). The burden estimate for using the patient assessment instrument for Medicare Part A is currently approved under 0938–0842. CMS will revise this currently approved package as necessary to include any additional burden placed on the IRF for submitting the patient assessment instrument for Medicare Advantage patients.

Section 412.606 Patient Assessments

Section 412.606 states that an IRF must use the CMS inpatient rehabilitation facility patient assessment instrument to assess Medicare Part A fee-for-service and Medicare Part C (Medicare Advantage) inpatients.

The burden for completing the patient assessment instrument for Medicare Part A is currently approved under 0938–0842. CMS will revise this currently approved package as necessary to include any additional burden placed on IRFs for submitting the patient assessment instrument for Medicare Advantage patients.

Section 412.610 Assessment Schedule

Section 412.610(f) states that an IRF must maintain all patient assessment data sets completed on Medicare Part A fee-for-service patients within the previous 5 years and Medicare Part C (Medicare Advantage) patients within the previous 10 years either in a paper format in the patient's clinical record or in an electronic computer file format that the inpatient rehabilitation facility can easily obtain and produce upon request to CMS or its contractors.

The burden for maintaining the patient assessment instrument for Medicare Part A is currently approved under OMB# 0938–0842. CMS will revise this currently approved package as necessary to include any additional burden placed on IRFs for maintaining the patient assessment instrument for Medicare Advantage patients.

Section 412.614 Transmission of Patient Assessment Data

Section 412.614(a) requires that the IRF must encode and transmit patient assessment data to CMS.

The burden associated with this requirement is the time staff must take to transmit the data. CMS currently estimates that it takes the IRF 0.10 of an hour to transmit a single patient assessment instrument. Therefore, the annual hour burden to transmit an average of approximately 38 additional patient assessment instruments per IRF is 3.8 hours (38 × 0.10). The total annual hour burden for all 1,205 IRFs is 4,579 hours (3.8 hours × 1,205 IRFs). The burden estimate for transmitting the patient assessment instrument for Medicare Part A is currently approved under 0938–0842. CMS will revise this currently approved package as necessary to include any additional burden placed on the IRF for transmitting the patient assessment instrument for Medicare Advantage patients.

Section 412.622 IRF Coverage Criteria

Section 412.622(a)(4)(i) requires that a comprehensive screening meet all of the requirements in paragraphs (A) through (E). Section 412(a)(4)(i)(D) requires the physician to document his or her concurrence with the findings and results of the preadmission screening. Section 412(a)(4)(i)(E) requires that the preadmission screening be retained in the patient's medical record.

The burden associated with these requirements is the time and effort put forth by the rehabilitation physician to document his or her concurrence with the preadmission findings and the results of the preadmission screening and retain the information in the patient's medical record. The burden associated with these requirements is in keeping with the ''Condition of Participation: Medical record services,'' that are already applicable to Medicare participating hospitals. The burden associated with these requirements is currently approved under OMB# 0938–0328. As stated in the approved Hospital CoPs Supporting Statement, we believe that these requirements reflect customary and usual business and medical practice. Thus, in accordance with section 1320.3(b)(2) of the Act, the burden is not subject to the PRA.

Section 412.622(a)(4)(ii) is consistent with the existing Hospital CoP requirement at § 482.24(c)(2) which requires the facility to have and utilize a post-admission evaluation process. The post-admission evaluation process requires that a rehabilitation physician complete a post-admission evaluation for each patient within 24 hours of that patient's admission to the IRF, compare it to that noted in the preadmission screening documentation, and begin development of the overall individualized plan of care. Similarly, § 482.24(c)(2) requires that the post-admission physician evaluation be retained in the patient's medical record in keeping with the Hospital CoPs.

The burden associated with these requirements is the time and effort put forth by the rehabilitation physician to document the patient's status on admission to the IRF, compare it to that noted in the preadmission screening document, begin development of the care plan, and retain the information in the patient's medical record. The burden associated with these requirements is consistent with the ''Condition of Participation: Medical record services,'' that is already applicable to Medicare participating hospitals. The burden associated with this requirement is currently approved under OMB# 0938–0328. As stated in the approved Hospital CoPs Supporting Statement, we believe that these requirements reflect customary and usual business and medical practice. Thus, in accordance with section

1320.3(b)(2) of the Act, the burden is not subject to the PRA.

The requirements in section 412.622 (a)(4)(iii) regarding an individualized plan of care are consistent with the existing Hospital CoPs at § 482.56(b) to develop an overall plan of care for each IRF admission. Similarly, the individualized plan of care required by 412.622(a)(4)(iii)(A) would be required to be retained in the patient's medical record, as currently required by the Hospital CoPs at § 482.24(c)(2).

The burden associated with these requirements is the time and effort put forth by the rehabilitation physician to develop the individualized overall plan of care and retain the individualized overall plan of care in the patient's medical record. The burden associated with these requirements is in keeping with the ''Condition of Participation: Medical record services,'' and ''Condition of Participation: Rehabilitation services. Standard: Delivery of Services'' that are already applicable to Medicare participating hospitals. The burden associated with these requirements is currently approved under OMB# 0938–0328. As stated in the approved Hospital CoPs Supporting Statement, we believe that these requirements reflect customary and usual business and medical practice. Thus, in accordance with section 1320.3(b)(2) of the Act, the burden is not subject to the PRA.

Section 412.622(a)(5) requires the interdisciplinary team to meet at least once per week throughout the duration of the patient's stay to implement appropriate treatment services; review the patient's progress toward stated rehabilitation goals; identify any problems that could impede progress towards those goals; and, where necessary, reassess previously established goals in light of impediments, revise the treatment plan in light of new goals, and monitor continued progress toward those goals. It also requires that the rehabilitation physician document his or her concurrence with the results and findings of the team meeting and that documentation of the weekly meetings be retained in the patient's medical record.

The burden associated with these requirements is the time spent documenting the weekly meetings and the concurrence of the rehabilitation physician with the results and findings of the team meeting and retaining the information in the patient's medical record. The burden associated with these proposed requirements is consistent with the ''Condition of Participation: Medical record services,'' that are already applicable to Medicare participating hospitals. The burden associated with these requirements is currently approved under OMB# 0938–0328. As stated in the approved ''Hospital CoPs Supporting Statement,'' we believe that the proposed requirements reflect customary and usual business and medical practice. Thus, in accordance with section 1320.3(b)(2) of the Act, the burden is not subject to the PRA.

You may submit comments on these information collection and recordkeeping requirements in one of the following ways (please choose only one of the ways listed):

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your written comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* CMS Desk Officer, [CMS–1538–F], *Fax:* (202) 395–7245; or *E-mail: OIRA_submission@omb.eop.gov*.

XIII. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this final rule as required by Executive Order 12866 (September 30, 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA, September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). This final rule is a major rule, as defined in Title 5, United States Code, section 804(2), because we estimate the impact to the Medicare program, and the annual effects to the overall economy, will be more than $100 million. We estimate that the total impact of these changes for estimated FY 2010 payments compared to estimated FY 2009 payments will be an increase of approximately $145 million due to the update to the payment rates.

The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most IRFs and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7 million to $34.5 million in any one year. (For details, see the Small Business Administration's final rule that set forth size standards for health care industries, at 65 FR 69432 at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf*, November 17, 2000.) Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IRFs or the proportion of IRFs' revenue that is derived from Medicare payments. Therefore, we assume that all IRFs (an approximate total of 1,200 IRFs, of which approximately 60 percent are nonprofit facilities) are considered small entities and that Medicare payment constitutes the majority of their revenues. The Department of Health and Human Services generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA. As shown in Table 7, we estimate that the net revenue impact of this final rule on all IRFs is to increase estimated payments by about 2.5 percent, with an estimated positive increase in payments of 3 percent or higher for some categories of IRFs (such as urban IRFs in the East South Central, West North Central, West South Central, Mountain and Pacific regions) and an estimated decrease in payments of 3.8 percent for the 17 IRFs that have a resident to ADC ratio greater than 19 percent. Thus, we anticipate that this final rule would have a significant impact on a substantial number of small entities. Medicare fiscal intermediaries and carriers are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. As discussed in detail below, the rates and policies set

forth in this final rule will not have an adverse impact on rural hospitals based on the data of the 184 rural units and 21 rural hospitals in our database of 1,181 IRFs for which data were available.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. In 2009, that threshold level is approximately $133 million. This final rule will not impose spending costs on State, local, or tribal governments, in the aggregate, or by the private sector, of $133 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. As stated above, this final rule will not have a substantial effect on State and local governments, preempt State law, or otherwise have a Federalism implication.

B. Anticipated Effects of the Final Rule

1. Basis and Methodology of Estimates

This final rule sets forth updates of the IRF PPS rates contained in the FY 2009 final rule and updates to the CMG relative weights and length of stay values, the facility-level adjustments, the wage index, and the outlier threshold for high-cost cases.

We estimate that the FY 2010 impact will be a net increase of $145 million in payments to IRF providers. The impact analysis in Table 7 of this final rule represents the projected effects of the final policy changes in the IRF PPS for FY 2010 compared with estimated IRF PPS payments in FY 2009 without the policy changes. We determine the effects by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to these changes, and we do not make adjustments for future changes in such variables as number of discharges or case-mix.

We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to forecasting errors because of other changes in the forecasted impact time period. Some examples could be legislative changes made by the Congress to the Medicare program that would impact program funding, or changes specifically related to IRFs. Although some of these changes may not necessarily be specific to the IRF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon IRFs.

In updating the rates for FY 2010, we are implementing a number of standard annual revisions and clarifications mentioned elsewhere in this final rule (for example, the update to the wage and market basket indexes used to adjust the Federal rates). We estimate that these revisions would increase payments to IRFs by approximately $145 million (all due to the update to the market basket index, since the update to the wage index is done in a budget neutral manner—as required by statute—and therefore neither increases nor decreases aggregate payments to IRFs).

The effects of the changes that impact IRF PPS payment rates are shown in Table 7. The following changes that affect the IRF PPS payment rates are discussed separately below:

- The effects of the update to the outlier threshold amount, consistent with section 1886(j)(4) of the Act.
- The effects of the annual market basket update (using the RPL market basket) to IRF PPS payment rates, as required by section 1886(j)(3)(A)(i) and section 1886(j)(3)(C) of the Act.
- The effects of applying the budget-neutral labor-related share and wage index adjustment, as required under section 1886(j)(6) of the Act.
- The effects of the budget-neutral changes to the CMG relative weights and length of stay values, under the authority of section 1886(j)(2)(C)(i) of the Act.
- The effects of the budget-neutral changes to the facility-level adjustment factors, as permitted under section 1886(j)(3)(A)(v) of the Act.
- The total change in estimated payments based on the FY 2010 policy changes relative to estimated FY 2009 payments without the policy changes.

2. Description of Table 7

The table below categorizes IRFs by geographic location, including urban or rural location, and location with respect to CMS's nine census divisions (as defined on the cost report) of the country. In addition, the table divides IRFs into those that are separate rehabilitation hospitals (otherwise called freestanding hospitals in this section), those that are rehabilitation units of a hospital (otherwise called hospital units in this section), rural or urban facilities, ownership (otherwise called for-profit, non-profit, and government), and by teaching status. The top row of the table shows the overall impact on the 1,181 IRFs included in the analysis.

The next 12 rows of Table 7 contain IRFs categorized according to their geographic location, designation as either a freestanding hospital or a unit of a hospital, and by type of ownership; all urban, which is further divided into urban units of a hospital, urban freestanding hospitals, and by type of ownership; and all rural, which is further divided into rural units of a hospital, rural freestanding hospitals, and by type of ownership. There are 976 IRFs located in urban areas included in our analysis. Among these, there are 776 IRF units of hospitals located in urban areas and 200 freestanding IRF hospitals located in urban areas. There are 205 IRFs located in rural areas included in our analysis. Among these, there are 184 IRF units of hospitals located in rural areas and 21 freestanding IRF hospitals located in rural areas. There are 390 for-profit IRFs. Among these, there are 321 IRFs in urban areas and 69 IRFs in rural areas. There are 724 non-profit IRFs. Among these, there are 603 urban IRFs and 121 rural IRFs. There are 67 government-owned IRFs. Among these, there are 52 urban IRFs and 15 rural IRFs.

The remaining three parts of Table 7 show IRFs grouped by their geographic location within a region and by teaching status. First, IRFs located in urban areas are categorized with respect to their location within a particular one of the nine CMS geographic regions. Second, IRFs located in rural areas are categorized with respect to their location within a particular one of the nine CMS geographic regions. In some cases, especially for rural IRFs located in the New England, Mountain, and Pacific regions, the number of IRFs represented is small. Finally, IRFs are grouped by teaching status, including non-teaching IRFs, IRFs with an intern and resident to average daily census (ADC) ratio less than 10 percent, IRFs with an intern and resident to ADC ratio greater than or equal to 10 percent and less than or equal to 19 percent, and IRFs with an intern and resident to ADC ratio greater than 19 percent.

The estimated impacts of each change to the facility categories listed above are shown in the columns of Table 7. The description of each column is as follows:

Column (1) shows the facility classification categories described above.

Column (2) shows the number of IRFs in each category in our FY 2008 analysis file.

Column (3) shows the number of cases in each category in our FY 2008 analysis file.

Column (4) shows the estimated effect of the adjustment to the outlier threshold amount.

Column (5) shows the estimated effect of the market basket update to the IRF PPS payment rates.

Column (6) shows the estimated effect of the update to the IRF labor-related share and wage index, in a budget neutral manner.

Column (7) shows the estimated effect of the update to the CMG relative weights and average length of stay values, in a budget neutral manner.

Column (8) shows the estimated effect of the update to the facility-level adjustment factors (rural, LIP, and teaching status), in a budget neutral manner.

Column (9) compares our estimates of the payments per discharge, incorporating all of the changes reflected in this final rule for FY 2010, to our estimates of payments per discharge in FY 2009(without these changes).

The average estimated increase for all IRFs is approximately 2.5 percent, which is entirely due to the market basket update. Since the update to the outlier threshold amount does not impact aggregate payments this year, and since we are making the remainder of the changes outlined in this final rule in a budget-neutral manner, the other changes being made in this final rule will not affect total estimated IRF payments in the aggregate. However, as described in more detail in each section, they will affect the estimated distribution of payments among providers.

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Table 7: IRF Impact Table for FY 2010

Facility Classification	Number of IRFs	Number of cases	Outlier	Market Basket	FY2010 CBSA wage index and labor-share	CMG	Facility Adjustments	Total Percent Change
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Total	1,181	373,746	0.0	2.5	0.0	0.0	0.0	2.5
Urban unit	776	196,614	0.0	2.5	0.0	-0.1	0.0	2.5
Rural unit	184	29,665	0.0	2.5	0.1	-0.1	-1.3	1.2
Urban hospital	200	141,020	0.0	2.5	0.0	0.1	0.3	2.9
Rural hospital	21	6,447	0.0	2.5	0.1	0.1	-1.6	1.0
Urban For-Profit	321	135,747	0.0	2.5	0.1	0.1	0.3	3.1
Rural For-Profit	69	13,565	0.0	2.5	0.0	0.0	-1.5	1.0
Urban Non-Profit	603	187,401	0.0	2.5	-0.1	-0.1	0.2	2.5
Rural Non-Profit	121	20,186	0.0	2.5	0.1	-0.1	-1.3	1.2
Urban Government	52	14,486	0.0	2.5	0.2	-0.1	-1.6	1.0
Rural Government	15	2,361	0.0	2.5	0.5	-0.1	-1.5	1.3
Urban	976	337,634	0.0	2.5	0.0	0.0	0.2	2.7
Rural	205	36,112	0.0	2.5	0.1	0.0	-1.4	1.1
Urban by region								
Urban New England	31	16,001	0.0	2.5	-0.1	0.1	0.4	2.9
Urban Middle Atlantic	150	62,465	0.0	2.5	-0.3	-0.1	-0.1	2.1
Urban South Atlantic	129	57,543	0.0	2.5	-0.1	0.0	-0.3	2.1
Urban East North Central	193	56,394	0.0	2.5	-0.6	0.0	0.3	2.2
Urban East South Central	53	25,292	0.0	2.5	-0.1	0.0	0.7	3.2
Urban West North Central	71	16,823	0.0	2.5	0.4	0.0	0.2	3.2
Urban West South Central	174	59,695	0.0	2.5	0.0	0.0	0.6	3.2
Urban Mountain	70	21,794	0.0	2.5	0.3	0.1	0.6	3.6
Urban Pacific	105	21,627	0.0	2.5	1.4	0.0	-0.7	3.3
Rural by region								
Rural New England	6	1,422	0.0	2.5	-0.5	-0.1	-0.7	1.2
Rural Middle Atlantic	16	3,429	0.0	2.5	-0.2	-0.1	-0.9	1.3
Rural South Atlantic	26	5,339	0.0	2.5	-0.2	0.0	-1.5	0.8
Rural East North Central	34	6,253	0.0	2.5	-0.5	0.0	-1.1	0.9
Rural East South Central	22	3,831	0.0	2.5	-0.2	-0.1	-2.1	0.1
Rural West North Central	36	4,916	0.0	2.5	0.5	0.0	-1.1	1.8
Rural West South Central	52	9,686	0.0	2.5	0.8	0.0	-1.8	1.5
Rural Mountain	8	742	0.0	2.5	-0.4	0.0	-0.8	1.3
Rural Pacific	5	494	0.1	2.5	0.6	-0.3	-0.6	2.3
Teaching Status								
Non-teaching	1,060	322,431	0.0	2.5	0.0	0.0	0.4	3.0
Resident to ADC less than 10%	69	34,113	0.0	2.5	-0.2	0.0	-0.9	1.4
Resident to ADC 10%-19%	35	10,543	0.0	2.5	-0.8	0.0	-2.8	-1.2
Resident to ADC greater than 19%	17	6,659	0.0	2.5	0.1	0.0	-6.3	-3.8

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3. Impact of the Update to the Outlier Threshold Amount

The outlier threshold adjustment is presented in column 4 of Table 7. We estimate that IRF outlier payments as a percentage of total estimated IRF payments are 3 percent in FY 2009. Therefore, since we estimate that we have achieved the target percentage in FY 2009, we are adjusting the outlier threshold amount in this final rule solely to account for the 2.5 percent market basket adjustment for FY 2010 (as discussed in section VI.A of this final rule) and the FY 2010 updates to the facility-level adjustments (as discussed in section V of this final rule) so that we will continue to maintain estimated outlier payments at 3 percent of total estimated aggregate IRF payments for FY 2010.

Since we estimate that we achieved the 3 percent target in FY 2009, and that estimated outlier payments will continue to equal 3 percent of total estimated payments in FY 2010, there is no overall impact on FY 2010 aggregate payments from this update. However, we estimate slight impacts on individual groups of IRFs, which are so small that they round to 0.0 percent. However, Medicare pays an unusually high percentage of outlier payments (8.3 percent) to rural IRFs in the Pacific region. Thus, the estimated impact of the update to the outlier threshold amount for FY 2010 just rounds to 0.1 percent for these 5 IRFs.

4. Impact of the Market Basket Update to the IRF PPS Payment Rates

The market basket update to the IRF PPS payment rates is presented in column 5 of Table 7. In the aggregate the update would result in a 2.5 percent increase in overall estimated payments to IRFs.

5. Impact of the CBSA Wage Index and Labor-Related Share

In column 6 of Table 7, we present the effects of the budget neutral update of the wage index and labor-related share. The changes to the wage index and the labor-related share are discussed together because the wage index is applied to the labor-related share portion of payments, so the changes in the two have a combined effect on payments to providers. As discussed in section VI.A of this final rule, the labor-related share increased from 75.464 percent in FY 2009 to 75.779 percent in FY 2010.

In the aggregate and for all urban IRFs, we do not estimate that these changes will affect overall estimated payments to IRFs. However, we estimate that these changes will have small distributional effects. We estimate a 0.1 percent increase in payments to rural IRFs, with the largest increase in payments of 1.4 percent for urban IRFs in the Pacific region. We estimate the largest decrease in payments from the update to the CBSA wage index and labor-related share to be a 0.8 percent decrease for IRFs with an intern and resident to ADC ratio greater than or equal to 10 percent and less than or equal to 19 percent.

6. Impact of the Update to the CMG Relative Weights and Average Length of Stay Values

In column 7 of Table 7, we present the effects of the budget neutral update of the CMG relative weights and average length of stay values. In the aggregate we do not estimate that these changes will affect overall estimated payments to IRFs. However, these changes have small distributional effects, with the largest effect being a decrease in payments of 0.3 percent to IRFs in the Rural Pacific region.

7. Impact of the Update to the Rural, LIP, and Teaching Status Adjustment Factors

In column 8 of Table 7, we present the effects of the budget neutral update to the rural, LIP, and teaching status adjustment factors. In the aggregate, we do not estimate that these changes will affect overall estimated payments to IRFs. However, we estimate that these changes will have small distributional effects. We estimate the largest increase in payments to be a 0.7 percent increase for urban IRFs in the East South Central region. We estimate the largest decrease in payments to be a 6.3 percent decrease for teaching IRFs with a resident to ADC ratio greater than 19 percent. The estimated decrease in payments for teaching IRFs, of between 0.9 percent and 6.3 percent depending on the IRF's intern and resident to average daily census ratio, is caused by the decrease in the teaching status adjustment factor from 0.9012 to 0.6876, as discussed in section V of this final rule. We also estimate decreases in payments to rural IRFs due to the decrease in the rural adjustment from 21.3 percent in FY 2009 to 18.4 percent in FY 2010, and slight distributional effects among facilities due to the decrease in the LIP adjustment factor from 0.6229 in FY 2009 to 0.4613 in FY 2010. Both the rural and the LIP adjustment factors are discussed in section V.A of this final rule.

C. Alternatives Considered

Because we have determined that this final rule would have a significant economic impact on IRFs and on a substantial number of small entities, we will discuss the alternative changes to the IRF PPS that we considered.

Section 1886(j)(3)(C) of the Act requires the Secretary to update the IRF PPS payment rates by an increase factor that reflects changes over time in the prices of an appropriate mix of goods and services included in the covered IRF services. As noted in section V of this final rule, in the absence of statutory direction on the FY 2010 market basket increase factor, it is our understanding that the Congress requires a full market basket increase factor based upon current data. Thus, we did not consider alternatives to updating payments using the estimated RPL market basket increase factor (currently 2.5 percent) for FY 2010.

We considered maintaining the existing CMG relative weights and average length of stay values for FY 2010. However, several commenters on the FY 2009 IRF PPS proposed rule (73 FR 46373) suggested that the data that we used for FY 2009 to update the CMG relative weights and average length of stay values did not fully reflect recent changes in IRF utilization that have occurred because of changes in the IRF compliance percentage and the consequences of recent IRF medical necessity reviews. In light of recently available data and our desire to ensure that the CMG relative weights and average length of stay values are as reflective as possible of these recent changes and that IRF PPS payments continue to reflect as accurately as possible the current costs of care in IRFs, we believe that it is appropriate to update the CMG relative weights and average length of stay values at this time.

We also considered maintaining the existing rural, LIP, and teaching status adjustment factors for FY 2010. However, the current rural, LIP, and teaching status adjustment factors are based on RAND's analysis of FY 2003 data, which are not reflective of recent changes in IRF utilization that have occurred because of changes in the IRF compliance percentage and the consequences of recent IRF medical necessity reviews. Thus, we believe that it is important to update these adjustment factors at this time to ensure that payments to IRFs reflect as accurately as possible the current costs of care in IRFs.

In estimating the updates to the rural, LIP, and teaching status adjustment

factors, we considered either basing them on an analysis of FY 2008 data alone, or averaging the adjustment factors based on the most recent three years of data (FYs 2006, 2007, and 2008). We decided to propose the new approach of averaging the adjustment factors based on the most recent three years of data to avoid unnecessarily large fluctuations in the adjustment factors from year to year, and thereby promote the consistency and predictability of IRF PPS payments over time. We believe that this will benefit all IRFs by enabling them to plan their future Medicare payments more accurately.

We considered maintaining the existing outlier threshold amount for FY 2010. However, we needed to update the outlier threshold amount to account for the 2.5 percent market basket increase to IRF PPS payments and the effects of the changes to the facility-level adjustment factors to maintain estimated outlier payments at 3 percent of estimated total payments for FY 2010. Thus, we believe that this update is appropriate for FY 2010.

In addition, we considered maintaining the existing coverage requirements for IRFs, without clarification. However, these coverage requirements have not been updated in over 20 years and no longer reflect current medical practice or changes that have occurred in IRF utilization and payments as a result of the implementation of the IRF PPS in 2002. We believe that the clarifications would benefit IRFs and Medicare's contractors (including fiscal intermediaries, Medicare Administrative Contractors, and Recovery Audit Contractors) by promoting a more consistent understanding of CMS's IRF coverage policies among stakeholders, thereby leading to fewer disputed IRF claims denials.

Finally, we considered maintaining our current policy of requiring that an IRF's Medicare Part A inpatient population consist of at least 50 percent or more of the facility's total inpatient population before the presumptive methodology can be used to calculate the IRF's compliance percentage under the 60 percent rule. However, increasing numbers of Medicare beneficiaries in many areas of the country have been enrolling in Medicare Advantage (MA) plans rather than remaining in the traditional Medicare Part A fee-for-service program. This, in turn, has led to decreases in the number of Medicare Part A fee-for-service inpatients in certain IRFs across the country and has resulted in a reduction in the number of IRFs that can benefit from the presumptive methodology. We did not anticipate this result when the policy was implemented. In light of these recent trends, we believe that it is appropriate at this time to include the Medicare Advantage patients in the calculations for the purposes of using the presumptive methodology to determine IRFs' compliance with the 60 percent rule requirements.

D. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 8 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this final rule. This table provides our best estimate of the increase in Medicare payments under the IRF PPS as a result of the changes presented in this final rule based on the data for 1,181 IRFs in our database. All estimated expenditures are classified as transfers to Medicare providers (that is, IRFs).

TABLE 8—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE 2009 IRF PPS FISCAL YEAR TO THE 2010 IRF PPS FISCAL YEAR

Category	Transfers
Annualized Monetized Transfers.	$145 million.
From Whom to Whom?	Federal Government to IRF Medicare Providers.

E. Conclusion

Overall, the estimated payments per discharge for IRFs in FY 2010 are projected to increase by 2.5 percent, compared with those in FY 2009, as reflected in column 9 of Table 7. IRF payments are estimated to increase 2.7 percent in urban areas and 1.1 percent in rural areas, per discharge compared with FY 2009. Payments to rehabilitation units in urban areas are estimated to increase 2.5 percent per discharge. Payments to rehabilitation freestanding hospitals in urban areas are estimated to increase 2.9 percent per discharge. Payments to rehabilitation units in rural areas are estimated to increase 1.2 percent per discharge, while payments to freestanding rehabilitation hospitals in rural areas are estimated to increase 1.0 percent per discharge.

Overall, the largest payment increase is estimated at 3.6 percent for urban IRFs in the Mountain region. Teaching IRFs with a resident to ADC ratio greater than 19 percent are estimated to have the largest decrease of 3.8 percent in payments.

We received 1 comment on the regulatory impact analysis, which is summarized below.

Comment: One commenter indicated that the information provided in the regulatory impact analysis for the proposed rule was not sufficient to allow the public to calculate the impacts for individual IRFs. This commenter suggested that we add additional columns, including information about the FY 2009 estimated average weight per discharge, the FY 2009 estimated outlier payments, and the FY 2009 total estimated payments to the IRF rate setting file that we post on the IRF PPS Web site in conjunction with each proposed and final rule.

Response: To provide as much information as possible to enable the public to analyze the impacts of our policies, we will add the suggested information to the IRF rate setting file that we will post on the IRF PPS Web site at *http://www.cms.hhs.gov/InpatientRehabFacPPS/07_DataFiles.asp#TopOfPage* in conjunction with this final rule.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

■ 1. The authority citation for part 412 is amended to read as follows:

Authority: Sections 1102, 1862, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395y, and 1395hh).

Subpart B—Hospital Services Subject to and Excluded From the Prospective Payment Systems for Inpatient Operating Costs and Inpatient Capital-Related Costs

■ 2. Section 412.23 is amended by—

■ A. Revising paragraph (b)(3).

■ B. Revising paragraph (b)(4).

■ C. Revising paragraph (b)(7).

The revisions read as follows:

§ 412.23 Excluded hospitals: Classifications.

* * * * *

(b) * * *

(3) Have in effect a preadmission screening procedure under which each prospective patient's condition and medical history are reviewed to determine whether the patient is likely to benefit significantly from an intensive inpatient hospital program.

(4) Ensure that the patients receive close medical supervision and furnish, through the use of qualified personnel, rehabilitation nursing, physical therapy, and occupational therapy, plus, as needed, speech-language pathology, social services, psychological services (including neuropsychological services), and orthotic and prosthetic services.

* * * * *

(7) Use a coordinated interdisciplinary team approach in the rehabilitation of each inpatient, as documented by the periodic clinical entries made in the patient's medical record to note the patient's status in relationship to goal attainment, and that team conferences are held at least once per week to determine the appropriateness of treatment.

* * * * *

■ 3. Section 412.29 is amended by—

■ A. Revising paragraph (b).

■ B. Revising paragraph (c).

■ C. Revising paragraph (e).

The revisions read as follows:

§ 412.29 Excluded rehabilitation units: Additional requirements.

* * * * *

(b) Have in effect a preadmission screening procedure under which each prospective patient's condition and medical history are reviewed to determine whether the patient is likely to benefit significantly from an intensive inpatient hospital program.

(c) Ensure that the patients receive close medical supervision and furnish, through the use of qualified personnel, rehabilitation nursing, physical therapy, and occupational therapy, plus, as needed, speech-language pathology, social services, psychological services (including neuropsychological services), and orthotic and prosthetic services.

* * * * *

(e) Use a coordinated interdisciplinary team approach in the rehabilitation of each inpatient, as documented by the periodic clinical entries made in the patient's medical record to note the patient's status in relationship to goal attainment, and that team conferences are held at least once per week to determine the appropriateness of treatment.

* * * * *

Subpart P—Prospective Payment for Inpatient Rehabilitation Hospitals and Rehabilitation Units

■ 4. Section 412.604 is amended by revising paragraph (c) to read as follows:

§ 412.604 Conditions for payment under the prospective payment system for inpatient rehabilitation facilities.

* * * * *

(c) *Completion of patient assessment instrument.* For each Medicare Part A fee-for-service patient admitted to or discharged from an IRF on or after January 1, 2002, the inpatient rehabilitation facility must complete a patient assessment instrument in accordance with § 412.606. IRFs must also complete a patient assessment instrument in accordance with § 412.606 for each Medicare Part C (Medicare Advantage) patient admitted to or discharged from an IRF on or after October 1, 2009.

* * * * *

■ 5. Section 412.606 is amended by—

■ A. Revising paragraph (b) introductory text.

■ B. Revising paragraph (c)(1).

The revisions read as follows:

§ 412.606 Patient assessments.

* * * * *

(b) *Patient assessment instrument.* An inpatient rehabilitation facility must use the CMS inpatient rehabilitation facility patient assessment instrument to assess Medicare Part A fee-for-service and Medicare Part C (Medicare Advantage) inpatients who—

* * * * *

(c) * * *

(1) A clinician of the inpatient rehabilitation facility must perform a comprehensive, accurate, standardized, and reproducible assessment of each Medicare Part A fee-for-service inpatient using the inpatient rehabilitation facility patient assessment instrument specified in paragraph (b) of this section as part of his or her patient assessment in accordance with the schedule described in § 412.610. IRFs must also complete a patient assessment instrument in accordance with § 412.606 for each Medicare Part C (Medicare Advantage) patient admitted to or discharged from an IRF on or after October 1, 2009.

* * * * *

■ 6. Section 412.610 is amended by—

■ A. Revising paragraph (a).

■ B. Revising paragraph (b).

■ C. Revising paragraph (c) introductory text.

■ D. Revising paragraph (c)(1)(i)(A).

■ E. Revising paragraph (c)(2)(ii)(B).

■ F. Revising paragraph (f).

The revisions read as follows:

§ 412.610 Assessment schedule.

(a) *General.* For each Medicare Part A fee-for-service or Medicare Part C (Medicare Advantage) inpatient, an inpatient rehabilitation facility must complete a patient assessment instrument as specified in § 412.606 that covers a time period that is in accordance with the assessment schedule specified in paragraph (c) of this section.

(b) *Starting the assessment schedule day count.* The first day that the Medicare Part A fee-for-service or Medicare Part C (Medicare Advantage) inpatient is furnished Medicare-covered services during his or her current inpatient rehabilitation facility hospital stay is counted as day one of the patient assessment schedule.

(c) *Assessment schedules and references dates.* The inpatient rehabilitation facility must complete a patient assessment instrument upon the Medicare Part A fee-for-service or Medicare Part C (Medicare Advantage) patient's admission and discharge as specified in paragraphs (c)(1) and (c)(2) of this section.

(1) * * *

(i) * * *

(A) Time period is a span of time that covers calendar days 1 through 3 of the patient's current Medicare Part A fee-for-service or Medicare Part C (Medicare Advantage) hospitalization;

* * * * *

(2) * * *

(ii) * * *

(B) The patient stops being furnished Medicare Part A fee-for-service or Medicare Part C (Medicare Advantage) inpatient rehabilitation services.

* * * * *

(f) *Patient assessment instrument record retention.* An inpatient rehabilitation facility must maintain all patient assessment data sets completed on Medicare Part A fee-for-service patients within the previous 5 years and Medicare Part C (Medicare Advantage) patients within the previous 10 years either in a paper format in the patient's clinical record or in an electronic computer file format that the inpatient rehabilitation facility can easily obtain and produce upon request to CMS or its contractors.

■ 7. Section 412.614 is amended by—

■ A. Revising paragraph (a) introductory text.

■ B. Removing paragraph (a)(3).
■ C. Revising paragraph (b)(1).
■ D. Revising paragraph (d).
■ E. Revising paragraph (e).
The revisions read as follows:

§ 412.614 Transmission of patient assessment data.

(a) *Data format. General rule.* The inpatient rehabilitation facility must encode and transmit data for each Medicare Part A fee-for-service and Medicare Part C (Medicare Advantage) inpatient—

* * * * *

(b) * * *

(1) Electronically transmit complete, accurate, and encoded data from the patient assessment instrument for each Medicare Part A fee-for-service and Medicare Part C (Medicare Advantage) inpatient to our patient data system in accordance with the data format specified in paragraph (a) of this section; and

* * * * *

(d) *Consequences of failure to submit complete and timely IRF–PAI data, as required under paragraph (c) of this section.*

(1) *Medicare Part-A fee-for-service data*—

(i) We assess a penalty when an inpatient rehabilitation facility does not transmit all of the required data from the patient assessment instrument for its Medicare Part A fee-for-service patients to our patient data system in accordance with the transmission timeline in paragraph (c) of this section.

(ii) If the actual patient assessment data transmission date for a Medicare Part A fee-for-service patient is later than 10 calendar days from the transmission date specified in paragraph (c) of this section, the patient assessment data is considered late and the inpatient rehabilitation facility receives a payment rate than is 25 percent less than the payment rate associated with a case-mix group.

(2) *Medicare Part C (Medicare Advantage) data.* Failure of the inpatient rehabilitation facility to transmit all of the required patient assessment instrument data for its Medicare Part C (Medicare Advantage) patients to our patient data system in accordance with the transmission timeline in paragraph (c) of this section will result in a forfeiture of the facility's ability to have any of its Medicare Part C (Medicare Advantage) data used in the calculations for determining the facility's compliance with the regulations in § 412.23(b)(2).

(e) *Exemption to the consequences for transmitting the IRF–PAI data late.* CMS may waive the consequences of failure to submit complete and timely IRF–PAI data specified in paragraph (d) of this section when, due to an extraordinary situation that is beyond the control of an inpatient rehabilitation facility, the inpatient rehabilitation facility is unable to transmit the patient assessment data in accordance with paragraph (c) of this section. Only CMS can determine if a situation encountered by an inpatient rehabilitation facility is extraordinary and qualifies as a situation for waiver of the penalty specified in paragraph (d)(1)(ii) of this section or for waiver of the forfeiture specified in paragraph (d)(2) of this section. An extraordinary situation may be due to, but is not limited to, fires, floods, earthquakes, or similar unusual events that inflect extensive damage to an inpatient facility. An extraordinary situation may be one that produces a data transmission problem that is beyond the control of the inpatient rehabilitation facility, as well as other situations determined by CMS to be beyond the control of the inpatient rehabilitation facility. An extraordinary situation must be fully documented by the inpatient rehabilitation facility.

■ 8. Section 412.618 is amended by revising the introductory text to read as follows.

§ 412.618 Assessment process for interrupted stays.

For purposes of the patient assessment process, if a Medicare Part A fee-for-service or Medicare Part C (Medicare Advantage) patient has an interrupted stay, as defined under § 412.602, the following applies:

* * * * *

■ 9. Section 412.622 is amended by adding paragraphs (a)(3) through (a)(5) to read as follows:

§ 412.622 Basis of payment.

(a) * * *

(3) *IRF coverage criteria.* In order for an IRF claim to be considered reasonable and necessary under section 1862(a)(1) of the Act, there must be a reasonable expectation that the patient meets all of the following requirements at the time of the patient's admission to the IRF—

(i) Requires the active and ongoing therapeutic intervention of multiple therapy disciplines (physical therapy, occupational therapy, speech-language pathology, or prosthetics/orthotics therapy), one of which must be physical or occupational therapy.

(ii) Generally requires and can reasonably be expected to actively participate in, and benefit from, an intensive rehabilitation therapy program. Under current industry standards, this intensive rehabilitation therapy program generally consists of at least 3 hours of therapy (physical therapy, occupational therapy, speech-language pathology, or prosthetics/orthotics therapy) per day at least 5 days per week. In certain well-documented cases, this intensive rehabilitation therapy program might instead consist of at least 15 hours of intensive rehabilitation therapy within a 7 consecutive day period, beginning with the date of admission to the IRF. Benefit from this intensive rehabilitation therapy program is demonstrated by measurable improvement that will be of practical value to the patient in improving the patient's functional capacity or adaptation to impairments. The required therapy treatments must begin within 36 hours from midnight of the day of admission to the IRF.

(iii) Is sufficiently stable at the time of admission to the IRF to be able to actively participate in the intensive rehabilitation therapy program that is described in paragraph (a)(3)(ii) of this section.

(iv) Requires physician supervision by a rehabilitation physician, defined as a licensed physician with specialized training and experience in inpatient rehabilitation. The requirement for medical supervision means that the rehabilitation physician must conduct face-to-face visits with the patient at least 3 days per week throughout the patient's stay in the IRF to assess the patient both medically and functionally, as well as to modify the course of treatment as needed to maximize the patient's capacity to benefit from the rehabilitation process.

(4) *Documentation.* To document that each patient for whom the IRF seeks payment is reasonably expected to meet all of the requirements in paragraph (a)(3) of this section at the time of admission, the patient's medical record at the IRF must contain the following documentation—

(i) A comprehensive preadmission screening that meets all of the following requirements—

(A) It is conducted by a licensed or certified clinician(s) designated by a rehabilitation physician described in paragraph (a)(3)(iv) of this section within the 48 hours immediately preceding the IRF admission. A preadmission screening that includes all of the required elements, but that is conducted more than 48 hours immediately preceding the IRF admission, will be accepted as long as an update is conducted in person or by telephone to update the patient's medical and functional status within the

48 hours immediately preceding the IRF admission and is documented in the patient's medical record.

(B) It includes a detailed and comprehensive review of each patient's condition and medical history.

(C) It serves as the basis for the initial determination of whether or not the patient meets the requirements for an IRF admission to be considered reasonable and necessary in paragraph (a)(3) of this section.

(D) It is used to inform a rehabilitation physician who reviews and documents his or her concurrence with the findings and results of the preadmission screening.

(E) It is retained in the patient's medical record at the IRF.

(ii) A post-admission physician evaluation that meets all of the following requirements—

(A) It is completed by a rehabilitation physician within 24 hours of the patient's admission to the IRF.

(B) It documents the patient's status on admission to the IRF, includes a comparison with the information noted in the preadmission screening documentation, and serves as the basis for the development of the overall individualized plan of care.

(C) It is retained in the patient's medical record at the IRF.

(iii) An individualized overall plan of care for the patient that meets all of the following requirements—

(A) It is developed by a rehabilitation physician, as defined in paragraph (a)(3)(iv) of this section, with input from the interdisciplinary team within 4 days of the patient's admission to the IRF.

(B) It is retained in the patient's medical record at the IRF.

(5) *Interdisciplinary team approach to care.* In order for an IRF claim to be considered reasonable and necessary under section 1862(a)(1) of the Act, the patient must require an interdisciplinary team approach to care, as evidenced by documentation in the patient's medical record of weekly interdisciplinary team meetings that meet all of the following requirements—

(A) The team meetings are led by a rehabilitation physician as defined in paragraph (a)(3)(iv) of this section, and further consist of a registered nurse with specialized training or experience in rehabilitation; a social worker or case manager (or both); and a licensed or certified therapist from each therapy discipline involved in treating the patient. All team members must have current knowledge of the patient's medical and functional status.

(B) The team meetings occur at least once per week throughout the duration of the patient's stay to implement appropriate treatment services; review the patient's progress toward stated rehabilitation goals; identify any problems that could impede progress towards those goals; and, where necessary, reassess previously established goals in light of impediments, revise the treatment plan in light of new goals, and monitor continued progress toward those goals.

(C) The results and findings of the team meetings, and the concurrence by the rehabilitation physician with those results and findings, are retained in the patient's medical record.

Authority: (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: July 20, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: July 30, 2009.

Kathleen Sebelius,

Secretary.

The following addendum will not appear in the Code of Federal Regulations.

Addendum

In this addendum, we provide the wage index tables referred to throughout the preamble to this proposed rule. The tables presented below are as follows:

Table 1.—Inpatient Rehabilitation Facility Wage Index for Urban Areas for Discharges Occurring from October 1, 2009 through September 30, 2010

Table 2.—Inpatient Rehabilitation Facility Wage Index for Rural Areas for Discharges Occurring from October 1, 2009 through September 30, 2010

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TABLE 1 - INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010

CBSA Code	Urban Area (Constituent Counties)	Wage Index
10180	Abilene, TX Callahan County, TX Jones County, TX Taylor County, TX	0.8097
10380	Aguadilla-Isabela-San Sebastián, PR Aguada Municipio, PR Aguadilla Municipio, PR Añasco Municipio, PR Isabela Municipio, PR Lares Municipio, PR Moca Municipio, PR Rincón Municipio, PR San Sebastián Municipio, PR	0.3399
10420	Akron, OH Portage County, OH Summit County, OH	0.8917
10500	Albany, GA Baker County, GA Dougherty County, GA Lee County, GA Terrell County, GA Worth County, GA	0.8703
10580	Albany-Schenectady-Troy, NY Albany County, NY Rensselaer County, NY Saratoga County, NY Schenectady County, NY Schoharie County, NY	0.8707
10740	Albuquerque, NM Bernalillo County, NM Sandoval County, NM Torrance County, NM Valencia County, NM	0.9210
10780	Alexandria, LA Grant Parish, LA Rapides Parish, LA	0.8130
10900	Allentown-Bethlehem-Easton, PA-NJ Warren County, NJ Carbon County, PA Lehigh County, PA Northampton County, PA	0.9499
11020	Altoona, PA Blair County, PA	0.8521
11100	Amarillo, TX Armstrong County, TX Carson County, TX Potter County, TX Randall County, TX	0.8927
11180	Ames, IA Story County, IA	0.9487
11260	Anchorage, AK Anchorage Municipality, AK Matanuska-Susitna Borough, AK	1.1931
11300	Anderson, IN Madison County, IN	0.8760
11340	Anderson, SC Anderson County, SC	0.9570
11460	Ann Arbor, MI Washtenaw County, MI	1.0445
11500	Anniston-Oxford, AL Calhoun County, AL	0.7927
11540	Appleton, WI Calumet County, WI Outagamie County, WI	0.9440

CBSA Code	Urban Area (Constituent Counties)	Wage Index
12060	Atlanta-Sandy Springs-Marietta, GA Barrow County, GA Bartow County, GA Butts County, GA Carroll County, GA Cherokee County, GA Clayton County, GA Cobb County, GA Coweta County, GA Dawson County, GA DeKalb County, GA Douglas County, GA Fayette County, GA Forsyth County, GA Fulton County, GA Gwinnett County, GA Haralson County, GA Heard County, GA Henry County, GA Jasper County, GA Lamar County, GA Meriwether County, GA Newton County, GA Paulding County, GA Pickens County, GA Pike County, GA Rockdale County, GA Spalding County, GA Walton County, GA	0.9754
12100	Atlantic City-Hammonton, NJ Atlantic County, NJ	1.1973
12220	Auburn-Opelika, AL Lee County, AL	0.7544
11700	Asheville, NC Buncombe County, NC Haywood County, NC Henderson County, NC Madison County, NC	0.9142
12020	Athens-Clarke County, GA Clarke County, GA Madison County, GA Oconee County, GA Oglethorpe County, GA	0.9591

CBSA Code	Urban Area (Constituent Counties)	Wage Index
12940	Baton Rouge, LA Ascension Parish, LA East Baton Rouge Parish, LA East Feliciana Parish, LA Iberville Parish, LA Livingston Parish, LA Pointe Coupee Parish, LA St. Helena Parish, LA West Baton Rouge Parish, LA West Feliciana Parish, LA	0.8163
12980	Battle Creek, MI Calhoun County, MI	1.0120
13020	Bay City, MI Bay County, MI	0.9248
13140	Beaumont-Port Arthur, TX Hardin County, TX Jefferson County, TX Orange County, TX	0.8479
13380	Bellingham, WA Whatcom County, WA	1.1640
13460	Bend, OR Deschutes County, OR	1.1375
13644	Bethesda-Frederick-Gaithersburg, MD Frederick County, MD Montgomery County, MD	1.0548
13740	Billings, MT Carbon County, MT Yellowstone County, MT	0.8805
13780	Binghamton, NY Broome County, NY Tioga County, NY	0.8574

CBSA Code	Urban Area (Constituent Counties)	Wage Index
12260	Augusta-Richmond County, GA-SC Burke County, GA Columbia County, GA McDuffie County, GA Richmond County, GA Aiken County, SC Edgefield County, SC	0.9615
12420	Austin-Round Rock, TX Bastrop County, TX Caldwell County, TX Hays County, TX Travis County, TX Williamson County, TX	0.9536
12540	Bakersfield, CA Kern County, CA	1.1189
12580	Baltimore-Towson, MD Anne Arundel County, MD Baltimore County, MD Carroll County, MD Harford County, MD Howard County, MD Queen Anne's County, MD Baltimore City, MD	1.0055
12620	Bangor, ME Penobscot County, ME	1.0174
12700	Barnstable Town, MA Barnstable County, MA	1.2643

CBSA Code	Urban Area (Constituent Counties)	Wage Index
13820	Birmingham-Hoover, AL Bibb County, AL Blount County, AL Chilton County, AL Jefferson County, AL St. Clair County, AL Shelby County, AL Walker County, AL	0.8792
13900	Bismarck, ND Burleigh County, ND Morton County, ND	0.7148
13980	Blacksburg-Christiansburg-Radford, VA Giles County, VA Montgomery County, VA Pulaski County, VA Radford City, VA	0.8155
14020	Bloomington, IN Greene County, IN Monroe County, IN Owen County, IN	0.8979
14060	Bloomington-Normal, IL McLean County, IL	0.9323
14260	Boise City-Nampa, ID Ada County, ID Boise County, ID Canyon County, ID Gem County, ID Owyhee County, ID	0.9268
14484	Boston-Quincy, MA Norfolk County, MA Plymouth County, MA Suffolk County, MA	1.1897
14500	Boulder, CO Boulder County, CO	1.0302
14540	Bowling Green, KY Edmonson County, KY Warren County, KY	0.8388
14600	Bradenton-Sarasota-Venice, FL Manatee County, FL Sarasota County, FL	0.9900
14740	Bremerton-Silverdale, WA Kitsap County, WA	1.0770
14860	Bridgeport-Stamford-Norwalk, CT Fairfield County, CT	1.2868
15180	Brownsville-Harlingen, TX Cameron County, TX	0.8916
15260	Brunswick, GA Brantley County, GA Glynn County, GA McIntosh County, GA	0.9567
15380	Buffalo-Niagara Falls, NY Erie County, NY Niagara County, NY	0.9537
15500	Burlington, NC Alamance County, NC	0.8736
15540	Burlington-South Burlington, VT Chittenden County, VT Franklin County, VT Grand Isle County, VT	0.9254
15764	Cambridge-Newton-Framingham, MA Middlesex County, MA	1.1086
15804	Camden, NJ Burlington County, NJ Camden County, NJ Gloucester County, NJ	1.0346
15940	Canton-Massillon, OH Carroll County, OH Stark County, OH	0.8841

CBSA Code	Urban Area (Constituent Counties)	Wage Index
15980	Cape Coral-Fort Myers, FL Lee County, FL	0.9396
16180	Carson City, NV Carson City, NV	1.0128
16220	Casper, WY Natrona County, WY	0.9579
16300	Cedar Rapids, IA Benton County, IA Jones County, IA Linn County, IA	0.8919
16580	Champaign-Urbana, IL Champaign County, IL Ford County, IL Piatt County, IL	0.9461
16620	Charleston, WV Boone County, WV Clay County, WV Kanawha County, WV Lincoln County, WV Putnam County, WV	0.8275
16700	Charleston-North Charleston-Summerville, SC Berkeley County, SC Charleston County, SC Dorchester County, SC	0.9209
16740	Charlotte-Gastonia-Concord, NC-SC Anson County, NC Cabarrus County, NC Gaston County, NC Mecklenburg County, NC Union County, NC York County, SC	0.9595
16820	Charlottesville, VA Albemarle County, VA Fluvanna County, VA Greene County, VA Nelson County, VA Charlottesville City, VA	0.9816
16860	Chattanooga, TN-GA Catoosa County, GA Dade County, GA Walker County, GA Hamilton County, TN Marion County, TN Sequatchie County, TN	0.8878
16940	Cheyenne, WY Laramie County, WY	0.9276
16974	Chicago-Naperville-Joliet, IL Cook County, IL DeKalb County, IL DuPage County, IL Grundy County, IL Kane County, IL Kendall County, IL McHenry County, IL Will County, IL	1.0399
17020	Chico, CA Butte County, CA	1.0897

CBSA Code	Urban Area (Constituent Counties)	Wage Index
17140	Cincinnati-Middletown, OH-KY-IN Dearborn County, IN Franklin County, IN Ohio County, IN Boone County, KY Bracken County, KY Campbell County, KY Gallatin County, KY Grant County, KY Kenton County, KY Pendleton County, KY Brown County, OH Butler County, OH Clermont County, OH Hamilton County, OH Warren County, OH	0.9687
17300	Clarksville, TN-KY Christian County, KY Trigg County, KY Montgomery County, TN Stewart County, TN	0.8298
17420	Cleveland, TN Bradley County, TN Polk County, TN	0.8010
17460	Cleveland-Elyria-Mentor, OH Cuyahoga County, OH Geauga County, OH Lake County, OH Lorain County, OH Medina County, OH	0.9241
17660	Coeur d'Alene, ID Kootenai County, ID	0.9322
17780	College Station-Bryan, TX Brazos County, TX Burleson County, TX Robertson County, TX	0.9346
17820	Colorado Springs, CO El Paso County, CO Teller County, CO	.0.9977
17860	Columbia, MO Boone County, MO Howard County, MO	0.8540
17900	Columbia, SC Calhoun County, SC Fairfield County, SC Kershaw County, SC Lexington County, SC Richland County, SC Saluda County, SC	0.8933
17980	Columbus, GA-AL Russell County, AL Chattahoochee County, GA Harris County, GA Marion County, GA Muscogee County, GA	0.8739
18020	Columbus, IN Bartholomew County, IN	0.9739
18140	Columbus, OH Delaware County, OH Fairfield County, OH Franklin County, OH Licking County, OH Madison County, OH Morrow County, OH Pickaway County, OH Union County, OH	0.9943

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18580	Corpus Christi, TX Aransas County, TX Nueces County, TX San Patricio County, TX	0.8598
18700	Corvallis, OR Benton County, OR	1.1304
19060	Cumberland, MD-WV Allegany County, MD Mineral County, WV	0.7816
19124	Dallas-Plano-Irving, TX Collin County, TX Dallas County, TX Delta County, TX Denton County, TX Ellis County, TX Hunt County, TX Kaufman County, TX Rockwall County, TX	0.9945
19140	Dalton, GA Murray County, GA Whitfield County, GA	0.8705
19180	Danville, IL Vermilion County, IL	0.9374
19260	Danville, VA Pittsylvania County, VA Danville City, VA	0.8395
19340	Davenport-Moline-Rock Island, IA-IL Henry County, IL Mercer County, IL Rock Island County, IL Scott County, IA	0.8435
19380	Dayton, OH Greene County, OH Miami County, OH Montgomery County, OH Preble County, OH	0.9203
19460	Decatur, AL Lawrence County, AL Morgan County, AL	0.7803
19500	Decatur, IL Macon County, IL	0.8145
19660	Deltona-Daytona Beach-Ormond Beach, FL Volusia County, FL	0.8890
19740	Denver-Aurora, CO Adams County, CO Arapahoe County, CO Broomfield County, CO Clear Creek County, CO Denver County, CO Douglas County, CO Elbert County, CO Gilpin County, CO Jefferson County, CO Park County, CO	1.0818
19780	Des Moines-West Des Moines, IA Dallas County, IA Guthrie County, IA Madison County, IA Polk County, IA Warren County, IA	0.9535
19804	Detroit-Livonia-Dearborn, MI Wayne County, MI	0.9958
20020	Dothan, AL Geneva County, AL Henry County, AL Houston County, AL	0.7613

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20100	Dover, DE Kent County, DE	1.0325
20220	Dubuque, IA Dubuque County, IA	0.8380
20260	Duluth, MN-WI Carlton County, MN St. Louis County, MN Douglas County, WI	1.0363
20500	Durham, NC Chatham County, NC Durham County, NC Orange County, NC Person County, NC	0.9732
20740	Eau Claire, WI Chippewa County, WI Eau Claire County, WI	0.9668
20764	Edison-New Brunswick, NJ Middlesex County, NJ Monmouth County, NJ Ocean County, NJ Somerset County, NJ	1.1283
20940	El Centro, CA Imperial County, CA	0.8746
21060	Elizabethtown, KY Hardin County, KY Larue County, KY	0.8525
21140	Elkhart-Goshen, IN Elkhart County, IN	0.9568
21300	Elmira, NY Chemung County, NY	0.8247
21340	El Paso, TX El Paso County, TX	0.8694
21500	Erie, PA Erie County, PA	0.8713
21660	Eugene-Springfield, OR Lane County, OR	1.1061
21780	Evansville, IN-KY Gibson County, IN Posey County, IN Vanderburgh County, IN Warrick County, IN Henderson County, KY Webster County, KY	0.8690
21820	Fairbanks, AK Fairbanks North Star Borough, AK	1.1297
21940	Fajardo, PR Ceiba Municipio, PR Fajardo Municipio, PR Luquillo Municipio, PR	0.4061
22020	Fargo, ND-MN Cass County, ND Clay County, MN	0.8166
22140	Farmington, NM San Juan County, NM	0.8051
22180	Fayetteville, NC Cumberland County, NC Hoke County, NC	0.9340
22220	Fayetteville-Springdale-Rogers, AR-MO Benton County, AR Madison County, AR Washington County, AR McDonald County, MO	0.8970
22380	Flagstaff, AZ Coconino County, AZ	1.1743
22420	Flint, MI Genesee County, MI	1.1425
22500	Florence, SC Darlington County, SC Florence County, SC	0.8130

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22520	Florence-Muscle Shoals, AL Colbert County, AL Lauderdale County, AL	0.7871
22540	Fond du Lac, WI Fond du Lac County, WI	0.9293
22660	Fort Collins-Loveland, CO Larimer County, CO	0.9867
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL Broward County, FL	0.9946
22900	Fort Smith, AR-OK Crawford County, AR Franklin County, AR Sebastian County, AR Le Flore County, OK Sequoyah County, OK	0.7697
23020	Fort Walton Beach-Crestview-Destin, FL Okaloosa County, FL	0.8769
23060	Fort Wayne, IN Allen County, IN Wells County, IN Whitley County, IN	0.9176
23104	Fort Worth-Arlington, TX Johnson County, TX Parker County, TX Tarrant County, TX Wise County, TX	0.9709
23420	Fresno, CA Fresno County, CA	1.1009
23460	Gadsden, AL Etowah County, AL	0.7983
23540	Gainesville, FL Alachua County, FL Gilchrist County, FL	0.9312
23580	Gainesville, GA Hall County, GA	0.9109
23844	Gary, IN Jasper County, IN Lake County, IN Newton County, IN Porter County, IN	0.9250
24020	Glens Falls, NY Warren County, NY Washington County, NY	0.8473
24140	Goldsboro, NC Wayne County, NC	0.9143
24220	Grand Forks, ND-MN Polk County, MN Grand Forks County, ND	0.7565
24300	Grand Junction, CO Mesa County, CO	0.9812
24340	Grand Rapids-Wyoming, MI Barry County, MI Ionia County, MI Kent County, MI Newaygo County, MI	0.9184
24500	Great Falls, MT Cascade County, MT	0.8784
24540	Greeley, CO Weld County, CO	0.9684
24580	Green Bay, WI Brown County, WI Kewaunee County, WI Oconto County, WI	0.9709
24660	Greensboro-High Point, NC Guilford County, NC Randolph County, NC Rockingham County, NC	0.9011
24780	Greenville, NC Greene County, NC Pitt County, NC	0.9448

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24860	Greenville-Mauldin-Easley, SC Greenville County, SC Laurens County, SC Pickens County, SC	0.9961
25020	Guayama, PR Arroyo Municipio, PR Guayama Municipio, PR Patillas Municipio, PR	0.3249
25060	Gulfport-Biloxi, MS Hancock County, MS Harrison County, MS Stone County, MS	0.9029
25180	Hagerstown-Martinsburg, MD-WV Washington County, MD Berkeley County, WV Morgan County, WV	0.8997
25260	Hanford-Corcoran, CA Kings County, CA	1.0870
25420	Harrisburg-Carlisle, PA Cumberland County, PA Dauphin County, PA Perry County, PA	0.9153
25500	Harrisonburg, VA Rockingham County, VA Harrisonburg City, VA	0.8894
25540	Hartford-West Hartford-East Hartford, CT Hartford County, CT Middlesex County, CT Tolland County, CT	1.1069
25620	Hattiesburg, MS Forrest County, MS Lamar County, MS Perry County, MS	0.7337
25860	Hickory-Lenoir-Morganton, NC Alexander County, NC Burke County, NC Caldwell County, NC Catawba County, NC	0.8976
25980	Hinesville-Fort Stewart, GA[1] Liberty County, GA Long County, GA	0.9110
26100	Holland-Grand Haven, MI Ottawa County, MI	0.9008
26180	Honolulu, HI Honolulu County, HI	1.1811
26300	Hot Springs, AR Garland County, AR	0.9113
26380	Houma-Bayou Cane-Thibodaux, LA Lafourche Parish, LA Terrebonne Parish, LA	0.7758
26420	Houston-Sugar Land-Baytown, TX Austin County, TX Brazoria County, TX Chambers County, TX Fort Bend County, TX Galveston County, TX Harris County, TX Liberty County, TX Montgomery County, TX San Jacinto County, TX Waller County, TX	0.9838
26580	Huntington-Ashland, WV-KY-OH Boyd County, KY Greenup County, KY Lawrence County, OH Cabell County, WV Wayne County, WV	0.9254
26620	Huntsville, AL Limestone County, AL Madison County, AL	0.9082

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26820	Idaho Falls, ID Bonneville County, ID Jefferson County, ID	0.9080
26900	Indianapolis-Carmel, IN Boone County, IN Brown County, IN Hamilton County, IN Hancock County, IN Hendricks County, IN Johnson County, IN Marion County, IN Morgan County, IN Putnam County, IN Shelby County, IN	0.9908
26980	Iowa City, IA Johnson County, IA Washington County, IA	0.9483
27060	Ithaca, NY Tompkins County, NY	0.9614
27100	Jackson, MI Jackson County, MI	0.9309
27140	Jackson, MS Copiah County, MS Hinds County, MS Madison County, MS Rankin County, MS Simpson County, MS	0.8067
27180	Jackson, TN Chester County, TN Madison County, TN	0.8523
27260	Jacksonville, FL Baker County, FL Clay County, FL Duval County, FL Nassau County, FL St. Johns County, FL	0.8999
27340	Jacksonville, NC Onslow County, NC	0.8177
27500	Janesville, WI Rock County, WI	0.9662
27620	Jefferson City, MO Callaway County, MO Cole County, MO Moniteau County, MO Osage County, MO	0.8775
27740	Johnson City, TN Carter County, TN Unicoi County, TN Washington County, TN	0.7971
27780	Johnstown, PA Cambria County, PA	0.7920
27860	Jonesboro, AR Craighead County, AR Poinsett County, AR	0.7916
27900	Joplin, MO Jasper County, MO Newton County, MO	0.9406
28020	Kalamazoo-Portage, MI Kalamazoo County, MI Van Buren County, MI	1.0801
28100	Kankakee-Bradley, IL Kankakee County, IL	1.0485

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28140	Kansas City, MO-KS Franklin County, KS Johnson County, KS Leavenworth County, KS Linn County, KS Miami County, KS Wyandotte County, KS Bates County, MO Caldwell County, MO Cass County, MO Clay County, MO Clinton County, MO Jackson County, MO Lafayette County, MO Platte County, MO Ray County, MO	0.9610
28420	Kennewick-Pasco-Richland, WA Benton County, WA Franklin County, WA	0.9911
28660	Killeen-Temple-Fort Hood, TX Bell County, TX Coryell County, TX Lampasas County, TX	0.8765
28700	Kingsport-Bristol-Bristol, TN-VA Hawkins County, TN Sullivan County, TN Bristol City, VA Scott County, VA Washington County, VA	0.7743
28740	Kingston, NY Ulster County, NY	0.9375
28940	Knoxville, TN Anderson County, TN Blount County, TN Knox County, TN Loudon County, TN Union County, TN	0.7881
29020	Kokomo, IN Howard County, IN Tipton County, IN	0.9349
29100	La Crosse, WI-MN Houston County, MN La Crosse County, WI	0.9758
29140	Lafayette, IN Benton County, IN Carroll County, IN Tippecanoe County, IN	0.9221
29180	Lafayette, LA Lafayette Parish, LA St. Martin Parish, LA	0.8374
29340	Lake Charles, LA Calcasieu Parish, LA Cameron Parish, LA	0.7556
29404	Lake County-Kenosha County, IL-WI Lake County, IL Kenosha County, WI	1.0389
29420	Lake Havasu City-Kingman, AZ Mohave County, AZ	0.9797
29460	Lakeland-Winter Haven, FL Polk County, FL	0.8530
29540	Lancaster, PA Lancaster County, PA	0.9363
29620	Lansing-East Lansing, MI Clinton County, MI Eaton County, MI Ingham County, MI	0.9931

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29700	Laredo, TX Webb County, TX	0.8366
29740	Las Cruces, NM Dona Ana County, NM	0.8929
29820	Las Vegas-Paradise, NV Clark County, NV	1.1971
29940	Lawrence, KS Douglas County, KS	0.8343
30020	Lawton, OK Comanche County, OK	0.8211
30140	Lebanon, PA Lebanon County, PA	0.8954
30300	Lewiston, ID-WA Nez Perce County, ID Asotin County, WA	0.9465
30340	Lewiston-Auburn, ME Androscoggin County, ME	0.9200
30460	Lexington-Fayette, KY Bourbon County, KY Clark County, KY Fayette County, KY Jessamine County, KY Scott County, KY Woodford County, KY	0.9110
30620	Lima, OH Allen County, OH	0.9427
30700	Lincoln, NE Lancaster County, NE Seward County, NE	0.9759
30780	Little Rock-North Little Rock-Conway, AR Faulkner County, AR Grant County, AR Lonoke County, AR Perry County, AR Pulaski County, AR Saline County, AR	0.8672
30860	Logan, UT-ID Franklin County, ID Cache County, UT	0.8765
30980	Longview, TX Gregg County, TX Rusk County, TX Upshur County, TX	0.8370
31020	Longview, WA Cowlitz County, WA	1.1207
31084	Los Angeles-Long Beach-Santa Ana, CA Los Angeles County, CA	1.2208
31140	Louisville-Jefferson County, KY-IN Clark County, IN Floyd County, IN Harrison County, IN Washington County, IN Bullitt County, KY Henry County, KY Meade County, KY Nelson County, KY Oldham County, KY Shelby County, KY Spencer County, KY Trimble County, KY	0.9249
31180	Lubbock, TX Crosby County, TX Lubbock County, TX	0.8731

CBSA Code	Urban Area (Constituent Counties)	Wage Index
31340	Lynchburg, VA Amherst County, VA Appomattox County, VA Bedford County, VA Campbell County, VA Bedford City, VA Lynchburg City, VA	0.8774
31420	Macon, GA Bibb County, GA Crawford County, GA Jones County, GA Monroe County, GA Twiggs County, GA	0.9570
31460	Madera, CA Madera County, CA	0.7939
31540	Madison, WI Columbia County, WI Dane County, WI Iowa County, WI	1.0967
31700	Manchester-Nashua, NH Hillsborough County, NH	1.0359
31900	Mansfield, OH Richland County, OH	0.9330
32420	Mayagüez, PR Hormigueros Municipio, PR Mayaguez Municipio, PR	0.3940
32580	McAllen-Edinburg-Mission, TX Hidalgo County, TX	0.9009
32780	Medford, OR Jackson County, OR	1.0244
32820	Memphis, TN-MS-AR Crittenden County, AR DeSoto County, MS Marshall County, MS Tate County, MS Tunica County, MS Fayette County, TN Shelby County, TN Tipton County, TN	0.9232
32900	Merced, CA Merced County, CA	1.2243
33124	Miami-Miami Beach-Kendall, FL Miami-Dade County, FL	0.9830
33140	Michigan City-La Porte, IN LaPorte County, IN	0.9159
33260	Midland, TX Midland County, TX	0.9827
33340	Milwaukee-Waukesha-West Allis, WI Milwaukee County, WI Ozaukee County, WI Washington County, WI Waukesha County, WI	1.0080

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33460	Minneapolis-St. Paul-Bloomington, MN-WI Anoka County, MN Carver County, MN Chisago County, MN Dakota County, MN Hennepin County, MN Isanti County, MN Ramsey County, MN Scott County, MN Sherburne County, MN Washington County, MN Wright County, MN Pierce County, WI St. Croix County, WI	1.1150
33540	Missoula, MT Missoula County, MT	0.8973
33660	Mobile, AL Mobile County, AL	0.7908
33700	Modesto, CA Stanislaus County, CA	1.2194
33740	Monroe, LA Ouachita Parish, LA Union Parish, LA	0.7900
33780	Monroe, MI Monroe County, MI	0.8941
33860	Montgomery, AL Autauga County, AL Elmore County, AL Lowndes County, AL Montgomery County, AL	0.8283
34060	Morgantown, WV Monongalia County, WV Preston County, WV	0.8528
34100	Morristown, TN Grainger County, TN Hamblen County, TN Jefferson County, TN	0.7254
34580	Mount Vernon-Anacortes, WA Skagit County, WA	1.0292
34620	Muncie, IN Delaware County, IN	0.8489
34740	Muskegon-Norton Shores, MI Muskegon County, MI	1.0055
34820	Myrtle Beach-North Myrtle Beach-Conway, SC Horry County, SC	0.8652
34900	Napa, CA Napa County, CA	1.4520
34940	Naples-Marco Island, FL Collier County, FL	0.9672
34980	Nashville-Davidson--Murfreesboro--Franklin, TN Cannon County, TN Cheatham County, TN Davidson County, TN Dickson County, TN Hickman County, TN Macon County, TN Robertson County, TN Rutherford County, TN Smith County, TN Sumner County, TN Trousdale County, TN Williamson County, TN Wilson County, TN	0.9504
35004	Nassau-Suffolk, NY Nassau County, NY Suffolk County, NY	1.2453

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35084	Newark-Union, NJ-PA Essex County, NJ Hunterdon County, NJ Morris County, NJ Sussex County, NJ Union County, NJ Pike County, PA	1.1731
35300	New Haven-Milford, CT New Haven County, CT	1.1742
35380	New Orleans-Metairie-Kenner, LA Jefferson Parish, LA Orleans Parish, LA Plaquemines Parish, LA St. Bernard Parish, LA St. Charles Parish, LA St. John the Baptist Parish, LA St. Tammany Parish, LA	0.9103
35644	New York-White Plains-Wayne, NY-NJ Bergen County, NJ Hudson County, NJ Passaic County, NJ Bronx County, NY Kings County, NY New York County, NY Putnam County, NY Queens County, NY Richmond County, NY Rockland County, NY Westchester County, NY	1.2885
35660	Niles-Benton Harbor, MI Berrien County, MI	0.9066
35980	Norwich-New London, CT New London County, CT	1.1398
36084	Oakland-Fremont-Hayward, CA Alameda County, CA Contra Costa County, CA	1.6092
36100	Ocala, FL Marion County, FL	0.8512
36140	Ocean City, NJ Cape May County, NJ	1.1496
36220	Odessa, TX Ector County, TX	0.9475
36260	Ogden-Clearfield, UT Davis County, UT Morgan County, UT Weber County, UT	0.9153
36420	Oklahoma City, OK Canadian County, OK Cleveland County, OK Grady County, OK Lincoln County, OK Logan County, OK McClain County, OK Oklahoma County, OK	0.8724
36500	Olympia, WA Thurston County, WA	1.1537
36540	Omaha-Council Bluffs, NE-IA Harrison County, IA Mills County, IA Pottawattamie County, IA Cass County, NE Douglas County, NE Sarpy County, NE Saunders County, NE Washington County, NE	0.9441

CBSA Code	Urban Area (Constituent Counties)	Wage Index
36740	Orlando-Kissimmee, FL Lake County, FL Orange County, FL Osceola County, FL Seminole County, FL	0.9111
36780	Oshkosh-Neenah, WI Winnebago County, WI	0.9474
36980	Owensboro, KY Daviess County, KY Hancock County, KY McLean County, KY	0.8685
37100	Oxnard-Thousand Oaks-Ventura, CA Ventura County, CA	1.1951
37340	Palm Bay-Melbourne-Titusville, FL Brevard County, FL	0.9332
37380	Palm Coast, FL Flagler County, FL	0.8963
37460	Panama City-Lynn Haven, FL Bay County, FL	0.8360
37620	Parkersburg-Marietta-Vienna, WV-OH Washington County, OH Pleasants County, WV Wirt County, WV Wood County, WV	0.7867
37700	Pascagoula, MS George County, MS Jackson County, MS	0.8102
37764	Peabody, MA Essex County, MA	1.0747
37860	Pensacola-Ferry Pass-Brent, FL Escambia County, FL Santa Rosa County, FL	0.8242
37900	Peoria, IL Marshall County, IL Peoria County, IL Stark County, IL Tazewell County, IL Woodford County, IL	0.9038
37964	Philadelphia, PA Bucks County, PA Chester County, PA Delaware County, PA Montgomery County, PA Philadelphia County, PA	1.0979
38060	Phoenix-Mesa-Scottsdale, AZ Maricopa County, AZ Pinal County, AZ	1.0379
38220	Pine Bluff, AR Cleveland County, AR Jefferson County, AR Lincoln County, AR	0.7926
38300	Pittsburgh, PA Allegheny County, PA Armstrong County, PA Beaver County, PA Butler County, PA Fayette County, PA Washington County, PA Westmoreland County, PA	0.8678
38340	Pittsfield, MA Berkshire County, MA	1.0445
38540	Pocatello, ID Bannock County, ID Power County, ID	0.9343

CBSA Code	Urban Area (Constituent Counties)	Wage Index
38660	Ponce, PR Juana Díaz Municipio, PR Ponce Municipio, PR Villalba Municipio, PR	0.4289
38860	Portland-South Portland-Biddeford, ME Cumberland County, ME Sagadahoc County, ME York County, ME	0.9942
38900	Portland-Vancouver-Beaverton, OR-WA Clackamas County, OR Columbia County, OR Multnomah County, OR Washington County, OR Yamhill County, OR Clark County, WA Skamania County, WA	1.1456
38940	Port St. Lucie, FL Martin County, FL St. Lucie County, FL	0.9870
39100	Poughkeepsie-Newburgh-Middletown, NY Dutchess County, NY Orange County, NY	1.0920
39140	Prescott, AZ Yavapai County, AZ	1.0221
39300	Providence-New Bedford-Fall River, RI-MA Bristol County, MA Bristol County, RI Kent County, RI Newport County, RI Providence County, RI Washington County, RI	1.0696
39340	Provo-Orem, UT Juab County, UT Utah County, UT	0.9381
39380	Pueblo, CO Pueblo County, CO	0.8713
39460	Punta Gorda, FL Charlotte County, FL	0.8976
39540	Racine, WI Racine County, WI	0.9054
39580	Raleigh-Cary, NC Franklin County, NC Johnston County, NC Wake County, NC	0.9817
39660	Rapid City, SD Meade County, SD Pennington County, SD	0.9598
39740	Reading, PA Berks County, PA	0.9242
39820	Redding, CA Shasta County, CA	1.3731
39900	Reno-Sparks, NV Storey County, NV Washoe County, NV	1.0317

CBSA Code	Urban Area (Constituent Counties)	Wage Index
40060	Richmond, VA Amelia County, VA Caroline County, VA Charles City County, VA Chesterfield County, VA Cumberland County, VA Dinwiddie County, VA Goochland County, VA Hanover County, VA Henrico County, VA King and Queen County, VA King William County, VA Louisa County, VA New Kent County, VA Powhatan County, VA Prince George County, VA Sussex County, VA Colonial Heights City, VA Hopewell City, VA Petersburg City, VA Richmond City, VA	0.9363
40140	Riverside-San Bernardino-Ontario, CA Riverside County, CA San Bernardino County, CA	1.1468
40220	Roanoke, VA Botetourt County, VA Craig County, VA Franklin County, VA Roanoke County, VA Roanoke City, VA Salem City, VA	0.8660
40340	Rochester, MN Dodge County, MN Olmsted County, MN Wabasha County, MN	1.1214
40380	Rochester, NY Livingston County, NY Monroe County, NY Ontario County, NY Orleans County, NY Wayne County, NY	0.8811
40420	Rockford, IL Boone County, IL Winnebago County, IL	0.9835
40484	Rockingham County, NH Rockingham County, NH Strafford County, NH	0.9926
40580	Rocky Mount, NC Edgecombe County, NC Nash County, NC	0.9031
40660	Rome, GA Floyd County, GA	0.9134
40900	Sacramento--Arden-Arcade--Roseville, CA El Dorado County, CA Placer County, CA Sacramento County, CA Yolo County, CA	1.3572
40980	Saginaw-Saginaw Township North, MI Saginaw County, MI	0.8702
41060	St. Cloud, MN Benton County, MN Stearns County, MN	1.0976
41100	St. George, UT Washington County, UT	0.9021
41140	St. Joseph, MO-KS Doniphan County, KS Andrew County, MO Buchanan County, MO DeKalb County, MO	1.0380

CBSA Code	Urban Area (Constituent Counties)	Wage Index
41180	St. Louis, MO-IL Bond County, IL Calhoun County, IL Clinton County, IL Jersey County, IL Macoupin County, IL Madison County, IL Monroe County, IL St. Clair County, IL Crawford County, MO Franklin County, MO Jefferson County, MO Lincoln County, MO St. Charles County, MO St. Louis County, MO Warren County, MO Washington County, MO St. Louis City, MO	0.9006
41420	Salem, OR Marion County, OR Polk County, OR	1.0884
41500	Salinas, CA Monterey County, CA	1.4987
41540	Salisbury, MD Somerset County, MD Wicomico County, MD	0.9246
41620	Salt Lake City, UT Salt Lake County, UT Summit County, UT Tooele County, UT	0.9158
41660	San Angelo, TX Irion County, TX Tom Green County, TX	0.8424
41700	San Antonio, TX Atascosa County, TX Bandera County, TX Bexar County, TX Comal County, TX Guadalupe County, TX Kendall County, TX Medina County, TX Wilson County, TX	0.8856
41740	San Diego-Carlsbad-San Marcos, CA San Diego County, CA	1.1538
41780	Sandusky, OH Erie County, OH	0.8870
41884	San Francisco-San Mateo-Redwood City, CA Marin County, CA San Francisco County, CA San Mateo County, CA	1.5529
41900	San Germán-Cabo Rojo, PR Cabo Rojo Municipio, PR Lajas Municipio, PR Sabana Grande Municipio, PR San Germán Municipio, PR	0.4756
41940	San Jose-Sunnyvale-Santa Clara, CA San Benito County, CA Santa Clara County, CA	1.6141

CBSA Code	Urban Area (Constituent Counties)	Wage Index
41980	San Juan-Caguas-Guaynabo, PR Aguas Buenas Municipio, PR Aibonito Municipio, PR Arecibo Municipio, PR Barceloneta Municipio, PR Barranquitas Municipio, PR Bayamón Municipio, PR Caguas Municipio, PR Camuy Municipio, PR Canóvanas Municipio, PR Carolina Municipio, PR Cataño Municipio, PR Cayey Municipio, PR Ciales Municipio, PR Cidra Municipio, PR Comerío Municipio, PR Corozal Municipio, PR Dorado Municipio, PR Florida Municipio, PR Guaynabo Municipio, PR Gurabo Municipio, PR Hatillo Municipio, PR Humacao Municipio, PR Juncos Municipio, PR Las Piedras Municipio, PR Loíza Municipio, PR Manatí Municipio, PR Maunabo Municipio, PR Morovis Municipio, PR Naguabo Municipio, PR Naranjito Municipio, PR Orocovis Municipio, PR Quebradillas Municipio, PR Río Grande Municipio, PR San Juan Municipio, PR San Lorenzo Municipio, PR Toa Alta Municipio, PR Toa Baja Municipio, PR Trujillo Alto Municipio, PR Vega Alta Municipio, PR Vega Baja Municipio, PR Yabucoa Municipio, PR	0.4393

CBSA Code	Urban Area (Constituent Counties)	Wage Index
42020	San Luis Obispo-Paso Robles, CA San Luis Obispo County, CA	1.2441
42044	Santa Ana-Anaheim-Irvine, CA Orange County, CA	1.1993
42060	Santa Barbara-Santa Maria-Goleta, CA Santa Barbara County, CA	1.1909
42100	Santa Cruz-Watsonville, CA Santa Cruz County, CA	1.6429
42140	Santa Fe, NM Santa Fe County, NM	1.0610
42220	Santa Rosa-Petaluma, CA Sonoma County, CA	1.5528
42340	Savannah, GA Bryan County, GA Chatham County, GA Effingham County, GA	0.9152
42540	Scranton--Wilkes-Barre, PA Lackawanna County, PA Luzerne County, PA Wyoming County, PA	0.8333
42644	Seattle-Bellevue-Everett, WA King County, WA Snohomish County, WA	1.1755
42680	Sebastian-Vero Beach, FL Indian River County, FL	0.9217
43100	Sheboygan, WI Sheboygan County, WI	0.8920
43300	Sherman-Denison, TX Grayson County, TX	0.9024
43340	Shreveport-Bossier City, LA Bossier Parish, LA Caddo Parish, LA De Soto Parish, LA	0.8442

CBSA Code	Urban Area (Constituent Counties)	Wage Index
43580	Sioux City, IA-NE-SD Woodbury County, IA Dakota County, NE Dixon County, NE Union County, SD	0.8915
43620	Sioux Falls, SD Lincoln County, SD McCook County, SD Minnehaha County, SD Turner County, SD	0.9354
43780	South Bend-Mishawaka, IN-MI St. Joseph County, IN Cass County, MI	0.9761
43900	Spartanburg, SC Spartanburg County, SC	0.9025
44060	Spokane, WA Spokane County, WA	1.0559
44100	Springfield, IL Menard County, IL Sangamon County, IL	0.9102
44140	Springfield, MA Franklin County, MA Hampden County, MA Hampshire County, MA	1.0405
44180	Springfield, MO Christian County, MO Dallas County, MO Greene County, MO Polk County, MO Webster County, MO	0.8424
44220	Springfield, OH Clark County, OH	0.8876
44300	State College, PA Centre County, PA	0.8937
44700	Stockton, CA San Joaquin County, CA	1.2015
44940	Sumter, SC Sumter County, SC	0.8257
45060	Syracuse, NY Madison County, NY Onondaga County, NY Oswego County, NY	0.9787
45104	Tacoma, WA Pierce County, WA	1.1241
45220	Tallahassee, FL Gadsden County, FL Jefferson County, FL Leon County, FL Wakulla County, FL	0.8964
45300	Tampa-St. Petersburg-Clearwater, FL Hernando County, FL Hillsborough County, FL Pasco County, FL Pinellas County, FL	0.8852
45460	Terre Haute, IN Clay County, IN Sullivan County, IN Vermillion County, IN Vigo County, IN	0.9085
45500	Texarkana, TX-Texarkana, AR Miller County, AR Bowie County, TX	0.8144
45780	Toledo, OH Fulton County, OH Lucas County, OH Ottawa County, OH Wood County, OH	0.9407

CBSA Code	Urban Area (Constituent Counties)	Wage Index
45820	Topeka, KS Jackson County, KS Jefferson County, KS Osage County, KS Shawnee County, KS Wabaunsee County, KS	0.8756
45940	Trenton-Ewing, NJ Mercer County, NJ	1.0604
46060	Tucson, AZ Pima County, AZ	0.9229
46140	Tulsa, OK Creek County, OK Okmulgee County, OK Osage County, OK Pawnee County, OK Rogers County, OK Tulsa County, OK Wagoner County, OK	0.8445
46220	Tuscaloosa, AL Greene County, AL Hale County, AL Tuscaloosa County, AL	0.8496
46340	Tyler, TX Smith County, TX	0.8804
46540	Utica-Rome, NY Herkimer County, NY Oneida County, NY	0.8404
46660	Valdosta, GA Brooks County, GA Echols County, GA Lanier County, GA Lowndes County, GA	0.8027
46700	Vallejo-Fairfield, CA Solano County, CA	1.4359
47020	Victoria, TX Calhoun County, TX Goliad County, TX Victoria County, TX	0.8124
47220	Vineland-Millville-Bridgeton, NJ Cumberland County, NJ	1.0366
47260	Virginia Beach-Norfolk-Newport News, VA-NC Currituck County, NC Gloucester County, VA Isle of Wight County, VA James City County, VA Mathews County, VA Surry County, VA York County, VA Chesapeake City, VA Hampton City, VA Newport News City, VA Norfolk City, VA Poquoson City, VA Portsmouth City, VA Suffolk City, VA Virginia Beach City, VA Williamsburg City, VA	0.8884
47300	Visalia-Porterville, CA Tulare County, CA	1.0144
47380	Waco, TX McLennan County, TX	0.8596
47580	Warner Robins, GA Houston County, GA	0.8989
47644	Warren-Troy-Farmington Hills, MI Lapeer County, MI Livingston County, MI Macomb County, MI Oakland County, MI St. Clair County, MI	0.9904

CBSA Code	Urban Area (Constituent Counties)	Wage Index
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV District of Columbia, DC Calvert County, MD Charles County, MD Prince George's County, MD Arlington County, VA Clarke County, VA Fairfax County, VA Fauquier County, VA Loudoun County, VA Prince William County, VA Spotsylvania County, VA Stafford County, VA Warren County, VA Alexandria City, VA Fairfax City, VA Falls Church City, VA Fredericksburg City, VA Manassas City, VA Manassas Park City, VA Jefferson County, WV	1.0827
47940	Waterloo-Cedar Falls, IA Black Hawk County, IA Bremer County, IA Grundy County, IA	0.8490
48140	Wausau, WI Marathon County, WI	0.9615
48260	Weirton-Steubenville, WV-OH Jefferson County, OH Brooke County, WV Hancock County, WV	0.8079
48300	Wenatchee, WA Chelan County, WA Douglas County, WA	0.9544
48424	West Palm Beach-Boca Raton-Boynton Beach, FL Palm Beach County, FL	0.9757
48540	Wheeling, WV-OH Belmont County, OH Marshall County, WV Ohio County, WV	0.6955
48620	Wichita, KS Butler County, KS Harvey County, KS Sedgwick County, KS Sumner County, KS	0.9069
48660	Wichita Falls, TX Archer County, TX Clay County, TX Wichita County, TX	0.8832
48700	Williamsport, PA Lycoming County, PA	0.8096
48864	Wilmington, DE-MD-NJ New Castle County, DE Cecil County, MD Salem County, NJ	1.0696
48900	Wilmington, NC Brunswick County, NC New Hanover County, NC Pender County, NC	0.9089
49020	Winchester, VA-WV Frederick County, VA Winchester City, VA Hampshire County, WV	0.9801
49180	Winston-Salem, NC Davie County, NC Forsyth County, NC Stokes County, NC Yadkin County, NC	0.9016

CBSA Code	Urban Area (Constituent Counties)	Wage Index
49340	Worcester, MA Worcester County, MA	1.0836
49420	Yakima, WA Yakima County, WA	0.9948
49500	Yauco, PR Guánica Municipio, PR Guayanilla Municipio, PR Peñuelas Municipio, PR Yauco Municipio, PR	0.3432
49620	York-Hanover, PA York County, PA	0.9518
49660	Youngstown-Warren-Boardman, OH-PA Mahoning County, OH Trumbull County, OH Mercer County, PA	0.8915
49700	Yuba City, CA Sutter County, CA Yuba County, CA	1.1137
49740	Yuma, AZ Yuma County, AZ	0.9281

[1] At this time, there are no hospitals located in this urban area on which to base a wage index. We use the average wage index of all of the urban areas within the State to serve as a reasonable proxy.

Table 2 - INPATIENT REHABILITATION FACILITY WAGE INDEX FOR RURAL AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010

State Code	Nonurban Area	Wage Index
1	Alabama	0.7587
2	Alaska	1.1898
3	Arizona	0.8453
4	Arkansas	0.7473
5	California	1.2275
6	Colorado	0.9570
7	Connecticut	1.1016
8	Delaware	0.9962
10	Florida	0.8504
11	Georgia	0.7612
12	Hawaii	1.0999
13	Idaho	0.7651
14	Illinois	0.8386
15	Indiana	0.8473
16	Iowa	0.8804
17	Kansas	0.8052
18	Kentucky	0.7803
19	Louisiana	0.7447
20	Maine	0.8644
21	Maryland	0.8883
22	Massachusetts[1]	1.1670
23	Michigan	0.8887
24	Minnesota	0.9059
25	Mississippi	0.7584
26	Missouri	0.7982
27	Montana	0.8658
28	Nebraska	0.8730
29	Nevada	0.9382

State Code	Nonurban Area	Wage Index
30	New Hampshire	1.0219
31	New Jersey[1]	-----
32	New Mexico	0.8812
33	New York	0.8145
34	North Carolina	0.8576
35	North Dakota	0.7205
36	Ohio	0.8588
37	Oklahoma	0.7732
38	Oregon	1.0218
39	Pennsylvania	0.8365
40	Puerto Rico1	0.4047
41	Rhode Island[1]	-----
42	South Carolina	0.8538
43	South Dakota	0.8603
44	Tennessee	0.7789
45	Texas	0.7894
46	Utah	0.8267
47	Vermont	1.0079
48	Virgin Islands	0.6971
49	Virginia	0.7861
50	Washington	1.0181
51	West Virginia	0.7503
52	Wisconsin	0.9373
53	Wyoming	0.9315
65	Guam	0.9611

[1] All counties within the State are classified as urban, with the exception of Massachusetts and Puerto Rico. Massachusetts and Puerto Rico have areas designated as rural; however, no short-term, acute care hospitals are located in the area(s) for FY 2010. The rural Massachusetts wage index is calculated as the average of all contiguous CBSAs. The Puerto Rico wage index is the same as FY 2009.

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Federal Register

Friday,
August 7, 2009

Part IV

Securities and Exchange Commission

17 CFR Part 275
Political Contributions by Certain Investment Advisers; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–2910; File No. S7–18–09]

RIN 3235–AK39

Political Contributions by Certain Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing for comment a new rule under the Investment Advisers Act of 1940 that would prohibit an investment adviser from providing advisory services for compensation to a government client for two years after the adviser or certain of its executives or employees make a contribution to certain elected officials or candidates. The new rule would also prohibit an adviser from providing or agreeing to provide, directly or indirectly, payment to any third party for a solicitation of advisory business from any government entity on behalf of such adviser. Additionally, the new rule would prevent an adviser from soliciting from others, or coordinating, contributions to certain elected officials or candidates or payments to political parties where the adviser is providing or seeking government business. The Commission also is proposing rule amendments that would require a registered adviser to maintain certain records of the political contributions made by the adviser or certain of its executives or employees. The new rule and rule amendments would address ''pay to play'' practices by investment advisers.

DATES: Comments should be received on or before October 6, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–18–09 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

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 S7–18–09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Melissa A. Roverts, Attorney-Adviser, Matthew N. Goldin, Senior Counsel, Daniel S. Kahl, Branch Chief, or Sarah A. Bessin, Assistant Director, at (202) 551–6787 or *IArules@sec.gov,* Office of Investment Adviser Regulation, Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on proposed rule 206(4)–5 [17 CFR 275.206(4)–5] and proposed amendments to rules 204–2 [17 CFR 275.204–2] and 206(4)–3 [17 CFR 275.206(4)–3] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] (''Advisers Act'' or ''Act'').

I. Background and Introduction

Investment advisers provide a wide variety of advisory services to State and local governments.[1] Advisers manage public monies that fund pension plans and a number of other important public programs, including transportation, children's programs, arts programs, environmental reclamation, and financial aid for education. In addition, advisers provide risk management,[2] asset allocation,[3] financial planning [4] and cash management services; [5] assist in investing proceeds from bond

[1] *See* Sofia Anastopoulos, An Introduction to Investment Advisers for State and Local Governments (2d ed. 2007); Werner Paul Zorn, *Public Employee Retirement Systems and Benefits, in* Local Government Finance, Concepts and Practices 376 (John E. Peterson and Dennis R. Strachota, eds., 1st ed. 1991) (discussing the services investment advisers provide for public funds).

[2] *See* Robert A. Fippinger, The Securities Law of Public Finance 669 (2d ed. 2004).

[3] *See, e.g.,* John H. Ilkiw, *Investment Policies, Processes and Problems in U.S. Public Sector Pension Plans: Some Observations and Solutions from a Practitioner, in* Public Pension Fund Management: Governance, Accountability and Investment Policies (Alberto R. Musalem and Robert J. Palacios, eds. 2004). *See also* Barry B. Burr, *The New $100 Billion Club,* Pens. & Inv. (May 4, 1998), at 1.

[4] *See* Cal. Ed. Code § 22303.5 (2008) (requiring teachers' retirement system to offer retirement planning services to beneficiaries); CalSTRS Counseling and Workshops, *available at http://www.calstrs.com/Counseling%20and%20Workshops/index.aspx.* Other funds also offer financial planning services to their beneficiaries. *See, e.g.,* CalPERS Launches Online Education Classes, U.S. States News (Mar. 3, 2008).

[5] *See* Government Finance Officers Association, An Introduction to External Money Management for Public Cash Managers 5 (1991).

offerings;[6] help State and local governments find and evaluate other advisers that manage public funds (''pension consultants'');[7] and provide other types of services.[8]

Most of the public funds managed by investment advisers fund State and municipal pension plans.[9] These pension plans have over $2.2 trillion of assets and represent one-third of all U.S. pension assets.[10] They are among the largest and most active institutional investors in the United States.[11] The management of these funds significantly affects publicly held companies[12] and the securities markets.[13] But most significantly, their management affects taxpayers and the beneficiaries of these funds, including the millions of present and future State and municipal retirees[14] who rely on the funds for their pensions and other benefits.[15]

Public pension plan assets are held, administered and managed by elected officials who often are responsible for selecting investment advisers to manage the funds they oversee. Pay to play practices undermine the fairness of the selection process when advisers seeking to do business with the governments of States and municipalities make political contributions to elected officials or candidates, hoping to influence the selection process. In other cases, political contributions may be solicited from advisers, or it is simply understood that only contributors will be considered for selection. Contributions, in this circumstance, may not always guarantee an award of business to the contributor, but the failure to contribute will guarantee that another is selected. Hence the term ''pay to play.''

Elected officials who allow political contributions to play a role in the management of these assets violate the public trust by rewarding those who make political contributions. Similarly, investment advisers that seek to influence the award of advisory contracts by public entities, by making or soliciting political contributions to those officials who are in a position to influence the awards, compromise their fiduciary obligations. Pay to play practices can distort the process by which investment advisers are selected and can harm advisers' public pension plan clients, and the pension plan beneficiaries, which may receive inferior advisory services and pay higher fees because, for instance, advisers must recoup contributions, or because contract negotiations are not handled on an arm's-length basis. Pay to play practices also may manipulate the market for advisory services by creating an uneven playing field among investment advisers. These practices also may hurt smaller advisers that cannot afford the required contributions. We believe that advisers' participation in pay to play practices is inconsistent with the high standards of ethical conduct required of them under the Advisers Act.

Pay to play practices are rarely explicit: participants do not typically let it be publicly known that contributions or payments are made or accepted for the purpose of influencing the selection of an adviser. As one court noted, in its decision upholding one of the rules on which the proposed rule is modeled, ''[w]hile the risk of corruption is obvious and substantial, actors in this field are presumably shrewd enough to structure their relations rather indirectly.''[16] Pay to play practices may take a variety of forms, including an adviser's direct contributions to government officials, an adviser's solicitation of third parties to make contributions or payments to government officials or political parties in the State or locality where the adviser seeks to provide services, or an adviser's payments to third parties to solicit (or as a condition of obtaining) government business. As a result, the full extent of pay to play practice remains hidden and is often hard to prove.

The rule we are proposing today is modeled on rules G–37 and G–38 of the Municipal Securities Rulemaking Board (''MSRB''),[17] which address pay to play practices in the municipal securities markets.[18] The Commission approved rule G–37 in 1994, after concluding that pay to play practices harm municipal securities markets.[19] MSRB rule G–37

[6] *See In the Matter of O'Brien Partners, Inc.,* Investment Advisers Act Release No. 1772 (Oct. 27, 1998) (settled enforcement action in which financial advisor was deemed subject to the Advisers Act for rendering advice to municipal securities issuers ''concerning their investment of bond proceeds in securities, including [non-government securities], and was compensated for that advice'').

[7] In addition to assisting public funds in selecting investment advisers, pension consultants may also provide advice to State and local governments on such things as designing investment objectives, or recommending specific securities or investments for the fund. Pension consultants may be investment advisers subject to the Advisers Act. *See Applicability of the Investment Advisers Act of 1940 to Financial Planners, Pension Consultants, and Other Persons Who Provide Others with Investment Advice as a Component of Other Financial Services,* Investment Advisers Act Release No. 1092 (Oct. 8, 1987) [52 FR 38400 (Oct. 16, 1987)] (''Release 1092'').

[8] For example, public funds may retain advisers to perform custodial services. *See, e.g., Public Employee Retirement Systems, supra* note 1, at 376–77.

[9] For this reason, in this Release, we use the term ''public pension plan'' interchangeably with ''government client'' and ''government entity''; however, our proposed rule would apply broadly to investment advisory activities for government clients, such as those mentioned here in this Background and Introduction, regardless of whether they are retirement funds. For a discussion of how the proposed rule would apply with respect to investment programs or plans sponsored or established by government entities, such as ''qualified tuition plans'' authorized by Section 529 of the Internal Revenue Code [26 U.S.C. 529] and retirement plans authorized by Section 403(b) or 457 of the Internal Revenue Code [26 U.S.C. 403(b) or 457], *see infra* section II.A.3(e) of this Release.

[10] Board of Governors of the Federal Reserve System, *Flow of Funds Accounts of the United States, Flows and Outstandings, First Quarter 2009* (June 11, 2009) (at table L.119). Since 2002, total financial assets of public pension funds have grown by 13% *Id.*

[11] According to a recent survey, seven of the ten largest pension funds were sponsored by State and municipal governments. *The Top 200 Pension Funds/Sponsors,* Pens. & Inv. (Sept. 30, 2008), *available at http://www.pionline.com/article/20090126/CHART/901209995.*

[12] *See* Stephen J. Choi & Jill E. Fisch, *On Beyond CalPERS: Survey Evidence on the Developing Role of Public Pension Funds in Corporate Governance,* 61 Vanderbilt L.Rev. 315 (Mar. 2008) (noting, ''Collectively, public pension funds have the potential to be a powerful shareholder force, and the example of CalPERS and its activities have spurred many to advocate greater institutional activism.'').

[13] Federal Reserve reports indicate that, of the $2.2 trillion in non-Federal government plans, $1.1 trillion are invested in corporate equities. Flow of Funds Accounts of the United States, *supra* note 10 (at table L.119).

[14] *See* Paul Zorn, 1997 Survey of State and Local Government Employee Retirement Systems 61 (1997) (''[t]he investment of plan assets is an issue of immense consequence to plan participants, taxpayers, and to the economy as a whole'' as a low rate of return will require additional funding from the sponsoring government, which ''can place an additional strain on the sponsoring government and may require tax increases'').

[15] The most current census data reports that public pension funds have 18.6 million beneficiaries. 2007 Census of Governments, U.S. Bureau of Census, *Number and Membership of State and Local Government Employee-Retirement Systems by State:* 2006–2007 (2007) (at Table 5), *available at http://www.census.gov/govs/retire/2007ret05.html.*

[16] *Blount* v. *SEC,* 61 F.3d 938, 945 (DC Cir. 1995), *cert. denied,* 517 U.S. 1119 (1996).

[17] In 1999 the Commission proposed a similar rule, which also would have been codified as rule 206(4)–5 under the Advisers Act, had it been adopted. *See Political Contributions by Certain Investment Advisers,* Investment Advisers Act Release No. 1812 (Aug. 4, 1999) [64 FR 43556 (Aug. 10, 1999)] (''1999 Proposing Release''). The Commission also proposed amendments in 1999 to rule 204–2 [17 CFR 275.204–2] under the Advisers Act, which would have required advisers with government clients to keep certain records relating to the 1999 proposed rule. *See id.,* at section II.B. We are not re-proposing that rule or those rule amendments today; we are withdrawing our 1999 proposal and proposing a new rule 206(4)-5 as well as new amendments to rule 204–2.

[18] MSRB rule G–37 and G–38 are available on the MSRB's Web site at *http://www.msrb.org/msrb1/rules/ruleg37.htm* and *http://www.msrb.org/msrb1/rules/ruleg38.htm,* respectively.

[19] *See In the Matter of Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Municipal Securities Rulemaking*

Continued

prohibits a broker-dealer from engaging in municipal securities business with a municipal issuer for two years after making a political contribution to an elected official of the issuer who can influence the selection of the broker-dealer.[20] The rule also prohibits a broker-dealer from providing or seeking to provide underwriting services to a government if the firm or any of its ''municipal finance professionals'' solicit contributions for a candidate or an elected official of that government, or if they solicit payments to political parties where the firm is providing or seeking to provide services to a government client.[21] MSRB rule G–38 prohibits municipal securities dealers from making payments to consultants for soliciting municipal securities business.[22] We believe that MSRB rules G–37 and G–38 have been successful in addressing pay to play practices in the municipal securities market.[23]

Following the adoption of MSRB rule G–37, we were increasingly concerned that the very success of the rule may have caused pay to play practices to migrate to an area not covered by the MSRB rules—the management of public pension plans.[24] Public pension plans are particularly vulnerable to pay to play practices. Management decisions over these investment pools, some of which are quite large, are typically made by one or more trustees who are (or are appointed by) elected officials. And the elected officials that govern the funds are also often involved, directly or indirectly, in selecting advisers to manage the public pension funds' assets. These officials may have the sole authority to select advisers,[25] may be members of a governing board that selects advisers,[26] or may appoint some or all of the board members who make the selection.[27]

In response to these concerns, in 1999 we proposed a rule under the Advisers Act, modeled substantially on MSRB rule G–37, that was designed to prevent advisers from participating in pay to play practices affecting the management of public pension plans.[28] In particular, the 1999 rule proposal would have prohibited an adviser from receiving compensation for the provision of advisory services for two years after the advisory firm or any of its partners, executive officers or solicitors, directly or indirectly, made a contribution to an elected official who (or a candidate for an elected office that) has the ability to influence the selection of the adviser.[29] Comments on the proposal were mixed, and some commenters that objected asserted that pay to play was not a problem in the management of public funds.[30]

Since then, it has become increasingly clear that pay to play is a significant problem in the management of public funds by investment advisers. In recent years, we and criminal authorities have brought a number of actions charging investment advisers with participating in pay to play schemes. We recently brought a civil action in Federal court charging former New York State officials, as well as a ''placement agent,'' with engaging in a fraudulent scheme to extract kickbacks from investment advisers seeking to manage assets of the New York State Common Retirement Fund.[31] Investment advisers allegedly paid sham ''placement agent'' fees, portions of which were funneled to public officials, as a means of obtaining public pension fund investments in the

Board Relating to Political Contributions and Prohibitions on Municipal Securities Business and Notice of Filing and Order Approving on an Accelerated Basis Amendment No. 1 Relating to the Effective Date and Contribution Date of the Proposed Rule, Exchange Act Release No. 33868 (Apr. 7, 1994) [59 FR 17621 (Apr. 13, 1994)] (''MSRB Rule G–37 Approval Order''), at sections V.A.1 and 2. In approving MSRB rule G–37, we concluded that pay to play practices may harm the municipal markets by fostering a selection process that excludes those firms that do not make contributions, causes less qualified underwriters to be retained, and undermines equitable practices in the municipal securities industry. *Id.* at section V.

[20] MSRB rule G–37(b). Shortly after MSRB rule G–37 became effective, a municipal securities dealer challenged it as an infringement on the constitutional rights of municipal securities professionals. A Federal appeals court upheld the constitutionality of MSRB rule G–37, finding that the rule is narrowly tailored to serve a compelling government interest. *See Blount, supra* note 16.

[21] MSRB rule G–37(c). A ''municipal finance professional'' is an associated person of a broker-dealer who is ''primarily engaged'' in municipal securities activities, who solicits municipal securities business on behalf of a broker-dealer, who supervises associated persons primarily engaged in municipal securities activities ''up through and including'' the chief executive officer of the firm (or person performing similar functions), or who is a member of the firm's executive or management committee (or person performing similar functions). MSRB rule G–37(g)(iv).

[22] MSRB rule G–38(a).

[23] Others, including the MSRB, agree. *See, e.g.,* MSRB Notice 2009–35, *Request for Comment: Rule G–37 on Political Contributions and Prohibitions on Municipal Securities Business—Bond Ballot Campaign Committee Contributions* (June 22, 2009) (''The MSRB believes the rule has provided substantial benefits to the industry and the investing public by greatly reducing the direct connection between political contributions given to issuer officials and the awarding of municipal securities business to dealers, thereby effectively eliminating pay-to-play practices in the new issue municipal securities market.'' [footnote omitted]); MSRB Notice 2003–32, *Notice Concerning Indirect Rule Violations: Rules G–37 and G–38* (Aug. 6, 2003) (''The impact of Rules G–37 and G–38 has been very positive. The rules have altered the political contribution practices of municipal securities dealers and opened discussion about the political contribution practices of the entire municipal industry.''); Letter from Darrick L. Hills and Linda L. Rittenhouse of the CFA Institute to Jill C. Finder, Asst. Gen. Counsel of the MSRB, dated Oct. 19, 2001, *available at http://www.cfainstitute.org/centre/topics/comment/2001/01msrb_ruleg37.html* (stating, ''We generally believe that the existing [MSRB] pay-to-play prohibitions have been effective in stemming practices that compromise the integrity of the [municipal securities] market by using political contributions to curry favor with politicians in positions of influence.''); Cmte. on Cap. Mkts. Reg., *Interim Report of the Cmte. on Cap. Mkts. Reg.* (Nov. 30, 2006), *available at http://www.capmktsreg.org/pdfs/11.30Committee_Interim_ReportREV2.pdf* (stating, upon describing MSRB Rule G–37 and the 2005 amendments to MSRB Rule G–38, ''Taken together, the MSRB's rules have largely put an end to the old ''pay to play'' practices in municipal underwriting.'').

[24] 1999 Proposing Release, *supra* note 17, at section I (''We have become particularly concerned about the possibility that the adoption of rule G–37 has resulted in a shift of pay to play practices to [the management of public pension funds] as political contributions by broker-dealers are curtailed.''). *See also* Bill Krueger, *Money Managers Giving to Boyles,* News & Observer (May 2, 1996), at A1 (noting that rule G–37 ''dried up'' a contribution source for a State treasurer, ''so now he is getting campaign contributions from a group [investment advisers] that is not subject to [rule G–37]''); Gerri Willis, *Filling Carl's War Chest: Comptroller Getting Thousands From State's Money Managers,* Crain's N.Y. Bus. (Sept. 16, 1996), at 1 (noting the observation of a securities executive that ''[b]ecause of the SEC's crackdown on the pay to play nature of the muni bond business, the game has shifted to asset management and brokerage'').

[25] *See, e.g.,* 2 NYCRR § 320.2 (placement of State and local government retirement systems assets (valued at $109 billion as of Mar. 2009) is under the sole custodianship of the New York State Comptroller).

[26] *See, e.g.,* S.C. Code Ann. §§ 9–1–20, 1–11–10 (2008) (board consists of all elected officials); Cal. Gov't Code § 20090 (Deering 2008) (board consists of some elected officials, some appointed members, and some representatives of interest groups chosen by the members of those groups); Md. Code Ann., State Pers. & Pens. § 21–104 (2008) (pension board consists of some elected officials, some appointed members, and some representatives of interest groups chosen by the members of those groups).

[27] *See, e.g.,* Ariz. Rev. Stat. Ann. § 38–713 (2008) (governor appoints all nine members); Hawaii Rev. Stat. § 88–24 (2008) (governor appoints three of eight members); Idaho Code § 59–1304 (2008) (governor appoints all five members).

[28] *See* 1999 Proposing Release, *supra* note 17.

[29] *See id.,* at section II.A.1.

[30] We received 59 comment letters on our 1999 proposal. Commenters representing beneficiaries and public pension plans expressed concern about pay to play practices and generally favored our proposed rule. State government officials and investment advisers generally opposed the rule. State government officials generally argued that there was no demonstrated need for the proposed rule and that State laws are adequate to address any concerns. Most advisers submitting comments opposed the rule's breadth and complained that the consequences of violating the rule were too harsh; some denied the existence of the problem we sought to address. Comment letters on our 1999 proposal and a summary of comments prepared by our staff are available in our Public Reference Room in File No. S7–19–99. Comment letters we received electronically are also available at *http://www.sec.gov/rules/proposed/s71999.shtml.*

[31] *See SEC* v. *Henry Morris, et al.,* Litigation Release No. 21036 (May 12, 2009).

funds those advisers managed.[32] Another settled administrative action involved an investment adviser who allegedly paid kickbacks in return for investment advisory business awarded by the New Mexico State treasurer's office.[33] In addition, we brought two separate cases against the former treasurer of the State of Connecticut and various other parties in which we alleged that the former treasurer awarded State pension fund investments to private equity fund managers in exchange for fees paid to the former treasurer's friends and political associates.[34] Criminal authorities have in recent years also brought cases in New York,[35] New Mexico,[36] Illinois,[37] Ohio,[38] Connecticut,[39] and Florida,[40] charging defendants with the same or similar conduct. In addition, there are a growing number of reports about pay to play activities involving investment advisers in other jurisdictions.[41] These cases involving investment advisers, as well as others involving broker-dealers, may reflect more widespread involvement by securities professionals in pay to play activities.[42]

Recognizing the harm pay to play practices cause in the management of public funds, several States, counties, localities, and even individual public pension funds, have undertaken to prohibit or regulate these practices in recent years.[43] And, most recently, in response to pay to play scandals that have emerged in their jurisdictions, public officials with oversight of public pension funds have written to us expressing support for a Commission rule to prohibit investment advisers from participating in pay to play practices, including prohibiting the use by advisers of placement agents (or other types of consultants) to help secure government business.[44]

These developments indicate that investment advisers may be playing an increasing role in pay to play activities. We therefore believe it is time for us to act with respect to investment advisers who may engage in such activities.[45]

[32] *See id.*

[33] *See In the Matter of Kent D. Nelson,* Investment Advisers Act Release No. 2765 (Aug. 1, 2008); Initial Decision Release No. 371 (Feb. 24, 2009); Investment Advisers Act Release No. 2868 (Apr. 17, 2009) (in which investment adviser was barred from association with any broker, dealer or investment adviser).

[34] *See SEC* v. *Paul J. Silvester et al.,* Litigation Release No. 16759 (Oct. 10, 2000); Litigation Release No. 20027 (Mar. 2, 2007); Litigation Release No. 19583 (Mar. 1, 2006); Litigation Release No. 18461 (Nov. 17, 2003); Litigation Release No. 16834 (Dec. 19, 2000); *SEC* v. *William A. DiBella et al.,* Litigation Release No. 20498 (Mar. 14, 2008). *See also U.S.* v. *Ben F. Andrews,* Litigation Release No. 19566 (Feb. 15, 2006); *In the Matter of Thayer Capital Partners, TC Equity Partners IV, L.L.C., TC Management Partners IV, L.L.C., and Frederick V. Malek,* Investment Advisers Act Release No. 2276 (Aug. 12, 2004); *In the Matter of Frederick W. McCarthy,* Investment Advisers Act Release No. 2218 (Mar. 5, 2004); *In the Matter of Lisa A. Thiesfield,* Investment Advisers Act Release No. 2186 (Oct. 29, 2003).

[35] *See New York* v. *Henry ''Hank'' Morris and David Loglisci,* Indictment No. 25/2009 (NY Mar. 19, 2009) (alleging that the deputy comptroller and a ''placement agent'' engaged in enterprise corruption and State securities fraud for selling access to management of public funds in return for kickbacks and other payments for personal and political gain).

[36] *See U.S.* v. *Montoya,* Criminal No. 05–2050 JP (D.N.M. Nov. 8, 2005) (the former treasurer of New Mexico pleaded guilty); *U.S.* v. *Kent Nelson,* Criminal Information No. 05–2021 JP, (D.N.M. 2007) (defendant pleaded guilty to one count of mail fraud); *U.S.* v. *Vigil,* 523 F. 3d 1258 (10th Cir. 2008) (affirming the conviction for attempted extortion of the former treasurer of New Mexico's successor for requiring that a friend be hired by an investment manager at a high salary in return for the former treasurer's willingness to accept a proposal from the manager for government business).

[37] *See* Jeff Coen *et al., State's Ultimate Insider Indicted,* Chicago Tribune (Oct. 31, 2008) (describing the thirteenth indictment in an Illinois pay to play probe).

[38] *See* Reginald Fields, *Four More Convicted in Pension Case: Ex-Board Members Took Gifts from Firm,* Cleveland Plain Dealer (Sept. 20, 2006) (addressing pay to play activities of members of the Ohio Teachers Retirement System).

[39] *See U.S.* v. *Joseph P. Ganim,* 2007 U.S. App. LEXIS 29367 (2d Cir. 2007) (affirming the district court's decision to uphold an indictment of the former mayor of Bridgeport, Connecticut, in connection with his conviction for, among other things, requiring payment from an investment adviser in return for city business); *U.S.* v. *Triumph Capital Group, et al,* No. 300CR217 JBA (D. Conn. filed Oct. 10, 2000) (the former treasurer, along with certain others, pleaded guilty—while others were ultimately convicted).

[40] *See United States* v. *Poirier,* 321 F.3d 1024 (11th Cir.), *cert. denied sub nom., deVegter* v. *United States,* 540 U.S. 874 (2003) (partner at Lazard Freres & Co., a municipal services firm, was found liable for conspiracy and wire fraud for fraudulently paying $40,000 through an intermediary to Fulton County's independent financial adviser to secure an assurance that Lazard would be selected for the Fulton County underwriting contract).

[41] *See, e.g.,* David Zahniser, *California; Private Finances, Public Role Intersect; Former Pension Board Member Had Consulted for a Firm that Sought Work with the Panel on Which He Served,* Los Angeles Times (May 9, 2009) (discussing alleged pay to play activities relating to a former member of the Los Angeles Fire and Police Pensions Board); Rick Rothacker & David Ingram, *Moore Defends Pension System,* Charlotte Observer (Feb. 25, 2007) (discussing alleged pay to play activities involving North Carolina's State treasurer); Len Boselovic, *Pensions, Politics and Consultants Make for Unsavory Bedfellows,* Pittsburgh Post-Gazzette (Aug. 13, 2006) and Jeffrey Cohan, *Fund Managers 'Pay to Play': Six Firms Managing County's Pension Investments Gave to Board Members' Campaigns,* Pittsburgh Post-Gazzette (Feb. 22, 2001) (discussing alleged pay to play activities relating to the Allegheny County Retirement Board); Mary Williams Walsh, *Political Money Said to Sway Pension Investments,* N.Y. Times (Feb. 10, 2004) (regarding a 2002 audit by then-new controller of Luzerne County, Pennsylvania alleging pay to play activities among various parties involved with county pension funds).

[42] For example, we recently brought a case against the mayor of Birmingham, Alabama, and other defendants, alleging that while the mayor served as president of the County Commission of Jefferson County, Alabama, he accepted undisclosed cash and benefits through a lobbyist as a conduit from the chairman of a Montgomery, Alabama-based broker-dealer, in return for awarding municipal bond business and swap transactions to the broker-dealer. *See SEC* v. *Larry P. Langford et al.,* Litigation Release No. 20545 (Apr. 30, 2008). Several years earlier, we brought an enforcement action against the former treasurer of the City of Chicago, to whom two registered representatives were alleged to have made secret cash payments to obtain a share of the city's lucrative securities investments. *See SEC* v. *Miriam Santos et al.,* Litigation Release No. 17839 (Nov. 14, 2002); Litigation Release No. 19269 (June 14, 2005). We also brought enforcement actions against the registered representatives allegedly involved in the scheme. *See SEC* v. *Miriam Santos, Peter J. Burns, and Michael F. Hollendoner,* Litigation Release Nos. 19270 and 19271 (June 14, 2005). In addition, we brought a case against a broker-dealer, two of its officers and a city official for participating in a scheme to defraud the City of Atlanta in connection with the purchase and sale of certain securities while providing substantial, undisclosed monetary benefits to the city's investment officer who was authorized to select a broker-dealer for the transactions. *See In the Matter of Pryor, McClendon, Counts & Co., Inc. et al.,* Securities Act Release No. 7673 (Apr. 29, 1999); Securities Act Release No. 8062 (Feb. 6, 2002); Exchange Act Release No. 48095 (June 26, 2003); Securities Act Release No. 8245 (June 26, 2003); Securities Act Release No. 8246 (June 26, 2003).

[43] For an example of a State statutory restriction on pay to play activities, *see* Ill. Pub. Act 095–0971 (2008). For an example of a restriction pursuant to a State constitutional amendment, *see* Colo. Const. amend. LIV (2008). For an example of a county restriction, *see* Resolution No. 08–397 (May 8, 2008) Special Pay to Play Restrictions for Professional Service Contracts and Extraordinary Unspecifiable Service Contracts, Monmouth County, NJ. For an example of a city restriction, *see* Ordinance 3663 (July 2, 2007), Prohibition of Redevelopment with Certain Contributors, Township of Franklin, NJ. For an example of a particular local government agency restriction, *see* Cal. Pub. Util. Code § 130051.20 (2008), Contributions to Authority Members, Los Angeles County Metropolitan Transportation Authority. For an example of a particular public pension fund restriction, *see* Prohibitions on Campaign Contributions, California State Teachers' Retirement System, 5 CCR § 24010 (2009).

[44] *See, e.g.,* Letter from New York City Comptroller William C. Thompson, Jr., to Securities and Exchange Commission Chairman Mary L. Schapiro, dated May 12, 2009, *available at http://www.comptroller.nyc.gov/press/pdfs/05-13-09_SEC-letter.pdf,* at 2; Letter from New York State Comptroller Thomas P. DiNapoli to Securities and Exchange Commission Chairman Mary L. Schapiro, dated May 7, 2009, *available at http://www.osc.state.ny.us/press/releases/may09/sec050709.pdf,* at 1–2.

[45] Another reason we believe it is important for us to act is because pay to play practices are characterized by what the *Blount* court called a ''collective action problem [that tends] to make the misallocation of resources persist.'' *Blount, supra* note 16 at 945–46. Elected officials that accept contributions from State contractors may believe

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Section 206(1) of the Advisers Act prohibits an investment adviser from ''employ[ing] any device, scheme, or artifice to defraud any client or prospective client.'' [46] Section 206(2) prohibits advisers from engaging in ''any transaction, practice or course of business which operates as a fraud or deceit on any client or prospective client.'' [47] The Supreme Court has construed section 206 as establishing a Federal fiduciary standard governing the conduct of advisers.[48]

Investment advisers that seek to influence the award of advisory contracts by public pension plans, by making political contributions to or soliciting them for those officials who are in a position to influence the awards, compromise their fiduciary obligations to the public pension plans.[49] In making such contributions, the adviser hopes to benefit from officials that ''award the contracts on the basis of benefit to their campaign chests rather than to the governmental entity.'' [50] If pay to play is a factor in the selection process, the public pension plan can be harmed in several ways. The most qualified adviser may not be selected, potentially leading to inferior management, diminished returns or greater losses. The pension plan may pay higher fees because advisers must recoup the contributions, or because contract negotiations may not occur on an arm's-length basis. The absence of arm's-length negotiations may enable advisers to obtain greater ancillary benefits, such as ''soft dollars,'' from the advisory relationship, which may be directed for the benefit of the adviser, potentially at the expense of the pension plan, thereby using a pension plan asset for the adviser's own purposes.[51]

We believe that play to play is inconsistent with the high standards of ethical conduct required of fiduciaries under the Advisers Act. We have authority under section 206(4) of the Act to adopt rules ''reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive or manipulative.'' [52] Congress gave us this authority to prohibit ''specific evils'' that the broad anti-fraud provisions may be incapable of covering.[53] The provision thus permits the Commission to adopt prophylactic rules that may prohibit acts that are not themselves fraudulent.[54] As noted above, pay to play practices are rarely explicit and often hard to prove, which makes a prophylactic rule particularly appropriate.[55] We are today proposing new rule 206(4)–5 under the Advisers Act designed to eliminate adviser participation in pay to play practices.

II. Discussion

A. Rule 206(4)–5: ''Pay To Play'' Restrictions

The rule we are proposing today is designed to protect public pension plans from the consequences of pay to play practices by preventing advisers' participation in such practices. As a result, advisers and government officials may attempt to structure their transactions in a manner intended to hide the true purpose of a contribution or a payment. For that reason, our proposed pay to play restrictions would capture not only direct political contributions by advisers, but also other ways that advisers may engage in pay to play arrangements. Rule 206(4)–5 would accomplish this through three measures. First, the rule would make it unlawful for an adviser to receive compensation for providing advisory services to a government entity for a two-year period after the adviser or any of its covered associates makes a political contribution to a public official of a government entity that is in a position to influence the award of advisory business.[56]

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they have an advantage over their opponents that forswear the contributions, and firms that do not ''pay'' may fear they will lose government business to those that do. *See id. See generally* Mancur Olson, The Logic of Collective Action; Public Goods and the Theory of Groups 44 (17th ed. 1998) (group members that seek to maximize their individual personal welfare will not act to advance common objectives absent coercion or other incentive**).** *See also* Paul Jacobs, *Donations to Pension Officials Scrutinized; Politics: Connell, Fong Say They Are not Influenced by Contributions from Firms Doing Business with State Systems,* L.A. Times, Aug. 21, 1997, at A41 (fund contractor quoted as saying, ''[i]f you don't contribute, you're subject to the concern that others might make contributions'').

[46] 15 U.S.C. 80b–6(1).

[47] 15 U.S.C. 80b–6(2).

[48] *Transamerica Mortgage Advisors, Inc.* v. *Lewis,* 444 U.S. 11, 17 (1979); *SEC* v. *Capital Gains Research Bureau, Inc.,* 375 U.S. 180, 191–192 (1963).

[49] *See* 1999 Proposing Release, *supra* note 17, at 3. As a fiduciary, an adviser has a duty to deal fairly with clients and prospective clients, and must make full disclosure of any material conflict or potential conflict. *See, e.g., Capital Gains Research Bureau,* 375 U.S. at 189, 191–192; Release 1092, *supra* note 7. Most public pension plans establish procedures for hiring investment advisers, the purpose of which is to obtain the best possible management services. When an adviser makes political contributions for the purpose of influencing the selection of the adviser to advise a public pension plan, the adviser seeks to interfere with the merit-based selection process established by its prospective clients—the public pension plan. The contribution creates a conflict of interest between the adviser (whose interest is in being selected) and its prospective client (whose interest is in obtaining the best possible management services). Even if the conflict was acknowledged and disclosed by the adviser, disclosure may not be effective in protecting the plan from harm. Disclosure to the trustee or board of trustees may be futile in protecting the plan since the trustees may be similarly conflicted, having accepted the contribution. Disclosure to beneficiaries may also be inadequate as they may be unable to act on the disclosure—beneficiaries generally cannot fire the adviser or find another pension plan.

[50] *See Blount, supra* note 16, at 944–45.

[51] *Cf. In re Performance Analytics, et al.,* Investment Advisers Act Release No. 2036 (June 17, 2002) (settled enforcement action in which an investment consultant for a union pension fund entered into a $100,000 brokerage arrangement with a soft dollar component in which the investment consultant would continue to recommend the investment adviser to the pension fund as long as the investment adviser sent its trades to one particular broker-dealer).

[52] 15 U.S.C. 80b–6(4).

[53] S. Rep. No. 1760, 86th Cong., 2d Sess. 4, 8 (1960). The Commission has used this authority to adopt seven rules addressing abusive advertising practices, custodial arrangements, the use of solicitors, required disclosures regarding the adviser's financial condition and disciplinary history, proxy voting, compliance procedures and practices, and deterring fraud with respect to pooled investment vehicles. 17 CFR 275.206(4)–1; 275.206(4)–2; 275.206(4)–3; 275.206(4)–4; 275.206(4)–6; 275.206(4)–7; and 275.206(4)–8.

[54] Section 206(4) was added to the Advisers Act in *Public Law* 86–750, 74 Stat. 885 (1960) at sec. 9. *See* H.R. Rep. No. 2197, 86th Cong., 2d Sess. (1960) at 7–8 (''Because of the general language of section 206 and the absence of express rulemaking power in that section, there has always been a question as to the scope of the fraudulent and deceptive activities which are prohibited and the extent to which the Commission is limited in this area by common law concepts of fraud and deceit * * * [Section 206(4)] would empower the Commission, by rules and regulations to define, and prescribe means reasonably designed to prevent, acts, practices, and courses of business which are fraudulent, deceptive, or manipulative. This is comparable to Section 15(c)(2) of the Securities Exchange Act [15 U.S.C. 78o(c)(2)] which applies to brokers and dealers.''). *See also* S. Rep. No. 1760, 86th Cong., 2d Sess. (1960) at 8 (''This [section 206(4) language] is almost the identical wording of section 15(c)(2) of the Securities Exchange Act of 1934 in regard to brokers and dealers.''). The Supreme Court, in *United States* v. *O'Hagan,* interpreted nearly identical language in section 14(e) of the Securities Exchange Act [15 U.S.C. 78n(e)] as providing the Commission with authority to adopt rules that are ''definitional and prophylactic'' and that may prohibit acts that are ''not themselves fraudulent * * * if the prohibition is 'reasonably designed to prevent * * * acts and practices [that] are fraudulent.''' *United States* v. *O'Hagan,* 521 U.S. 642, at 667, 673 (1997). The wording of the rulemaking authority in section 206(4) remains substantially similar to that of section 14(e) and section 15(c)(2) of the Securities Exchange Act. *See also Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles,* Investment Advisers Act Release No. 2628 (Aug. 3, 2007) [72 FR 44756 (Aug. 9, 2007)] (stating, in connection with the suggestion by commenters that section 206(4) provides us authority only to adopt prophylactic rules that explicitly identify conduct that would be fraudulent under a particular rule, ''We believe our authority is broader. We do not believe that the commenters' suggested approach would be consistent with the purposes of the Advisers Act or the protection of investors.'').

[55] *Cf. Blount, supra* note 16 at 945 (''no smoking gun is needed where, as here, the conflict of interest is apparent, the likelihood of stealth great, and the legislative purpose prophylactic'').

[56] Proposed rule 206(4)–5(a)(1) states: ''As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts, practices, or courses of business within the meaning of section 206(4) of the Act [15 U.S.C. 80b–6(4)], it shall be unlawful:

Proposed rule 206(4)–5 would not, therefore, ban or limit the amount of political contributions an adviser or its covered associates could make; rather, it would impose a two-year ''time out'' on conducting compensated advisory business with a government client after a contribution is made. This aspect of the proposed rule is modeled on MSRB rule G–37 and is consistent with our 1999 proposal.

Second, the rule would prohibit advisers from paying third parties to solicit government entities for advisory business.[57] That is, an adviser would be prohibited from providing or agreeing to provide, directly or indirectly, payment to any person who is not a related person of the adviser for solicitation of government advisory business on behalf of such adviser. This aspect of our proposed rule is modeled on MSRB rule G–38.[58] Third, the rule would also make it unlawful for an adviser itself or through any of its covered associates to solicit or to coordinate contributions for an official of a government entity to which the investment adviser is seeking to provide investment advisory services, or payments to a political party of a State or locality where the investment adviser is providing or seeking to provide investment advisory services to a government entity. MSRB rule G–37 contains a similar prohibition, as did our 1999 proposal.[59]

We recognize that we cannot anticipate all of the ways advisers and government officials may structure pay to play arrangements to attempt to evade the prohibitions of our proposed rule. For that reason, we are also proposing to include a provision that would make it unlawful for an adviser or any of its covered associates to do anything indirectly which, if done directly, would result in a violation of the proposed rule. Finally, for purposes of the proposed rule, an investment adviser to certain pooled investment vehicles in which a government entity invests or is solicited to invest would be treated as though the adviser were providing or seeking to provide investment advisory services directly to the government entity.

Although today's proposal is similar to the one we made in 1999, we are proposing a few critical changes in response to intervening developments that we highlight in the discussion below. We have made these changes to conform our proposal to measures undertaken in recent years to curtail pay to play activities by the MSRB and various State and local authorities and to deter circumvention of the restrictions through the use of third-party placement agents or through an adviser obtaining government clients indirectly by soliciting investment in funds it manages.

1. Advisers Subject to the Rule

Proposed rule 206(4)–5 would apply to any investment adviser registered (or required to be registered) with the Commission, or unregistered in reliance on the exemption available under section 203(b)(3) of the Advisers Act [15 U.S.C. 80b–3(b)(3)].[60] We are including this category of exempt advisers within the scope of the rule in order to make the rule applicable to the many advisers to private investment companies that are not registered under the Advisers Act.[61] The rule would not apply, however, to most small advisers that are registered with the State securities authorities,[62] and certain other advisers that are exempt from registration with us.[63] We believe that the rule would apply to most advisers to public pension plans.[64] We request comment on the scope of the proposed rule. Should we apply the rule to State-registered advisers? Should we limit the rule only to advisers registered (or required to be registered) with us? Should we apply the rule to advisers that are exempt from registration in reliance on Advisers Act section 203(b)(3)? We request comment on whether we should extend the scope of the rule to apply to advisers exempt from registering with us pursuant to any or all of the other categories under Advisers Act section 203(b). For example, should we include advisers exempt from registration pursuant to any or all of Advisers Act sections 203(b)(1) (intrastate advisers), 203(b)(2) (advisers with only insurance company clients), 203(b)(4) (investments advisers that are charitable organizations), 203(b)(5) (advisers that are plans described in section 414(e) of the Internal Revenue Code of 1986 or certain persons associated with such plans), or 203(b)(6) (certain commodity trading advisors)?[65] To the extent that they are able to have government clients at all, are any of these advisers likely to engage in pay to play?

We note that proposed rule 206(4)–5 would regulate the activities of investment advisers—business organizations over which we have clear regulatory authority under the Advisers Act. The rule would have no effect on State laws, codes of ethics or other rules governing the activities of State and municipal officials or employees of

(1) For any investment adviser registered (or required to be registered) with the Commission, or unregistered in reliance on the exemption available under section 203(b)(3) of the Advisers Act [15 U.S.C. 80b–3(b)(3)], to provide investment advisory services for compensation to a government entity within two years after a contribution to an official of the government entity is made by the investment adviser or any covered associate of the investment adviser (including a person who becomes a covered associate within two years after the contribution is made).''

[57] Proposed rule 206(4)–5(a)(2)(i).

[58] MSRB rule G–38 was amended in 2005 to prohibit municipal securities dealers from paying third-party solicitors to solicit municipal securities business. *In the Matter of Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change Relating to Solicitation of Municipal Securities Business under MSRB Rule G–38,* Exchange Act Release No. 52278 (Aug. 17, 2005) [70 FR 49342 (Aug. 23, 2005)]. Our 1999 proposal did not include an analogous prohibition.

[59] *See* MSRB rule G–37(c); 1999 Proposing Release, *supra* note 17, at section II.A.2.

[60] Proposed rule 206(4)–5(a)(1) and (2). Section 203(b)(3) [15 U.S.C. 80b–3(b)(3)] exempts from registration any investment adviser that is not holding itself out to the public as an investment adviser and had fewer than 15 clients during the last 12 months.

[61] *See* discussion *infra* section II.A.3(e).

[62] Section 203A of the Advisers Act [15 U.S.C. 80b–3A] prohibits investment advisers with less than $25 million in assets under management from registering with the Commission; although we do not propose to include them within the coverage of this rule, they remain subject to the Act's general anti-fraud authority. *See, e.g., Rules Implementing Amendments to the Investment Advisers Act of 1940,* Investment Advisers Act Release No. 1633, n.154 and accompanying text (May 15, 1997) [62 FR 28112 (May 22, 1997)] (''Both the Commission and the States will be able to continue bringing antifraud actions against investment advisers regardless of whether the investment adviser is registered with the State or the SEC.''). *See also* S. Rep. No. 293, 104th Cong., 2d Sess. 3–4 (1996) (''1996 Senate Report'') at 4.

[63] *See, e.g,* exemption for intrastate investment advisers under section 203(b)(1) [15 U.S.C. 80b–3(b)(1)].

[64] With the exception of the exemption from registration provided for by section 203(b)(3) [15 U.S.C. 80b–3(b)(3)], advisers that are exempt from SEC registration are unlikely to have State or municipal government clients as providing advisory services to them would result in the adviser no longer being eligible for the exemption, *e.g.,* section 203(b)(2) [15 U.S.C. 80b–3(b)(2)] and section 203(b)(4) [15 U.S.C. 80b–3(b)(4)]. Moreover, based on a review of a sampling of requests for proposals from State and municipal governments for investment advisory services, a common requirement is that the adviser be registered with the SEC or a State. *See, e.g., Request for Information Vermont Pension Investment Committee—Vermont Manager Program RFI* (Feb. 27, 2009) (stating that eligible investment advisers must be SEC-registered with at least $100 million in assets under management), *available at: http://www.vermonttreasurer.gov/documents/rfp/20090316_VPICVermontManagerProgram.pdf.* It also is our understanding from discussions with representatives of the State securities regulators that a very small percentage of State-registered advisers have State or municipal government clients.

[65] Our 1999 proposed rule would have applied to all investment advisers not prohibited from registering with the Commission. *See* 1999 Proposing Release, *supra* note 17.

public pension plans over whom we have no regulatory jurisdiction.[66]

2. Relationship With MSRB Rules; Alternative Approaches

As discussed above, we modeled proposed rule 206(4)–5 on MSRB rules G–37 and G–38, which we believe have successfully addressed pay to play in the municipal bond market. This approach should minimize the compliance burdens on firms that would be subject to both rule regimes because firms that are already subject to MSRB rules would already have developed policies and systems for compliance that could be adapted to meet investment adviser requirements. Certain provisions of our proposed rule, however, are somewhat different in ways that reflect the different statutory framework under which the rule would be adopted and the differences between municipal underwriting and asset management. Comment is requested on whether we should use rules G–37 and G–38 as the models for proposed rule 206(4)–5.[67] If not, are there alternative models that would be more appropriate? Are there significant differences in governments' selection process for municipal underwriters and investment advisers that we have not addressed but that should be reflected in the rule? Would our approach adequately protect public pension plans, their sponsors and participants against the adverse effects of pay to play practices?

We understand many advisers have established restrictions on pay to play practices in their codes of ethics and compliance policies. Instead of, or in addition to, adopting a new rule to address pay to play practices, should we amend our code of ethics rule[68] or our compliance rule[69] to require all registered advisers to adopt policies and procedures designed to prevent them from engaging in pay to play practices?[70] Should we instead, or also, require an executive officer of each adviser to certify annually that the adviser or its covered associates did not participate in pay to play? Should some other employee of the adviser, such as the chief compliance officer, make the certification?

In 1999, we considered proposing a different approach to address pay to play, which would have required an adviser to disclose information about its political contributions to officials of government entities to which it provided or was seeking to provide investment advisory services. We decided not to propose such an approach at that time because we thought that disclosure would not be effective to protect public pension plan clients.[71] Disclosure to a pension plan's trustees might be insufficient because, in some cases, the trustees would have received the contributions. Disclosure to plan beneficiaries also would likely be insufficient because they are generally unable to act on the information by moving their pension assets to a different plan or reversing adviser hiring decisions. Moreover, disclosure requirements may not stop pay to play practices and can be circumvented.[72] Accordingly, we do not believe that relying on disclosure is sufficient to address these problematic practices.[73] We request comment on whether we should, nonetheless, consider this approach, as well as potential alternative approaches that may be more effective or less costly.

3. Pay To Play Restrictions

(a) Two-Year ''Time Out'' for Contributors

Proposed rule 206(4)–5(a)(1) would prohibit investment advisers from providing advice for compensation to a ''government entity''[74] within two years after a ''contribution'' to an ''official'' of the government entity has been made by the investment adviser or by any of its ''covered associates.''[75] We are proposing that the time out be two years long because the duration needs to be sufficiently long to have a deterrent effect. We recognize, however, that a longer ban could be overly harsh.[76] We note that MSRB rule G–37 contains a two-year time out, which appears, based on the success of the MSRB rules, to have operated as an effective deterrent

[66] A number of commenters in 1999, including those representing State and local officials, argued that the rule would be an intrusion on State sovereignty. We disagree. We have a responsibility to regulate the activities of investment advisers. Our objectives in the proposed rule do not relate to campaign finance, but rather to prohibiting fraudulent activity by investment advisers. We believe our proposed rule is appropriately tailored to those ends.

[67] For instance, in 1999, we requested comment on our use of MSRB rule G–37 as a model, and several commenters responded that, because of distinctions between the investment adviser profession and the municipal securities industry, we should not follow the approach of MSRB rule G–37. Some commenters asserted that, unlike municipal underwriters, advisers' business relationships with State and municipal clients are ongoing and long-term and thus the two-year ban is much more harsh a consequence. While municipal underwritings themselves tend to be episodic, underwriting relationships are often longstanding. As a result, the rules' time outs may have similar effects.

[68] Rule 204A–1 under the Advisers Act [17 CFR 275.204A–1].

[69] Rule 206(4)–7 under the Advisers Act [17 CFR 275.206(4)–7].

[70] Some commenters in 1999 suggested that the better approach would be to require advisers to adopt codes of ethics designed to prevent pay to play practices. The Investment Counsel Association of America (subsequently renamed the Investment Advisers Association) submitted to the comment file relating to our 1999 proposal ''*Best Practice Pay-to-Play Guidelines for Adviser Codes of Ethics,*'' advocating such an approach as an alternative to our 1999 proposal. *See http://www.sec.gov/rules/proposed/s71999/tittswo2.htm.* The ICAA offered the following three alternative policies on political contributions, and suggested that advisers should tailor these policies to fit their respective circumstances: (1) A contribution ban above a certain *de minimis* amount (either with respect to all political contributions or ones that fall within certain specified parameters); (2) a pre-clearance process for contributions; or (3) a disclosure policy with respect to contributions. At that time, codes of ethics were voluntary. However, in 2004, the Commission adopted a requirement that advisers adopt and implement codes of ethics that include a standard of conduct that reflects the adviser's fiduciary obligations, although the code of ethics rule does not directly address pay to play practices. *See* Advisers Act rule 204A–1 [17 CFR 275.204A–1]; *Investment Adviser Codes of Ethics,* Investment Advisers Act Release No. 2256 (July 2, 2004) [69 FR 41696 (July 9, 2004)]. *See also* Investment Counsel Association of America, Report on Pay-to-Play and the Investment Advisory Profession (May 15, 2000), *available at http://www.investmentadviser.org/eweb/docs/Publications_News/PublicDocs_UsefulWebsites/PubDoc/report* (condemning practices by which investment professionals try to gain access to business through political contributions, and urging its members to adopt codes of ethics designed to prevent pay to play).

[71] In response to our 1999 Proposal, some commenters suggested requiring advisers to disclose publicly their contributions to State and local officials. Statutes requiring disclosure of political contributions are designed to inform voters about a candidate's financial supporters; an informed electorate can then use the information to vote for or against a candidate. But, as several other commenters correctly pointed out, our goal is not campaign finance reform, and how voters might react to such disclosure is not, for us, the relevant concern. Our primary concern is the protection of advisory clients and investors who are affected by pay to play practices whom we have the responsibility to protect under the Advisers Act.

[72] *See infra* note 158 and accompanying text regarding swap arrangements that may be used to circumvent public disclosure.

[73] MSRB rule G–37, however, does establish a reporting and disclosure system for broker-dealers subject to that rule. MSRB rule G–37(e)(ii).

[74] ''Government entity'' is defined by the proposed rule as ''any State or political subdivision of a State, including any agency, authority, or instrumentality of the State or political subdivision, a plan, program, or pool of assets sponsored or established by the State or political subdivision or any agency, authority or instrumentality thereof; and officers, agents, or employees of the State or political subdivision or any agency, authority or instrumentality thereof, acting in their official capacity.'' Proposed rule 206(4)–5(f)(5).

[75] Proposed rule 206(4)–5(a)(1).

[76] We note that, notwithstanding the proposed duration of the rule's ''time out''—two years—the reach of the time out is relatively narrow in the sense that it only prohibits advisers from receiving compensation for providing advice from the particular government entities to whose officials triggering contributions have been made. It does not limit the adviser from receiving compensation from other government entities as to which triggering contributions have not been made.

in the municipal securities context.[77] We request comment on whether two years is an appropriate length of time.[78]

(1) Prohibition on Compensation

Investment advisers making contributions covered by the proposed rule would not be prohibited from providing advisory services to a government client, even after triggering the two-year time out. Instead, an adviser would be prohibited from *receiving compensation* for providing advisory services to the government client during the time out. This approach is intended to avoid requiring an adviser to abandon a government client after the adviser or any of its covered associates makes a political contribution covered by the rule. An adviser subject to the prohibition would likely, at a minimum, be obligated to provide (uncompensated) advisory services for a reasonable period of time[79] until the government client finds a successor to ensure its withdrawal did not harm the client, or the contractual arrangement between the adviser and the government client might obligate the adviser to continue to perform under the contract at no fee.[80] We request comment on our proposed approach. Is there another approach that would cause less disruption to the government client?

(2) Officials of a Government Entity

The prohibitions in the rule would be triggered by a contribution to an ''official'' of a ''government entity.'' Government entities under the proposed rule include all State and local governments, their agencies and instrumentalities, and all public pension plans and other collective government funds.[81] An official would include an incumbent, candidate or successful candidate for elective office of a government entity if the office is directly or indirectly responsible for, or can influence the outcome of, the selection of an investment adviser or has authority to appoint any person who is directly or indirectly responsible for or can influence the outcome of the selection of an investment adviser.[82] Generally, executive or legislative officers who hold a position with influence over the hiring of an investment adviser are government officials under the proposed rule.[83] These definitions are substantively the same as those in MSRB rule G–37.[84]

We request comment on our proposed definition of ''official.'' For instance, a candidate for Federal office may be an ''official'' under the rule, just as such a person may be under MSRB rule G–37, not because of the office he or she is running for, but as a result of an office he or she currently holds.[85] As a preliminary matter, we do not believe that an incumbent State or local official should be excluded from the definition solely because he or she is running for Federal office, but we request comment on this aspect of the proposed rule. Should such a candidate for Federal office be excluded?[86] Are there other persons to whom an adviser or its covered associates might make a contribution to influence the selection of that adviser? For example, should we expand the rule's prohibitions to apply expressly in cases where an adviser or a covered associate gives a contribution to others closely associated with the official—such as an official's political action committee (''PAC''), his or her inauguration or transition committee,[87] a local or State political party that provides assistance to such official,[88] or

[77] *See supra* note 24. Several commenters in 1999 suggested that, because advisers' business relationships with State and municipal clients are ongoing and long-term, as compared to the relationships between municipal underwriters and their clients, the two-year ban is much more harsh a consequence. As we note above, while municipal underwritings themselves tend to be episodic, underwriting relationships are often longstanding, which may result in the rules' time outs having similar effects. *See supra* note 67.

[78] Some commenters in 1999 objected to two years as being too long a period of time (arguing, for example, that because changing investment advisers can be so disruptive to a pension fund that such a fund would be extremely unlikely to return to an adviser after a ''time out,'' thereby rendering the two-year ban tantamount to a permanent one), whereas others suggested that the period be longer or that it track the remainder of the term of the government official to whom the contribution was made.

[79] Some commenters in 1999 indicated concern that government entities that retain advisers who trigger the two-year time out—and would therefore be unable to receive compensation for two years—might try to delay an adviser's ability to withdraw in order to enjoy the benefits of investment advice for free. We believe that while an adviser's fiduciary obligations require it to act in the best interests of its clients, they do not require it to provide uncompensated advice indefinitely because it is prohibited from receiving compensation under the rule—rather, the adviser may need to continue to provide advice for only a reasonable period of time.

[80] An investment adviser that violates the rule may be required, under its fiduciary duties, to continue providing advisory services to the public pension plan, for a reasonable period of time, until the plan obtains a new adviser. *See Temporary Exemption for Certain Investment Advisers,* Investment Advisers Act Release No. 1846 (Nov. 29, 1999) [64 FR 68019, 68024 (Dec. 6, 1999)] (describing an investment adviser's fiduciary duties to an investment company in the case of an assignment of the advisory contract).

We note that the two-year time out in MSRB rule G–37 operates to prohibit a broker, dealer or municipal securities dealer from engaging in *all* municipal securities business; it does not distinguish between providing compensated and uncompensated services. MSRB Rule G–37(b)(i). *See also* MSRB Rule G–37 Interpretive Notices, Interpretation of Prohibition on Municipal Securities Business Pursuant to Rule G–37 (Feb. 21, 1997) (determining that once a dealer enters into contract and a subsequent contribution results in a prohibition, the dealer ''should not be allowed to continue with the municipal securities business, subject to an orderly transition to another entity to perform such business''). *But see infra* note 189 (discussing MSRB's approach to transitions in the context of pre-existing engagements relating to municipal fund securities, such as interests in Section 529 plans).

[81] *See supra* note 74.

[82] Proposed rule 206(4)–5(f)(6). The two-year time out would be triggered by contributions, not only to elected officials who have legal authority to hire or select the adviser, but to elected officials (such as persons with appointment authority) who can influence the hiring of the adviser. A person who serves at the will of an elected official is likely to be subject to that official's influences and recommendations. We note that MSRB rule G–37 also applies to elected officials empowered to appoint persons with the authority to select which broker-dealers will receive government business.

[83] It is the scope of authority of the particular office of an official, not the influence actually exercised by the individual, that would determine whether the individual has influence over the awarding of an investment advisory contract under the definition.

[84] *See* MSRB rule G–37(g)(ii) and (g)(vi).

[85] Proposed rule 206(4)–5(f)(6), in relevant part, defines ''official'' as *any person* * * * who was, at the time of the contribution, an incumbent, candidate or successful candidate for elective office of a government entity * * *, '' and a ''government entity,'' in relevant part, as ''any State or political subdivision of a State'' (emphasis added). Accordingly, any person, including a person running for Federal office, who meets the definition of ''official'' would be covered under the rule. *See also* MSRB rule G–37(g)(ii) and (g)(vi) (defining ''issuer'' and ''official of an issuer'', respectively); MSRB Qs & As, Question IV.2 and IV.3, *available at http://www.msrb.org/msrb1/rules/QAG-372003.htm* (explaining how G–37 applies to candidates for Federal office).

[86] Some 1999 commenters urged that contributions to candidates for Federal office be excluded from the rule, while others agreed these contributions should be covered. In particular, certain commenters asserted that this aspect of the proposed rule would have a disparate effect on candidates for Federal office because State and local politicians would experience limitations on their ability to receive Federal campaign contributions while their opponents would be subject to no such limitations. These commenters also claimed the rule would have little effect because if the candidate for Federal office was successful, he or she would quickly lose his or her ability to influence the selection of an investment adviser at the State or local level. Other commenters thought it appropriate that the rule apply to candidates for Federal office. As noted above, our emphasis in the proposed rule remains on the *current* office of an elected official and his or her ability to affect the selection of an investment adviser, regardless of what outside positions that official may seek.

[87] A contribution to an official, as opposed to a committee, for inauguration or transition expenses would be a contribution under the proposed rule. *See infra* note 93 and accompanying text. This approach is consistent with the approach in MSRB rule G–37. We are proposing a similar approach for reasons of regulatory consistency; nonetheless, we have included this request for comment on whether we should include contributions to such committees.

[88] Under the proposed rule, such contributions or payments by an adviser (or its covered associates) would only trigger the rule's provisions to the extent that an adviser was trying to do indirectly

Continued

a foundation or other charitable institution associated with such official? [89]

(3) Contributions

The proposed rule covers ''contributions'' made by an investment adviser and its covered associates. The proposed rule uses the same definition of contribution as MSRB rule G–37.[90] A contribution would generally be any gift, subscription, loan, advance, deposit of money, or anything of value [91] made for the purpose of influencing an election for a Federal, State or local office, including any payments for debts incurred in such an election.[92] It would also include transition or inaugural expenses incurred by a successful candidate for State or local office.[93] We request comment on our proposed definition of ''contribution.'' [94] Are there additional items of value that, as with transitional or inaugural expenses, should be specified in and covered by the definition? For instance, should we include the expenses an investment adviser would incur in organizing or sponsoring a conference at which a government official is invited to attend or is a speaker? [95] If so, how should our rule distinguish legitimate conferences or meetings from those that are more akin to fundraising events? [96] Are there items that should be excluded from the definition?

(4) Covered Associates

Contributions made to influence the selection process are typically made not by the firm itself, but by officers and employees of the firm who have a direct economic stake in the business relationship with the government client. For this reason, MSRB rule G–37 limits its prohibitions to contributions made by ''municipal finance professionals'' employed by a broker-dealer. No group analogous to municipal finance professionals, however, exists within the typical investment advisory firm. In many of the pay to play enforcement actions we have brought involving investment advisers, we have alleged that political contributions or other payments were made to influence the selection of the advisory firm by executives of the adviser or persons who solicit government clients on behalf of the adviser.[97] We therefore are proposing to limit application of the rule's ''time out'' provision to contributions made by the adviser and its ''covered associates,'' which would include the adviser's general partners, managing members, executive officers, or other individual with a similar status or function.[98] Any employee of the

what it is prohibited from doing directly. *See infra* section II.A.3(d) of this Release. In contrast, the prohibition on advisers soliciting contributions or payments from others in proposed rule 206(4)–5(a)(2)(ii) would expressly include payments to a political party of a State or locality where the investment adviser is providing or seeking to provide investment advisory services to a government entity. *See infra* section II.A.3(c) of this Release. Further, our proposed amendments to rule 204–2 (in particular, rule 204–2(a)(18)(i)(D)) would expressly include a requirement that an adviser subject to the rule make and keep records of, among other things, all direct or indirect contributions or payments made by the investment adviser or any of its covered associates to a political party of a State or political subdivision thereof. Our proposed approach to these provisions generally tracks the MSRB approach.

[89] For a discussion of associated recordkeeping requirements, *see infra* note 206 and accompanying text.

[90] MSRB rule G–37(g)(i).

[91] Commenters to our 1999 proposal raised concerns that volunteer campaign work by advisory employees could trigger the proposed rule's time out provision. We would not consider volunteer campaign work by an individual to be a contribution, provided the adviser has not solicited the individual's efforts and the adviser's resources, such as office space, are not used. *Cf.* MSRB Qs & As, Question II.12, *available at http://www.msrb.org/msrb1/rules/QAG-372003.htm.*

[92] Proposed rule 206(4)–5(f)(1). Commenters in 1999 expressed concern that the scope of our proposed rule was too broad. These commenters, many of whom represented investment advisers, raised concerns that the rule as proposed could unnecessarily restrict their employees from making *any* political contributions. Some commenters questioned the constitutionality of our proposal, arguing that the proposed rule would violate First Amendment protections for free speech. In *Blount, supra* note 16, a Federal appeals court upheld a First Amendment challenge to MSRB rule G–37. The Court left open the question of the appropriate level of scrutiny to be applied, but concluded that the rule satisfied even a strict scrutiny test. We believe that the rule we are proposing today similarly is consistent with the First Amendment. Absent provisions to limit the application of the rule's prohibitions, it could result in frequent inadvertent violations that would carry harsh consequences for advisers. Accordingly, we refined the categories of persons whose personal political contributions would be covered under the rule and provided for a self-executing exception that should prevent many inadvertent violations. We believe these changes will address many of the commenters' concerns about the rule we proposed in 1999.

[93] Proposed rule 206(4)–5(f)(1)(iii). Transition or inaugural expenses of a successful candidate for *Federal* office are *not* included. Contributions to political parties are not specifically covered by the definition and thus would not trigger the proposed rule's two-year timeout unless they are a means to do indirectly what the proposed rule would prohibit if done directly (for example, the contributions are earmarked or known to be provided for the benefit of a particular political official). *See* proposed rule 206(4)–5(d). Contributions to State and local political parties are, however, subject to the proposed rule's recordkeeping requirements. *See infra* section II.B and proposed rule 204–2(a)(18)(i)(D).

[94] Commenters in 1999 urged us to adopt a rule prohibiting only political contributions *intended* to influence, or made *for the purpose* of influencing, adviser selection. This approach, they argued, would eliminate the risk that innocent campaign contributions would trigger application of the ''two-year time out.'' Political contributions are made ostensibly to support a candidate, however, and the burden of proving a different intent is very difficult absent unusual evidence. As one court noted, ''actors in this field are presumably shrewd enough to structure their relations rather indirectly.'' *Blount, supra* note 16. As a result, requiring proof of such an intent would greatly diminish, if not eliminate, the prophylactic value of the proposed rule.

[95] Under the proposed rule, an adviser would be prohibited from soliciting contributions for the official. Proposed rule 206(4)–5(a)(2)(ii).

[96] *Cf. Supervision When Sponsoring Meetings and Conferences Involving Issuer Officials,* MSRB Rule G–37 Interpretive Notice (Mar. 26, 2007), *available at http://www.msrb.org/msrb1/rules/notg37.htm* (rather than addressing meetings and conferences of this nature in its rules directly, the MSRB applies a facts-and-circumstances test on a case-by-case basis).

[97] *See, e.g., In the Matter of Barrett N. Wissman,* Investment Advisers Act Release No. 2879 (May 22, 2009) (in a settled action, the Commission alleged that managing director of registered investment adviser engaged in a fraudulent scheme involving undisclosed kickback payments made by investment management firms and others in connection with the sale of securities to the New York Common Retirement Fund and the investment of the fund's assets in the purchase and sale of securities); *In the Matter of Thayer Capital Partners, TC Equity Partners IV, L.L.C., TC Management Partners IV, L.L.C., and Frederick V. Malek,* Investment Advisers Act Release No. 2276 (Aug. 12, 2004) (in a settled action, the Commission alleged that unregistered adviser, through its chairman, agreed to hire an inexperienced associate of the Connecticut Treasurer as a consultant as a condition to securing a State pension fund investment); *In the Matter of Frederick W. McCarthy,* Investment Advisers Act Release No. 2218 (Mar. 5, 2004) (in a settled action, the Commission alleged that principal and chairman of investment management firm provided $2 million in consulting contracts to associates of the Connecticut Treasurer in order to secure the Treasurer's decision to invest). We have also observed this pattern of contributions in pay to play arrangements in other contexts, including those involving union pension funds. *See, e.g., In the Matter of William M. Stephens,* Investment Advisers Act Release No. 2076 (Nov. 4, 2002) (in a settled action, the Commission alleged that executive vice president and chief investment strategist of registered investment adviser met with people who offered to introduce him to the trustees of union pension funds, and he agreed that after he and his firm became the funds' adviser, he would arrange to divert a portion of the funds into investments controlled by the people who made the introductions, who would, in turn, pay kickbacks to the pension fund trustees who hired him and his firm); *In the Matter of Chris Woessner,* Investment Advisers Act Release No. 2164 (Aug. 26, 2003) (Commission alleged that former vice president of sales at registered investment adviser who was in charge of marketing to pension plans caused his firm to direct client commissions for the benefit of a broker-dealer and pension consultant in exchange for the referral of a union pension fund client to the firm).

[98] Proposed rule 206(4)–5(f)(2)(i). Under our 1999 proposal, the rule would have applied more broadly to ''partners'' (not just a general partner or equivalent) and ''executive officers'' (which we proposed to define as ''the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions, for the investment adviser''). *See* 1999 Proposing Release, *supra* note 17, at section II.A.1. Commenters in 1999 suggested that, instead of applying the rule to *all* partners, we

adviser who solicits [99] government entity clients for the investment adviser would also be a covered associate,[100] as would any PAC controlled by the investment adviser or any of the adviser's covered associates.[101]

Under the proposed rule, the term ''executive officer'' includes the adviser's president and any vice president in charge of a principal business unit, division or function (such as sales, administration or finance) or any other executive officer who, in each case, in connection with his or her regular duties: (i) Performs investment advisory services (or supervises someone who performs them) for an adviser; (ii) solicits (or supervises someone who solicits) for an adviser, including with respect to investors for a covered investment pool; [102] or (iii) supervises, directly or indirectly, executive officers described in (i) or (ii).[103] Accordingly, for instance, the proposed rule would cover contributions by a portfolio manager who is an executive officer, as well as contributions by anyone in the portfolio manager's chain of supervision up to and including the president of the adviser. The rule would also cover contributions by an executive officer who supervises personnel who solicit advisory clients and contributions by anyone in that executive's chain of supervision. The rule would not, however, cover contributions by the adviser's other executives, such as its comptroller, its head of human resources, or its director of information services, unless the contribution is an indirect contribution for the adviser, because the compensation of these individuals is likely to be tied less directly to obtaining or retaining clients.

Contributions by non-executive employees (other than those who solicit government entity clients) would not trigger the rule's prohibitions, unless the adviser or any of its covered associates used the person to indirectly make a contribution.[104] This could occur, for example, if a firm paid a non-executive employee a bonus with the understanding that the bonus would be used by the employee to make a political contribution that, if made by the firm, would trigger the rule's prohibition.[105]

As noted above, the Commission has drafted the proposed rule so that its prohibitions are triggered by political contributions by persons who, in the context of an advisory firm, are likely to have an economic incentive to make contributions to influence the advisory firm's selection and the categories of executives and employees of an adviser that we have seen, most typically, to make political contributions and payments in pay to play situations. We are mindful of the burdens the proposed rule would place on advisory firms and on the ability of persons associated with an adviser to participate in civic affairs. We thus have narrowly tailored the rule to achieve our goal of preventing adviser participation in pay to play practices.

We request comment on the scope of the proposed rule and, in particular, those persons associated with the advisers whose political contributions would trigger the application of the two-year ''time out'' and would be prohibited from soliciting political contributions from others. Have we included persons most likely to have an economic incentive to make political contributions for the purpose of influencing the selection of the adviser?

Have we covered too many persons? If so, how should we narrow the rule? For example, are there certain executive officers of the adviser we should not include? The proposed rule would cover all executive officers who, as part of their regular duties, perform investment advisory services or supervise someone who performs them. Should we instead limit the scope to a subset of such officers? If so, how should we define that subset? [106] Should we extend the rule to cover all portfolio managers, or just those portfolio managers responsible for managing government client assets? Are there other types of employees whose contributions should trigger the time out?

Have we too narrowly drawn the rule to achieve our goals? Should we, for example, include employees of companies that are related persons of an adviser who solicit government entity clients for the investment adviser? As discussed further below, we propose permitting payments to these persons under the proposed ban on payments to third parties because we recognize that an adviser may rely on them to assist it in seeking government clients.[107] Would that same rationale support including them as ''covered associates'' of the adviser (whose contributions would be subject the proposed rule's two-year time out provision)? Would not including them be likely to encourage circumvention of the rule's requirements? [108] We also request comment on whether we should, for example, include certain family members who, and related businesses that, might give political contributions on the adviser's behalf to try to

narrow the rule to apply only to a firm's general partner (or equivalent) and other owners that have a significant ownership interest in the firm. Commenters also suggested that we either exclude executive officers of divisions unrelated to the firm's solicitation and/or advisory functions or limit the rule's application to only the most senior officers of an adviser, such as persons required to be listed on Schedule A of Form ADV. In light of these comments, we have included in our proposed definition of ''covered associates'' only those persons associated with an investment adviser who we believe are more likely to have an economic incentive to make contributions to influence the advisory firm's selection and who we have found, in our enforcement actions, typically make contributions.

[99] *See* proposed rule 206(4)–5(f)(10) (defining ''solicit'').

[100] Proposed rule 206(4)–5(f)(2)(ii). Several commenters in 1999 argued that we would have included too broad a category of solicitors because our definition of ''solicitor'' would have included any person who solicited *any* client for or referred *any* client to the adviser. The two-year time out would have been triggered, for example, by registered representatives who solicited brokerage business for a firm dually registered as a broker-dealer and as an adviser, even though the registered representatives had no involvement with government clients. *See* 1999 Proposing Release, *supra* note 17, at section II.A.1. We have included a narrower category of solicitors in our current proposed rule; the two-year time out provisions would be triggered by a contribution by a person who solicits government entities for advisory services. Many commenters also urged that the definition of ''solicitor'' exclude third-party solicitors. They asserted that it was unfair to hold advisers responsible for the actions of these solicitors, arguing that the advisers did not control their activities. We have excluded third-party solicitors from this two-year time out provision; instead we are proposing to prohibit advisers from soliciting government business through third parties, as discussed in detail in section II.A.3(b) of this Release.

[101] Proposed rule 206(4)–5(f)(2)(iii). Our 1999 proposal would also have included PACs controlled by the investment adviser and the individuals associated with the investment adviser whose contributions would have triggered the ''time out.'' *See* 1999 Proposing Release, *supra* note 17, at section II.A.1. We have proposed to include PACs because these vehicles, which may be regulated by State and/or Federal election law, are often used by corporations, interest groups, or others to make political contributions. *See, e.g.,* Tennessee Registry of Election Finance, *PACs FAQ, available at http://www.state.tn.us/tref/pacs/pacs_faq.htm;* Federal Election Commission, *Quick Answers to PAC Questions, available at http://www.fec.gov/ans/answers_pac.shtml.*

[102] *See* discussion of covered investment pools, *infra,* section II.A.3(e).

[103] Proposed rule 206(4)–5(f)(4). Our proposed definition of ''executive officer'' in rule 206(4)–5(f)(4) is based on the same considerations as a similar definition in Advisers Act rule 205–3 [17 CFR 275.205–3]. Whether a person is an executive officer depends on his or her function, not title; a chief executive officer whose title does not include ''president'' is clearly an executive officer.

[104] Proposed rule 206(4)–5(d).

[105] *See id. See also* discussion of indirect contributions, *infra* section II.A.3(c).

[106] Many 1999 commenters argued that our proposal included too many persons whose activities are unconnected to managing public pension money, making it too likely that an innocent political contribution would trigger a two-year time out. We considered these comments in narrowing the scope of persons covered by our current proposed rule, as described above.

[107] *See* discussion at section II.A.3(b), *infra* .

[108] *See* proposed rule 206(4)–5(d), however.

influence officials of government entities? [109] Under the proposed rule, political contributions by such persons would only result in a violation under the rule if the adviser or its covered associates were acting through them to do indirectly what they cannot do directly under the rule.[110] MSRB rule G–37 addresses this matter similarly. Should we include beneficial owners of the adviser because they have a direct economic stake in the adviser's business relationship with the government client? If so, should the definition include all owners, or only those with a significant ownership stake in an adviser, such as those who have contributed (or that have the right to receive upon dissolution) ten percent or more of the company's capital?

(5) ''Look Back''

Under the proposed rule, the two-year time out would continue in effect after the covered associate who made the triggering contribution left the advisory firm. Moreover, a contribution made by a covered associate of an adviser would be attributed to any other adviser that employs or engages the person who made the contribution within two years after the date the contribution was made.[111] As a result, an investment adviser would be required to ''look back'' in time to determine whether it would be subject to any business restrictions under the proposed rule when employing or engaging a covered associate. This provision, which tracks MSRB rule G–37,[112] would prevent advisers from circumventing the rule by channeling contributions through departing employees, or by influencing the selection process by hiring persons who have made political contributions. Comment is requested on the proposed look-back requirement. For example, would a shorter period be sufficient to prevent circumvention of the rule? [113] If so, what period would be appropriate? Would our proposed look-back provision inappropriately deter politically active individuals from joining advisory firms that provide investment advice to government entities or are seeking to do so?

(6) Exception for De Minimis Contributions

Proposed rule 206(4)–5 contains a *de minimis* exception that would permit each covered associate who is an individual [114] to make aggregate contributions of $250 or less, per election, to an elected official or candidate without triggering the rule's prohibitions if the person making the contribution is entitled to vote for the official or candidate.[115] We have proposed $250 because we believe that contributions of $250 or less are typically made without the intent or ability to influence the selection process for investment advisers and thus do not involve the conflicts of interest the rule is intended to prevent, as well as for reasons of regulatory consistency. The $250 amount is the same as the *de minimis* amount excepted from MSRB rule G–37.[116] Comment is requested on the scope of the exception.[117] Should the amount be increased or decreased, and if so, on what basis? For instance, the MSRB has not adjusted its *de minimis* amount for inflation since it was established in 1994. We have not adjusted the $250 for inflation because of ease of reference to a round number and because an inflation adjustment would result in an amount not significantly higher. We request comment, however, on whether we should adjust our amount for inflation. Should we provide a *de minimis* exception for contributions to officials for whom an individual is not entitled to vote, and if so, what would be an appropriate *de minimis* amount? [118]

(7) Exception for Certain Returned Contributions

We are proposing a second exception from the two-year compensation ban intended to address situations in which the adviser triggers the ban inadvertently.[119] We have attempted to limit the scope of this exception to the types of contributions that we believe are unlikely to raise pay to play concerns. This exception would be available only with respect to contributions made by a covered associate of the investment adviser to officials *other* than those for whom the covered associate was entitled to vote at the time of the contributions and which, in the aggregate, do not exceed $250 to any one official, per election.[120] Further, the adviser must have discovered the

[109] *See, e.g.,* Martin Z. Braun *et al., A Political Family Affair?,* The Bond Buyer (Oct. 21, 2002) (noting that spouses of municipal finance professionals in dealer firms are making campaign contributions to issuer officials who can influence the award of bond business).

[110] Paragraph (d) of proposed rule 206(4)–5. *See* section II.A.3(d) of this Release.

[111] Proposed rule 206(4)–5(a)(1). In no case would the prohibition imposed by the proposed rule be longer than two years from the date the covered associate makes a covered contribution. If, for example, a covered associate becomes employed by an investment adviser one year and six months after making a contribution, the new employer would be subject to the proposed rule's prohibition for the remaining six months of the two-year period. The covered associate's employer at the time of the contribution would be subject to the proposed rule's prohibition for the entire two-year period regardless of whether the covered associate remains employed by the adviser. *See infra* section II.B.

[112] MSRB rule G–37(g)(iv). *Cf.* MSRB Qs & As, Question II.12, *available at http://www.msrb.org/msrb1/rules/QAG-372003.htm.*

[113] Commenters in 1999 urged us to reduce the look back period, arguing that politically active individuals might be discouraged from joining advisory firms. However, we are concerned about the prospect of advisers seeking to circumvent the rule by hiring individuals shortly after they have made significant contributions that could influence government officials.

[114] Under the proposed rule, each covered associate, taken separately, would be subject to the $250 *de minimis* exception for elections in which he or she is entitled to vote. In other words, the $250 limit applies per covered associate and is not an aggregate limit for all of an adviser's covered associates.

[115] Proposed rule 206(4)–5(b)(1). Under the proposed rule, primary and general elections would be considered separate elections. Accordingly, a covered person of an investment adviser could, without triggering the prohibitions of the rule, contribute up to $250 in both the primary election campaign and the general election campaign (up to $500) of each official for whom the person making the contribution would be entitled to vote. For purposes of this rule, a person would be ''entitled to vote'' for an official if the person's principal residence is in the locality in which the official seeks election. *See, e.g.,* In the Matter of Pryor, McClendon, Counts & Co., Inc. et al., Exchange Act Release No. 48095 (June 26, 2003) (noting that Rule G–37 allows a person to contribute $250 to a candidate's campaign in the primary and in the general election, for a total of $500 during the election cycle, and clarifying that contributions must be limited to $250 *before* the primary, with an additional $250 allowed *after* the primary for the general election). *See also* MSRB Qs & As, Question II.8, *available at http://www.msrb.org/msrb1/rules/QAG-372003.htm.*

[116] *See* MSRB rule G–37(b)(i).

[117] Some commenters in 1999 suggested that the amount be substantially higher. Some commenters thought we should raise the *de minimis* amount to $1,000 to be consistent with the limits on private contributions for candidates for Federal office. We believe that a higher threshold—such as $1,000—would be significantly more likely to enable a contributor to seek to exert influence over an official with the ability to select an investment adviser, especially in a local election. We also believe a lower amount might be too restrictive—it could preclude individuals from supporting candidates for whom they are able to vote at levels that are less likely to facilitate undue influence.

[118] Our proposed *de minimis* exception only applies to contributions to a candidate for whom the contributor is *entitled to vote.* Whereas the outcome of an election in which a contributor is eligible to vote is likely to have a greater personal impact on the contributor, there is a significantly greater likelihood that a contributor's contribution in an election in which he or she is not entitled to vote could be motivated by other factors, which might include influencing a candidate. In 1999, there was a mixture of support and criticism for limiting the exception to contributions to officials or candidates for whom the contributor is entitled to vote, and one commenter advocated expanding it to a $100 *de minimis* exception for candidates for whom the contributor is *not* entitled to vote.

[119] Proposed rule 206(4)–5(b)(2).

[120] Proposed rule 206(4)–5(b)(2)(i). To the extent that the contribution by a covered associate of the adviser was less than $250 and was for an official for whom the covered associate was entitled to vote at the time of the contributions, the contribution would not have triggered the two-year ban on account of the exception contained in paragraph (b)(1) of the proposed rule.

contribution which resulted in the prohibition within four months of the date of such contribution [121] and, within 60 days after learning of the triggering contribution, must cause the contribution to be returned to the contributor.[122] We believe this exception should only be available when the adviser discovered the triggering contribution, and caused it to be returned, promptly. Our proposal generally tracks MSRB rule G–37's ''automatic exemption'' provision.[123]

To ensure that the exception for certain returned contributions does not encourage an investment adviser to relax its efforts to promote compliance with the rule's prohibitions, no adviser would be entitled to rely on the exception more than twice per 12-month period.[124] And an investment adviser would not be permitted to rely on the exception more than once with respect to contributions by the same covered associate of the investment adviser,[125] regardless of the time period.

We request comment on the proposed criteria for, and limitations on, the exception for certain returned contributions. Are the various time periods we proposed (discovery of contribution within four months of it being made, return of contribution within 60 days of discovery, and limitation of reliance on the exception twice per adviser per 12-month period) reasonable? Would they be effective? Are there other circumstances under which an adviser should be able to avail itself of an exception? Alternatively, should we require that an adviser institute special supervisory procedures (after it relies on the exception for certain returned contributions) for the covered associate making the contribution, including requiring pre-clearance of all contributions, for a specified period of time?

(b) Ban on Using Third Parties To Solicit Government Business

After the adoption of rule G–37 in 1994, the MSRB observed that municipal securities dealers sought to circumvent rule G–37 by hiring third-party consultants to solicit government clients on their behalf.[126] These third-party consultants would make political contributions or otherwise seek to exert influence designed to secure municipal business for the municipal securities firm.[127] Two years later, in 1996, the Commission approved, and the MSRB adopted, rule G–38, which required municipal dealers to disclose publicly the terms of their agreements with consultants.[128] In 2005, after concluding that the required disclosure was neither adequate to prevent circumvention of rule G–37, nor consistently being made,[129] the MSRB (with the

[121] *Id.* We believe that requiring that the adviser must have discovered the contribution within four months provides an appropriate time limit for the exception. On one hand, we do not believe the exception should be available where it takes longer for advisers to discover contributions made by covered associates because they might enjoy the benefits of a contribution's potential influence for too long a period of time. On the other hand, we believe it makes sense to give advisers sufficient time to discover contributions made by covered associates if, for example, their covered associates disclose their contributions to the adviser on a quarterly basis. Also, this provision is consistent with the approach taken in MSRB rule G–37(j)(i).

[122] Proposed rule 206(4)–5(b)(2)(i). The prompt return of the contribution would provide some indication that the contribution would not affect an official of a government entity's decision-making process with regard to choosing an adviser. We have proposed that the contribution must be returned within 60 days to give contributors sufficient time to seek its return, but still require that they do so in a timely manner. Also, this provision is consistent with MSRB rule G–37(j)(i). If the recipient will not return the contribution, the adviser would still have available the opportunity to apply for an exemption under paragraph (e) of the proposed rule. Paragraph (e), which sets forth factors we would consider in determining whether to grant an exemption, includes as a factor whether the adviser ''has taken all available steps to cause the contributor involved in making the contribution which resulted in such prohibition to obtain a return of the contribution.''

[123] MSRB rule G–37(j). We did not include an equivalent provision in our 1999 proposal, and MSRB rule G–37 contained no such provision at that time. However, the MSRB added an ''automatic exemption'' provision in 2003. Exchange Act Release No. 47814 (May 8, 2003) [68 FR 25917 (May 14, 2003)]. Several of the comments we received on our 1999 proposal, while supporting the exemptive provision we proposed at that time, expressed concern that the scope and breadth of the rule would expose advisers to the risk of inadvertent violations, which would necessitate frequent exemptive applications. *See, e.g.,* Comment Letter of the Securities Industry Association (Oct. 29, 1999) (''SIA Comment Letter''); Comment Letter of Morgan Stanley Dean Witter Investment Management Inc. (Nov. 1, 1999) (''MSDW Comment Letter''); Comment Letter of Fidelity Investments (Nov. 1, 1999); Investment Counsel Association of America Comment Letter (Nov. 1, 1999) (''Nov. ICAA Comment Letter''); Comment Letter of Scudder Kemper Investments (Nov. 8, 1999) (''Scudder Kemper Comment Letter''); Comment Letter of Nicholas-Applegate Capital Management (Oct. 26, 1999) (''Nicholas-Applegate Comment Letter''); Comment Letter of Smith Barney Asset Management and Salomon Brothers Asset Management Inc. (Nov. 1, 1999) (''Smith Barney Comment Letter'') (suggesting, alternatively, that the time out period be 30 days for inadvertent violations); Comment Letter of Davis Polk & Wardwell (Nov. 1, 1999) (''Davis Polk Comment Letter''); and Comment Letter of American Bar Association, Subcommittees on Investment Companies and Investment Advisers and on Private Investment Entities of the Committee on Federal Regulation of Securities, Section of Business Law (Jan. 5, 2000) (''ABA Comment Letter''). The exception we have proposed would help address these concerns.

[124] Proposed rule 206(4)–5(b)(2)(ii). We wanted to give each adviser more than one opportunity to refine its compliance procedures to avoid further violations of the proposed rule but, as noted, did not want to allow an adviser to relax its standards by making multiple exceptions available. This will generally create some flexibility to accommodate a covered associate's inadvertent violation.

[125] Proposed rule 206(4)–5(b)(2)(iii). Once a covered associate has been made aware of an ''inadvertent'' violation, a justification for a second violation is more questionable.

[126] *See In the Matter of Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Consultants,* Exchange Act Release No. 36522 (Nov. 28, 1995) [60 FR 62275 (Dec. 5, 1995)] (''The Board believes that rules G–37 and G–20 [regarding gifts and gratuities] * * * along with [the rule on fair dealing] set appropriate standards for dealer conduct in the municipal securities industry. However, the Board is concerned about dealers' increasing use of consultants to obtain or retain municipal securities business. While the Board believes that in many instances the use of consultants is appropriate, it also believes that, in a number of instances, the use of consultants may be in response to limitations placed on dealer activities by rule G–37 and rule G–20. While both of these rules prohibit dealers from doing indirectly what they are precluded from doing directly, indirect activities often are difficult to prove.'' (footnotes omitted)).

[127] *See id.*

[128] *See In the Matter of Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Consultants,* Exchange Act Release No. 36727 (Jan. 17, 1996) [61 FR 1955 (Jan. 24, 1996)] (''The rule approved today is intended to provide additional information to issuers and to the public to assist in determining the extent to which payments to consultants influence the issuer's selection process in connection with municipal securities business. * * *'') (''MSRB Rule G–38 Adoption Order''). *See also* Municipal Securities Rulemaking Board, *Request for Comments on Revised Draft Amendments to Rule G–38 Relating to Solicitation of Municipal Securities Business (as modified on Oct. 12, 2004)* (Sept. 29, 2004), *available at http://www.msrb.org/msrb1/archive/2004/RevRuleG-38Solicitation.htm#revised1* (noting, with regard to MSRB rule G–38, ''As initially adopted, the rule required * * * that the dealer disclose information about its consulting arrangements to any issuer from which a consultant would solicit municipal securities business on its behalf [and that the dealer disclose] to the MSRB * * * the terms of the consulting agreements and the business obtained by the consultants * * * [with] such disclosures made available to the public through the MSRB Web site * * *'' (footnotes omitted)).

[129] *See* Municipal Securities Rulemaking Board, *Amendments Relating to Solicitation of Municipal Securities Business Under Rule G–38,* SR–MSRB–2005–04 (Mar. 17, 2005), *available at http://www.msrb.org/msrb1/rulesandforms/sec/SR-MSRB-2005-04.pdf* (''The MSRB began its current rulemaking initiative on the solicitation on behalf of brokers, dealers and municipal securities dealers (''dealers'') of municipal securities business by consultants early last year because of certain practices that could present challenges to maintaining the integrity of the municipal securities market. These practices include, among other things, significant increases in recent years in the number of consultants being used, the amount these consultants are being paid and the level of reported political giving by consultants. The MSRB has been concerned that increases in levels of compensation paid to consultants for successfully obtaining municipal securities business may be motivating consultants, who currently are not subject to the basic standards of fair practice and professionalism embodied in MSRB rules, to use more aggressive or questionable tactics in their contacts with issuers.'').

Commission's approval) amended rule G–38 to impose a complete ban on the use of third-party consultants to solicit government clients.[130]

We are concerned that our adoption of a rule addressing pay to play practices by advisers would lead to a similar use of consultants or solicitors by investment advisers to circumvent the rule. Indeed, we have alleged that third-party solicitors have played a central role in each of the enforcement actions against investment advisers that we have brought in the past several years involving pay to play schemes.[131] Government authorities in New York and other jurisdictions have prohibited, or are considering prohibiting, the use of consultants, solicitors, or placement agents by investment advisers to solicit government investment business.[132]

In our 1999 proposal, contributions to a government official by an adviser's third-party solicitor, engaged by the adviser to obtain clients, would have triggered a two-year ''time out'' for the adviser.[133] Several commenters opposed inclusion of contributions by third-party solicitors as a trigger for the ''time out.'' Most argued that this aspect of the rule was unfair and created significant compliance challenges because these solicitors were not, according to the commenters, controlled by advisers.[134]

In light of these considerations, including the apparent difficulties for advisers to monitor the activities of their third-party solicitors, we are proposing to prohibit investment advisers from using third-party solicitors to obtain government clients.[135] Proposed rule 206(4)–5 would make it unlawful for any investment adviser registered (or required to be registered) with the Commission, or unregistered in reliance on the exemption available under section 203(b)(3) of the Advisers Act [15 U.S.C. 80b–3(b)(3)], or any of its covered associates, to provide or agree to provide, directly or indirectly, ''payment'' to any person to solicit a government entity for investment advisory services unless such person is: (i) A ''related person'' of the investment adviser or, if the related person is a company, an employee of that related person; or (ii) any of the adviser's employees, general partners, LLC managing members, executive officers (or other person with a similar status or function, as applicable).[136] The rule's prohibition on an adviser's payments to third-party solicitors may apply to persons commonly called ''finders,'' ''solicitors,'' ''placement agents,'' or ''pension consultants.'' [137]

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[130] *See In the Matter of Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change Relating to Solicitation of Municipal Securities Business under MSRB Rule G–38,* Exchange Act Release No. 52278 (Aug. 17, 2005) [70 FR 49342 (Aug. 23, 2005)]. As amended, MSRB rule G–38(a) states, ''Subject to section (c) of this rule [regarding transitional payments], no broker, dealer or municipal securities dealer may provide or agree to provide, directly or indirectly, payment to any person who is not an affiliated person of the broker, dealer or municipal securities dealer for a solicitation of municipal securities business on behalf of such broker, dealer or municipal securities dealer.''

[131] *See, e.g., SEC* v. *Henry Morris, et al.,* Litigation Release No. 20963 (Mar. 19, 2009) (the Commission's complaint alleges that investment advisers and a placement agent, among others, engaged in a fraudulent scheme to extract kickbacks from investment management firms seeking to manage assets of the New York State Common Retirement Fund); *In the Matter of Kent D. Nelson,* Investment Advisers Act Release No. 2765 (Aug. 1, 2008); Initial Decision Release No. 371 (Feb. 24, 2009); Investment Advisers Act Release No. 2868 (Apr. 17, 2009) (an administrative law judge found that an investment adviser funneled payments through a third party to the New Mexico State treasurer in exchange for being retained as an adviser by the State treasurer's office); *SEC* v. *Paul J. Silvester et al.,* Litigation Release No. 16759 (Oct. 10, 2000); Litigation Release No. 16834 (Dec. 19, 2000); Litigation Release No. 18461 (Nov. 17, 2003); Litigation Release No. 19583 (Mar. 1, 2006); Litigation Release No. 20027 (Mar. 2, 2007) (alleging that, in order to obtain investment contracts, investment adviser firms made payments to associates of the Connecticut State treasurer, a portion of which were kicked back to the treasurer). *See also supra* notes 31–40 (discussing other cases related to these enforcement actions).

[132] *See, e.g.,* Aaron Elstein, *NY Pension Fund Bans Controversial Middlemen,* Crain's New York Business (Apr. 22, 2009) (describing the New York State Comptroller's ban on placement agents); Press Release, Office of the New York City Comptroller, *Thompson Moves to Ban Placement Agents, Asks State AG to Investigate Quadrangle Transaction,* PR–09–04–095 (Apr. 22, 2009), *available at http://www.comptroller.nyc.gov/press/2009_releases/pr09-04-095.shtm* (describing the New York City Comptroller's calls on the New York City Pension Funds to ban placement agents); Henry Goldman, *New York City Police Pension Bans Placement Agent Use,* Bloomberg (May 5, 2009) (describing the New York City Police Pension Fund's suspension on the use of placement agents); Martin Z. Braun, *New York City's Fire Pension Bans Middlemen, Joining Two Others,* Bloomberg (May 16, 2009) (describing the New York City Fire Pension Fund's suspension on the use of placement agents); Barry Massey, *NM Agency Bans Placement Agents on Investments,* Businessweek (May 26, 2009) (describing the New Mexico State Investment Council's ban on placement agents). *See also In the Matter of the Carlyle Group,* AGNY Investigation No. 2009–071, Assurance of Discontinuance Pursuant to Executive Law § 63(15) (May 14, 2009), *available at http://www.oag.state.ny.us/media_center/2009/may/pdfs/Carlyle%20AOD.pdf; In the Matter of Riverstone Holdings, LLC,* AGNY Investigation No. 2009–091, Assurance of Discontinuance Pursuant to Executive Law § 63(15) (June 11, 2009), *available at http://www.oag.state.ny.us/media_center/2009/june/pdfs/Riverstone%20AOD%20FINAL%20EXECUTED.pdf;* and *In the Matter of PCG Corporate Partners Advisors II, LLC,* AGNY Investigation No. 2009–101, Assurance of Discontinuance Pursuant to Executive Law § 63(15) (July 1, 2009), *available at http://www.oag.state.ny.us/media_center/2009/july/pdfs/PCG%20AOD%20FINAL%20EXECUTED.pdf* (in each case, banning the use of third-party placement agents pursuant to a ''Public Pension Fund Reform Code of Conduct'' in connection with the New York Attorney General's findings that ''private equity firms and hedge funds frequently use placement agents, finders, lobbyists, and other intermediaries * * * to obtain investments from public pension funds * * *, that these placement agents are frequently politically-connected individuals selling access to public money, * * * and that the use of placement agents to obtain public pension fund investments is a practice fraught with peril and prone to manipulation and abuse.'').

[133] *See* 1999 Proposing Release, *supra* note 17, at section II.A.1.

[134] *See, e.g.,* SIA Comment Letter; T. Rowe Comment Letter; MSDW Comment Letter; Comment Letter of Legg Mason, Inc. (Nov. 1, 1999); American Bankers Association Comment Letter (Nov. 1, 1999); Nov. ICAA Comment Letter; Scudder Kemper Comment Letter; Nicholas-Applegate Comment Letter; Smith Barney Comment Letter; Davis Polk Comment Letter; and ABA Comment Letter. We note that rule 206(4)-3 (the ''cash solicitation rule'') under the Advisers Act, among other things, requires an adviser that engages a third-party solicitor for clients: (i) to make a bona fide effort to ascertain whether the solicitor has complied with the adviser's agreement with the solicitor; and (ii) to have a reasonable basis for believing that the solicitor has so complied. Advisers Act rule 206(4)-3(a)(2)(iii)(C) [17 CFR 275.206(4)–3(a)(2)(iii)(C)].

[135] Although rule 206(4)–3 under the Advisers Act (the ''Cash Solicitation Rule'') contemplates that certain client solicitation activities of third parties can be undertaken where certain conditions are met and the adviser both ''makes a bona fide effort to ascertain whether'' and ''has a reasonable basis for believing that'' the solicitor has complied with certain aspects of the rule (Advisers Act rule 206(4)–3(a)(2)(iii)(C) [17 CFR 275.206(4)–3(a)(2)(iii)(C)]), commenters' concerns about the inability of advisers to control the political contribution activity of their solicitors (which is not restricted under the Cash Solicitation Rule) persuade us that a different approach is appropriate for solicitation of government clients.

[136] Proposed rule 206(4)–5(a)(2)(i). Advisers making payments to solicitors must comply with the cash solicitation rule under the Advisers Act. If this component of proposed rule 206(4)–5 is adopted as proposed, investment advisers registered or required to be registered with us would no longer be able to rely on the cash solicitation rule to pay third-party solicitors to obtain government clients. For a discussion of proposed amendments to the cash solicitation rule, *see infra* section II.C.

[137] Pension consultants provide advice to pension plans (public or private) and their trustees with respect to their investments, selection of money managers and other service providers, and other investment-related matters. Many pension plans rely heavily on the expertise and guidance of their pension consultant in helping them to manage pension plan assets. Pension consultants may act as third-party solicitors. Others may act as investment advisers subject to our rule. In 2005, our Office of Compliance Inspections and Examinations published a report highlighting concerns relating to the Advisers Act stemming from examinations of 24 pension consultant firms, including conflicts of interest that arise with respect to pension consultants that provide products and services to both pension plan advisory clients and money managers and mutual funds on an ongoing basis. Office of Compliance Inspections and Examinations, U.S. Securities and Exchange Commission, *Staff Report Concerning Examinations of Select Pension Consultants* (May 16, 2005), *available at http://www.sec.gov/news/studies/pensionexamstudy.pdf.* Commission staff also published on the Commission's Web site, in cooperation with the U.S. Department of Labor, tips to assist fiduciaries of employee benefit plans in

The proposed rule would only apply to ''third-party'' solicitors who solicit government entities for investment advisory services.[138] The prohibition on payments to third-party solicitors would not cover solicitations on behalf of an investment adviser by a person who is a ''related person'' of the adviser, any of the related person's employees if the related person is a company,[139] or any executive officer or partner of the adviser.[140] A contribution to a government official by certain of these persons would instead trigger the two-year ''time out'' under paragraph (a) of the proposed rule, during which the investment adviser could not provide investment advisory services for compensation to the government entity whose selection of an adviser that official could influence.[141] We have proposed to include related persons and their employees (if the related persons are companies) in order to enable advisers to compensate parent companies and other owners, subsidiaries and sister companies—as well as employees of related companies—for government entity solicitation activities because we recognize that there may be efficiencies in allowing advisers to rely on these particular types of persons to assist them in seeking clients.[142] We request comment on whether we should include employees of an adviser's related persons that are companies within the group of persons not subject to the ban on payments to third parties. Should we include only employees of certain related persons of the adviser? If so, how should we make that determination? We also request comment on whether there are other types of persons associated with an investment adviser who should not be subject to the ban on payments to third parties. We would define ''payment'' as any gift, subscription, loan, advance or deposit of money or anything of value.[143] We are proposing this definition to cover the various means by which an adviser and its covered associates may seek to compensate a third-party solicitor.[144] A ''finder's fee'' paid for a third-party solicitation would be an example of a prohibited payment. It could also include payments made to pension consultants for performing various services, such as attending or sponsoring conferences, if those services are intended to obtain government clients.[145] Are there other types of payments we should explicitly include in the definition? Are there others that we should exclude, and, if so, why?

We would broadly define ''solicit'' to mean: (i) With respect to investment advisory services, to communicate, directly or indirectly, for the purpose of obtaining or retaining a client for, or referring a client to, an investment adviser; and (ii) with respect to a contribution or payment, to communicate, directly or indirectly, for the purpose of obtaining or arranging a contribution or payment. We are proposing this definition to capture the types of communications in which an investment adviser might engage that we believe should trigger application of the rule's prohibitions—communications for the purpose of obtaining or retaining a client or a contribution.[146] Whether a particular communication constitutes a ''solicitation,'' therefore, depends on the specific facts and circumstances relating to the communication. The nature of information conveyed in any communication and the manner in which it is presented would be relevant factors to consider. Does our proposed definition effectively capture the appropriate scope of communications? If not, what types of communications should we exclude, and why?

We request comment on our proposal to prohibit the use of third-party solicitors of government business. Is our proposed prohibition on the use of third-party solicitors an appropriate means to deter pay to play practices? We propose to prohibit only third-party solicitors as likely posing a significant threat to investor protection; certain related-party solicitors would, instead, be subject to the time out limitations of proposed rule 206(4)–5(a)(1). Is this differentiation appropriate? If not, should we instead subject advisers to the two-year time out for contributions made by their third party solicitors although, as noted above, commenters in 1999 indicated that such a requirement may impose significant compliance challenges? [147] If the differentiation is appropriate, should we also have a two-year look back restriction for any contributions made by the third party? Is there a different approach that would be effective at eliminating circumvention of the rule through the use of third parties? For example, should we consider narrowing the prohibition to accommodate government solicitation activities by third parties if such third parties (and

reviewing conflicts of interest of pension consultants. *Selecting and Monitoring Pension Consultants: Tips for Plan Fiduciaries* (June 1, 2005), *available at http://www.sec.gov/investor/pubs/sponsortips.htm.*

Although the terms are sometimes used interchangeably, ''finders'' typically locate buyers and/or sellers for a security on behalf of a broker-dealer, ''solicitors'' typically locate investment advisory clients on behalf of an investment adviser, and ''placement agents'' typically specialize in finding investors (often institutional investors or high net worth investors) that are willing and able to invest in a private offering of securities on behalf of the issuer of such privately offered securities.

[138] Proposed rule 206(4)–5(a)(2)(i).

[139] We would define ''related person'' as any person, directly or indirectly, controlling or controlled by the investment adviser, and any person that is under common control with the investment adviser. Proposed rule 206(4)–5(f)(9). The term ''company'' is defined in the Advisers Act, in relevant part, as ''a corporation, a partnership, an association, a 'joint-stock' company, a trust, or any organized group of persons, whether incorporated or not.'' 15 U.S.C. 80b–2(a)(5).

[140] More specifically, we do not include any of the following within the prohibition on payments for solicitation of government clients: executive officers, general partners, managing members (or, in each case, persons with similar status or function), employees, or ''related persons'' of the investment adviser. Proposed rule 206(4)–5(a)(2)(i). We make this distinction because related person solicitors are subject to an adviser's (or its affiliates') control and thus should not present the compliance challenges that advisers pointed to with respect to third-party solicitors. *See supra* note 134 and accompanying text. MSRB rule G–38's exclusions are based on two similar definitions—of ''affiliated person of the broker, dealer or municipal securities dealer'' and of ''affiliated company of the broker, dealer or municipal securities dealer.'' MSRB rule G–38(b)(i) and (b)(ii).

[141] Pursuant to proposed rule 206(4)–5(a)(1), certain contributions by the investment adviser and its covered associates would trigger the two-year time out. For a discussion of the two year ''time out'' provision of the proposed rule, *see supra* section II.A.3(a). We are not proposing that contributions by ''related persons'' and their employees would trigger the two-year time out, although we request comment on whether to include in the definition of ''covered associate'' an employee of a related person who solicits a government entity for the adviser. *See* discussion at section II.A.3(a)(4), *supra. See also* proposed rule 206(4)–5(d).

[142] For example, if an adviser's sister company has an office in a given location, the adviser might seek the assistance of a sister company's employee at that location to solicit local government business on its behalf rather than relying on its own personnel who might be located a significant distance away.

[143] Proposed rule 206(4)–5(f)(7). MSRB rule G–38 incorporates the definition of ''payment,'' as well as the definitions of ''issuer'' and ''municipal securities business'' from MSRB rule G–37(g).

[144] As well as the various means by which an adviser and its covered associates may seek to solicit other persons or coordinate donations to political parties. *See infra* section II.A.3(d).

[145] The proposed rule's prohibition on making payments to third-party solicitors of government clients would apply expressly only to investment advisers and their covered associates. *But see* proposed rule 206(4)–5(d) (the proposed rule's prohibitions on an adviser and its covered associates doing indirectly what cannot be done directly). For a discussion of this provision, *see infra* section II.A.3.(d) of this Release. The proposed rule would not prohibit government entities from retaining ''pension consultants'' (or other third-parties) and paying them to recommend particular investment advisers for the management of public funds.

[146] *See* proposed rule 206(4)–5(f)(10). MSRB rule G–38 contains a similar definition. *See* MSRB rule G–38(b)(i).

[147] *See supra* note 134.

their related persons) commit not to contribute to (or solicit contributions for) officials of any government entity from which any adviser that hires them is seeking business? To what extent might the proposed ban on using third parties to solicit government business disproportionately impact the ability of certain investment advisers, such as those that are smaller and less established, to compete in the market to provide advisory services to government clients? Conversely, to what extent might the proposed ban benefit smaller or less established advisers who are currently unable or unwilling to engage in pay to play practices to compete for government business?

(c) Restrictions on Soliciting and Coordinating Contributions and Payments

Another way an adviser can attempt to influence the selection process is by coordinating contributions for an elected official or payments to a political party, or by soliciting others to make contributions to an elected official or payments to a political party.[148] Therefore, proposed rule 206(4)–5(a)(2)(ii) would prohibit an adviser and its covered associates from soliciting any person or PAC to make, or from coordinating, any contribution to an official of a government entity to which the adviser is providing or seeking to provide investment advisory services, or any payment [149] to a political party of a State or locality where the investment adviser is providing or seeking to provide investment advisory services to a government entity.[150] Our proposed restrictions on soliciting and coordinating contributions and payments generally track MSRB rule G–37.[151] The MSRB amended its rule in 2005, with Commission approval, to expand its prohibition on soliciting others to make, and on coordinating, payments to State and local political parties to close what the MSRB identified as a gap in which contributions were being made indirectly to officials through payments to political parties for the purposes of influencing their choice of municipal securities dealers.[152] The MSRB had not previously been able to deter this misconduct, despite issuing informal guidance in both 1996 and in 2003.[153] We are proposing a similar prohibition on soliciting or coordinating payments to political parties in States or localities where the investment adviser is providing or seeking to provide investment advisory services to a government entity because we are concerned that our adoption of a rule that only prohibits advisers from soliciting others to make, or coordinating, contributions to officials would lead to the development of a similar gap in which advisers could circumvent the rule by making payments to political parties to influence an official.[154]

Proposed rule 206(4)–5(a)(2)(ii) would also prohibit advisers from seeking to influence the selection process by, for example, ''bundling'' [155] contributions

[148] For examples of solicitation or coordination of contributions in the municipal securities dealer context, *see In the Matter of Pryor, McClendon, Counts & Co., Inc. et al.*, Exchange Act Release No. 48095 (June 26, 2003) (Commission alleged that a broker-dealer violated rule G–37(c) because its president delivered three $250 money orders (in other people's names) in addition to his own personal check for $250 to the campaign of a New York City mayoral candidate during a period when the firm was engaged in municipal securities business with New York City); *In the Matter of FAIC Securities, Inc.*, Exchange Act Release No. 36937 (Mar. 7, 1996) (Commission alleged that the broker-dealer willfully violated G–37(c) because the firm's municipal finance professionals approved its affiliated companies' political contributions to candidates for office who could influence the awarding of municipal securities business by the State of Florida and by Dade County, Florida, and during the two-year period following those contributions, the firm continued to seek, and was selected, to participate in negotiated underwritings of certain municipal securities by both Dade County and a State agency).

[149] *See supra* note 143 and accompanying text for the definition of ''payment.'' This definition is derived from the definition of ''contribution,'' but does not include the limits on the purposes for which such money is given, as currently set forth in the proposed definition of contribution. We are including ''payments,'' as opposed to ''contributions,'' here to deter an adviser from circumventing the rule's prohibitions by coordinating indirect contributions to government officials through payments to political parties. We noted similar concerns in the context of MSRB Rule G–37 when we approved a recordkeeping provision in rule G–8 to require persons subject to that rule to keep records relating to political party payments. *See SEC Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rule G–37 on Political Contributions and Prohibitions on Municipal Securities Business, and Rule G–8, on Recordkeeping,* Exchange Act Release No. 35446 (Mar. 6, 1995) (''[S]ome [industry participants] currently are urging dealers to make payments to political parties earmarked for expenses other than political contributions (such as administrative expenses or voter registration drives). Since these payments would not constitute ''contributions'' under the rule, the recordkeeping and reporting provisions would not apply. The MSRB is concerned, based upon this information, that the same pay-to-play pressures that motivated the MSRB to adopt rule G–37 may be emerging in connection with the fundraising practices of certain political parties described above.'').

[150] Proposed rule 206(4)–5(a)(2)(ii). An investment adviser would be seeking to provide advisory services to a government entity when it responds to a request for proposal, communicates with a government entity regarding that entity's formal selection process for investment advisers, or engages in some other solicitation of investment advisory business of the government entity. A violation of paragraph (a)(2)(ii) of the proposed rule would not trigger a two-year ban on the provision of investment advisory services for compensation, but would be a violation of the rule. This provision would prohibit, for example, an adviser's solicitation of a payment to the political party of the State in which the adviser was seeking to provide advisory services to a government entity of the State, but would not preclude that adviser from soliciting a payment to a local political party, unless the adviser was doing so as a means to do indirectly what the adviser could not do directly under the proposed rule (for example, if the adviser was soliciting the payment as a means to funnel payments to an official of the government entity from which the adviser was seeking business). *See* proposed rule 206(4)–5(d).

[151] *See* MSRB rule G–37(c). We note, however, that G–37 did not contain a prohibition on soliciting or coordinating payments to political parties in 1999, and our 1999 proposal did not contain such a provision. 1999 Proposing Release, *supra* note 17.

[152] *See Rule G–37: Request for Comments on Draft Amendments to Rule G–37(c), Relating to Prohibiting Solicitation and Coordination of Payments to Political Parties, and Draft Question and Answer Guidance Concerning Indirect Rule Violations,* MSRB Notice 2005–11 (Feb. 15, 2005), *available at http://www.msrb.org/msrb1/archive/2005/2005-11.asp* (''G–37(c) Notice'') (''[T]he MSRB is especially troubled by the emergence of recent media and other reports that issuer agents have informed dealers and [municipal finance professionals] that, if they are prohibited from contributing directly to an issuer official's campaign, they should contribute to the affiliated party's ''housekeeping'' account. The MSRB is concerned that dealers or [municipal finance professionals] who make such payments may be doing so in an effort to avoid the political contribution limitations embodied in Rule G–37.''); Self-*Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Concerning Solicitation and Coordination of Payments to Political Parties and Question and Answer Guidance on Supervisory Procedures Related to Rule G–37(d) on Indirect Violations,* Exchange Act Release No. 52496 (Sept. 22, 2005) (SEC order approving change to MSRB G–37 to prohibit soliciting or coordinating payments to political parties).

[153] *See* G–37(c) Notice, *supra* note 152. (''Both the 1996 Q&A guidance and the 2003 Notice were intended to alert dealers and [municipal finance professionals] to the realities of political fundraising and guide them toward developing procedures that would lead to compliance with both the letter and the spirit of the Rule. The MSRB continues to be concerned, however, that dealer, [municipal finance professional], and affiliated persons' payments to political parties, including ''housekeeping,'' ''conference'' or ''overhead'' type accounts, and PACs give rise to at least the appearance that dealers may be circumventing the intent of Rule G–37.'').

[154] We note that a direct contribution to a political party by an adviser or its covered associates would not trigger the two-year time out provision of the proposed rule (although we request comment on our proposed definition of ''contribution''), unless the contribution was a means for the adviser to do indirectly what the proposed rule would prohibit if done directly (for example, if the contribution was earmarked or known to be provided for the benefit of a particular government official). *See supra* note 93. We are proposing, however, that an adviser be prohibited from soliciting others to make, or coordinating, payments to political parties because, as the MSRB's experience has shown, advisers could otherwise use such means to circumvent the proposed rule's limitations on direct contributions to government officials.

[155] An employee or person acting on an adviser's behalf ''bundles'' contributions or payments by

or payments from its employees or others or by making or coordinating contributions or payments through a third party, such as a ''gatekeeper.'' [156] In a gatekeeper arrangement, political contributions or payments are arranged by an intermediary, typically a pension consultant, which distributes or directs contributions or payments to elected officials or candidates.[157] The gatekeeper ensures that advisers not making a requisite amount of contributions or payments are not included among the final candidates for advisory contracts. In addition, a gatekeeper could arrange ''swaps'' of contributions or payments between elected officials in order to obscure the significance of the contributions or payments from public disclosure or to circumvent plan restrictions on contributions to trustees.[158] Under the proposed rule, the gatekeeper in these arrangements would be coordinating political contributions or payments and, if the gatekeeper is an investment adviser, would itself violate the proposed rule's restrictions on coordinating contributions or payments.[159] The adviser would also violate the proposed rule if it paid the third-party solicitor to coordinate political contributions or payments in order to obtain business.

We request comment on this aspect of the proposed rule, including our proposed definitions. Is it appropriate to differentiate between ''contributions'' to officials and ''payments'' to political parties? Are there alternative approaches that would effectively deter these types of indirect pay to play arrangements? Do commenters believe that our proposed inclusion of payments to State and local political parties closes an important gap in which contributions might be made indirectly to officials for the purposes of influencing their choice of investment advisers? Alternatively, do commenters believe that our proposed inclusion of political parties is unnecessary?

(d) Direct and Indirect Contributions or Solicitations

Rule 206(4)–5(d) would also prohibit acts done indirectly, which, if done directly, would result in a violation of the rule.[160] Thus, an adviser and its covered associates could not circumvent the rule by directing or funding contributions through third parties, including, for example, consultants, attorneys, family members, friends or companies affiliated with the adviser. This provision would also cover, for example, situations in which contributions by an adviser are made, directed or funded through a third party with an expectation that, as a result of the contribution, another contribution is likely to be made by a third party to an ''official of the government entity,'' for the benefit of the adviser. Contributions made through gatekeepers (described above) thus would be considered made ''indirectly'' for purposes of the proposed rule. We request comment on this aspect of the proposed rule.

(e) Investment Pools

(1) Application of the Rule to Pooled Investment Vehicles

Pay to play activities in the context of investment pools [161] also raise concerns about the potential for fraud.[162] The fraud that may result from pay to play practices can occur in a number of circumstances involving the government official and the pooled investment vehicle. The following are examples of pay to play relationships involving

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coordinating small contributions or payments from several employees of the adviser or others to create one large contribution or payment. For an example of this in the context of the municipal securities industry, *see In the Matter of Pryor, McClendon, Counts & Co., Inc. et al.,* Securities Act Release No. 48095 (June 26, 2003) (''Counts[, the president of the broker-dealer firm,] gave his administrative assistant $750 in cash, told her to purchase three separate money orders, and told her to make them payable for $250 each to the candidate's campaign. Counts instructed his assistant to make out one of the money orders as if it were from the assistant herself, and to make out the other two as if they were from the wife of a [firm] employee and a friend of Counts', respectively. Counts then caused those money orders to be delivered to the candidate's campaign together with Counts' own personal check for $250. [When two of the three money orders were subsequently returned,] Counts instructed his assistant to deposit the returned $500 into [the firm]'s bank account, which she did.'').

[156] We are proposing that solicitation of contributions of others for an official of a government entity to which an adviser is providing or seeking to provide investment advisory services by an adviser or its covered associates be subject to a flat prohibition under the rule, rather than trigger a two-year ''time out,'' because we recognize it may be more difficult for an adviser to monitor solicitation activities (as opposed to direct contribution activity). For a discussion of an adviser's obligation to adopt policies and procedures reasonably designed to prevent violations of the Advisers Act pursuant to our ''compliance rule,'' *see infra* note 207 and accompanying text.

[157] *See, e.g., SEC* v. *Morris et al.,* Litigation Release No. 21001 (Apr. 15, 2009) (the Commission's complaint alleges that placement agents acted as gatekeepers by directing investment management firms to funnel kickbacks through various entities); *In the Matter of Kent D. Nelson,* Initial Decision Release No. 371 (Feb. 24, 2009) (an administrative law judge found that an investment adviser funneled payments through a third party to the New Mexico State treasurer, acting as gatekeeper by extracting $4.4 million in finder's fees from broker-dealers and siphoning $2.9 million to the State treasurer's office to influence the office's discretionary commitment of funds, in exchange for being retained as an adviser by the State treasurer's office); (Investment Advisers Act Release No. 2868 (Apr. 17, 2009). Similar types of arrangements exist outside of the context of government investments, such as in the area of union pension funds. *See, e.g., In the Matter of Duff & Phelps Investment Management Co., Inc.,* Investment Advisers Act Release No. 1984 (Sept. 28, 2001) and related case *In re Performance Analytics, et al.,* Investment Advisers Act Release No. 2036 (June 17, 2002) (in a settled action, the Commission alleged that an investment adviser entered into an arrangement with gatekeeper broker-dealer in which the adviser would direct its trades to broker-dealer if the broker-dealer would continue to recommend the adviser to the union pension fund board, and the broker-dealer allegedly funneled payments to certain trustees on the pension fund board to preserve its role as gatekeeper and to preserve the adviser's role as adviser to the fund).

[158] For example, Adviser A advises Plan X, while Adviser B advises Plan Y. The ''gatekeeper'' may direct a political contribution from Adviser A to the elected official, who is a trustee to Plan Y, and from Adviser B to the elected official, who is a trustee to Plan X, agreeing to place both advisers on each plan's approved list. Persons reviewing records of the political contributions would have no way of determining that the contributions were swapped and that they created conflicts of interest on the part of the advisers as well as the elected officials.

[159] Regardless of whether the gatekeeper is an investment adviser, a person participating in such a scheme could, if the rule is adopted, be considered to be aiding and abetting an adviser's violation of the rule. *See* section 209(d) of the Act [15 U.S.C. 80b-9(d)] (authorizing Commission enforcement action for aiding and abetting a violation of the Advisers Act or any Advisers Act rule).

[160] Proposed rule 206(4)–5(d). *See also* section 208(d) of the Advisers Act [15 U.S.C. 80b–8(d)]; MSRB rule G–37(d).

[161] Investment pools may include, but are not limited to: mutual funds, hedge funds, private equity funds, and venture capital funds.

[162] *See, e.g., SEC* v. *Paul J. Silvester et al.,* Litigation Release No. 16759 (Oct. 10, 2000) (action in which investment adviser allegedly paid third party solicitors who kicked back a portion of the money to the former Connecticut State Treasurer in order to obtain public pension fund investments in a hedge fund managed by the adviser); *SEC* v. *William A. DiBella et al.,* Litigation Release No. 20498 (Mar. 14, 2008) (consultant was found to have aided and abetted the former Connecticut State Treasurer in a pay to play scheme involving an investment adviser to a private equity fund who had paid third-party solicitors to obtain public pension fund investments in the fund); *In the Matter of the Carlyle Group,* AGNY Investigation No. 2009–071, Assurance of Discontinuance Pursuant to Executive Law § 63(15) (May 14, 2009), *available at http://www.oag.state.ny.us/media_center/2009/may/pdfs/Carlyle%20AOD.pdf; In the Matter of Riverstone Holdings, LLC,* AGNY Investigation No. 2009–091, Assurance of Discontinuance Pursuant to Executive Law § 63(15) (June 11, 2009), *available at http://www.oag.state.ny.us/media_center/2009/june/pdfs/Riverstone%20AOD%20FINAL%20EXECUTED.pdf;* and *In the Matter of PCG Corporate Partners Advisors II, LLC,* AGNY Investigation No. 2009–101, Assurance of Discontinuance Pursuant to Executive Law § 63(15) (July 1, 2009), *available at http://www.oag.state.ny.us/media_center/2009/july/pdfs/PCG%20AOD%20FINAL%20EXECUTED.pdf* (three settled actions brought by New York Attorney General in which advisers allegedly paid third-party solicitors who kicked back a portion of the money to the former New York Deputy State Treasurer in order to obtain public pension investments in private equity funds managed by the advisers).

investment pools that implicate the concerns underlying this rulemaking:

- When an investment adviser to a pooled investment vehicle makes a contribution to a government official and the government official directs that public monies (*e.g.,* pension plan assets) be invested in that adviser's pooled investment vehicle;
- When an investment adviser to a pooled investment vehicle makes a contribution to a government official and that government official chooses that investment adviser to be an adviser to a government sponsored plan, such as a ''529 plan;'' [163] and
- When an investment adviser to a pooled investment vehicle makes a contribution to a government official and that government official chooses that adviser's pooled investment vehicle as an investment option in a government sponsored plan, such as a ''529 plan,'' [164] regardless of whether the adviser is also chosen to be the adviser to the plan.

Pay to play activities can harm public pension plans and their beneficiaries. Such activities can cause competition in the market for investments to be manipulated, which can distort the process by which investment decisions regarding public investments are made, and can result in public pension plans making inferior investments. In addition, the pension plan may pay higher fees because advisers must recoup the contributions, or because the contract negotiations are not handled on an arm's-length basis.

An adviser's participation in pay to play activities may also defraud other investors in a pooled investment vehicle. For example, in a pay to play kickback scheme, the government investor in the pooled vehicle would receive a kickback payment from the adviser while other investors in the pool may pay higher advisory fees as a result of the adviser trying to recoup the cost of the kickback. As another example, a government investor that has engaged in a pay to play scheme with an investment adviser may leverage the fact of the adviser's payment to obtain additional benefits for itself that may operate as a fraud on other investors in the pooled vehicle.

Therefore, the proposed prophylactic rule seeks to address pay to play practices by advisers managing pooled investment vehicles.[165] The proposed rule would subject an adviser to a covered investment pool to the prohibitions of proposed rule 206(4)–5 [166] so that the government entities, the pooled investment vehicles, and the other investors in that vehicle are also protected against the harms that may result when advisers engage in pay to play practices.

(2) Covered Investment Pools

The proposed rule's prohibitions would be applicable only with respect to an adviser that manages a *covered investment pool.*[167] The proposed rule would generally define ''covered investment pool'' [168] as: (i) Any investment company as defined in section 3(a) of the Investment Company Act of 1940 (''Investment Company Act''); [169] or (ii) any company that would be an investment company under section 3(a) of that Act but for the exclusion provided from that definition by section 3(c)(1), section 3(c)(7) or section 3(c)(11) of that Act.[170]

Our 1999 proposal would have applied the rule only to advisers managing private funds, such as hedge funds and private equity funds,[171] that are typically excepted from the definition of investment company by either section 3(c)(1) or 3(c)(7) of the Investment Company Act.[172] We have expanded upon that proposal to include advisers managing investment companies [173] (which are registered under the Investment Company Act [174]) as well as collective investment trusts (which are excepted from the definition of investment company by section 3(c)(11)).[175] Both of these types of collective investment pools today are used as either funding vehicles for, or investments of, government-sponsored savings and retirement plans. These plans include, for example, college savings plans (such as ''529 plans'' [176]) and retirement plans (such as ''403(b) plans'' [177] and ''457 plans'' [178]). They typically allow participants to select among pre-established investment ''options,'' or particular investment pools (often invested in registered investment companies or funds of funds, such as target date funds), that a government official has directly or indirectly selected to include as investment choices for participants.[179]

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[163] This practice would be covered under (a)(1) of the proposed rule. *See supra* section II.A.3.(a) of this release. For a specific discussion of the application to ''529 plans,'' *see* discussion below at footnotes 176–189 and related text.

[164] *See* Elliot Blair Smith, *Fund Scandal Worries Tuition Plan Investors,* USA Today (Nov. 19, 2003), at B1 (reporting that the former governor of Wisconsin received campaign contributions from the founder of a mutual fund company, and subsequently the then-governor's staff created a panel of four State employees that selected the founder's firm to manage the State's 529 plan and provide the plan's investment options).

[165] *See* proposed rule 206(4)–5(c).

[166] *Id.*

[167] *See* proposed rule 206(4)–5(c). As described below, proposed rule 206(4)–5 narrows this definition to exclude certain investment companies for the purposes of paragraph (a)(1) of the proposed rule.

[168] Proposed rule 206(4)–5(f)(3).

[169] 15 U.S.C. 80a–3(a).

[170] 15 U.S.C. 80a–3(c)(1), (7) or (11).

[171] *See* 1999 Proposing Release, *supra* note 17, at section II.A.4.

[172] 15 U.S.C. 80a–3(c)(1) and (7).

[173] 15 U.S.C. 80a–3(a).

[174] 15 U.S.C. 80a–8.

[175] 15 U.S.C. 80a–3(c)(11). We note that a bank maintaining a collective investment trust would not be subject to the proposed rule if the bank falls within the exclusion from the definition of ''investment adviser'' in Section 202(a)(11)(A) of the Advisers Act [15 U.S.C. 80b–2(a)(11)(A)]. A person who falls within the definition of an investment adviser that provides advisory services with respect to a collective investment trust in which a government entity invests, however, would be subject to the rule's prohibitions.

[176] A 529 plan is a ''qualified tuition plan'' established under Section 529 of the Internal Revenue Code of 1986 [26 U.S.C. 529]. States generally establish 529 plans as State trusts which are considered instrumentalities of States for Federal securities law purposes. As a result, the plans themselves are generally not regulated under the Federal securities laws and many of the protections of the Federal securities laws do not apply to investors in them. *See* Section 2(b) of the Investment Company Act [15 U.S.C. 80a–2(b) and Section 202(b) of the Advisers Act [15 U.S.C. 80b–2(b) (exempting State-owned entities from those statutes). However, the Federal securities laws do generally apply to, and the Commission does generally regulate, the brokers, dealers, and municipal securities dealers that effect transactions in interests in 529 plans. *See generally* Sections 15(a)(1) and 15B of the Securities Exchange Act of 1934 [15 U.S.C. 78a–15(a)(1) and 15B] (''Exchange Act''). A bank effecting transactions in 529 plan interests may be exempt from the definition of ''broker'' or ''municipal securities dealer'' under the Exchange Act if it can rely on an exception from the definition of broker in the Exchange Act. In addition, State sponsors of 529 plans may hire third-party investment advisers either to manage 529 plan assets on their behalf or to act as investment consultants to the agency responsible for managing plan assets. These investment advisers, unless they qualify for a specific exemption from registration under the Advisers Act, are generally required to be registered with the Commission and would therefore be subject to our proposed rule.

[177] A 403(b) plan is a tax-deferred employee benefit retirement plan established under Section 403(b) of the Internal Revenue Code of 1986 [26 U.S.C. 403(b)].

[178] A 457 plan is a tax-deferred employee benefit retirement plan established under Section 457 of the Internal Revenue Code of 1986 [26 U.S.C. 457].

[179] For example, many 529 plans allow plan participants to select among various underlying investment options to direct the investment of their contributions. The participants' contributions are then invested in options of the 529 plan and the plan, in turn, invests its assets in the investment companies or other investments on which the plan options are based. The Internal Revenue Code requires that in order to set up a 529 plan investor contributions must be held in a qualified trust. *See* 26 U.S.C. 529(b). Often, the adviser to the 529 plan also advises the registered investment companies that serve as the underlying investment options for the plan. Sometimes, however, registered investment companies advised by investment advisers that do not provide advisory services directly to the government entity may serve as the underlying investment options for the plan.

Government-sponsored savings plans have grown enormously in recent years.[180] Competition for an adviser's fund to be selected as an investment option in government-sponsored savings plans is keen,[181] and we are concerned that advisers to pooled investment vehicles are making political contributions to influence the decision by government entities of the funds to be included as options in such plans. Of course, as discussed above,[182] proving such a direct *quid pro quo* or intent to influence in a specific case often will not be possible. As previously stated, it is precisely because of that difficulty that a prophylactic rule is needed.[183] We are concerned about the harmful effects pay to play activities may have in this context on these government-sponsored plans and their beneficiaries. Plans and their beneficiaries may be harmed, for example, if because of an adviser's political contributions, a government official causes a government-sponsored plan to invest in a fund managed by that adviser that charges higher fees or is less well managed than a fund that may have been chosen on the basis of pure merit. In addition, pay to play practices could be particularly damaging in the 529 context if a State offers only one, or very few, investment options to its participants.[184] Accordingly, we are proposing to include these other pooled investment vehicles often managed by investment advisers.

Under the rule, each of the pay to play prohibitions (with one exception discussed below) would be equally applicable to an investment adviser that manages assets of a government entity through the entity's investment in a covered investment pool managed by that adviser. For example, if an investment adviser subject to our rule makes a campaign contribution to an official of a government entity in a position to influence the decision to invest government assets in a private equity fund managed by that adviser, the investment adviser would be prohibited from receiving compensation with respect to the government entity's investment in the private equity fund.

In the case of an adviser to a publicly-offered registered investment company, however, we propose to apply the two-year ''time out'' provision only when the investment company is included in a plan or program of a government entity (*e.g.,* a 529 plan).[185] When a government entity invests in publicly-offered securities of a registered investment company, we are generally less concerned that the investment company's adviser would be motivated by pay to play considerations if, for example, the adviser has not bid for, or solicited, the government entity's business. Moreover, in many circumstances in which a government entity determines to make an investment in an investment company for cash management or other purposes, the adviser may not even be aware that a government entity has made an investment.[186] We are mindful that subjecting advisers and their covered associates to the two-year ''time out'' in these situations could create substantial compliance challenges because the adviser would have to monitor investments by these government entities in its investment companies to ensure that a contribution by the adviser or its covered associates did not trigger a time out. In contrast, we have included an exception that would subject to the two-year time out provision an adviser to a publicly offered registered investment company that is included in a plan or program of a government entity because we believe pay to play concerns are more likely to be present in that situation, and advisers will clearly know that the government entity is a client or investor in the adviser's investment company. As noted above, significant competition exists among advisers to have their funds selected as investment options in government-sponsored savings plans, which we believe may contribute to the risk of pay to play.[187]

We believe it is appropriate, however, to apply the other two substantive prohibitions of the proposed rule[188] to advisers to pooled investment vehicles regardless of whether it is included in a plan or program of a government entity. We believe the same concerns regarding pay to play are raised under those prohibitions whether the adviser is managing the government entities' assets directly or through a pooled investment vehicle.

For example, an investment adviser subject to our proposed rule that manages a registered investment company would be prohibited from compensating a third party to solicit an investment by a government entity in the fund or soliciting others to make contributions to officials of a government entity that the adviser seeks to have invest in the fund. For purposes of the two-year time out, however, a mutual fund adviser would *not* need to screen for investments from government entities to determine if a disqualifying campaign contribution has been made if the fund is used for investment of a State government's general assets or for investment by the State's pension fund. If the registered investment company is to be included in that State's 529 plan, however, the investment adviser *would* be subject to the two-year time out on contributions.[189]

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[180] *See* Investment Company Institute, *529 Plan Program Statistics, Dec. 2008* (May 22, 2009), *available at http://www.ici.org/research/stats/529s/529s_12-08* (indicating that 529 plan assets have increased from $8.6 billion in 2000 to $104.9 billion in the fourth quarter of 2008, and that 529 plan participants have increased from 1.3 million in 2000 to 11.2 million in the fourth quarter of 2008); Investment Company Institute, *The U.S. Retirement Market, 2008,* 18 Research Fundamentals, No. 5 (June 2009), *available at http://www.ici.org/pdf/fm-v18n5.pdf* (indicating that 403(b) plan and 457 plan assets have increased from $627 billion in 2000 to $712 billion in the fourth quarter of 2008); SEI, *Collective Investment Trusts: The New Wave in Retirement Investing* (May 2008), *available at https://longjump.com/networking/RepositoryPublicDocDownload?id=80031025axe1395095578&docname=SEI%20CIT%20White%20Paper%205.08.pdf&cid=80031025&encode=application/pdf* (citing Morningstar data indicating that collective investment trust assets nearly tripled from 2004 to 2007 and grew by more than 150 percent between 2005 and 2007 alone).

[181] *See, e.g.,* Charles Paikert, *TIAA–CREF Stages Comeback in College Savings Plans,* Crain's New York Business (Apr. 23, 2007) (depicting TIAA–CREF's struggle to remain a major player in managing State 529 plans because of increasing competition from the industry's heavyweights); Beth Healy, *Investment Giants Battle for Share of Exploding College-Savings Market,* Boston Globe (Oct. 29, 2000), at F1 (describing the increasing competition between investment firms for State 529 plans and increasing competition to market their plans nationally).

[182] *See supra* notes 16 and 55 and accompanying text.

[183] *See, e.g. Blount, supra* note 16, at 945.

[184] *See, e.g., Restrictions Lessen Benefits of State College Savings Plans,* USA Today (Dec. 1, 2003), at A20 (''[M]any States offer only a few investment options * * * [and] limit investors to a single fund company. * * * While plans vary, States typically have negotiated an exclusive deal with one fund company.'').

[185] Proposed rule 206(4)–5(c), (f)(3). Accordingly, the time out provision *would* be applicable, for example, if a particular mutual fund is selected to be an investment option for participants in a 529 plan; the time out provision would *not* be applicable if a State government invested its pension fund assets in that same mutual fund. We define a ''plan or program of a government entity'' in the proposed rule as any investment program or plan sponsored or established by a government entity, including, but not limited to, a ''qualified tuition plan,'' such as a 529 plan, a retirement plan, such as a 403(b) plan or 457 plan, or any similar program or plan. Proposed rule 206(4)–5(f)(8).

[186] In contrast, where securities are privately placed, such as securities of a private fund, the adviser (and through its compliance program, its personnel) should be aware that an investment from a government entity is being solicited and should therefore be in a position to refrain from making contributions that would trigger a ''time out'' with respect to receiving compensation from that government entity.

[187] *See supra* note 180 and accompanying text.

[188] Proposed rule 206(4)–5(a)(2)(i) and (ii).

[189] The proposed rule would prohibit the receipt of compensation from the investment company by

Continued

We request comment on the definition of covered investment pool under the proposed rule. Should we also apply the rule in the context of government investments in structured finance vehicles in which public funds may invest? [190] Should we, alternatively or in addition, limit the applicability of the proposed rule's prohibitions in the context of registered investment companies to circumstances under which the government entity's investment is of a sufficiently large size such that the fund adviser is more likely to have an incentive to attempt to influence the government entity's decision-making process? If so, how should we define that threshold? Should we, for example, base it on the amount of assets in the fund, such as 5 percent of the fund's assets? Should we treat differently under the rule advisers to funds in plans where the adviser is not the sole or primary adviser to the plan or where a different adviser's funds are included as investment options under the plan? For example, are there sub-advisory arrangements in which a sub-adviser would not know or be able to influence whether, or which, government entities are being solicited for a covered investment pool? If so, how should we define those sub-advisers? Should we circumscribe the rule's applicability so it is not triggered in the context of government entity investments in particular types of funds, such as money market funds, where the ability of the adviser to profit might be attenuated because, for example, those particular types of funds tend to generate lower margin or investments tend to be for relatively short terms? Should we provide exceptions to the provision subjecting an adviser to a two-year ''time out'' from receiving compensation in the context of specific types of government entity investments (such as short-term investments for cash management)?

(3) Applying the Compensation Limit to Covered Investment Pools

If a government entity is an investor in a covered investment pool at the time the contribution triggering a two-year ''time out'' is made, the proposed rule would require the adviser to forgo any compensation related to the assets invested or committed by that government entity.[191] We recognize the provisions of the proposed rule that would require the adviser to either waive its fee or terminate the relationship raise different issues for investment pools than for separately managed accounts due to various structural and legal differences.

In the case of a private fund, the adviser typically could waive or rebate the related fees and any performance allocation or carried interest.[192] The adviser may also seek to cause the pooled investment vehicle to redeem the investment of the government entity. For many private funds, such as venture capital and private equity funds, it may not be possible for a government entity to withdraw its capital or cancel its commitment without harm to the other investors. We request comment on ways to prevent advisers to these funds from benefitting from contributions covered by the two-year time out, while protecting other investors in the funds.

The options for restricting compensation involving government investors in registered investment companies are more limited, due to both Investment Company Act provisions and potential tax consequences.[193] One approach that would meet the requirements of the proposed rule would be for the adviser of a registered investment company to waive its advisory fee for the fund as a whole in an amount approximately equal to fees attributable to the government entity.[194] We request comment on other options that may be available, including alternatives that might require us to revise the proposed rule.

An adviser to a covered investment pool that serves as an investment option in a government program such as a 529 plan might seek to eliminate its investment pool as an option in order to comply with or mitigate costs arising from the rule's two-year ''time out.'' As a result, plan investors may be denied an appropriate investment alternative. Would elimination of the option be an inappropriate consequence we should seek to prevent? Have we appropriately applied the rule to curb pay to play activities (that may be effectuated, for example, through revenue sharing arrangements) while still permitting funds to be marketed and distributed to government entities in the ordinary course of business through compensated third parties, such as registered broker-dealers?

(f) Exemptions

We are proposing a provision under which an adviser may apply to us for an order exempting it from the two-year compensation ban.[195] Under the proposed rule, the Commission could

the investment adviser, not the inclusion of the investment company in the 529 plan, and would also prohibit the receipt of any advisory fee to which the adviser is entitled if it is also a direct adviser to the 529 plan.

We note that a firm retained by a government entity to distribute interests in a 529 plan (*i.e.,* municipal fund securities) may be subject to MSRB rules. *See* Municipal Securities Rulemaking Board, *Interpretive Notice: Rule D–12: Interpretation Relating to Sales of Municipal Fund Securities in the Primary Market* (Jan. 18, 2001), *available at http://www.msrb.org/msrb1/rules/NewRuleD-12Interpretation.htm.* Such a distributor may have an affiliated investment adviser that is retained by the government entity to provide investment advice to the 529 plan. Thus, the distributor could be subject to MSRB rules G–37 and G–38, while the affiliated investment adviser could be subject to our proposed rule, if adopted. As we note above, the investment adviser's fiduciary obligations could require it to continue to provide investment advice without compensation after it or a covered associate gives a contribution that triggers our proposed rule's two-year ''time out'' while MSRB rule G–37 typically would ban a firm from continuing to engage in municipal securities business for two years after a triggering contribution is made. *See supra* note 80. However, the MSRB has provided additional flexibility in the context of contracts to distribute securities such as interests in 529 plans. *See* Municipal Securities Rulemaking Board, *Interpretation on the Effect of a Ban on Municipal Securities Business under Rule G–37 Arising During a Pre-Existing Engagement Relating to Municipal Fund Securities* (Apr. 2, 2002), *available at http://www.msrb.org/msrb1/rules/notg37.htm* (allowing a dealer that has become subject to G–37's ban on new municipal securities business to continue receiving compensation throughout the duration of the ban if certain conditions are met). We are not proposing a similar approach under our rule because it would undermine the deterrent effect of having a two-year time out.

[190] These might include, for example, pools exempt from the definition of ''investment company'' under Section 3(c)(5) or (6) of the Investment Company Act [15 U.S.C. 80a–3(c)(5) and (6)] and pools relying on rule 3a–7 under the Investment Company Act. [17 CFR 270.3a–7]. Pursuant to our proposed definition of ''covered investment pool,'' the rule would apply to an investment by a government entity in a structured finance vehicle that relies on Section 3(c)(1) or 3(c)(7) of the Investment Company Act [15 U.S.C. 80a–3(c)(1) and (7)]. *See* proposed rule 206(4)–5(f)(3).

[191] *See* discussion at Section II.A.3.(a)(1), *supra.* We note that the phrase ''for compensation'' includes both profits and the recouping of costs, so the proposed rule would not permit an adviser to continue to manage assets at cost after a disqualifying contribution is made.

[192] Some commenters on our 1999 Proposal noted that a performance fee waiver raises various calculation issues. An adviser making a disqualifying contribution could comply with the proposed rule by waiving a performance fee or carried interest determined on the same basis as the fee or carried interest is normally calculated, *e.g.,* on a mark-to-market basis. For arrangements like those typically found in private equity and venture capital funds where the fee or carry is calculated based on realized gains and losses and mark-to-market calculations are not feasible, advisers could use a straight line method of calculation which assumes that the realized gains and losses were earned over the life of the investment.

[193] *See, e.g.,* Rule 18f–3 under the Investment Company Act. Moreover, other regulatory considerations, such as the Employee Retirement Income Security Act of 1974 [29 U.S.C. 18] (''ERISA''), may impact these arrangements with respect to collective investment trusts.

[194] This may also be done at the class level or series level for private funds organized as corporations.

[195] Rules 0–4, 0–5, and 0–6 under the Advisers Act [17 CFR 275.0–4, 0–5, and 0–6] provide procedures for filing applications under the Act, including applications under the proposed rule.

exempt advisers from the rule's ''time out'' requirement where the adviser discovers contributions that trigger the compensation ban only after they have been made or when imposition of the prohibitions is unnecessary to achieve the rule's intended purpose.[196]

In determining whether to grant an exemption from the two-year compensation ban, we would take into account the varying facts and circumstances that each application presents. Further, we would consider: (i) Whether the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Advisers Act; (ii) whether the investment adviser, (A) before the contribution resulting in the prohibition was made, adopted and implemented policies and procedures reasonably designed to prevent violations of this section; (B) prior to or at the time the contribution which resulted in such prohibition was made, had no actual knowledge of the contribution; and (C) after learning of the contribution, (1) has taken all available steps to cause the contributor involved in making the contribution which resulted in such prohibition to obtain a return of the contribution; and (2) has taken such other remedial or preventive measures as may be appropriate under the circumstances; (iii) whether, at the time of the contribution, the contributor was a covered associate or otherwise an employee of the investment adviser, or was seeking such employment; (iv) the timing and amount of the contribution which resulted in the prohibition; (v) the nature of the election (*e.g.,* Federal, State or local); and (vi) the contributor's apparent intent or motive in making the contribution which resulted in the prohibition, as evidenced by the facts and circumstances surrounding such contribution.[197]

These factors are similar to those considered by FINRA and the appropriate bank regulators in determining whether to grant an exemption under MSRB rule G–37(i).[198] As suggested above, when applying the criteria, we expect to take into account, among other things, the varying facts and circumstances presented by each application. The factors are intended to assist us in determining whether granting relief is appropriate. For example, one factor relates to whether the adviser had and implemented reasonably designed policies and procedures. Several other factors relate to the adviser's knowledge of the contribution and its conduct after the contribution was discovered. The remaining factors largely relate to the particular facts surrounding the contribution that may affect whether it is appropriate for us to grant relief in that situation. For example, the same amount of money contributed in a local election may have a much greater impact than in a Federal election. Facts regarding the timing and amount of the contribution, the contributor's employment status at the time of the contribution, as well as the contributor's apparent intent or motive may suggest whether the contribution was made to influence the selection of the adviser. We would apply these exemptive provisions with sufficient flexibility to avoid consequences disproportionate to the situation, while effecting the policies underlying the rule.[199] Should we provide for additional exemptions from the proposed rule? We request comment on the proposed criteria for exemptions by application. Are there additional criteria the Commission should explicitly consider when determining whether to grant an exemption?

B. Recordkeeping

We are also proposing amendments to rule 204–2 [200] to require an investment adviser that is registered or required to be registered with us and (i) has or seeks government clients or (ii) provides investment advisory services to a covered investment pool in which a government entity investor invests or is solicited to invest, to make and keep certain records of contributions made by the adviser and its covered associates. We believe these records would be necessary to allow us to examine for compliance with rule 206(4)–5, if adopted.

The proposed amendments would require an adviser to make and keep the following records: (i) The names, titles and business and residence addresses of all covered associates of the investment adviser; (ii) all government entities for which the investment adviser or any of its covered associates is providing or seeking to provide investment advisory services, or which are investors or are solicited to invest in any covered investment pool to which the investment adviser provides investment advisory services, as applicable; [201] (iii) all government entities to which the investment adviser has provided investment advisory services, along with any related covered investment pool(s) to which the investment adviser has provided investment advisory services and in which the government entity has invested, as applicable, in the past five years, but not prior to the effective date of the proposed rule; [202] and (iv) all direct or indirect contributions or payments made by the investment adviser or any of its covered associates to an official of a government entity, a political party of a State or political subdivision thereof, or a PAC.[203] The adviser's records of contributions and payments would be required to be listed in chronological order identifying each contributor and recipient, the amounts and dates of each contribution or payment and whether such contribution or payment was subject to the exception for certain returned contributions pursuant to proposed rule 206(4)–5(b)(2).[204] These requirements are generally consistent with the MSRB recordkeeping rule for broker-dealers.[205]

Should we exclude *de minimis* contributions from the recordkeeping requirement? Should we expand our recordkeeping requirements to cover records of contributions or payments not just to government officials and political parties, but also persons associated with officials of government entities, regardless of whether contributions or payments to these individuals trigger the prohibitions

[196] This provision is similar to our 1999 proposal.

[197] Proposed rule 206(4)–5(e). If the proposed rule is adopted, we would grant such exemptions pursuant to our authority under Section 206A of the Advisers Act [15 U.S.C. 80b–6a].

[198] *See* MSRB rule G–37(i).

[199] An adviser applying for an exemption could place advisory fees earned between the date of the contribution triggering the prohibition and the date on which we determine whether to grant an exemption in an escrow account. The escrow account would be payable to the adviser if the Commission grants the exemption. If the Commission does not grant the exemption, the fees contained in the account must be returned to the public fund.

[200] 17 CFR 275.204–2.

[201] We note that an adviser may identify its clients on its books through the use of codes. *See* Advisers Act rule 204–2(d) [17 CFR 275.204–2(d)].

[202] *See id.*

[203] Proposed rule 204–2(a)(18)(i). We note that this provision is intended to include records of direct contributions an adviser or its covered associates makes under proposed rule 206(4)–5(a)(1), as well as records of contributions or payments an adviser or its covered associates coordinates or solicits another person or PAC to make under proposed rule 206(4)–5(a)(2)(ii), which would be considered indirect contributions or payments.

[204] Proposed rule 204–2(a)(18)(ii).

[205] MSRB rule G–8(a)(xvi). Like rule G–37, the proposed rule requires an investment adviser to keep, in addition to records of political contributions, records of any other ''payments'' made to officials, political parties or PACs. *See* proposed amendment to rule 204–2(a)(18)(i)(D). *See also supra* note 149 and accompanying text for an explanation of how the rule distinguishes between contributions and payments. The MSRB also requires certain records to be made and kept in accordance with disclosure requirements that our proposed rule does not contain.

contained in our proposed pay to play rule? [206]

To manage compliance with the proposed rule effectively, we would expect that the adviser would adopt sufficient internal procedures—which would include keeping certain records—to prevent the rule's prohibitions from being triggered.[207] As discussed above, a single contribution could, under the rule, lead to a two-year suspension of compensated advisory activities for a government client. Therefore, we anticipate that many, if not all, of the records that we propose to require registered advisers make and keep under our proposed amendments would be those an adviser undertaking a serious compliance effort would ordinarily make and keep. We request that commenters opposing the new recordkeeping requirements suggest alternative means that would be sufficient to aid examinations for compliance with the proposed rule.

C. Amendment to Cash Solicitation Rule

We are also proposing a technical amendment to rule 206(4)–3 under the Advisers Act, the ''cash solicitation rule.'' That rule makes it unlawful, except under specified circumstances and subject to certain conditions, for an investment adviser to make a cash payment to a person who directly or indirectly solicits any client for, or refers any client to, an investment adviser.[208]

Because paragraph (iii) of rule 206(4)–3 contains provisions regarding more general restrictions on third-party solicitors that would cover solicitation activities directed at any client—whether a government entity client or not—our proposed technical amendment would be designed to note the specialized provisions prohibiting payments by an adviser to third-party solicitors of government clients that are contained in proposed rule 206(4)–5. Specifically, we propose to add a new paragraph (e) to rule 206(4)–3 to alert advisers and others that special prohibitions apply to solicitation activities involving government entity clients under our proposed pay to play rule.[209]

D. Transition Period

The prohibition and recordkeeping requirements under the proposed rule would arise from contributions made on or after the effective date of the rule, if adopted. As a result, firms would need to have developed and adopted appropriate procedures to track contributions and would need to begin monitoring contributions made by their covered associates on that date. The Commission requests comment on whether firms would require additional time to develop procedures to comply with the proposed rule and, if so, how long of a transition period following the rule's adoption would be necessary? For example, if a transition period is necessary, would 90 days be an appropriate amount of time? Would longer be necessary, *e.g.*, six months, and if so, why?

E. General Request for Comment

Any interested persons wishing to submit written comments on the proposed rule and rule amendment that are the subject of this Release, or to suggest additional changes or submit comments on other matters that might have an effect on the proposals described above, are requested to do so. Commenters suggesting alternative approaches are encouraged to submit proposed rule text.

III. Cost/Benefit Analysis

We are sensitive to the costs and benefits imposed by our rules, and understand that there would be compliance costs with proposed rule 206(4)–5 and the proposed amendment to rule 204–2.[210] We are mindful of the burdens the proposed rule would place on advisory firms and limitations it would place on the ability of certain persons associated with an adviser to make contributions to candidates for certain offices and to solicit contributions for certain candidates and payments to political parties. We thus have narrowly tailored the rule to achieve our goal of ending adviser participation in pay to play practices, while seeking to limit these burdens.

The proposed rule and rule amendments would address ''pay to play'' practices by investment advisers that provide, or are seeking to provide, advisory services to government entity clients and to certain covered investment pools in which a government entity invests. The proposed rule would prohibit an investment adviser from providing advisory services for compensation to a government client for two years after the adviser or certain of its executives or employees make a contribution to certain elected officials or candidates. The proposed rule would also prohibit an adviser from providing or agreeing to provide, directly or indirectly, payment to any third party for a solicitation of advisory business from any government entity, or for a solicitation of a government entity to invest in certain covered investment pools, on behalf of such adviser. Additionally, the proposed rule would prevent an adviser from coordinating or soliciting from others contributions to certain elected officials or candidates or payments to certain political parties. Our proposed amendment to rule 204–2 would require a registered adviser (or adviser required to be registered) to maintain certain records of the political contributions made by the adviser or certain of its executive or employees.

A. Benefits

As discussed extensively throughout this release, we expect that proposed rule 206(4)–5 would yield several important direct and indirect benefits. At its core, the rulemaking addresses practices that undermine the integrity of our markets. Overall, the proposed rule is intended to address pay to play relationships that interfere with the legitimate process by which advisers are chosen based on the merits rather than on their contributions to political officials. The potential for fraud to invade the various, intertwined relationships created by pay to play arrangements is without question. Accordingly, we believe that the proposed rule will achieve its goals of protecting public pension plans, beneficiaries, and other investors from the resulting harms.

Curtailing pay to play practices will help protect public pension plans and investments of the public in government-sponsored savings and retirement plans and programs by addressing situations in which a more qualified adviser may not be selected, potentially leading to inferior management, diminished returns or greater losses. By addressing pay to play practices, we would be leveling the playing field so that the advisers selected to manage retirement funds and other investments for the public are more likely to be selected based on their skills and the quality of their advisory services. These benefits could result in substantial savings and better performance for the public pension

[206] *See supra* note 89 and accompanying text.

[207] *See* Advisers Act rule 206(4)–7 [17 CFR 275.206(4)–7] (setting forth guidelines for advisers' compliance policies and procedures).

[208] 17 CFR 275.206(4)–3.

[209] Proposed rule 206(4)–3(e).

[210] We are also proposing to make a conforming technical amendment to rule 206(4)–3 to address potential areas of conflict with proposed rule 206(4)–5. We do not expect that this technical amendment will affect the costs associated with the rulemaking.

plans, their beneficiaries, and participants.[211]

By leveling the playing field among advisers competing for State and local government business, the proposed rule could also eliminate or minimize manipulation of the market for advisory services provided to State and local governments. Payments made to third-party solicitors as part of pay to play practices create artificial barriers to competition for firms that cannot, or will not, make those contributions or payments. They also create increased costs for firms that may feel they have no alternative but to pay to play. Additionally, pay to play practices potentially expose an adviser to other costs, such as liability, defense costs and distraction from its duties. Curtailing pay to play arrangements enables advisory firms, particularly smaller advisory firms, to compete on merit, rather than their ability or willingness to make contributions.

Moreover, the absence of arm's-length negotiations may enable advisers to obtain greater ancillary benefits, such as ''soft dollars,'' from the advisory relationship, which may be directed for the benefit of the adviser, potentially at the expense of the pension plan, thereby using a pension plan asset for the adviser's own purposes.[212] Additionally, taxpayers could benefit because they might otherwise bear the financial burden of bailing out a government pension fund that has ended up with a shortfall due to poor performance or excessive fees that might result from pay to play.

Applying the proposed rule to government entity investments in certain pooled investment vehicles or where a pooled investment vehicle is an investment option in a government-sponsored plan or program would extend the same benefits regardless of whether an adviser subject to the proposed rule is providing advice directly to the government entity or is managing assets for the government entity indirectly through a pooled investment vehicle. By addressing distortions in the process by which investment decisions are made regarding public investments, we will provide important protections to public pension plans and their beneficiaries, as well as participants in other important plans or programs sponsored by government entities. Other investors in a pooled investment vehicle also will be better protected from, among other things, the effects of fraud that may result from an adviser's participation in pay to play activities, such as higher advisory fees.

Finally, the proposed amendments to rule 204–2 would benefit the public plans and their beneficiaries and participants in State plans or programs as well as investment advisers that keep the required records. The public pension plans, beneficiaries, and participants would benefit from these amendments because the records required to be kept would provide Commission staff with information to review an adviser's compliance with proposed rule 206(4)–5 and thereby may promote improved compliance. Advisers would benefit from the proposed amendments to the recordkeeping rule as these records would assist the Commission in enforcing the rule against, for example, competitors whose pay to play activities, if not uncovered, could adversely affect the competitive position of a compliant adviser.

B. Costs

The proposed rule and rule amendments would impose costs on advisers that provide advisory services to government clients, though we have tried to minimize the costs associated with an inadvertent violation of proposed rule 206(4)–5 by including an exception for certain returned contributions. The proposed rule would require an adviser with government clients, and an adviser that solicits business from government clients, to incur costs to monitor contributions made by the adviser and its covered associates, and to establish procedures to comply with the proposed rule and rule amendments. The initial and ongoing compliance costs imposed by the proposed rule would vary significantly among firms, depending on a number of factors. These include the number of covered associates of the adviser, the degree to which compliance procedures are automated, the extent to which an adviser has a pre-existing policy under its code of ethics or compliance program,[213] and whether the adviser is affiliated with a broker-dealer firm that is subject to rules G–37 and G–38. A smaller adviser, for example, would likely have a small number of covered associates, and thus expend less resources to comply with the proposed rule and rule amendments than a larger adviser.

A large adviser is likely to spend more resources to comply with the rule than a smaller adviser. However, based on staff observations, a large adviser is more likely to have an affiliated broker-dealer that is required to comply with MSRB rules G–37 and G–38.[214] Such a large adviser could likely use some or all of the compliance procedures established by its broker-dealer affiliate to facilitate its compliance with proposed rule 206(4)–5. As a result, many advisers with broker-dealer affiliates may spend less resources to comply with the proposed rule and rule amendments.[215]

We anticipate that advisory firms subject to proposed rule 206(4)–5 would develop compliance procedures to monitor the political contributions made by the adviser and its covered associates. We estimate that the costs imposed by the proposed rule would be higher initially, as firms establish and implement procedures and systems to comply with the rule and rule amendments. It is anticipated that compliance expenses would then decline to a relatively constant amount in future years, and annual expenses are likely to be lower for small advisers as the systems and processes should be less complex than for a large adviser.

We estimate that approximately 1,764 investment advisers registered with the Commission may be affected by the proposed rule and rule amendments.[216]

[211] According to U.S. census data as of 2007, there are 2,547 State and local government employee retirement systems.

[212] *See supra* note 51.

[213] *See* Investment Counsel Association of America Comment Letter (May 15, 2000) (''May ICAA Comment Letter'') (''According to our members, many investment advisers already have policies and procedures in place to report contributions under State and local law and to avoid pay to play issues.'').

[214] According to registration information available from Investment Adviser Registration Depository (''IARD'') as of July 1, 2009, there are 1,312 SEC-registered investment advisers (or 11.57% of the total 11,340 registered advisers) that indicate in Item 5.D.(9) of Form ADV that they have State or municipal government clients. Of those 1,312 advisers, 108 (or 82.4%) of the largest 10% have one or more affiliated broker-dealers or are, themselves, also registered as a broker-dealer; and 202 of the largest 20% (or 87.1%) have one or more affiliated broker-dealers or are, themselves, also registered as a broker-dealer. Conversely, only 46 (or 35.1%) of the smallest 10% have one or more affiliated broker-dealers or are, themselves, also registered as a broker-dealer; and only 72 of the smallest 20% (or 31.0%) have one or more affiliated broker-dealers or are, themselves, also registered as a broker-dealer. With respect to broker-dealer affiliates, however, we note that our IARD data does not indicate whether the affiliated broker-dealer is a municipal securities dealer subject to MSRB rules G–37 and G–38.

[215] *Cf.* Comment Letter of US Bancorp Piper Jaffray (Nov. 15, 1999) (''U.S. Bancorp Letter'') (''[T]he more the Rule mirrors G–37, the more firms can borrow from or build upon compliance procedures already in place. * * * [H]owever, [there are] many differences between the rules that would result in significant new burdens.'').

[216] This number is based on registration information available from IARD as of July 1, 2009. As noted previously, there are 1,312 SEC-registered investment advisers (or 11.57% of the total 11,340

Continued

Of the 1,764 advisers, we estimate that approximately 1,300 advisers have fewer than five covered associates that would be subject to the proposed rule each, a ''smaller firm''; approximately 328 advisers have between five and 15 covered associates each, a ''medium firm''; and approximately 136 advisers have more than 15 covered associates that would be subject to the prohibitions of the proposed rule each, a ''larger firm'' [217].

Advisers that are unregistered in reliance on the exemption available under section 203(b)(3) of the Advisers Act [15 U.S.C. 80b–3(b)(3)] would be subject to proposed rule 206(4)–5.[218] Based on our review of registration information on IARD and outside sources and reports, we estimate that there are approximately 2,000 advisers that are unregistered in reliance on section 203(b)(3).[219] Applying the same principles we used with respect to registered investment advisers, we estimate that 231 of those advisers manage pooled investment vehicles in which government client assets are invested and would therefore be subject to the proposed rule.[220]

For purposes of this analysis, it is assumed that each exempt advisory firm that would be subject to the proposed rule would likely either be smaller firms or medium firms, in terms of number of covered associates because it is unlikely that an adviser that is limited to fewer than 15 clients would have a large number of advisory personnel that would be covered associates.[221]

Although the time needed to comply with the proposed rule would vary significantly from adviser to adviser, the Commission staff estimates that firms with government clients would spend between 8 hours and 250 hours to establish policies and procedures to comply with the proposed rule. Commission staff further estimates that ongoing compliance with the proposed rule would require between 10 and 1,000 hours, annually. These estimates are derived in part from conversations with industry professionals regarding broker-dealer compliance with rule G–37 and G–38 and representatives of investment advisers that have pay to play policies in place. In addition, advisory firms may incur one-time costs to establish or enhance current systems to assist in their compliance with the proposed rule. These costs would vary widely among firms. Small advisers may not incur any system costs if they determine a system is unnecessary due to the limited number of employees they have or the limited number of government entity clients they have. Large firms likely already have devoted significant resources into automating compliance and reporting and the new rule could result in enhancements to these existing systems. We believe such system costs could range from the tens of thousands of dollars for simple reporting systems, to hundreds of thousands of dollars for complex systems used by the large advisers. As we noted previously, large advisers are more likely to have broker-dealer affiliates that may already have compliance systems in place for MSRB rules G–37 and G–38 that could be used by an adviser.

Initial compliance procedures would likely be designed, and ongoing administration of them performed, by compliance managers and compliance clerks. We estimate that the hourly wage rate for compliance managers is $258, including benefits, and for compliance clerks, $63 per hour, including benefits.[222] To establish and implement adequate compliance procedures, we estimate that the proposed rule would impose initial compliance costs of approximately $2,064 [223] per smaller firm, approximately $26,156 [224] per medium firm, and approximately $52,313 [225] per larger firm.[226] It is estimated that the proposed rule would impose annual, ongoing compliance

registered advisers) that indicate in Item 5.D.(9) of Form ADV that they have State or municipal government clients. Based on this data point and other responses to Item 5.D., we further estimate that 289 (or 11.57%) of the 2,502 registered investment advisers that manage ''other pooled investment vehicles'' (and do not also indicate that they have State or municipal government clients) are advising pooled investment vehicles in which government clients invest, and we estimate that 79 (or 11.57%) of the 679 registered investment advisers that manage registered investment companies (and do not also indicate that they have State or municipal government clients) are advising registered investment companies that are available as an investment option in a government plan or program. The sum of 1,312, 289 and 79 is 1,680. The proposed rule also applies to those advisers that seek to obtain government clients, and we do not know the precise number of such advisers. We believe, however, that the percentage of advisers is likely not great because, according to IARD data, there has not been any appreciable growth or shrinkage over the past five years in the percentage of SEC-registered advisers who have State or municipal government clients; the percentage has been almost unchanged. Accordingly, we estimate that an additional 5% (or 84) of SEC-registered advisers are seeking government clients, for a total of 1,764 (1,680 + 84) registered advisers subject to the proposed rule.

[217] These estimates are based on IARD data, specifically the responses to Item 5.B.(1) of Form ADV, that 967 (or 73.7%) of the 1,312 registered investment advisers that have government clients have fewer than five employees who perform investment advisory functions related to those government clients, 244 (or 18.6%) have five to 15 such employees, and 101 (or 7.7%) have more than 15 such employees. We then applied those percentages to the 1,764 advisers we believe will be subject to the proposed rule for a total of 1,300 smaller, 328 medium and 136 larger firms.

[218] The proposed amendments to rules 204–2 and 206(4)–3 would apply only to advisers that are registered, or required to be registered, with the Commission.

[219] This number is based on our review of registration information on IARD as of July 1, 2009, IARD data from the peak of hedge fund adviser registration in 2005, and a distillation of numerous third-party sources including news organizations and industry trade groups.

[220] 11.57% of 2000 is 231.4. *See supra* note 216.

[221] *See* section 203(b)(3) of the Advisers Act [15 U.S.C. 80b–3(b)(3)].

[222] Our hourly wage rate estimate for a compliance manager and compliance clerk is based on data from the *Securities Industry Financial Markets Association's Management & Professional Earnings in the Securities Industry 2008,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

[223] The per firm cost estimate is based on our estimate that development of initial compliance procedures for smaller firms would take 8 hours of compliance manager time (at $258 per hour).

[224] With respect to our estimated range of 8–250 hours, we assume a medium-sized firm would take 125 hours to develop initial compliance procedures, and such a firm would likely have support staff. We also anticipate that a compliance manager would do approximately 75% of the work because he/she is responsible for implementing the policy for the entire firm. Accordingly, the per firm cost estimate is based on our estimate that development of initial compliance procedures for medium firms would take 93.75 hours of compliance manager time (at $258 per hour) and 31.25 hours of clerical time (at $63 per hour).

[225] With respect to our estimated range of 8–250 hours, we assume a larger firm would take 250 hours to develop initial compliance procedures, and such a firm would likely have support staff. We also anticipate that a compliance manager would do approximately 75% of the work because he/she is responsible for implementing the policy for the entire firm. Accordingly, the per firm cost estimate is based on our estimate that development of initial compliance procedures for larger firms would take 187.50 hours of compliance manager time (at $258 per hour) and 62.5 hours of clerical time (at $63 per hour).

[226] Some commenters in 1999 suggested that our cost estimates, then, were too low. *See* U.S. Bancorp Letter (''[W]e believe the initial compliance cost estimates in the [1999] Release of $285 for a small firm, $13,387.50 for a medium firm and $22,312.50 for a large firm underestimate by orders of magnitude the initial costs of compliance.''); Comment Letter of American Council of Life Insurance (Nov. 1, 1999) (''Many of our member companies have observed that the proposal's compliance cost projections are speculative and unrealistic, especially when applied to large diversified financial institutions like life insurers. * * * Moreover, the cost estimates are greatly understated when the proposed rule is applied to large diversified life insurers offering investment advice as one of several products and services. * * * One of our larger diversified member companies has estimated that it would cost approximately $200,000 per year to administer compliance with the proposed rule for the approximately 200–300 people the rule would encompass. The company developing these estimates based its estimate of hours and labor costs on its actual compliance with Rule G–37.''). We have significantly increased our cost estimates from our 1999 proposal. We also note that the scope of persons covered under the current rule proposal is narrower than the scope of persons proposed to be covered in 1999. *See supra* note 98 and accompanying text.

expenses of approximately $2,580 [227] per smaller firm, $104,625 [228] per medium firm, and $209,250 [229] per larger firm.

We further anticipate that approximately one-third of advisers that we estimate would be subject to the rule may also engage outside legal services to assist in drafting policies and procedures.[230] We estimate the cost associated with such an engagement would include fees for approximately three hours of outside legal review for a smaller firm, 10 hours for a medium firm, and 30 hours for a large firm, at a rate of $400 per hour. For a smaller firm we estimate a total of $1,200 in outside legal fees for each of the estimated 325 advisers that would seek assistance, for a medium firm we estimate a total of $4,000 for the estimated 164 advisers that would seek assistance, and for each of the 102 larger firms we estimate a total of $12,000.[231] Thus, we estimate that approximately 591 investment advisers will incur these additional costs, for a total cost of $2,270,000 among advisers affected by the proposed rule amendments.

Additionally, we expect that on average approximately five advisers annually will apply to the Commission for an exemption from the proposed rule.[232] We estimate that a firm that applies for an exemption will hire outside counsel to prepare an exemptive request, and that counsel will spend 16 hours preparing and submitting an application for review at a rate of $400 per hour. As a result, each application will cost approximately $6,400, and the total estimated cost for five applications annually will be $32,000.

The prohibitions of the proposed rule may also impose other costs on advisers, covered associates, third-party solicitors, and political officials. An adviser that becomes subject to the prohibitions of the proposed rule would no longer be eligible to receive advisory fees from its government client. This could limit the number of advisers able to provide services to potential government entity clients. The adviser, however, may be obligated to provide (uncompensated) advisory services for a reasonable period of time until the government client finds a successor to ensure its withdrawal did not harm the client, or the contractual arrangement between the adviser and the government client might obligate the adviser to continue to perform under the contract at no fee. An adviser that provides uncompensated advisory services to a government client would incur the direct cost of providing uncompensated services, and may incur opportunity costs if the adviser is unable to pursue other business opportunities for a period of time. Advisers to government clients, as well as covered associates of the adviser, also may be less likely to make political contributions to political officials, possibly imposing costs on the officials if they are unable to secure alternate funding. Under the proposed rule, covered associates and executives may face new limitations on the amounts and to whom they can contribute. In addition, these same individuals could be prohibited from soliciting others to contribute or from coordinating contributions to government officials or political parties in certain circumstances. These limitations and prohibitions, including if a firm chose to adopt policies or procedures that are more restrictive than the proposed rule, could be perceived by the individuals subject to them as costs imposed on their ability to express their support for certain candidates for elected office and government officials.

Because the proposed rule would prohibit advisers from compensating third parties to solicit government entities for advisory services, advisers that currently rely on third-party solicitors to obtain government clients may have to bear the expense of hiring and training in-house staff in order to continue their solicitation activities. While third-party solicitors are not subject to the proposed rule, the proposed ban on advisers' use of third-party solicitors may have a substantial negative impact on persons who provide third-party solicitation services, and if their businesses consists solely of soliciting government entities on behalf of investment advisers, the proposed rule could result in these persons instead being employed directly by advisers or shifting the focus of their solicitation activities. In addition, small investment advisers and new investment advisers that do not have the capital to hire employees to obtain government clients may find it difficult to enter the market to provide advisory services to government pension plans or to obtain additional government clients.

We also anticipate that the proposed amendment to rule 204–2 would impose additional costs. The proposed amendments to rule 204–2 would require that SEC-registered advisers maintain certain records of campaign contributions by certain advisory personnel.[233] For purposes of the Paperwork Reduction Act, we have estimated that Commission-registered advisers would incur approximately 3,528 additional hours annually to comply with the proposed amendments to rule 204–2.[234] Based on this estimate, we anticipate that advisers would incur an aggregate cost of approximately $222,264 per year for the total hours advisory personnel would spend in complying with the proposed recordkeeping requirements.[235] Unregistered advisers that would be subject to proposed rule 206(4)–5 would not be subject to the proposed amendments to rules 204–2 and 206(4)–3.

C. Request for Comment

The Commission requests comment on the effects of the proposed rule and rule amendments on pension plan beneficiaries, participants in government plans or programs, investors in pooled investment vehicles, investment advisers, the advisory profession as a whole, government entities, third party solicitors, and political action committees. We request data to quantify the costs and value of the benefits associated with the

[227] The per firm cost estimate is based on our estimate that ongoing compliance procedures for smaller firms would take 10 hours of compliance manager time (at $258 per hour) per year.

[228] The per firm cost estimate is based on our estimate that ongoing compliance procedures for medium firms would take 375 hours of compliance manager time (at $258 per hour) and 125 hours of clerical time (at $63 per hour), per year.

[229] The per firm cost estimate is based on our estimate that ongoing compliance procedures for larger firms would take 750 hours of compliance manager time (at $258 per hour) and 250 hours of clerical time (at $63 per hour), per year.

[230] Based on staff observations, we estimate 75% of larger firms, 50% of medium firms, and 25% of smaller firms would seek to outsource all or a portion of this type of legal work.

[231] As noted above, we estimate 75% of larger firms, 50% of medium firms, and 25% of smaller firms would seek the assistance of outside counsel.

[232] This estimate is based on staff discussions with Financial Industry Regulatory Authority staff responsible for reviewing exemptive applications submitted under MSRB rule G–37.

[233] One commenter in 1999 expressed the view that our proposed amendments to the recordkeeping rule would be burdensome. *See* Nov. ICAA Comment Letter (''The proposed rule, in effect, requires firms to keep an ongoing, continuously updated list of prospective government clients. * * * [I]t is logistically unclear how a firm should compile this list. * * * [T]he burden of continuously compiling this list would be significant.'') We have increased our burden estimate from our 1999 proposal. We note that records are a critical component of proposed rule 206(4)–5. In particular, such records are necessary for examiners to inspect advisers for compliance with the terms of the proposed rule. We also note that it is typical for advisers seeking business from government entities to do so through a request for proposal or similar process, which would typically generate a record.

[234] *See infra* note 242.

[235] We expect that the function of recording and maintaining records of political contributions would be performed by a compliance clerk at a cost of $63 per hour. *See supra* note 222. Therefore the total costs would be $222,264 (3,528 hours × $63 per/hour).

proposed rule. Specifically, comment is requested on the costs of establishing compliance procedures to comply with the proposed rule, both on an initial and ongoing basis. Comment also is requested on the costs of using compliance procedures of an affiliated broker-dealer that the broker-dealer established as a result of rule G–37 and G–38.[236] In addition, we request data regarding our assumptions about the number of unregistered advisers that would be subject to the proposed rule, and the number of covered associates of these exempt advisers. As discussed below, section 202(c)(1) of the Advisers Act does not apply to proposed new rule 206(4)–5 or the proposed amendments to rule 206(4)–3. Nonetheless, in the context of the objectives of this rulemaking, we are interested in comments that address whether these proposed rules will promote efficiency, competition and capital formation. We solicit comment on the effect the proposed rule would have on the market for investment advisory services and third-party solicitation services. Commenters should provide analysis and empirical data to support their views on the costs and benefits associated with this proposal.

IV. Paperwork Reduction Act

A. Rule 204–2

The proposed amendment to rule 204–2 contains a new ''collection of information'' requirement within the meaning of the PRA, and the Commission has submitted the proposed amendment to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is ''Rule 204–2 under the Advisers Act of 1940.'' Rule 204–2 contains a currently approved collection of information number under OMB control number 3235–0278. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Section 204 of the Advisers Act provides that investment advisers registered or required to be registered with the Commission must make and keep certain records for prescribed periods, and make and disseminate certain reports. Rule 204–2 sets forth the requirements for maintaining and preserving specified books and records. This collection of information is mandatory. The Commission staff uses this collection of information in its examination and oversight program, and the information generally is kept confidential.[237]

The current approved collection of information for rule 204–2 is based on an average of 181.15 burden hours each year, per Commission-registered adviser, for a total of 1,954,109 burden hours. The current total burden is based on an estimate of 10,787 registered advisers.

The proposed amendments to rule 204–2 would require every investment adviser registered or required to be registered that provides or seeks to provide advisory services to government entities to maintain certain records of contributions made by the adviser or any of its covered associates. The proposed amendments would require an adviser to make and keep the following records: (i) The names, titles and business and residence addresses of all covered associates of the investment adviser; (ii) all government entities for which the investment adviser or any of its covered associates is providing or seeking to provide investment advisory services, or which are investors or are solicited to invest in any covered investment pool to which the investment adviser provides investment advisory services, as applicable; (iii) all government entities to which the investment adviser has provided investment advisory services, along with any related covered investment pool(s) to which the investment adviser has provided investment advisory services and in which the government entity has invested, as applicable, in the past five years, but not prior to the effective date of the proposed rule; and (iv) all direct or indirect contributions or payments made by the investment adviser or any of its covered associates to an official of a government entity, a political party of a State or political subdivision thereof, or a PAC. An adviser to a covered investment pool in which a government entity invests or is solicited to invest would be treated as though that investment adviser were providing or seeking to provide investment advisory services directly to the government client. The adviser's records of contributions and payments would be required to be listed in chronological order identifying each contributor and recipient, the amounts and dates of each contribution or payment and whether such contribution or payment was subject to the exception for certain returned contributions pursuant to proposed rule 206(4)–5(b)(2). These records would be required to be maintained in the same manner, and for the same period of time, as other books and records under rule 204–2(a). This collection of information would be found at 17 CFR 275.204–2. Advisers that are exempt from Commission registration under section 203(b)(3) of the Advisers Act would not be subject to the recordkeeping requirements.

Commission records indicate that currently there are approximately 11,340 registered investment advisers subject to the collection of information imposed by rule 204–2.[238] As a result of the increase in the number of advisers registered with the Commission since the current total burden was approved, the total burden has increased by 100,176 hours (553 additional advisers[239] × 181.15 hours). We estimate that approximately 1,764 Commission-registered advisers provide, or seek to provide, advisory services to government clients and to certain pooled investment vehicles in which government entities invest, and would thus be affected by the proposed rule amendments.[240] Under the proposed amendments, each respondent would be required to retain the records in the same manner and for the same period of time as currently required under rule 204–2. The proposed amendments to rule 204–2 are estimated to increase the burden by approximately two hours per Commission-registered adviser with government clients annually for a total increase of 3,528 hours.[241] The revised annual aggregate burden for all respondents to the recordkeeping requirements under rule 204–2 thus would be 2,057,813 hours.[242] The revised weighted average burden per Commission-registered adviser would be 181.46 hours.[243]

Additionally, we expect advisory firms may incur one-time costs to establish or enhance current systems to

[236] *See* ABA Comment Letter (''Any cost-benefit analysis of the Rule logically should begin, by analogy, with an analysis of the costs that have been borne by Municipal Securities Professionals in complying with MSRB Rule G–37, bearing in mind that the proposed Rule contains no reporting requirements.'').

[237] *See* section 210(b) of the Advisers Act [15 U.S.C. 80b–10(b)].

[238] This figure is based on registration information from IARD as of July 1, 2009.

[239] 11,340 − 10,787 = 553.

[240] *See supra* note 216.

[241] This increased burden relates *only* to the recordkeeping requirements we are proposing to amend. *See supra* section III.B. of this release for an explanation of other estimated costs associated with complying with the proposed rule and rule amendments.

[242] 1,954,109 (current approved burden) + 100,176 (burden for additional registrants) + 3,528 (burden for proposed amendments) = 2,057,813 hours.

[243] 2,057,813 (revised annual aggregate burden) divided by 11,340 (total number of registrants) = 181.46.

assist in their compliance with the proposed amendments to rule 204–2. These costs would vary widely among firms. Small advisers may not incur any system costs if they determine a system is unnecessary due to the limited number of employees they have or the limited number of government entity clients they have. Large firms likely already have devoted significant resources into automating compliance and reporting and the new rule could result in enhancements to these existing systems. We believe they could range from the tens of thousands of dollars for simple reporting systems, to hundreds of thousands of dollars for complex systems used by the large advisers.

B. Rule 206(4)–3

The proposed amendment to rule 206(4)–3 contains a revised ''collection of information'' requirement within the meaning of the PRA, and the Commission has submitted the proposed amendment to the OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is ''Rule 206(4)–3—Cash Payments for Client Solicitations.'' Rule 206(4)–3 contains a currently approved collection of information number under OMB control number 3235–0242.

Section 206(4) of the Advisers Act provides that it shall be unlawful for any investment adviser to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative. Rule 206(4)–3 generally prohibits investment advisers from paying cash fees to solicitors for client referrals unless certain conditions are met. The rule requires that an adviser pay all solicitors' fees pursuant to a written agreement that the adviser is required to retain. This collection of information is mandatory. The Commission staff uses this collection of information in its examination and oversight program, and the information generally is kept confidential.[244]

The current approved collection of information for rule 206(4)–3 is based on an estimate that 20% of the 10,817 Commission-registered advisers (or 2,163 advisers) rely on the rule, at an average of 7.04 burden hours each year, per respondent, for a total of 15,228 burden hours ($7.04 \times 2{,}163$).

The proposed amendments to rule 206(4)–3 would require every investment adviser that relies on the rule and that provides or seeks to provide advisory services to government entities to also abide by the limitations provided in proposed rule 206(4)–5. This collection of information would be found at 17 CFR 275.206(4)–3. Advisers that are exempt from Commission registration under section 203(b)(3) of the Advisers Act would not be subject to rule 206(4)–3.

Commission records indicate that currently there are approximately 11,340 registered investment advisers,[245] 20% of which (or 2,268) are likely subject to the collection of information imposed by rule 206(4)–3. As a result of the increase in the number of advisers registered with the Commission since the current total burden was approved, the total burden has increased by 739.2 hours (105 additional advisers[246] $\times$ 7.04 hours). We assume that approximately 20% of the Commission-registered advisers that use rule 206(4)–3 (or 454 advisers) provide, or seek to provide, advisory services to government clients and would thus be affected by the proposed rule amendments.[247] Under the proposed amendments, each respondent would be prohibited from certain solicitation activities with respect to government clients,[248] which would eliminate the need to enter into and retain the written agreement required under rule 206(4)–3 with respect to those clients. Accordingly, the proposed amendments to rule 206(4)–3 are estimated to decrease the burden by 20%, or approximately 1.4 hours, per Commission-registered adviser that uses the rule and has or is seeking government clients annually, for a total decrease of 635.6 hours. The revised annual aggregate burden for all respondents to the recordkeeping requirements under rule 206(4)–3 thus would be 15,331.6 hours.[249] The revised weighted average burden per Commission-registered adviser would be 6.76 hours.[250]

C. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed amendments to the collection of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) determine whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, Washington, DC 20503, and also should send a copy of their comments to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090 with reference to File No. S7–18–09. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–18–09, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street, NE., Washington, DC 20549–0213. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this release.

V. Initial Regulatory Flexibility Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis (''IRFA'') regarding proposed rule 206(4)–5 and the amendments to rules 204–2 and 206(4)–3 in accordance with section 3(a) of the Regulatory Flexibility Act.[251]

A. Reasons for Proposed Action

Investment advisers that seek to influence the award of advisory contracts by government entities, by making or soliciting political

[244] *See* section 210(b) of the Advisers Act [15 U.S.C. 80b–10(b)].

[245] This figure is based on registration information from IARD as of July 1, 2009.

[246] 2,268 (20% of current registered investment advisers) − 2,163 (20% of registered investment advisers when burden estimate was last approved by OMB) = 105.

[247] In light of the 11.57% of registered investment advisers that indicate they have State or municipal government clients, we conservatively estimate that 20% of the advisers who rely on rule 206(4)–3 are soliciting government entities to be advisory clients or to invest in covered investment pools those advisers manage. *See supra* note 214.

[248] *See* proposed rule 206(4)–3(a).

[249] 15,228 (current approved burden) + 739.2 (burden for additional registrants) − 635.6 (reduction in burden for proposed amendments) = 15,331.6 hours.

[250] 15,331.6 (revised annual aggregate burden) divided by 2,268 (total number of registrants who rely on rule) = 6.76.

[251] 5 U.S.C. 603(a).

contributions to those officials who are in a position to influence the awards violate their fiduciary obligations. These practices—known as ''pay to play''—distort the process by which investment advisers are selected and, as discussed in greater detail above, can harm advisers' public pension plan clients, and thereby beneficiaries of those plans, which may receive inferior advisory services and pay higher fees. In addition, the most qualified adviser may not be selected, potentially leading to inferior management, diminished returns or greater losses for the public pension plan. Pay to play is a significant problem in the management of public funds by investment advisers. Moreover, we believe that advisers' participation in pay to play is inconsistent with the high standards of ethical conduct required of them under the Advisers Act. The proposed rule and rule amendments are designed to prevent fraud, deception and manipulation by reducing or eliminating adviser participation in pay to play practices.

B. Objectives and Legal Basis

Proposed rule 206(4)–5, the ''pay to play'' rule, would prohibit an adviser registered (or required to be registered) with the Commission, or unregistered in reliance on the exemption available under section 203(b)(3) of the Advisers Act, from providing advisory services for compensation to a government client for two years after the adviser, or any of its covered associates, make a contribution to public officials (and candidates) such as State treasurers, comptrollers or other elected executives or administrators who can influence the selection of the adviser.[252] In addition, we are proposing to prohibit an adviser or any of its covered associates from soliciting contributions for an elected official or candidate or payments to a political party of a State or locality where the adviser is providing or seeking to provide advisory services to a government entity,[253] and from providing or agreeing to provide, directly or indirectly, payment to any third party engaged to solicit advisory business from any government entity on behalf of the adviser.[254] Further, the prohibitions in the proposed rule also would apply to advisers to certain investment pools in which a government entity invests.[255] The proposed rule amendment to rule 204–2 is designed to provide Commission staff with records to review compliance with proposed rule 206(4)–5, and the proposed amendment to rule 206(4)–3 would clarify the application of the cash solicitation rule as a result of proposed rule 206(4)–5.

The Commission is proposing new rule 206(4)–5 and proposing to amend rule 206(4)–3 pursuant to the authority set forth in sections 206(4) and 211(a) of the Advisers Act [15 U.S.C. 80b–6(4) and 80b–11(a)]; to amend rule 204–2 pursuant to the authority set forth in sections 204 and 211 of the Advisers Act [15 U.S.C. 80b–4 and 80b–11]. Section 206(4) gives us authority to prescribe means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices. Section 211 gives us authority to classify, by rule, persons and matters within our jurisdiction and to prescribe different requirements for different classes of persons, as necessary or appropriate to the exercise of our authority under the Act. Section 204 gives us authority to prescribe, by rule, such records and reports that an adviser must make, keep for prescribed periods, or disseminate, as necessary or appropriate in the public interest or for the protection of investors.

C. Small Entities Subject to Rule

Under Commission rules, for the purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity if it: (i) Has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had $5 million or more on the last day of its most recent fiscal year.[256]

The Commission estimates that as of July 2009 there are approximately 706 small SEC-registered investment advisers.[257] Of these 706 advisers, 57 indicate on Form ADV that they have State or local government clients. The proposed rule also would apply to those advisers that are exempt from registration with the Commission in reliance on section 203(b)(3) of the Advisers Act. We estimate that approximately 231 such unregistered advisers may manage pooled investment vehicles in which government client assets are invested and would be subject to the proposed rule.[258] We do not have data and are not aware of any databases that compile information regarding how may advisers that are exempt from registration with the Commission in reliance on section 203(b)(3) of the Advisers Act and that have State or local government clients. It is unclear how many of these advisers that are exempt from registration that would be subject to the rule are small advisers for purposes of this analysis.

D. Reporting, Recordkeeping, and other Compliance Requirements

The proposed rule would impose certain reporting, recordkeeping and compliance requirements on advisers, including small advisers. The proposed rule imposes a new compliance requirement by: (i) Prohibiting an adviser from providing advisory services for compensation to government clients for two years after the adviser or any of its covered associates makes a contribution to certain elected officials or candidates; (ii) prohibiting an adviser from providing or agreeing to provide, directly or indirectly, payment to any third party engaged to solicit advisory business from any government entity on behalf of the adviser; and (iii) prohibiting an adviser or any of its covered associates from soliciting contributions for an elected official or candidate or payments to a political party of a State or locality where the adviser is providing or seeking to provide advisory services to a government entity.

The proposed rule amendments would impose new recordkeeping requirements by requiring an adviser to maintain certain records about its covered associates, its advisory clients, government entities invested in certain pooled investment vehicles managed by the adviser, and its political contributions as well as the political contributions of its covered associates. An investment adviser that does not provide or seek to provide advisory services to a government entity, or to a covered investment pool in which a government entity invests, would not be subject to the proposed rule and rule amendments.

As noted above, we believe that a limited number of small advisers will have to comply with the proposed rule and rule amendments. Moreover, to the extent small advisers tend to have fewer clients and fewer employees that would be covered associates for purposes of the rule, the proposal should impose lower costs on small advisers as compared to

[252] Proposed rule 206(4)–5(a)(1).

[253] Proposed rule 206(4)–5(a)(2)(ii).

[254] Proposed rule 206(4)–5(a)(2)(i).

[255] Proposed rule 206(4)–5(c).

[256] 17 CFR 275.0–7(a).

[257] This estimate is based on registration information from IARD as of July 1, 2009.

[258] *See supra* notes 217 and 220.

large advisers as variable costs, such as the requirement to make and keep records relating to contributions, should be lower as there should be fewer records to make and keep.[259]

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes that there are no other Federal rules that duplicate, overlap, or conflict with the proposed rule amendments. As discussed above, to make clear the relationship between our rules, we propose making a technical amendment to rule 206(4)–3 to specify that solicitation activities involving government entity clients under our proposed rule 206(4)–5 are subject to limitations set forth in that rule.

F. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant impact on small entities.[260] In connection with the proposed rule amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed rule and rule amendments for such small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposed rule and rule amendments, or any part thereof, for such small entities.

Regarding the first alternative, the Commission is not proposing different compliance or reporting requirements for small advisers as it may be inappropriate under the circumstances. The proposal is designed to reduce or eliminate adviser participation in pay to play, a practice that can distort the process by which investment advisers are selected to manage public pension plans that can harm public pension plan clients and cause advisers to violate their fiduciary obligations. To establish different requirements for small advisers could diminish the protections the proposal would provide to public pension plan clients and their beneficiaries.

Regarding the second alternative, we will continue to consider whether further clarification, consolidation, or simplification of the compliance requirements is feasible or necessary, but we believe that the current proposal is clear. The proposed rule and rule amendments contain an approach to curtailing pay to play practices that is modeled on established MSRB rules that have already been implemented by financial firms of varying sizes. However, we note that we are proposing an amendment to rule 206(4)–3, the cash solicitation rule, to clarify that the requirements of new proposed rule 206(4)–5 apply to solicitation activities involving government clients.

Regarding the third alternative, we consider using performance rather than design standards with respect to pay to play practices of investment advisers to be neither consistent with the objectives for this rulemaking nor sufficient to protect investors in accordance with our statutory mandate of investor protection. Design standards, which we have employed, provide a baseline for advisory conduct as it relates to contributions and other pay to play activities, which is consistent with a rule designed to prohibit pay to play. The use of design standards also is important to ensure consistent application of the rule among investment advisers to which the rule and rule amendments will apply.

Regarding the fourth alternative, exempting small entities could compromise the overall effectiveness of the proposed rule and related rule amendments. Since we intend to extend the benefit of banning pay to play practices to clients of both small and large advisers, it would be inconsistent to specify different requirements for small advisers.

G. Solicitation of Comments

We encourage written comments on matters discussed in this IRFA. In particular, the Commission seeks comment on:

- The number of small entities, particularly small advisers, to which the proposed rule and rule amendments would apply and the effect on those entities, including whether the effects would be economically significant; and
- How to quantify the number of small advisers, including those that are unregistered, that would be subject to the proposed rule and rule amendments.

Commenters are asked to describe the nature of any effect and provide empirical data supporting the extent of the effect.

VI. Effects on Competition, Efficiency and Capital Formation

The Commission is proposing to amend rule 204–2 pursuant to its authority under sections 204 and 211. Section 204 requires the Commission, when engaging in rulemaking pursuant to that authority, to consider whether the rule is ''necessary or appropriate in the public interest or for the protection of investors.'' [261] Section 202(c) of the Advisers Act [262] requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[263]

We are proposing to amend rule 204–2 to require an adviser to make and keep a list of its covered associates, the government entities the adviser provides advisory services to or seeks to provide advisory services to, and the contributions made by the firm and its covered associates, as applicable, to government officials and candidates.[264] The proposed amendment is designed to provide our examiners important information about the adviser and its covered associates' contributions to government officials and the government entities that the adviser provides advisory services to or seeks to provide those services. We believe that the proposed amendment to the Advisers Act recordkeeping rule would not materially increase the compliance burden on advisers under rule 204–2. Similarly, we do not believe that the proposed amendments to the recordkeeping rule would disproportionately affect advisers with government entity clients or potential government clients. The amendments will apply equally to all SEC-registered advisers. All registered advisers are already subject to a variety of recordkeeping requirements in the course of their business and, therefore, the proposed amendments to the recordkeeping rule should not affect

[259] However, as noted above, many larger advisers with broker-dealer affiliates may spend less resources to comply with the proposed rule and rule amendments because they may be able to rely on compliance procedures and systems that the broker-dealer already has in place to comply with MSRB rules G–37 and G–38. *See supra* note 214 and accompanying text.

[260] As noted above, we considered two alternatives to certain aspects of proposed rule 206(4)–5: A disclosure obligation and a two-year time out for third-party solicitors. We do not believe either alternative would accomplish our stated objective of curtailing pay to play activities and thereby address potential harms from those activities. *See* section II.A.2., as well as notes 133 and 134 and accompanying text.

[261] 15 U.S.C. 80b–4(a).

[262] 15 U.S.C. 80b–2(c).

[263] In contrast, the Commission is proposing new rule 206(4)–5 and amendments to rule 206(4)–3 pursuant to its authority under sections 206(4) and 211, neither of which requires us to consider the factors identified in section 202(c)(1).

[264] Proposed rule 204–2(a)(18)(i).

efficiency. We do not anticipate that the proposed recordkeeping rule amendments would affect capital formation.

The Commission requests comment whether the proposed amendment to rule 204–2, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data to support their views.

VII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [265] the Commission must advise OMB whether a proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results in or is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposed new rule and proposed rule amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VIII. Statutory Authority

The Commission is proposing new rule 206(4)–5 and amendments to rule 206(4)–3 of the Advisers Act pursuant to the authority set forth in sections 206(4) and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–6(4), 80b–11(a)].

The Commission is proposing amendments to rule 204–2 of the Advisers Act pursuant to the authority set forth in sections 204 and 211(a) of the Advisers Act [15 U.S.C. 80b–4 and 80b–11(a)].

List of Subjects in 17 CFR Part 275

Reporting and recordkeeping requirements; Securities.

For the reasons set out in the preamble, Title 17 Chapter II of the Code of Federal Regulations is proposed to be amended as follows.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

2. Section 275.204–2 is amended by adding paragraph (a)(18) and by revising paragraph (h)(1) to read as follows:

275.204–2 Books and records to be maintained by investment advisers.

(a) * * *

(18)(i) Books and records that pertain to § 275.206(4)–5 containing a list or other record of:

(A) The names, titles and business and residence addresses of all covered associates of the investment adviser;

(B) All government entities for which the investment adviser or any of its covered associates is providing or seeking to provide investment advisory services, or which are investors or are solicited to invest in any covered investment pool to which the investment adviser provides investment advisory services, as applicable;

(C) All government entities to which the investment adviser has provided investment advisory services, along with any related covered investment pool(s) to which the investment adviser has provided investment advisory services and in which the government entity has invested, as applicable, in the past five years, but not prior to [effective date of this section]; and

(D) All direct or indirect contributions or payments made by the investment adviser or any of its covered associates to an official of a government entity, a political party of a State or political subdivision thereof, or a political action committee.

(ii) Records relating to the contributions and payments referred to in paragraph (a)(18)(i)(D) of this section must be listed in chronological order and indicate:

(A) The name and title of each contributor;

(B) The name and title (including any city/county/State or other political subdivision) of each recipient of a contribution or payment;

(C) The amount and date of each contribution or payment; and

(D) Whether any such contribution was the subject of the exception for certain returned contributions pursuant to § 275.206(4)–5(b)(2).

(iii) For purposes of this section, the terms ''contribution,'' ''covered associate,'' ''covered investment pool,'' ''government entity,'' ''official,'' ''payment,'' and ''solicit'' have the same meanings as set forth in § 275.206(4)–5.

(iv) For purposes of this section, an investment adviser to a covered investment pool in which a government entity invests or is solicited to invest shall be treated as though that investment adviser were providing or seeking to provide investment advisory services directly to the government entity.

* * * * *

(h)(1) Any book or other record made, kept, maintained and preserved in compliance with §§ 240.17a–3 and 240.17a–4 of this chapter under the Securities Exchange Act of 1934, or with rules adopted by the Municipal Securities Rulemaking Board, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this section, shall be deemed to be made, kept, maintained and preserved in compliance with this section.

* * * * *

3. Section 275.206(4)–3 is amended by adding paragraph (e) and removing the authority citation following the section to read as follows:

§ 275.206(4)–3 Cash payments for client solicitations.

* * * * *

(e) *Special rule for solicitation of government entity clients.* Solicitation activities involving a government entity, as defined in § 275.206(4)–5, shall be subject to the additional limitations set forth in that section.

4. Section 275.206(4)–5 is added to read as follows:

§ 275.206(4)–5 Political contributions by certain investment advisers.

(a) *Prohibitions.* As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts, practices, or courses of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)), it shall be unlawful:

(1) For any investment adviser registered (or required to be registered) with the Commission, or unregistered in reliance on the exemption available under section 203(b)(3) of the Advisers Act (15 U.S.C. 80b–3(b)(3)) to provide investment advisory services for compensation to a government entity within two years after a contribution to an official of the government entity is made by the investment adviser or any covered associate of the investment adviser (including a person who becomes a covered associate within two years after the contribution is made); and

(2) For any investment adviser registered (or required to be registered) with the Commission, or unregistered in reliance on the exemption available under section 203(b)(3) of the Advisers

[265] *Public Law* 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

Act (15 U.S.C. 80b–3(b)(3)) or any of the investment adviser's covered associates:

(i) To provide or agree to provide, directly or indirectly, payment to any person to solicit a government entity for investment advisory services on behalf of such investment adviser unless:

(A) Such person is a related person of the investment adviser or, if the related person is a company, an employee of that related person; or

(B) Such person is an executive officer, general partner, managing member (or, in each case, a person with a similar status or function), or employee of the investment adviser; and

(ii) To coordinate, or to solicit any person or political action committee to make, any:

(A) Contribution to an official of a government entity to which the investment adviser is providing or seeking to provide investment advisory services; or

(B) Payment to a political party of a State or locality where the investment adviser is providing or seeking to provide investment advisory services to a government entity.

(b) *Exceptions.*

(1) *De minimis* exception. Paragraph (a)(1) of this section does not apply to contributions made by a covered associate, if a natural person, to officials for whom the covered associate was entitled to vote at the time of the contributions and which in the aggregate do not exceed $250 to any one official, per election.

(2) Exception for certain returned contributions.

(i) An investment adviser that is prohibited from providing investment advisory services for compensation pursuant to paragraph (a)(1) of this section as a result of a contribution made by a covered associate of the investment adviser is excepted from such prohibition, subject to paragraphs (b)(2)(ii) and (b)(2)(iii) of this section, upon satisfaction of the following requirements:

(A) The investment adviser must have discovered the contribution which resulted in the prohibition within four months of the date of such contribution;

(B) Such contribution must not have exceeded $250; and

(C) The contributor must obtain a return of the contribution within 60 calendar days of the date of discovery of such contribution by the investment adviser.

(ii) An investment adviser is entitled to no more than two exceptions pursuant to paragraph (b)(2)(i) of this section per 12-month period.

(iii) An investment adviser may not rely on the exception provided in paragraph (b)(2)(i) of this section more than once with respect to contributions by the same covered associate of the investment adviser regardless of the time period.

(c) *Prohibitions as applied to covered investment pools.* For purposes of this section, an investment adviser to a covered investment pool in which a government entity invests or is solicited to invest shall be treated as though that investment adviser were providing or seeking to provide investment advisory services directly to the government entity.

(d) *Further prohibition.* As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts, practices, or courses of business within the meaning of section 206(4) of Advisers Act (15 U.S.C. 80b–6(4)), it shall be unlawful for any investment adviser registered (or required to be registered) with the Commission, or unregistered in reliance on the exemption available under section 203(b)(3) of the Advisers Act (15 U.S.C. 80b–3(b)(3)) or any of the investment adviser's covered associates to do anything indirectly which, if done directly, would result in a violation of this section.

(e) *Exemptions.* The Commission, upon application, may conditionally or unconditionally exempt an investment adviser from the prohibition under paragraph (a)(1) of this section. In determining whether to grant an exemption, the Commission will consider, among other factors:

(1) Whether the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of Advisers Act (15 U.S.C. 80b);

(2) Whether the investment adviser:

(i) Before the contribution resulting in the prohibition was made, adopted and implemented policies and procedures reasonably designed to prevent violations of this section; and

(ii) Prior to or at the time the contribution which resulted in such prohibition was made, had no actual knowledge of the contribution; and

(iii) After learning of the contribution:

(A) Has taken all available steps to cause the contributor involved in making the contribution which resulted in such prohibition to obtain a return of the contribution; and

(B) Has taken such other remedial or preventive measures as may be appropriate under the circumstances;

(3) Whether, at the time of the contribution, the contributor was a covered associate or otherwise an employee of the investment adviser, or was seeking such employment;

(4) The timing and amount of the contribution which resulted in the prohibition;

(5) The nature of the election (*e.g,* Federal, State or local); and

(6) The contributor's apparent intent or motive in making the contribution which resulted in the prohibition, as evidenced by the facts and circumstances surrounding such contribution.

(f) *Definitions.* For purposes of this section:

(1) *Contribution* means any gift, subscription, loan, advance, or deposit of money or anything of value made for:

(i) The purpose of influencing any election for Federal, State or local office;

(ii) Payment of debt incurred in connection with any such election; or

(iii) Transition or inaugural expenses of the successful candidate for State or local office.

(2) *Covered associate* of an investment adviser means:

(i) Any general partner, managing member or executive officer, or other individual with a similar status or function;

(ii) Any employee who solicits a government entity for the investment adviser; and

(iii) Any political action committee controlled by the investment adviser or by any person described in paragraphs (f)(2)(i) and (f)(2)(ii) of this section.

(3) *Covered investment pool* means any investment company, as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(a)), or any company that would be an investment company under section 3(a) of that Act but for the exclusion provided from that definition by either section 3(c)(1), section 3(c)(7) or section 3(c)(11) of that Act (15 U.S.C. 80a–3(c)(1), (c)(7) or (c)(11)), *except that* for purposes of paragraph (a)(1) of this section, an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a), the shares of which are registered under the Securities Act of 1933 (15 U.S.C. 77a), shall be a covered investment pool only if it is an investment or an investment option of a plan or program of a government entity.

(4) *Executive officer* of an investment adviser means the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other executive officer of the investment adviser who, in each case, in connection with his or her regular duties:

(i) Performs, or supervises any person who performs, investment advisory services for the investment adviser;

(ii) Solicits, or supervises any person who solicits, for the investment adviser, including with respect to investors for a covered investment pool; or

(iii) Supervises, directly or indirectly, any person described in paragraph (f)(4)(i) or (f)(4)(ii) of this section.

(5) *Government entity* means any State or political subdivision of a State, including:

(i) Any agency, authority, or instrumentality of the State or political subdivision;

(ii) A plan, program, or pool of assets sponsored or established by the State or political subdivision or any agency, authority or instrumentality thereof; and

(iii) Officers, agents, or employees of the State or political subdivision or any agency, authority or instrumentality thereof, acting in their official capacity.

(6) *Official* means any person (including any election committee for the person) who was, at the time of the contribution, an incumbent, candidate or successful candidate for elective office of a government entity, if the office:

(i) Is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity; or

(ii) Has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity.

(7) *Payment* means any gift, subscription, loan, advance, or deposit of money or anything of value.

(8) *Plan or program of a government entity* means any investment program or plan sponsored or established by a government entity, including, but not limited to, a ''qualified tuition plan'' authorized by section 529 of the Internal Revenue Code (26 U.S.C. 529), a retirement plan authorized by section 403(b) or 457 of the Internal Revenue Code (26 U.S.C. 403(b) or 457), or any similar program or plan.

(9) *Related person* of an investment adviser means any person, directly or indirectly, controlling or controlled by the investment adviser, and any person that is under common control with the investment adviser.

(10) *Solicit* means:

(i) With respect to investment advisory services, to communicate, directly or indirectly, for the purpose of obtaining or retaining a client for, or referring a client to, an investment adviser; and

(ii) With respect to a contribution or payment, to communicate, directly or indirectly, for the purpose of obtaining or arranging a contribution or payment.

(g) *Effective date.* The prohibitions on providing investment advisory services and payments to solicit, in each case as described in this section, arise only from contributions and payments, respectively, made on or after [the effective date of this section].

Dated: August 3, 2009.

By the Commission.

Elizabeth M. Murphy,

Secretary.

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S. 1513/P.L. 111–43
To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes. (July 31, 2009; 123 Stat. 1965)
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