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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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Presidential Documents

Title 3—

The President

Presidential Determination No. 2009–23 of July 8, 2009

Waiver of Restriction On Providing Funds To The Palestinian Authority

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7040(b) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009 (Division H, Public Law 111–8) (the ''Act''), I hereby certify that it is important to the national security interests of the United States to waive the provisions of section 7040(a) of the Act, in order to provide funds appropriated to carry out chapter 4 of part II of the Foreign Assistance Act, as amended, to the Palestinian Authority.

You are directed to transmit this determination to the Congress, with a report pursuant to section 7040(d) of the Act, and to publish the determination in the *Federal Register*.

[FR Doc. E9–20013
Filed 8–18–09; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0670]

Drawbridge Operating Regulations; Franklin Canal, Franklin, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Chatsworth Road Bridge across the Franklin Canal, mile 4.8, at Franklin, St. Mary Parish, Louisiana. This deviation will test a change to the operating schedule to determine whether a permanent change to the schedule is needed. It will allow the bridge to remain unmanned during most of the day by requiring a one-hour notice for an opening of the draw.

DATES: This deviation is effective from 5 a.m. on August 19, 2009 until 9 p.m. on February 16, 2010. Comments and related material must be received by the Coast Guard on or before October 19, 2009.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0670 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 202–355–9329.

To avoid duplication, please use only one of these methods. See ''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 rule, call or e-mail Phil Johnson, Bridge Administration Branch, Eighth Coast Guard District; telephone 504–671–2128, e-mail *Philip.R.Johnson@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–2009–0670), 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 (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered as having been 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 phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2009–0670'' click ''Search'' 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 them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2009–0670'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit either 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 on or before September 3, 2009.

Background and Purpose

The St. Mary Parish Government has requested that the operating regulation of the Chatsworth Road swing span

bridge, located on the Franklin Canal at mile 4.8 in Franklin, St. Mary Parish, Louisiana, be changed in order for the bridge not to have to be continuously manned by a draw tender. Currently, the bridge opens on signal from 5 a.m. to 9 p.m. Because of the relocation of a public boat landing downstream of the bridge, vessel traffic has become infrequent, and it is no longer necessary to have a bridge tender continuously man the bridge.

Currently, the bridge operates as follows: The draw of the Chatsworth Road Bridge, mile 4.8 at Franklin, shall open on signal from 5 a.m. to 9 p.m. From October 1 through January 31 from 9 p.m. to 5 a.m., the draw shall open on signal if at least three hours notice is given. From February 1 through September 30 from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

This Temporary Deviation from Drawbridge Operating Regulations allows the bridge to operate as follows: The draw of the Chatsworth Road Bridge, mile 4.8 at Franklin, shall open on signal from 5 a.m. to 9 p.m. if at least one hour notice is given. From October 1 through January 31 from 9 p.m. to 5 a.m., the draw shall open on signal if at least three hours notice is given. From February 1 through September 30 from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

While some commercial vessels use the waterway to access commercial facilities upstream of the bridge, they are able to schedule operations around the advance notices required for an opening. The majority of waterway usage consists of small recreational fishing craft that now utilize the boat launch that has been relocated downstream of the bridge. The bridge provides a vertical clearance of 7 feet above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position. Thus, the majority of recreational fishing craft that may wish to transit through the bridge will be able to do so without requesting an opening of the draw.

A Notice of Proposed Rule Making [USCG–2009–0672] is being issued in conjunction with this Temporary Deviation to obtain public comments. The St. Mary Parish Government states that the decrease in vessel traffic, due to the relocation of the boat ramp downstream of the bridge, has resulted in such infrequency of drawbridge openings that it is impractical to man the bridge full time from 5 a.m. to 9 p.m. daily. A bridge tender will be on call to open the bridge with a one-hour notice by calling the telephone number that will be posted on the bridge. The Coast Guard will evaluate public comments from this Temporary Deviation and the above referenced Notice of Proposed Rule Making to determine if a change to the permanent special drawbridge operating regulation is warranted.

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

Dated: August 4, 2009.

David M. Frank,

Bridge Administrator.

[FR Doc. E9–19824 Filed 8–18–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2009–0699]

Drawbridge Operation Regulations; Gowanus Canal, Brooklyn, NY, Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Hamilton Avenue Bridge across the Gowanus Canal, mile 1.2, at Brooklyn, New York. Under this temporary deviation the bridge shall require a four-hour advance notice for bridge openings for three months to facilitate bridge maintenance. Vessels that can pass under the draw without a bridge opening may do so at all times.

DATES: This deviation is effective from August 17, 2009, through October 31, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0699 and are available online at *www.regulations.gov*, inserting USCG–2009–0699 in the ''Keyword'' box and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 668–7165. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Hamilton Avenue Bridge, across the Gowanus Canal, mile 1.2, at Brooklyn, New York, has a vertical clearance in the closed position of 19 feet at mean high water and 23 feet at mean low water. The Drawbridge Operation Regulations are listed at 33 CFR 117.5.

The waterway has seasonal recreational vessels, and commercial vessels of various sizes.

The owner of the bridge, New York City Department of Transportation, requested a temporary deviation to facilitate the training of bridge personnel, mechanical and electrical testing at the bridge.

Under this temporary deviation the Hamilton Avenue Bridge shall require at least a four-hour advance notice for bridge openings from August 17, 2009 through October 31, 2009.

Vessels that can pass under the bridge without a bridge opening may do so at all times. Notice may be provided by calling (201) 400–5243.

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

Dated: August 4, 2009.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E9–19817 Filed 8–18–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0689]

Drawbridge Operation Regulation; Gulf Intracoastal Waterway, Sargent, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the FM 457 pontoon drawbridge across the Gulf Intracoastal Waterway, mile 418.0, west of Harvey Locks, near Sargent,

Matagorda County, Texas. The deviation is necessary for continued maintenance of the bridge. This deviation allows the bridge to remain closed to navigation.

DATES: This deviation is effective from 6 a.m. through 5 p.m. on September 2, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–0689 and are available online by going to *http://www.regulations.gov*, inserting USCG–2009–0689 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lindsey Middleton, Bridge Administration Branch, Coast Guard; telephone 504–671–2128, e-mail *Lindsey.R.Middleton@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Texas Department of Transportation has requested a temporary deviation for the FM 457 pontoon drawbridge across the Gulf Intracoastal Waterway, mile 418.0, west of Harvey Locks, near Sargent, Matagorda County, Texas. They requested the temporary deviation for scheduled maintenance on the bridge. Currently, according to 33 CFR 117.5, the drawbridge opens on signal for the passage of vessels. The temporary deviation would allow the bridge to remain closed to navigation from 9 a.m. until 6 p.m. on Wednesday, September 2, 2009. The bridge has no vertical clearance in the closed-to-navigation position and has unlimited clearance in the open-to-navigation position. Navigation on the waterway consists of tugs with tows, fishing vessels, sailing vessels, and other recreational craft. This work is essential for the continued operation of the draw span. This request has been coordinated with waterway user groups and the local Coast Guard office.

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

Dated: August 9, 2009.

David M. Frank,

Bridge Administrator.

[FR Doc. E9–19823 Filed 8–18–09; 8:45 am]

BILLING CODE 4910–15–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket No. CP2009–49; Order No. 268]

International Mail

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is making changes to the Competitive Product List, including adding a Global Plus 2 contract. This is consistent with changes in a recent law governing postal operations. Republication of the lists of market dominant and competitive products is also consistent with requirements in the new law.

DATES: Effective August 19, 2009 and is applicable beginning July 31, 2009.

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

SUPPLEMENTARY INFORMATION: *Regulatory History*, 74 FR 35898 (July 21, 2009).

I. Introduction

The Postal Service proposes to add a specific Global Plus 2 contract to the Global Plus Contract product established in Docket No. MC2008–7. For the reasons discussed below, the Commission approves the Postal Service's proposal.

II. Background

On July 13, 2009, the Postal Service filed a notice, pursuant to 39 CFR 3015.5, announcing that it has entered into two additional Global Plus 2 contracts, which it states fit within the previously established Global Plus 2 Contracts product.[1] The Postal Service states that each contract is functionally equivalent to previously submitted Global Plus 2 contracts, are filed in accordance with Order No. 112[2] and are supported by Governors' Decision No. 08–10 filed in Docket No. MC2008–7.[3] Notice at 1.

The Notice also states that in Docket No. MC2008–7, the Governors established prices and classifications for competitive products not of general applicability for Global Plus Contracts. The Postal Service relates that the instant contract is the immediate successor contract to the contract in Docket No. CP2008–17, which will expire soon, and which the Commission found to be functionally equivalent in Order No. 112.

The Postal Service contends that the instant contract should be included within the Global Plus 2 product on the Competitive Product List. *Id.*

In support, the Postal Service has filed a redacted version of the contract and related materials as Attachment 1–A. A redacted version of the certified statement required by 39 CFR 3015.5 is included as Attachment 2–A. The Postal Service states that the contract should be included within the Global Plus 2 product and requests that the instant contract be considered the ''baseline contract[s] for future functional equivalency analyses concerning this product.'' *Id.* at 2.

The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. The contract becomes effective August 1, 2009, unless regulatory reviews affect that date, and have a one-year term.

The Postal Service maintains that certain portions of each contract and certified statement required by 39 CFR 3015.5(c)(2), containing names and identifying information of the Global Plus 2 customer, related financial information, portions of the certified statement which contain costs and pricing as well as the accompanying analyses that provide prices, terms, conditions, and financial projections should remain under seal. *Id.* at 3.

The Postal Service asserts the contract is functionally equivalent with the contract filed in Docket No. CP2009–49 because they share similar cost and market characteristics. It contends that they should be classified as a single product. *Id.* It states that while the existing contracts filed in Docket Nos.

[1] Notice of the United States Postal Service of Filing Two Functionally Equivalent Global Plus 2 Negotiated Service Agreements, July 13, 2009 (Notice). While the Notice was filed jointly in Docket Nos. CP2009–48 and CP2009–49, the Commission will address the issues in these dockets in separate orders. The Postal Service requests that the two contracts be included in the Global Plus 2 product, and ''that they be considered the new 'baseline' contracts for future functional equivalency analyses....'' *Id.* at 2.

[2] *See* Docket Nos. MC2008–7, CP2008–16 and CP2008–17, Order Concerning Global Plus 2 Negotiated Service Agreements, October 3, 2008 (Order No. 112).

[3] *See* Docket Nos. MC2008–7, CP2008–16 and CP2008–17, Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classification for Global Direct, Global Bulk Economy, and Global Plus Contracts, July 16, 2008 (Governors' Decision 08–10).

CP2008–16 and CP2008–17 exhibited minor distinctions, the new contracts are identical to one another. *Id.* at 4.

The instant contract is with the same Postal Qualified Wholesalers (PQW) as in Docket No. CP2008–17. Even though some terms and conditions of the contract have changed, the Postal Service states that the essence of the service to the PQW customers is offering price-based incentives to commit large amounts of mail volume or postage revenue for Global Bulk Economy (GBE) and Global Direct (GD).[4]

The Postal Service indicates that the instant contract has material differences which include removal of retroactivity provisions; explanations of price modification as a result of currency rate fluctuations or postal administration fees; removal of language on enforcement of mailing requirements; and restructuring of price incentives, commitments, penalties and clarification of continuing contractual obligations in the event of termination.

The Postal Service maintains these differences only add detail or amplify processes included in prior Global Plus 2 contracts. It contends because the instant contract has the same cost attributes and methodology as well as similar cost and market characteristics, the differences do not affect the fundamental service being offered or the essential structure of the contract. *Id.* at 8. Therefore, it asserts these contracts are ''functionally equivalent in all pertinent respects.'' *Id.* at 8.

In Order No. 250, the Commission gave notice of the filing, appointed a Public Representative, and provided the public with an opportunity to comment.[5]

On July 23, 2009, Chairman's Information Request No. 1 (CHIR No. 1) was issued with responses due by July 28, 2009. On July 28, 2009, the Postal Service provided its responses to CHIR No. 1.

III. Comments

Comments were filed by the Public Representative.[6] No other interested parties submitted comments. The Public Representative states the contract appears to satisfy the statutory criteria, but because he believes there are ambiguities in the cost methodology, his response is not an unqualified recommendation in support of the contract's approval. *Id.* at 2. He notes that relevant provisions of 39 U.S.C. 3632, 3633 and 3642 appear to be met by these additional Global Plus 2 contracts. *Id.* The Public Representative states that he believes the contracts are functionally equivalent to the existing Global Plus Contracts product. He also determines that the Postal Service has provided greater transparency and accessibility in its filings. *Id.* at 3.

The Public Representative notes that the general public benefits from the availability of these contracts in several ways: Well prepared international mail adds increased efficiency in the mailstream, enhanced volume results in timeliness in outbound shipments to all countries including those with small volume, and the addition of shipping options may result in expansion of mail volumes, particularly with the incentives for PQWs to promote the use of outbound international shipping resulting in expansion of these services for the Postal Service. *Id.* at 4.

Finally, he discusses the need for self-contained docket filings. In particular, he notes that the instant contract relies on data from the most recent International Cost and Revenue Analysis (ICRA), which was filed in another docket. He suggest that the Postal Service identify the location of the ICRA utilized and cited in that docket. *Id.* at 6.

IV. Commission Analysis

The Postal Service proposes to add an additional contract under the Global Plus Contracts product that was created in Docket No. MC2008–7. As filed, this docket presents two issues for the Commission to consider: (1) Whether the contract satisfies 39 U.S.C. 3633, and (2) whether the contract is functionally equivalent to previously reviewed Global Plus 2 contracts. In reaching its conclusions, the Commission has reviewed the Notice, the contract and the financial analyses provided under seal, supplemental information, and the Public Representative's comments.

Statutory requirements. The Postal Service contends that the instant contract and supporting documents filed in this docket establish compliance with the statutory provisions applicable to rates for competitive products (39 U.S.C. 3633). Notice at 2.

J. Ron Poland, Manager, Statistical Programs, Finance Department asserts Governors' Decision No. 08–10 for Global Plus Contracts establishes price floor and ceiling formulas issued on July 16, 2008. He certifies that the pricing in the instant contract meets the Governors' pricing formula and meets the criteria of 39 U.S.C. 3633(a)(1), (2) and (3). He further states that the prices demonstrate that the contract and the included ancillary services should cover their attributable costs, preclude the subsidization of competitive products by market dominant products, and should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs. Notice, Attachment 2–A.

For his part, the Public Representative indicates that the contract appears to satisfy 39 U.S.C. 3633. Public Representative Comments at 1–3.

Based on the data submitted, including the supplemental information, the Commission finds that the contract should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of the contract indicates that it comports with the provisions applicable to rates for competitive products.

Functional equivalence. The Postal Service asserts that the instant contract is functionally equivalent to the contract filed in the companion proceeding, Docket No. CP2009–49, as well as with Global Plus 2 contracts filed previously because they share similar cost and market characteristics. Notice at 4. The Postal Service states that the customers under the existing and proposed contracts are the same. In addition, it notes that existing contracts exhibited some differences, the contracts proposed in Docket Nos. CP2009–48 and CP2009–49 are identical. *Id.*

Having reviewed the contracts filed in the instant proceeding and in Docket No. CP2009–49, and the Postal Service's justification, the Commission finds that the two contracts may be treated as functionally equivalent.

New baseline. The Postal Service requests that the contracts filed in Docket Nos. CP2009–48 and 2009–49 be included in the Global Plus 2 product and ''considered the new 'baseline' contracts for purposes of future functional equivalency analyses concerning this product.'' *Id.* at 2. Currently, the Global Plus 2 product consists of two existing contracts that will be superseded by the contracts in Docket Nos. CP2009–48 and CP2009–49.

[4] The Postal Service states the commitments also account for International Priority Airmail (IPA), International Surface Air Lift (ISAL), Express Mail International (EMI), and Priority Mail International (PMI) items mailed under a separate but related Global Plus 1 contract with each customer. The Global Plus 1 contracts are the subject of a separate competitive products proceeding.

[5] Notice of Filing of Two Functionally Equivalent Global Plus 2 Negotiated Service Agreements, July 16, 2009 (Order No. 250).

[6] Public Representative Comments in Response to Order No. 250, July 23, 2009 (Public Representative Comments).

Under those circumstances, the new contracts need not be designated as a new product. Accordingly, the new contracts in Docket Nos. CP2009–48 and CP2009–49 will be included in the Global Plus 2 product and become the ''baseline'' for future functional equivalency analyses regarding that product.

Other considerations. If the agreement terminates earlier than anticipated, the Postal Service shall promptly inform the Commission of the new termination date.

In conclusion, the Commission finds that the negotiated service agreement submitted in Docket No. CP2009–49 is appropriately included within the Global Plus 2 product.

V. Ordering Paragraphs

It is ordered:

1. The contract filed in Docket No. CP2009–49 is included within the Global Plus 2 product (MC2008–7 and CP2009–49).

2. The existing Global Plus 2 product (MC2008–7, CP2008–16 and CP2008–17) is removed from the product list.

3. As discussed in the body of this order, future contract filings which rely on materials filed under seal in other dockets should be self contained.

4. The Postal Service shall notify the Commission if the termination date changes as discussed in this order.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

Issued: July 31, 2009.

By the Commission.

Judith M. Grady,

Acting Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to Subpart A of Part 3020—Mail Classification Schedule to read as follows:

Appendix to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products

1000 Market Dominant Product List

First-Class Mail
- Single-Piece Letters/Postcards
- Bulk Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Single-Piece First-Class Mail International

Standard Mail (Regular and Nonprofit)
- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route
- Letters
- Flats
- Not Flat-Machinables (NFMs)/Parcels

Periodicals
- Within County Periodicals
- Outside County Periodicals

Package Services
- Single-Piece Parcel Post
- Inbound Surface Parcel Post (at UPU rates)
- Bound Printed Matter Flats
- Bound Printed Matter Parcels
- Media Mail/Library Mail

Special Services
- Ancillary Services
- International Ancillary Services
- Address List Services
- Caller Service
- Change-of-Address Credit Card Authentication
- Confirm
- International Reply Coupon Service
- International Business Reply Mail Service
- Money Orders
- Post Office Box Service

Negotiated Service Agreements
- HSBC North America Holdings Inc. Negotiated Service Agreement
- Bookspan Negotiated Service Agreement
- Bank of America corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement
- Inbound International
- Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services

Market Dominant Product Descriptions

First-Class Mail

[Reserved for Class Description]
- Single-Piece Letters/Postcards
- [Reserved for Product Description]
- Bulk Letters/Postcards
- [Reserved for Product Description]
- Flats
- [Reserved for Product Description]
- Parcels
- [Reserved for Product Description]
- Outbound Single-Piece First-Class Mail International
- [Reserved for Product Description]
- Inbound Single-Piece First-Class Mail International
- [Reserved for Product Description]

Standard Mail (Regular and Nonprofit)

[Reserved for Class Description]
- High Density and Saturation Letters
- [Reserved for Product Description]
- High Density and Saturation Flats/Parcels
- [Reserved for Product Description]
- Carrier Route
- [Reserved for Product Description]
- Letters
- [Reserved for Product Description]
- Flats
- [Reserved for Product Description]
- Not Flat-Machinables (NFMs)/Parcels
- [Reserved for Product Description]

Periodicals

[Reserved for Class Description]
- Within County Periodicals
- [Reserved for Product Description]
- Outside County Periodicals
- [Reserved for Product Description]

Package Services

[Reserved for Class Description]
- Single-Piece Parcel Post
- [Reserved for Product Description]
- Inbound Surface Parcel Post (at UPU rates)
- [Reserved for Product Description]
- Bound Printed Matter Flats
- [Reserved for Product Description]
- Bound Printed Matter Parcels
- [Reserved for Product Description]
- Media Mail/Library Mail
- [Reserved for Product Description]

Special Services

[Reserved for Class Description]
- Ancillary Services
- [Reserved for Product Description]
- Address Correction Service
- [Reserved for Product Description]
- Applications and Mailing Permits
- [Reserved for Product Description]
- Business Reply Mail
- [Reserved for Product Description]
- Bulk Parcel Return Service
- [Reserved for Product Description]
- Certified Mail
- [Reserved for Product Description]
- Certificate of Mailing
- [Reserved for Product Description]
- Collect on Delivery
- [Reserved for Product Description]
- Delivery Confirmation
- [Reserved for Product Description]
- Insurance
- [Reserved for Product Description]
- Merchandise Return Service
- [Reserved for Product Description]
- Parcel Airlift (PAL)
- [Reserved for Product Description]
- Registered Mail
- [Reserved for Product Description]
- Return Receipt
- [Reserved for Product Description]
- Return Receipt for Merchandise
- [Reserved for Product Description]
- Restricted Delivery
- [Reserved for Product Description]
- Shipper-Paid Forwarding
- [Reserved for Product Description]
- Signature Confirmation
- [Reserved for Product Description]
- Special Handling
- [Reserved for Product Description]
- Stamped Envelopes
- [Reserved for Product Description]
- Stamped Cards
- [Reserved for Product Description]
- Premium Stamped Stationery
- [Reserved for Product Description]
- Premium Stamped Cards
- [Reserved for Product Description]
- International Ancillary Services
- [Reserved for Product Description]
- International Certificate of Mailing
- [Reserved for Product Description]
- International Registered Mail
- [Reserved for Product Description]
- International Return Receipt
- [Reserved for Product Description]
- International Restricted Delivery
- [Reserved for Product Description]
- Address List Services

[Reserved for Product Description]
Caller Service
[Reserved for Product Description]
Change-of-Address Credit Card Authentication
[Reserved for Product Description]
Confirm
[Reserved for Product Description]
International Reply Coupon Service
[Reserved for Product Description]
International Business Reply Mail Service
[Reserved for Product Description]
Money Orders
[Reserved for Product Description]
Post Office Box Service
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Class Description]
HSBC North America Holdings Inc. Negotiated Service Agreement
[Reserved for Product Description]
Bookspan Negotiated Service Agreement
[Reserved for Product Description]
Bank of America Corporation Negotiated Service Agreement
The Bradford Group Negotiated Service Agreement

Part B—Competitive Products

2000 Competitive Product List

Express Mail
Express Mail
Outbound International Expedited Services
Inbound International Expedited Services
Inbound International Expedited Services 1 (CP2008–7)
Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)
Priority Mail
Priority Mail
Outbound Priority Mail International
Inbound Air Parcel Post
Royal Mail Group Inbound Air Parcel Post Agreement
Parcel Select
Parcel Return Service
International
International Priority Airlift (IPA)
International Surface Airlift (ISAL)
International Direct Sacks—M-Bags
Global Customized Shipping Services
Inbound Surface Parcel Post (at non-UPU rates)
Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)
International Money Transfer Service
International Ancillary Services
Special Services
Premium Forwarding Service
Negotiated Service Agreements
Domestic
Express Mail Contract 1 (MC2008–5)
Express Mail Contract 2 (MC2009–3 and CP2009–4)
Express Mail Contract 3 (MC2009–15 and CP2009–21)
Express Mail Contract 4 (MC2009–34 and CP2009–45)
Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)
Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)
Express Mail & Priority Mail Contract 6 (MC2009–31 and CP2009–42)
Express Mail & Priority Mail Contract 7 (MC2009–32 and CP2009–43)
Express Mail & Priority Mail Contract 8 (MC2009–33 and CP2009–44)
Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
Priority Mail Contract 1 (MC2008–8 and CP2008–26)
Priority Mail Contract 2 (MC2009–2 and CP2009–3)
Priority Mail Contract 3 (MC2009–4 and CP2009–5)
Priority Mail Contract 4 (MC2009–5 and CP2009–6)
Priority Mail Contract 5 (MC2009–21 and CP2009–26)
Priority Mail Contract 6 (MC2009–25 and CP2009–30)
Priority Mail Contract 7 (MC2009–25 and CP2009–31)
Priority Mail Contract 8 (MC2009–25 and CP2009–32)
Priority Mail Contract 9 (MC2009–25 and CP2009–33)
Priority Mail Contract 10 (MC2009–25 and CP2009–34)
Priority Mail Contract 11 (MC2009–27 and CP2009–37)
Priority Mail Contract 12 (MC2009–28 and CP2009–38)
Priority Mail Contract 13 (MC2009–29 and CP2009–39)
Priority Mail Contract 14 (MC2009–30 and CP2009–40)
Outbound International
Direct Entry Parcels Contracts
Direct Entry Parcels 1 (MC2009–26 and CP2009–36)
Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
Global Expedited Package Services (GEPS) Contracts
GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
Global Plus Contracts
Global Plus 1 (CP2008–8, CP2008–46 and CP2009–47)
Global Plus 2 (MC2008–7, CP2009–48 and CP2009–49)
Inbound International
Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)
International Business Reply Service Competitive Contract 1 (MC2009–14 and CP2009–20)

[FR Doc. E9–19855 Filed 8–18–09; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2004–0285; FRL–8430–6]

1,2-ethanediamine, *N,N,N′,N′*-tetramethyl-, polymer with 1,1′-oxybis[2-chloroethane]; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance under 40 CFR 180.920 for residues of 1,2-ethanediamine, *N,N,N′,N′*-tetramethyl-, polymer with 1,1′-oxybis[2-chloroethane] (CAS Reg. No. 31075–24–8) when used as an inert ingredient in pesticide formulations applied to cotton or wheat crops only. Buckman Laboratories International, Inc submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 1,2-ethanediamine, *N,N,N′,N′*-tetramethyl-, polymer with 1,1′-oxybis[2-chloroethane].

DATES: This regulation is effective August 19, 2009. Objections and requests for hearings must be received on or before October 19, 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–2004–0285. 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: Keri Grinstead, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8373; e-mail address: *grinstead.keri@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. 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 180 through the Government Printing Office's e-CFR cite 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–2004–0285 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 19, 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–2004–0285, 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 September 17, 2004 (69 FR 56062) (FRL–7675–9), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by Food Quality Protection Act (FQPA) (Public Law 104–170), announcing the filing of a pesticide petition (PP 4E6841) by Buckman Laboratories International, Inc., 1256 North McLean Blvd., Memphis, TN 38108. The petition requested that 40 CFR 180.920 be amended by establishing an exemption from the requirement of a tolerance for residues of 1,2-ethanediamine,*N*,*N*,*N*′,*N*′-tetramethyl-, polymer with 1,1′-oxybis[2-chloroethane] (CAS Reg. No. 31075–24–8) in or on raw agricultural commodities when used as an inert ingredient in pesticide formulations. That notice included a summary of the petition prepared by the petitioner. There were no substantive comments received in response to the notice of filing. The petitioner subsequently specified that the inert ingredient use of the chemical will be as an adjuvant or water conditioner in pesticide products applied only to cotton and to wheat prior to boot stage.

For ease of reading in this document, 1,2-ethanediamine,*N*,*N*,*N*′,*N*′-tetramethyl-, polymer with 1,1′-oxybis[2-chloroethane] is herein referred to as BCETMD copolymer.

Section 408(b)(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 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. . . .''

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. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the

low toxicity of the individual inert ingredients.

IV. 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. The nature of the toxic effects caused by 1,2-ethanediamine,*N*,*N*,*N*′,*N*′-tetramethyl-, polymer with 1,1′-oxybis[2-chloroethane are discussed in this unit.

The following provides a brief summary of the risk assessment and conclusions from the Agency's review of BCETMD copolymer. The Agency's full risk assessment for this action, ''Inert Ingredient Decision Document for Pesticide Petition 4E6841: 1,2-ethanediamine, *N*,*N*,*N*′,*N*′-tetramethyl-, polymer with 1,1′-oxybis[2-chloroethane] (CAS Reg. No. 31075–24–8)'', is available in the docket (EPA–HQ–OPP–2004–0285).

Sufficient data were submitted to the Agency in support of this action. In acute toxicity studies, BCETMD copolymer exhibits low to moderate oral toxicity, slight irritation to the rabbit eye and skin, and is not a skin sensitizer in Guinea pigs. A subchronic study in rats had a no observed adverse effect level (NOAEL) of 221 milligrams/kilogram/day (mk/kg/day) and a lowest observed adverse level (LOAEL) of 752 mg/kg/day due to mineralization of the renal tubules. The following were observed at the two highest dosages: Decreases in body weights and possibly absolute organ weights (heart, liver, kidney and gonads); an equivocal decrease in red blood cell counts; elevated leukocyte counts; non-suppurative inflammation of the choroid plexus of the brain; and death. A chronic study in the dog showed: In males, a NOAEL of 250 mg/kg/day and a LOAEL of 500 mg/kg/day based on testicular hypoplasia, atrophy/degeneration, aspermia, dysplasia and cellular debris of testicular origin in epididymis; and, in females, a NOAEL of 500 mg/kg/day and a LOAEL of 1,000 mg/kg/day based on gastrointestinal disturbances, emaciation and neurological signs, bloody stools, weight loss and ataxia. Reproductive/developmental toxicity was only seen at dosage levels at or above those which also caused maternal effects. BCETMD copolymer was determined not to be mutagenic or carcinogenic. In metabolism studies, most (>86%) of the chemical was excreted in the feces.

V. 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).

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

The primary route of exposure to BCETMD copolymer from its use as an inert ingredient in pesticide products applied to cotton and wheat crops would most likely be through consumption of food to which pesticide products containing it as an inert ingredient have been applied, and possibly through drinking water (from runoff). The use of this chemical is limited to pesticide formulations applied to cotton and wheat crops only, therefore, there are no residential uses of this chemical, and thus no residential (dermal and inhalation) exposures are expected.

No adverse effects attributable to a single exposure of BCETMD copolymer were seen in the toxicity database. Therefore, an acute dietary risk assessment is not required.

There are no data provided regarding BCETMD copolymer residues in food or any other nonoccupational exposures to BCETMD copolymer. In the absence of actual residue data for BCETMD copolymer, the Agency performed a chronic dietary (food and drinking water) exposure assessment for BCETMD copolymer when used as an inert ingredient in pesticide formulations applied pre-harvest to cotton and wheat using a series of very conservative assumptions. This exposure assessment was calculated based on the following assumptions:

1. BCETMD copolymer would be used as an inert ingredient in all food use pesticide formulations applied pre-harvest to cotton and wheat crops.

2. A hundred percent of all cotton and wheat crops would be treated with pesticide products containing BCETMD copolymer.

3. BCETMD copolymer residues would be present in all cotton and wheat crops at levels equal to or exceeding the highest established tolerance levels for any pesticide active ingredient.

4. A conservative default value of 1,000 parts per billion (ppb) for the concentration of an inert ingredient in all sources of drinking water was used. This approach is highly conservative as it is extremely unlikely that BCETMD copolymer would have such use as a pesticide product inert ingredient and be present in cotton and wheat food commodities and drinking water at such high levels.

VI. Cumulative Effects

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.''

Unlike other pesticide ingredients for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to BCETMD copolymer and any other substances and BCETMD copolymer does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that BCETMD copolymer has 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 the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

VII. Determination of Safety for Infants and Children

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.

EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

1. The database is considered adequate for FQPA assessment. The studies included in the toxicological database are: 90–day toxicity study in rats via the oral route, 90–day dermal toxicity study in rabbits, chronic toxicity study in dogs, carcinogenicity study in mice, combined chronic/carcinogenicity study in rats, several mutagenicity studies (*in vivo* and *in vitro*), metabolism study in rats and dermal penetration study in rats. There are no acute and/or subchronic neurotoxicity studies available in the database. There was no evidence of clinical signs of neurotoxicity in the database except ataxia in the chronic toxicity study in dogs (1,000 mg/kg/day) and convulsions in a carcinogenicity study in mice (1,200 mg/kg/day). These effects are considered due to excessive toxicity and not of a neurologic origin. Therefore, there is no need for acute and subchronic neurotoxicity studies for this chemical. EPA also concluded that there is no need for a developmental neurotoxicity study for this chemical because there is no evidence in the database of neurotoxicity or increased susceptibility to infants and children.

2. There is no evidence of increased qualitative or quantitative susceptibility in the developmental toxicity study in rats and rabbits and in the two-generation reproduction study in rats. No developmental effects were observed in the rat developmental toxicity study at doses up to 500 mg/kg/day highest dose tested (HDT) in the presence of maternal toxicity. In the rabbit developmental toxicity study, the maternal and developmental NOAELs were 45 mg/kg/day. In this study, skeletal variations (developmental effects) were observed in the presence of equally severe maternal toxicity (abortions). In the 2-generation reproduction study in rats, pup weights were decreased at a dose level higher than the dose that produced maternal toxicity.

3. The highly conservative dietary exposure assessment using default assumptions would not underestimate the risk to infants and children.

VIII. Determination of Safety for U.S. Population

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. 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.

Residues of concern are not anticipated for dietary exposure (food and drinking water) from the use of BCETMD copolymer as an inert ingredient in pesticide products applied pre-harvest to cotton and wheat and there are no residential uses/exposures from this use. The toxicology data indicate that BCETMD copolymer does not pose an acute risk and, therefore, derivation of an aPAD is unnecessary. Chronic risk was assessed by comparing aggregate exposure to BCETMD copolymer to a cPAD of .45 mg/kg/day (based on a NOAEL of 45 mg/kg/day in the developmental toxicity study in rabbits and a safety/uncertainty factor of 100X (10X for interspecies and 10X for intraspecies variations). Utilizing the highly conservative aggregate exposure assessment described above, the resulting chronic exposure estimates do not exceed the Agency's level of concern; the chronic dietary estimate for the U.S. population was 6.7% (non-nursing infants were the most highly exposed population with the chronic exposure estimates occupying 20.0% of the cPAD).

Taking into consideration all available information on BCETMD copolymer and the limitations in the proposed tolerance exemption, EPA has determined that there is a reasonable certainty that no harm to any population subgroup will result from aggregate exposure to BCETMD copolymer under reasonable foreseeable circumstances. Therefore, the establishment of an exemption from tolerance under 40 CFR 180.920 for residues of BCETMD copolymer when used as an inert ingredient in pesticide formulations applied pre-harvest to cotton and wheat only, is safe under section 408 of the FFDCA.

IX. Other Considerations

A. Analytical Method

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

B. Existing Exemptions

There are no existing exemptions for BCETMD copolymer.

C. International Tolerances

The Agency is not aware of any country requiring a tolerance for BCETMD copolymer nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

X. Conclusions

Therefore, an exemption from the requirement of tolerance is established under 40 CFR 180.920 for BCETMD copolymer (CAS Reg. No. 31075–24–8) when used as an inert ingredient (adjuvant or water conditioner) in pesticide formulations applied to cotton or wheat only.

XI. 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).

XII. 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: August 6, 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.

■ 2. In §180.920, the table is amended by adding alphabetically the following inert ingredient.

§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * *	* *	* *
1,2-ethanediamine,*N*,*N*,*N*′, *N*′-tetramethyl-, polymer with 1,1′-oxybis[2-chloroethane] (CAS Reg. No. 31075–24–8)	For use in pesticide formulations applied to cotton or wheat only	Adjuvant or water conditioner
* * *	* *	* *

* * * * *

[FR Doc. E9–19762 Filed 8–18–09; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1732; MB Docket No. 09–18; RM–11513]

Radio Broadcasting Services: Dulac, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The staff grants a rulemaking petition filed by Sunburst Media-Louisiana, LLC, by substituting FM Channel 230A for vacant Channel 242A at Dulac, Louisiana. The reference coordinates for Channel 230A at Dulac are 29–20–37 NL and 90–45–16 WL.

DATES: Effective September 17, 2009.

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

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 09–18, adopted July 30, 2009, and released August 3, 2009. The full text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*.

The *Notice of Proposed Rule Making* in this proceeding stated that Sunburst Media-Louisiana's rulemaking petition was filed as part of a hybrid application and rulemaking proposal involving its concurrently filed minor change application (File No. BPH–20090129AMR). In this application, Sunburst proposes the upgrade and reallotment of its Station KMYO–FM from Channel 244C3 at Morgan City, Louisiana, to Channel 244C2 at Gray, Louisiana. The modification of the Morgan City license is contingent upon the channel substitution at Dulac. The *Report and Order* notes that Sunburst's application is being granted simultaneously with the release of the *Report and Order*.

The *Report and Order* does not contain proposed information collection requirements subject to the Paperwork

Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). The Commission will send a copy of the *Report and Order* in this proceeding 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).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 242A at Dulac and adding Channel 230A at Dulac.

Federal Communications Commission.

Andrew J. Rhodes,

Senior Counsel, Allocations, Audio Division, Media Bureau.

[FR Doc. E9–19878 Filed 8–18–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1726; MB Docket No. 08–242; RN–11506]

Radio Broadcasting Services; Ten Sleep, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Legend Communications of Wyoming, LLC, allots Channel 267A at Ten Sleep, Wyoming, as the community's second potential local FM service. Channel 267A can be allotted to Ten Sleep, Wyoming, in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.3 kilometers (0.2 miles) northeast of Ten Sleep. The coordinates for Channel 267A at Ten Sleep, Wyoming, are 44–02–08 North Latitude and 107–26–50 West Longitude.

DATES: Effective September 17, 2009.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 08–242, adopted July 30, 2009, and released August 3, 2009. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Ten Sleep, Channel 267A.

Andrew J. Rhodes,

Senior Counsel, Allocations, Audio Division, Media Bureau, Federal Communications Commission.

[FR Doc. E9–19880 Filed 8–18–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1794; MB Docket No. 09–115; RM–11543]

Television Broadcasting Services; Fond du Lac, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by WWAZ License, LLC, the licensee of WWAZ–DT, DTV Channel 44, Fond du Lac, Wisconsin, requesting the substitution of DTV channel 5 for channel 44 at Fond du Lac.

DATES: This rule is effective August 19, 2009.

FOR FURTHER INFORMATION CONTACT: David J. Brown, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 09–115, adopted August 11, 2009, and released August 12, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and 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).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Wisconsin, is amended by adding DTV channel 5 and removing DTV channel 44 at Fond du Lac.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–19876 Filed 8–18–09; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 74, No. 159
Wednesday, August 19, 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 HOMELAND SECURITY

8 CFR Part 274a

[ICE 2377–06; DHS Docket No. ICEB–2006–0004]

RIN 1653–AA59

Safe-Harbor Procedures for Employers Who Receive a No-Match Letter: Rescission

AGENCY: U.S. Immigration and Customs Enforcement, DHS.

ACTION: Proposed rule.

SUMMARY: The Department of Homeland Security (DHS) proposes to amend its regulations by rescinding the amendments promulgated on August 15, 2007, and October 28, 2008, relating to procedures that employers may take to acquire a safe harbor from receipt of no-match letters. Implementation of the 2007 final rule was preliminarily enjoined by the United States District Court for the Northern District of California on October 10, 2007. After further review, DHS has determined to focus its enforcement efforts relating to the employment of aliens not authorized to work in the United States on increased compliance through improved verification, including participation in E-Verify, ICE Mutual Agreement Between Government and Employers (IMAGE), and other programs.

DATES: Comments must be submitted not later than September 18, 2009.

ADDRESSES: Comments may be submitted, identified by DHS Docket No. ICEB 2006–0004, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail/Courier: National Program Manager Charles McClain, U.S. Immigration and Customs Enforcement, Office of Investigations—MS 5112, 500 12th Street, SW., Washington, DC 20536–5112.024 To ensure proper handling, please reference DHS Docket No. ICEB–2006–0004 on your correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions.
- Hand Delivery: National Program Manager Charles McClain, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Washington, DC 20536–20024.

FOR FURTHER INFORMATION CONTACT: National Program Manager Charles McClain, U.S. Immigration and Customs Enforcement, Office of Investigations—MS 5112, 500 12th Street, SW., Washington, DC 20536. Telephone: 202–732–3988 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to comment on this rulemaking by submitting written data, views, or arguments on all aspects of the rule. Comments that will most assist DHS will reference a specific portion of the rule and explain the reason for any recommended change. Comments should include data, information, and the authority that supports the recommended change. Comments previously submitted to this docket do not need to be submitted again.

Instructions for filing comments: All submissions received must include the agency name and DHS docket number ICEB–2006–0004. All comments received (including any personal information provided) will be posted without change to *http://www.regulations.gov*. See **ADDRESSES**, above, for methods to submit comments. Mailed submissions may be paper, disk, or CD–ROM.

Reviewing comments: Public comments may be viewed online at *http://www.regulations.gov* or in person at U.S Immigration and Customs Enforcement, Department of Homeland Security, 500 12th Street, SW., Room 1000, Washington, DC 20024, by appointment. To make an appointment to review the docket you must call telephone number 202–307–0071.

II. Background

It is unlawful for a person or other entity to hire, or to recruit or refer for a fee, an alien for employment in the United States knowing the alien is not authorized to work in the United States. Immigration and Nationality Act of 1952, as amended (INA), section 274A(a)(1)(A), 8 U.S.C. 1324a(a)(1)(A). It is also unlawful for a person or other entity, after hiring an alien for employment, to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment. INA section 274A(a)(2), 8 U.S.C. 1324a(a)(2).

All persons or entities that hire, or recruit or refer persons for a fee, for employment must verify the identity and employment eligibility of all employees hired to work in the United States. INA section 274A(a)(1)(B), (b)(1), (b)(2), 8 U.S.C. 1324a(a)(1)(B), (b)(1), (b)(2). Under the INA, this verification is performed by completing an Employment Eligibility Verification form (Form I–9) for all employees, including United States citizens. INA section 274A(b)(1), (b)(2), 8 U.S.C. 1324a (b)(1), (b)(2); 8 CFR 274a.2. An employer, or a recruiter or referrer for a fee, must retain the completed Form I–9 for three years after hiring, recruiting or referral, or, where the employment extends longer, for the life of the individual's employment and for one year following the employee's departure. INA section 274A(b)(3), 8 U.S.C. 1324a(b)(3). These forms are not routinely filed with any Government agency; employers are responsible for maintaining these records, and they may be requested and reviewed by DHS Immigration and Customs Enforcement (ICE). INA section 274A(b)(1)(E)(3); 8 CFR 274a.2(b)(2), (c)(2); *see* 71 FR 34510 (June 15, 2006) (Electronic Signature and Storage of Form I–9, Employment Eligibility Verification).

Employers annually send the Social Security Administration (SSA) millions of earnings reports (W–2 Forms) in which the combination of employee name and social security number (SSN) does not match SSA records. In some of these cases, SSA sends a letter, such as an ''Employer Correction Request,'' that informs the employer of the mismatch. The letter is commonly referred to as an employer ''no-match letter.'' There can be many causes for a no-match, including clerical error and name changes. One potential cause may be the submission of information for an alien who is not authorized to work in the United States and who may be using a false SSN or a SSN assigned to someone else. Such a letter may be one indicator to an employer that one of its employees may be an unauthorized alien.

ICE sends a similar letter (currently called a ''Notice of Suspect Documents'') after it has inspected an employer's Employment Eligibility Verification forms (Forms I–9) during an investigation audit and after unsuccessfully attempting to confirm, in agency records, that an immigration status document or employment authorization document presented or referenced by the employee in completing the Form I–9 was assigned to that person. (After a Form I–9 is completed by an employer and employee, it is retained by the employer and made available to DHS investigators on request, such as during an audit.)

Over the years, employers have inquired of the former Immigration and Naturalization Service, and now DHS, whether receipt of a no-match letter constitutes constructive knowledge on the part of the employer that he or she may have hired an alien who is not authorized to work in the United States. On August 15, 2007, DHS issued a rule describing the legal obligations of an employer following receipt of a no-match letter from SSA or a letter from DHS regarding employment verification forms. See 72 FR 45611. The rule also established ''safe-harbor'' procedures for employers receiving no-match letters.

On August 29, 2007, the American Federation of Labor and Congress of Industrial Organizations, and others, filed suit seeking declaratory and injunctive relief in the United States District Court for the Northern District of California. *AFL–CIO, et al.* v. *Chertoff, et al.*, No. 07–4472–CRB, D.E. 1 (N.D. Cal. Aug. 29, 2007). The district court granted plaintiffs' initial motion for a temporary restraining order against implementation of the August 2007 Final Rule. *AFL–CIO* v. *Chertoff*, D.E. 21 (N.D. Cal. Aug. 31, 2007) (order granting motion for temporary restraining order and setting schedule for briefing and hearing on preliminary injunction). On October 10, 2007, the district court granted the plaintiffs' motion for preliminary injunction. *AFL–CIO* v. *Chertoff*, 552 F.Supp.2d 999 (N.D. Cal. 2007) (order granting motion for preliminary injunction).

The court raised three issues regarding DHS's rulemaking action implementing the No-Match final rule: Whether DHS had (1) supplied a reasoned analysis to justify what the court viewed as a change in the Department's position—that a no-match letter may be sufficient, by itself, to put an employer on notice, and thus impart constructive knowledge, that employees referenced in the letter may not be work-authorized; (2) exceeded its authority (and encroached on the authority of the Department of Justice (DOJ)) by interpreting the anti-discrimination provisions of the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99–603, 100 Stat. 3359 (1986), INA section 274B, 8 U.S.C. 1324b; and (3) violated the Regulatory Flexibility Act, 5 U.S.C 601 *et seq.*, by not conducting a regulatory flexibility analysis. DHS subsequently published a supplemental notice of proposed rulemaking (SNPRM) and supplemental final rule to clarify certain aspects of the 2007 No-Match final rule and to respond to the three findings underlying the court's injunction.. See *e.g.* 73 FR 15944 (Mar. 26, 2008), 73 FR 63843 (Oct. 28, 2008). Neither the SNPRM nor final rule, however, changed the safe-harbor procedures or applicable regulatory text. The implementation of the rule remains enjoined.

III. Basis for Policy Change

On January 20, 2009, President Barack Obama was sworn into office. Shortly thereafter, on January 21, 2009, Janet Napolitano was sworn in as the Secretary of Homeland Security. Following the transition, the Secretary conducted a review of existing programs and regulations to determine areas for reform or improved efficiency. Pursuant to this review, DHS has determined that improvements in U.S. Citizenship and Immigration Services' (USCIS) electronic employment verification system (E-Verify), along with other DHS programs, provide better tools for employers to reduce incidences of unauthorized employment and to better detect and deter the use of fraudulent identity documents by employees. As discussed below, DHS therefore has concluded that rescinding the August 2007 No-Match Rule and 2008 Supplemental Final Rule will better achieve DHS's regulatory and enforcement goals.

DHS has determined that a more appropriate utilization of DHS resources would be to focus enforcement/community outreach efforts on increased compliance through improved verification, including increased participation in the USCIS's E-Verify employment eligibility verification system, the U.S. Immigration and Customs Enforcement's ICE Mutual Agreement Between Government and Employers (IMAGE), and other programs. This decision is part of a Government-wide reexamination of regulatory processes.

Further development of the USCIS E-Verify employment eligibility verification system warrants refocusing DHS's priorities on the implementation of that compliance protocol. DHS believes E-Verify is an essential tool for employers committed to maintaining a legal workforce. E-Verify compares employee information from the Form I–9 against more than 455,000,000 records in the SSA database and more than 80,000,000 records in DHS immigration databases.

E-Verify has expanded exponentially in the past several years to include over 138,000 employers representing over 500,000 locations; on average, 1,000 employers enroll in E-Verify each week. Participation has more than doubled each fiscal year since 2007. As of August 1, 2009, more than six million queries have been run through the system in FY 2009. Accuracy of the E-Verify program also has improved. An independent evaluation completed in December 2008 found that approximately 96.9 percent of all cases queried through E-Verify are instantly found to be work-authorized. Of the 3.1 percent of queries that resulted in a mismatch of the information in SSA or DHS databases, 0.3 percent of queries were successfully contested. The remaining 2.8 percent either did not contest the determination or were unsuccessful in contesting, or were found unauthorized to work at the secondary verification stage.

In September 2007, E-Verify began to automatically flag inconsistent data and allow employers to double-check the data they entered into E-Verify before issuing a tentative non-confirmation, thereby reducing data entry errors and initial mismatches by approximately 30 percent. Cross-checking queries against USCIS naturalization data reduced citizenship mismatches by approximately 39 percent. As of May, 2008, E-Verify also added the Integrated Border Inspection System (IBIS) real time arrival and departure information for non-citizens to its databases. This step reduced hundreds of E-Verify mismatches that had resulted from data entry delays, thus allowing newly arriving workers to enter the country legally and start working immediately. In February 2009, USCIS began incorporating Department of State passport data into E-Verify in order to check citizenship status information in the event of a mismatch with SSA, reducing the number of mismatches for citizens who did not personally complete the naturalization process, but derived citizenship from their parents, eliminating several hundred more mismatches.

Finally, to reduce the premium on identity theft to commit immigration fraud, the E-Verify program introduced a photograph screening capability into

the verification process in September 2007, allowing an employer to check the photos on Employment Authorization Documents or Permanent Resident Cards (green card) against images stored in USCIS databases. Through use of the photo tool, hundreds of cases of document and identity fraud have been identified, and unauthorized workers have been prevented from illegally obtaining employment.

In FY 2010, USCIS plans to improve the E-Verify system's ability to automatically verify international students and exchange visitors through the incorporation of ICE's Student and Exchange Visitors Information System (SEVIS) data into E-Verify. By incorporating SEVIS nonimmigrant student visa data into the automatic initial E-Verify check, the number of students and exchange visitors who receive initial mismatches should be reduced. In 2010, ICE will be launching a new version of SEVIS, SEVIS II, which will include employment eligibility information that E-Verify will be able to access electronically. Currently, the SEVIS database is checked manually by immigration status verifiers after an initial mismatch is issued. See, *Adjusting Program Fees and Establishing Procedures for Out-of-Cycle Review and Recertification of Schools Certified by the Student and Exchange Visitor Program To Enroll F or M Nonimmigrant Students,* 73 FR 21260 (Apr. 21, 2008) (proposed rule); 73 FR 55683 (Sept. 26, 2008) (final rule) (establishing fees and cost base for SEVIS II).

DHS is dedicated to providing this service to employers and continuing to make improvements to the system to address issues such as usability, fraud, discrimination, and further improve the system's automatic verification rate. E-Verify will continue to be a key element of DHS's ability to deter employment of unauthorized aliens and illegal immigration.

Additionally, the ICE Mutual Agreement between Government and Employers (IMAGE) program assists employers to develop a more secure and stable workforce and to enhance fraudulent document awareness through education and training to combat unlawful employment and reduce vulnerabilities. Employers can reduce unauthorized employment and the use of fraudulent identity documents by voluntarily participating in the IMAGE program. As part of IMAGE, ICE and USCIS provide education and training on proper hiring procedures, fraudulent document detection, and the use of the E-Verify employment eligibility verification program. Since 2006, ICE has partnered with industry to provide ''best practices,'' training, and recommended tools that industry can use to comply with worksite laws and requirements. In FY 2008, ICE outreach coordinators in 26 field offices made 517 IMAGE presentations to more than 8,300 businesses. DHS believes that a comprehensive strategy to address worksite enforcement creates a culture of industry compliance. To that end, IMAGE outreach efforts have increased significantly since the inception of the program.

Opportunities for employment remain a primary motivation for aliens seeking illegal entry into the United States. ICE's worksite enforcement program targets unscrupulous employers who prey upon these aliens by subjecting them to poor or unsafe working conditions or paying them sub-standard wages. ICE's multi-faceted worksite enforcement strategy targets two types of employers: employers whose business model relies upon an unauthorized workforce, and employers who place the national security of the United States at risk by employing unauthorized workers in sensitive critical infrastructure industries.

Employers hire undocumented workers to obtain a financial advantage over their competitors by paying lower wages, offering few if any benefits, failing to comply with tax laws, and avoiding health and safety related complaints. ICE focuses on the most egregious violators, namely employers who engage in human smuggling, identity theft, and social security number fraud. ICE also focuses on employers who use undocumented workers at our Nation's critical infrastructure sites, including airports.

DHS's worksite enforcement strategy includes a restructured process for worksite administrative fines to build a more vigorous program. ICE has established and distributed to all field offices guidance about the issuance of administrative fines and standardized criteria for the imposition of such fines. DHS expects that the increased use of the administrative fines process will result in meaningful penalties for those who engage in the employment of unauthorized workers.

ICE has also implemented a debarment policy that prevents employers from receiving Federal contracts when they are in violation of worksite laws. After completion of administrative proceedings and on the basis of a determination that an employer has violated the worksite laws, an offending employer may be excluded from doing business with the Federal Government or from receiving loans under the Recovery Act. Since this relatively new program began, thirty-one companies and forty individuals have been debarred.

ICE also created the Document and Benefit Fraud Task Forces (DBFTF) to combat the vulnerabilities exploited by identity and document fraud organizations and to maintain the integrity of the United States immigration system. The DBFTF cooperative effort leverages multiple law enforcement tools and authorities to identify, disrupt, and dismantle criminal organizations involved in immigration benefit fraud and the manufacturing and distribution of fraudulent identity documents, including United States passports, birth certificates, state-issued identification cards, social security cards, and alien registration documents. In these taskforces, ICE and USCIS work with the law enforcement functions and the Inspectors General of the Departments of Labor and State, the Social Security Administration, U.S. Postal Service, and various state and local law enforcement agencies.

The aggregate of these changes in enforcement priorities must be balanced with other efforts of the U.S. government. In addition, as noted in the 2008 Supplemental Final Rule, SSA has continued to refine the wage reporting process in ways that help to reduce potential errors resulting in a no-match letter. As noted previously, electronic filing of Forms W–2 rose from 53% of all employee reports in FY2003 to over 80% in FY2007—a 51% increase.[1] SSA has more recently reported a further increase in electronic filing of Forms W–2 to 86.3%.[2] Employers who use SSA's system are able to eliminate most no-matches in their reports and thereby significantly reduce their likelihood of receiving a no-match letter. SSA improvements in related areas have led the SSA Inspector General to question the efficacy of the continuing use of no-match letters.[3]

Finally, as noted in the Supplemental Final Rule, SSA no-match letters have also formed a basis for multiple criminal investigations by ICE and prosecutions on charges of harboring or knowingly

[1] Social Security Administration, *Performance and Accountability Report, Fiscal Year 2007* at 67–8.

[2] Social Security Administration, *Performance and Accountability Report, Fiscal Year 2008* at 175.

[3] Office of the Inspector General, Social Security Administration, *Quick Response Evaluation: Effectiveness of Educational Correspondence to Employers,* Audit Rept. No. A–030–07–17105 (Dec. 2008) (''[O]ur review showed EDCOR letters were not as successful as other SSA processes in removing suspended wage items from the ESF'').

hiring unauthorized aliens.[4] DHS has determined that focusing on the management practices of employers would be more efficacious than focusing on a single element of evidence within the totality of the circumstances.

Accordingly, DHS proposes to rescind the 2007 Final Rule and 2008 Supplemental Final Rule, and reinstate the language of 8 CFR 274.1(l) as it existed prior to the effective date of the 2007 Final Rule.

IV. Statutory and Regulatory Reviews

A. Administrative Procedure Act

DHS is publishing this proposed rule in the **Federal Register** as a discretionary request for public comment. DHS has previously stated that the regulation that is being rescinded was an interpretive, not legislative, rule. 73 FR 15951 (March 26, 2008) (supplemental proposed rule); 73 FR 63861 (Oct. 28, 2008) (supplemental final rule). DHS believes that rescission of the regulation is an interpretive rule for the same reasons that the underlying regulation being rescinded was an interpretive rule.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. This proposed rule would amend DHS regulations to rescind the amendments promulgated in the 2007 Final Rule and the 2008 Supplemental Final Rule relating to procedures that employers may take to acquire a safe harbor from evidentiary use of receipt of no-match letters. Implementation of the 2007 Final Rule was preliminarily enjoined by the United States District Court for the Northern District of California on October 10, 2007. This rule would reinstate the language of 8 CFR 274.1(l) as it existed prior to the effective date of the 2007 Final Rule.

As explained at 73 FR 63863, DHS does not believe the safe-harbor offered by the 2007 Final Rule and the 2008 Supplemental Final Rule imposed a mandate that forced employers to incur ''compliance'' costs for the purposes of the Regulatory Flexibility Act. Only small entities that choose to avail themselves to the safe harbor would incur direct costs as a result of the 2007 Final Rule and the 2008 Supplemental Final Rule. As this rulemaking proposes to rescind the offer of a safe harbor, this rule does not propose any compliance requirements and consequently would not impose any direct costs on small entities if promulgated as a final rule. Therefore, DHS certifies under 5 U.S.C 605(b) that this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. DHS invites comments from small entities regarding any direct costs commenters believe this rulemaking would impose.

C. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in one year, and it would not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law No. 104–4, 109 Stat. 48 (1995), 2 U.S.C. 1501 *et seq.*

D. Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996, Public Law 104–121, 804, 110 Stat. 847, 872 (1996), 5 U.S.C. 804(2). This proposed rule has not been found to be likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or foreign markets.

E. Executive Order 12866 (Regulatory Planning and Review)

This proposed rule constitutes a ''significant regulatory action'' under Executive Order 12866, and therefore has been reviewed by the Office of Management and Budget. Under Executive Order 12866, a significant regulatory action is subject to an Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one 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 or 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. Because this rule rescinds two previously published rules that received considerable public attention and involves multiple agencies of the United States, this rule raises novel policy issues and, thereby, is subject to OMB review.

F. Executive Order 13132 (Federalism)

This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order No. 13132, 64 FR 43,255 (Aug. 4, 1999), this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order No.12988, 61 Fed. Reg. 4729 (Feb. 5, 1996).

H. Paperwork Reduction Act

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

List of Subjects in 8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, DHS proposes to

[4] 73 FR at 63848 & n.2. Further developments in the criminal cases previously noted in this rulemaking illustrate the utility of focusing attention on employer and employer management conduct. *United States* v. *Gonzales,* 2008 WL 160636 (N.D. Miss. No. 4:07–CR–140, Jan. 18, 2008) (final order of forfeiture of $310,511.75, as to Gonzalez and Tarrasco Steel Company, Inc.); *United States* v. *Insolia,* No. 1:07–CR–10251 (D. Mass), (Insolia plead guilty to harboring and submitting false social security numbers; to serve 13 to 18 months, fined $30,000; MBI plead guilty to 18 counts of knowingly hiring unauthorized workers between early 2004 and late 2006; harboring and shielding from 2004–2007; social security and mail fraud from 2005–2007; fine approximately $1,500,000, including $476,000 in restitution to employees; managers also plead guilty); *United States* v. *Rice,* No. 1:07–CR–109 (N.D.N.Y) (IFCO Systems reached corporate settlement of $2,600,000 in back pay for overtime violations and $18,100,000 in civil forfeitures. Nine IFCO managers previously plead guilty (including Rice) (indictment of seven managers for illegal immigration and employment-related practices filed).

amend part 274A of title 8 of the Code of Federal Regulations as follows:

8 CFR CHAPTER 1—DEPARTMENT OF HOMELAND SECURITY

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

1. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1624a, 8 CFR part 2, Public Law 101–410, 104 Stat. 890, as amended by Public Law 104–134, 110 Stat. 1321.

2. Section 274a.1 is proposed to be amended by revising paragraph (l) to read as follows:

§ 274a.1 Definitions.

* * * * *

(l)(1) The term *knowing* includes not only actual knowledge but also knowledge which may fairly be inferred through notice of certain facts and circumstances which would lead a person, through the exercise of reasonable care, to know about a certain condition. Constructive knowledge may include, but is not limited to, situations where an employer:

(i) Fails to complete or improperly completes the Employment Eligibility Verification Form, I–9;

(ii) Has information available to it that would indicate that the alien is not authorized to work, such as Labor Certification and/or an Application for Prospective Employer; or

(iii) Acts with reckless and wanton disregard for the legal consequences of permitting another individual to introduce an unauthorized alien into its work force or to act on its behalf.

(2) Knowledge that an employee is unauthorized may not be inferred from an employee's foreign appearance or accent. Nothing in this definition should be interpreted as permitting an employer to request more or different documents than are required under section 274(b) of the Act or to refuse to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual.

Janet Napolitano,

Secretary.

[FR Doc. E9–19826 Filed 8–18–09; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0715; Directorate Identifier 2008–NM–211–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120, –120ER, –120FC, –120QC, and –120RT Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: It has been found the occurrence of corrosion on the Auxiliary Power Unit (APU) mounting rods that could cause the APU rod to break, affecting the APU support structure integrity.

APU support structure failure could result in undetectable fire in the tail cone and possible loss of control of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by September 18, 2009.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: (202) 493–2251.
- Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- Hand Delivery: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim–12227–901 São Jose dos Campos–SP—BRASIL; telephone: +55 12 3927–5852 or +55 12 3309–0732; fax: +55 12 3927–7546; e-mail: *distrib@embraer.com.br*; Internet: *http://www.flyembraer.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket 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 in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0715; Directorate Identifier 2008–NM–211–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The Agencia Nacional De Aviacao Civil—Brazil (ANAC), which is the airworthiness authority for Brazil, has issued Brazilian Airworthiness Directive 2008–08–01, dated October 21, 2008

(referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

It has been found the occurrence of corrosion on the Auxiliary Power Unit (APU) mounting rods that could cause the APU rod to break, affecting the APU support structure integrity.

APU support structure failure could result in undetectable fire in the tail cone and possible loss of control of the airplane. Required actions include repetitive inspections for corrosion of the APU auxiliary and center mounting rods and rod ends, and corrective actions if necessary. Corrective actions include removing corrosion, applying anticorrosive treatment, and replacing mounting rods. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Embraer has issued Service Bulletin 120–49–0023, Revision 01, dated June 30, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 90 products of U.S. registry. We also estimate that it would take about 8 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $57,600, or $640 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2009–0715; Directorate Identifier 2008–NM–211–AD.

Comments Due Date

(a) We must receive comments by September 18, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes, certified in any category; as identified in Embraer Service Bulletin 120–49–0023, Revision 01, dated June 30, 2008.

Subject

(d) Air Transport Association (ATA) of America Code 49: Airborne Auxiliary Power.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

It has been found the occurrence of corrosion on the Auxiliary Power Unit (APU) mounting rods that could cause the APU rod to break, affecting the APU support structure integrity.

APU support structure failure could result in undetectable fire in the tail cone and possible loss of control of the airplane. Required actions include repetitive inspections for corrosion of the APU auxiliary and center mounting rods and rod ends, and corrective actions if necessary. Corrective actions include removing corrosion, applying anticorrosive treatment, and replacing mounting rods.

Actions and Compliance

(f) Unless already done do the following actions:

(1) Within 500 flight hours or two months after the effective date of this AD, whichever occurs first, do an external detailed inspection for corrosion of the APU, auxiliary and center mounting rods, and rod ends. Repeat the inspections thereafter at intervals not to exceed 1,500 flight hours or 6 months,

whichever occurs first. If any corrosion is found during any inspection, before further flight, do the actions required by paragraphs (f)(1)(i), (f)(1)(ii), and (f)(1)(iii) of this AD, as applicable. Do all actions required by this paragraph in accordance with the Accomplishment Instructions of Embraer Service Bulletin 120–49–0023, Revision 01, dated June 30, 2008.

(i) If light corrosion (characterized by discoloration or pitting) is found on a mounting rod, remove the corrosion and apply an anticorrosive treatment.

(ii) If moderate corrosion (characterized by surface blistering or evidence of scaling and flaking), or heavy corrosion (characterized by severe blistering exfoliation, scaling and flaking) is found, replace the affected mounting rod with a new mounting rod having the same part number.

(iii) If any corrosion is detected on the rod ends, remove the corrosion and apply an anticorrosive treatment.

(2) Accomplishing of the inspection and corrective actions required by paragraph (f)(1) of this AD before the effective date of this AD in accordance with Embraer Service Bulletin 120–49–0023, dated April 18, 2008, is acceptable for compliance with the corresponding requirements of paragraph (f)(1) of this AD.

(3) Submit a report of the positive findings (including level of corrosion such as Light, Moderate, or Heavy as identified in Embraer Corrosion Prevention Manual (CPM) 51–11–01, on the external surface of the rods as well as the rod ends) of the inspection required by paragraph (f)(1) of this AD to Mr. Antonio Claret—Customer Support Group, Embraer Aircraft Holding, Inc, 276 S.W. 34th Street Fort Lauderdale, FL 33315—USA; telephone (954) 359–3826, at the applicable time specified in paragraph (f)(3)(i) or (f)(3)(ii) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was accomplished prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

(1) Brazilian Airworthiness Directive 2008–08–01, dated October 21, 2008, requires only a one-time inspection with a compliance time of 1,500 flight hours or 6 months after the effective date of the Brazilian AD, whichever occurs first. However, we have determined that, since the exterior surface of the mounting rods is cadmium-plated and corrosion propagates from inside out, a one-time inspection may not identify the corroded rods if corrosion did not become evident through the cadmium-plated exterior surface. This one-time inspection will not reveal the extent of damage to these rods on the existing fleet and may require subsequent non-destructive inspections (NDI) to determine the final action. This AD instead requires an initial inspection within the next 500 flight hours or 2 months after the effective date of this AD, whichever occurs first; and repetitive inspections at intervals not to exceed 1,500 flight hours or 6 months, whichever occurs first. This difference has been coordinated with the Agencia Nacional De Aviacao Civil—Brazil (ANAC).

(2) Although Brazilian Airworthiness Directive 2008–08–01, dated October 21, 2008, does not include a reporting requirement, the service bulletin identified in paragraph (f)(1) of this AD does specify reporting findings to Embraer. This AD requires that operators report the results of the inspections to Embraer because the required inspection report will help determine the extent of the corrosion in the affected fleet, from which we will determine if further corrective action is warranted. This difference has been coordinated with ANAC.

(3) Brazilian Airworthiness Directive 2008–08–01, dated October 21, 2008, allows replacement of the affected APU mounting rods by ''new ones bearing a new P/N [part number] approved by ANAC [Agência Nacional de Aviação Civil].'' However, paragraph (f)(1)(ii) of this AD requires replacing the affected mounting rod only with a new mounting rod having the same part number. Operators may request approval of an alternative method of compliance in order to install a new part number in accordance with the procedures specified in paragraph (g)(1) of this AD. This difference has been coordinated with ANAC.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

(4) *Special Flight Permits:* Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the airplane can be modified (if the operator elects to do so), except if two or more center mounting rods or rod ends are heavily corroded or broken, a special flight permit is not permitted.

Related Information

(h) Refer to MCAI Brazilian Airworthiness Directive 2008–08–01, dated October 21, 2008, and Embraer Service Bulletin 120–49–0023, Revision 01, dated June 30, 2008, for related information.

Issued in Renton, Washington, on August 7, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–19851 Filed 8–18–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0716; Directorate Identifier 2008–NM–212–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 Airplanes; and Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: It has been found the occurrence of corrosion on the Auxiliary Power Unit (APU) mounting rods that could cause the APU rod to break, affecting the APU support structure integrity.

APU support structure failure could result in undetectable fire in the tail cone and possible loss of control of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by September 18, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone: +55 12 3927–5852 or +55 12 3309–0732; fax: +55 12 3927–7546; e-mail: *distrib@embraer.com.br*; Internet: *http://www.flyembraer.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket 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 in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0716; Directorate Identifier 2008–NM–212–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The Agencia Nacional De Aviacao Civil—Brazil (ANAC), which is the airworthiness authority for Brazil, has issued Brazilian Airworthiness Directive 2008–10–02, dated October 21, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> It has been found the occurrence of corrosion on the Auxiliary Power Unit (APU) mounting rods that could cause the APU rod to break, affecting the APU support structure integrity.

APU support structure failure could result in undetectable fire in the tail cone and possible loss of control of the airplane. Required actions include repetitive inspections for corrosion of the APU auxiliary and center mounting rods and rod ends, and corrective actions if necessary. Corrective actions include removing corrosion, applying anticorrosive treatment, and replacing mounting rods. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Embraer has issued Service Bulletin 145–49–0034, Revision 01, dated September 8, 2008; and Service Bulletin 145LEG–49–0008, Revision 02, dated September 8, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 761 products of U.S. registry. We also estimate that it would take about 8 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $487,040, or $640 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on

the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2009–0716; Directorate Identifier 2008–NM–212–AD.

Comments Due Date

(a) We must receive comments by September 18, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, and –135LR airplanes; and EMBRAER Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes, certified in any category; as identified Embraer Service Bulletin 145–49–0034, Revision 01, dated September 8, 2008; and Embraer Service Bulletin 145LEG–49–0008, Revision 02, dated September 8, 2008.

Subject

(d) Air Transport Association (ATA) of America Code 49: Airborne Auxiliary Power.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

It has been found the occurrence of corrosion on the Auxiliary Power Unit (APU) mounting rods that could cause the APU rod to break, affecting the APU support structure integrity.

APU support structure failure could result in undetectable fire in the tail cone and possible loss of control of the airplane. Required actions include repetitive inspections for corrosion of the APU auxiliary and center mounting rods and rod ends, and corrective actions if necessary. Corrective actions include removing corrosion, applying anticorrosive treatment, and replacing mounting rods.

Actions and Compliance

(f) Unless already done do the following actions:

(1) Within 500 flight hours or two months after the effective date of this AD, whichever occurs first, do an external detailed inspection for corrosion of the APU, auxiliary and center mounting rods, and rod ends. Repeat the inspections thereafter at intervals not to exceed 1,500 flight hours or 6 months, whichever occurs first. If any corrosion is found during any inspection, before further flight, do the actions required by paragraphs (f)(1)(i), (f)(1)(ii), and (f)(1)(iii) of this AD, as applicable. Do all actions required by this paragraph in accordance with the Accomplishment Instructions of Embraer Service Bulletin 145–49–0034, Revision 01, dated September 8, 2008; or Embraer Service Bulletin 145LEG–49–0008, Revision 02, dated September 8, 2008; as applicable.

(i) If light corrosion (characterized by discoloration or pitting) is found on a mounting rod, remove the corrosion and apply an anticorrosive treatment.

(ii) If moderate corrosion (characterized by surface blistering or evidence of scaling and flaking), or heavy corrosion (characterized by severe blistering exfoliation, scaling and flaking) is found, replace the affected mounting rod with a new mounting rod having the same part number.

(iii) If any corrosion is detected on the rod ends, remove the corrosion and apply an anticorrosive treatment.

(2) Accomplishing the inspection and corrective actions required by paragraph (f)(1) of this AD before the effective date of this AD in accordance with Embraer Service Bulletin 145–49–0034, dated April 18, 2008; Embraer Service Bulletin 145LEG–49–0008, dated April 18, 2008; or Embraer Service Bulletin 145LEG–49–0008, Revision 01, dated May 26, 2008; is acceptable for compliance with the corresponding requirements of paragraph (f)(1) of this AD.

(3) Submit a report of the positive findings (including level of corrosion such as Light, Moderate, or Heavy as identified in Embraer Corrosion Prevention Manual (CPM) 51–11–01, on the external surface of the rods as well as the rod ends) of the inspection required by paragraph (f)(1) of this AD to the ATTN: Mr. Antonio Claret—Customer Support Group, Embraer Aircraft Holding, Inc, 276 S.W. 34th Street Fort Lauderdale, FL 33315—USA; telephone (954) 359–3826, at the applicable time specified in paragraph (f)(3)(i) or (f)(3)(ii) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was accomplished prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

(1) Brazilian Airworthiness Directive 2008–10–02, dated October 21, 2008, requires only a one-time inspection with a compliance time of 1,500 flight hours or 6 months after the effective date of the Brazilian AD, whichever occurs first. However, we have determined that, since the exterior surface of the mounting rods is cadmium-plated and corrosion propagates from inside out, a one-time inspection may not identify the corroded rods if corrosion did not become evident through the cadmium plated exterior surface. This one-time inspection will not reveal the extent of damage to these rods on the existing fleet and may require subsequent non-destructive inspections (NDI) to determine the final action. This AD instead requires an initial inspection within the next 500 flight hours or 2 months after the effective date of this AD, whichever occurs first; and repetitive inspections at intervals not to exceed 1,500 flight hours or 6 months, whichever occurs first. This difference has been coordinated with the Agencia Nacional De Aviacao Civil—Brazil (ANAC).

(2) Although Brazilian Airworthiness Directive 2008–10–02, dated October 21, 2008, does not include a reporting requirement, the service bulletins identified in paragraph (f)(1) of this AD do specify reporting findings to Embraer. This AD requires that operators report the results of the inspections to Embraer because the required inspection report will help determine the extent of the corrosion in the affected fleet, from which we will determine if further corrective action is warranted. This difference has been coordinated with ANAC.

(3) Brazilian Airworthiness Directive 2008–10–02, dated October 21, 2008, allows replacement of the affected APU mounting rods by ''new ones bearing a new P/N [part number] approved by ANAC [Agência Nacional de Aviação Civil].'' However, paragraph (f)(1)(ii) of this AD requires replacing the affected mounting rod only with a new mounting rod having the same part number. Operators may request approval of an alternative method of compliance in order to install a new part number in accordance with the procedures specified in paragraph (g)(1) of this AD. This difference has been coordinated with ANAC.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International

Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

(4) Special Flight Permits: Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the airplane can be modified (if the operator elects to do so), except if two or more center mounting rods or rod ends are heavily corroded or broken, a special flight permit is not permitted.

Related Information

(h) Refer to MCAI Brazilian Airworthiness Directive 2008–10–02, dated October 21, 2008; Embraer Service Bulletin 145–49–0034, Revision 01, dated September 8, 2008; and Embraer Service Bulletin 145LEG–49–0008, Revision 02, dated September 8, 2008, for related information.

Issued in Renton, Washington, on August 7, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–19852 Filed 8–18–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0714; Directorate Identifier 2009–NM–041–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ, –135ER, –135KE, –135KL, –135LR, –145, –145EP, 145ER, –145MP, –145MR, –145XR, and 145LR Airplanes Modified in Accordance With Brazilian Supplemental Type Certificate (STC) 2002S06–09, 2002S06–10, or 2003S08–01

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: It was reported that after commanding the landing gear lever to down the three green landing gear positioning indication was displayed followed by the LG/LEVER DISAGREE EICAS [engine indicating and crew alerting system] message. The crew decided to continue the approach and landing procedure. As soon as the crew identified that the landing gear was not extended properly, a go-around procedure was successfully performed. During maneuver, the airplane settled momentarily onto the flaps and belly.

The unsafe condition is the landing gear remaining in the up and locked position during approach and landing and accompanied by an invalid EICAS landing gear position indication, which could result in landing with gear in the up position, and eliminate controllability of the airplane on ground. This may consequently result in structural damage to the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by September 18, 2009.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: (202) 493–2251.
- Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- Hand Delivery: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone: +55 12 3927–5852 or +55 12 3309–0732; fax: +55 12 3927–7546; e-mail: *distrib@embraer.com.br*; Internet: *http://www.flyembraer.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket 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 in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0714; Directorate Identifier 2009–NM–041–AD'' at the beginning of your comments. We specifically invite

comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2009–01–01, effective January 8, 2009, as corrected by Brazilian Airworthiness Directive Errata, effective January 20, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> It was reported that after commanding the landing gear lever to down the three green landing gear positioning indication was displayed followed by the LG/LEVER DISAGREE EICAS [engine indicating and crew alerting system] message. The crew decided to continue the approach and landing procedure. As soon as the crew identified that the landing gear was not extended properly, a go-around procedure was successfully performed. During maneuver, the airplane settled momentarily onto the flaps and belly.
>
> * * * * *

The unsafe condition is the landing gear remaining in the up and locked position during approach and landing and accompanied by an invalid EICAS landing gear position indication, which could result in landing with gear in the up position, and eliminate controllability of the airplane on ground. This may consequently result in structural damage to the airplane. Required actions include replacing the landing gear electronic unit with a new one having a new part number. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Embraer has issued Service Bulletins 145–32–0120, Revision 01, dated November 4, 2008; and 145LEG–32–0032, Revision 02, dated February 17, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 711 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $113,760, or $160 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2009–0714; Directorate Identifier 2009–NM–041–AD.

Comments Due Date

(a) We must receive comments by September 18, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes, certificated in any category, modified according to Brazilian Supplemental Type Certificate 2002S06–09, 2002S06–10 or 2003S08–01, and equipped with landing gear electronic unit (LGEU) part number (P/N) 355–022–002.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

It was reported that after commanding the landing gear lever to down the three green landing gear positioning indication was displayed followed by the LG/LEVER DISAGREE EICAS [engine indicating and crew alerting system] message. The crew decided to continue the approach and landing procedure. As soon as the crew identified that the landing gear was not extended properly, a go-around procedure was successfully performed.

During maneuver, the airplane settled momentarily onto the flaps and belly.

* * * * *

The unsafe condition is the landing gear remaining in the up and locked position during approach and landing and accompanied by an invalid EICAS landing gear position indication, which could result in landing with gear in the up position, and eliminate controllability of the airplane on ground. This may consequently result in structural damage to the airplane. Required actions include replacing the LGEU with a new one having a new part number.

Actions and Compliance

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

(1) Within 12 months after the effective date of this AD, replace any LGEU P/N 355–022–002 having a serial number (S/N) 1000 through 1999 inclusive with a new LGEU having P/N 355–022–003, in accordance with the Accomplishment Instructions of Embraer Service Bulletin 145–32–0120, Revision 01, dated November 4, 2008; or 145LEG–32–0032, Revision 02, dated February 17, 2009; as applicable.

(2) As of 12 months after the effective date of this AD, no person may install on any airplane an LGEU having a P/N 355–022–002 and S/N 1000 through 1999 inclusive.

(3) Within 30 months after the effective date of this AD, replace any LGEU P/N 355–022–002 having a serial number not identified in paragraph (f)(1) of this AD, with a new LGEU having a P/N 355–022–003, in accordance with the Accomplishment Instructions of Embraer Service Bulletin 145–32–0120, Revision 01, dated November 4, 2008; or 145LEG–32–0032, Revision 02, dated February 17, 2009; as applicable.

(4) As of 30 months after the effective date of this AD, no person may install on any airplane an LGEU having a P/N 355–022–002.

(5) Replacement of the LGEU is also acceptable for compliance with the requirements of paragraph (f) of this AD if done before the effective date of this AD in accordance with one of the service bulletins identified in Table 1 of this AD:

TABLE 1—CREDIT SERVICE BULLETINS

Embraer Service Bulletin—	Revision—	Dated—
145LEG–32–0032	Original	October 8, 2008.
145LEG–32–0032	01	November 4, 2008.
145–32–0120	Original	September 15, 2008.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

Although Embraer Service Bulletins 145LEG–32–0032, Revision 02, dated February 17, 2009; and 145–32–0120, Revision 01, dated November 4, 2008; specify that no person may install on any airplane an LGEU P/N 355–022–002 as of 30 months after the effective date of this AD, we have determined that no LGEU P/N 355–022–002 with a S/N 1000 through 1999 inclusive may be installed 12 months after the effective date of this AD. Allowing installation of those serial numbers beyond 12 months would not address the identified unsafe condition and ensure an adequate level of safety. This difference has been coordinated with the Agência Nacional de Aviação Civil (ANAC).

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI ANAC Airworthiness Directive 2009–01–01, effective January 8, 2009, as corrected by Brazilian Airworthiness Directive Errata, effective January 20, 2009; and the service bulletins listed in Table 2 of this AD; for related information.

TABLE 2—RELATED SERVICE BULLETINS

Embraer Service Bulletin—	Revision—	Dated—
145–32–0120	01	November 4, 2008.
145LEG–32–0032	02	February 17, 2009.

Issued in Renton, Washington, on August 7, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–19853 Filed 8–18–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0686; Directorate Identifier 2009–NM–044–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain McDonnell Douglas Model MD–11 and MD–11F airplanes. This proposed AD would require a one-time inspection to determine if wires touch the upper surface of the center upper auxiliary fuel tank and marking the location, if necessary; a one-time inspection of all wire bundles above the center upper auxiliary fuel tank for splices and damage; a one-time inspection for damage to the fuel vapor barrier seal and upper surface of the center upper auxiliary fuel tank; and corrective actions, if necessary. This proposed AD would also require installation of nonmetallic barrier/shield sleeving, new clamps, new attaching hardware, and a new extruded channel. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by October 5, 2009.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0686; Directorate Identifier 2009–NM–044–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.,* type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination

with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

We have received a report that wire bundles routed above the center upper auxiliary fuel tank are in close proximity to the upper surface of the tank on certain McDonnell Douglas Model MD–11 and MD–11F airplanes. In addition, some wire harness mounts may have loosened, allowing the wires to contact the tank. This condition may cause wire damage or chafing that can lead to possible arcing, sparking, and burn-through on the fuel tank upper surface, which can result in a fuel tank explosion.

Relevant Service Information

We have reviewed Boeing Service Bulletin MD11–28–126, Revision 1, dated June 18, 2009, which describes procedures for the following actions.

- A general visual inspection to determine if wires touch the upper surface of the center upper auxiliary fuel tank; and marking the location(s) where the wire bundle(s) contacts the upper surface of the center upper auxiliary fuel tank.
- A detailed inspection for splices and damage (such as chafing, arcing, and broken insulation) of all wire bundles above the center upper auxiliary fuel tank, and corrective actions if necessary. The corrective actions include repairing or replacing damaged wires, and relocating any splice.
- A detailed inspection for damage (burn marks) on the upper surface of the center upper auxiliary fuel tank and fuel vapor barrier seal, and corrective actions if necessary. The corrective actions include repairing the vapor barrier seal and contacting Boeing for repair instructions and doing the repair.
- Installing nonmetallic barrier/shield sleeving to the wire harnesses, new clamps, new attaching hardware, and a new extruded channel, to raise the wire harnesses off the upper surface of the center upper auxiliary fuel tank.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between Proposed AD and Service Information.''

Differences Between Proposed AD and Service Information

Boeing Service Bulletin MD11–28–126, Revision 1, dated June 18, 2009, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by a Structures Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD would affect 111 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Inspection/Installation [1].	136 to 154	$80	$9,405 to $12,201	$20,285 to $24,521	111	$2,251,635 to $2,721,831.

[1] Depending on airplane configuration.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866,

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket No. FAA–2009–0686; Directorate Identifier 2009–NM–044–AD.

Comments Due Date

(a) We must receive comments by October 5, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model MD–11 and MD–11F airplanes, certificated in any category, as identified in Boeing Service Bulletin MD11–28–126, Revision 1, dated June 18, 2009.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Unsafe Condition

(e) This AD results from fuel system reviews conducted by the manufacturer. The Federal Aviation Administration is issuing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Compliance

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

Actions

(g) Within 60 months after the effective date of this AD: Do the actions specified in paragraphs (g)(1), (g)(2), (g)(3), (g)(4), and (g)(5) of this AD, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin MD11–28–126, Revision 1, dated June 18, 2009, except as required by paragraph (h) of this AD. Do all applicable corrective actions before further flight.

(1) Do a general visual inspection to determine if wires touch the upper surface of the center upper auxiliary fuel tank, and mark the location, as applicable.

(2) Do a detailed inspection for splices and damage of all wire bundles above the center upper auxiliary fuel tank.

(3) Do a detailed inspection for damage (burn marks) on the upper surface of the center upper auxiliary fuel tank.

(4) Do a detailed inspection for damage (burn marks) on the fuel vapor barrier seal.

(5) Install nonmetallic barrier/shield sleeving, new clamps, new attaching hardware, and a new extruded channel.

(h) If damage (burn marks) is found on the upper surface of the center upper auxiliary fuel tank during any inspection required by paragraph (g)(3) of this AD, and Boeing Service Bulletin MD11–28–126, Revision 1, dated June 18, 2009, specifies to contact Boeing for repair instructions: Before further flight, repair the auxiliary fuel tank using a method approved in accordance with the procedures specified in paragraph (j)(3) of this AD.

Actions Accomplished According to Previous Issue of Service Bulletin

(i) Actions accomplished before the effective date of this AD according to Boeing Service Bulletin MD11–28–126, dated March 3, 2009, are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

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

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

Issued in Renton, Washington, on August 4, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–19850 Filed 8–18–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 652, 661, 662, 663, 664 and 667

RIN 1205–AB46

Workforce Investment Act Amendments

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Department of Labor (DOL or Department) is announcing the withdrawal of the proposed rule that was published in the **Federal Register** on December 20, 2006 (71 FR 76558) relating to policy changes to the Workforce Investment Act and Wagner-Peyser Act Regulations. The Department no longer considers this proposed rule viable for final action at this time.

DATES: Effective August 19, 2009, the Department withdraws the proposed rule published on December 20, 2006, at 71 FR 76558.

FOR FURTHER INFORMATION CONTACT: Thomas M. Dowd, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210, telephone: (202) 693–3700 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Workforce Investment Act (WIA) enacted in August 1998, reformed Federal job training programs and created a new, comprehensive workforce investment system. The legislation replaced the Job Training Partnership Act and amended the Wagner-Peyser Act. WIA authorization for appropriations expired on September 30, 2003. Although WIA reauthorization bills passed the House and the Senate, the reauthorization legislation was not enacted, and Congress continued to annually authorize and fund these programs through annual appropriations.

In the absence of reauthorizing legislation, the Department published a Notice of Proposed Rulemaking (NPRM) on December 20, 2006, to implement several policy changes to the Workforce Investment Act and Wagner-Peyser Act regulations. (71 FR 76558). Subsequently, in February 2007, Congress enacted language in the revised Continuing Resolution (Pub. L. 110–5, sec. 20601(a)(4)), prohibiting the Department from finalizing or implementing any proposed regulations under the Workforce Investment Act until legislation reauthorizing the Act is enacted. The prohibition has been reenacted annually, most recently in the Department of Labor Appropriations Act, 2009 (Pub. L. 111–8, Div. G, sec. 110).

II. Withdrawal of the Proposed Rule

The Department has decided to withdraw the proposed rule based upon the continuing Congressional prohibition against publishing a rule until the Workforce Investment Act is reauthorized. The Department notes,

however, that the withdrawal of this proposed rule does not preclude it from reinstituting rulemaking concerning the issues addressed in the proposal at a future date. Should a future rulemaking ensue, the Department will provide a new opportunity for public comment on such a proposal.

Signed at Washington, DC, this 12th day of August 2009.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. E9–19801 Filed 8–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0670]

RIN 1625–AA09

Drawbridge Operation Regulation; Franklin Canal, Franklin, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulation governing the operation of the Chatsworth Road swing span bridge across the Franklin Canal, mile 4.8, at Franklin, St. Mary Parish, Louisiana. The St. Mary Parish Government has requested that the operating regulation of the Chatsworth Road swing span bridge be changed in order for the bridge not to have to be continuously manned by a draw tender. This change would allow the bridge to remain unmanned during most of the day by requiring a one-hour notice for an opening of the draw between 5 a.m. and 9 p.m. daily. Currently the bridge opens on signal during this time period.

DATES: Comments and related material must reach the Coast Guard on or before October 19, 2009. Requests for public meetings must be received by the Coast Guard on or before September 3, 2009.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0670 using 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 methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instruction on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Phil Johnson, Bridge Administration Branch, Eighth Coast Guard District; telephone 504–671–2128, e-mail *Philip.R.Johnson@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–2009–0670), indicate the specific section of this document to which each comment applies, and provide the reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered as having been 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 phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rules'' and insert ''USCG–2009–0670'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2009–0670'' and click ''Search.'' Click on the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the 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 on or before September 3, 2009 using one of the four methods specified under **ADDRESSES**. Please explain why one 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.**

Background and Purpose

The St. Mary Parish Government has requested that the operating regulation of the Chatsworth Road swing span bridge, located on the Franklin Canal at mile 4.8 in Franklin, St. Mary Parish,

Louisiana, be changed in order for the bridge not to have to be continuously manned by a draw tender from 5 a.m. to 9 p.m. when the bridge is now required to open on signal. Because of the relocation of a public boat landing downstream of the bridge, vessel traffic has become infrequent, and it is no longer necessary to have a bridge tender continuously man the bridge.

Concurrent with the publication of the Notice of Proposed Rulemaking, a Test Deviation [USCG–2009–0670] has been issued to allow the St. Mary Parish Government to test the proposed schedule and to obtain data and public comments. The test period will be in effect during the entire Notice of Proposed Rulemaking comment period. The Coast Guard will review the logs of the drawbridge and evaluate public comments from this Notice of Proposed Rulemaking and the above referenced Temporary Deviation to determine if a change to the permanent special drawbridge operating regulation is warranted.

The Test Deviation allows the bridge to operate as follows: The Chatsworth Road Bridge, mile 4.8 at Franklin, shall open on signal from 5 a.m. to 9 p.m. if at least one hour notice is given. From October 1 through January 31 from 9 p.m. to 5 a.m., the draw shall be opened on signal if at least three hours notice is given. From February 1 through September 30 from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

Discussion of Proposed Rule

The bridge owner has requested a change in the operating regulation which would require a one-hour notice for an opening of the draw from 5 a.m. to 9 p.m. daily. Presently, the bridge operates as follows: The draw of the Chatsworth Road Bridge, mile 4.8 at Franklin, shall open on signal from 5 a.m. to 9 p.m. From October 1 through January 31 from 9 p.m. to 5 a.m., the draw shall open on signal if at least three hours notice is given. From February 1 through September 30 from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given. This rule would allow the bridge to operate as follows: The draw of the Chatsworth Road Bridge, mile 4.8 at Franklin, shall open on signal from 5 a.m. to 9 p.m. if at least one hour notice is given. From October 1 through January 31 from 9 p.m. to 5 a.m., the draw shall be opened on signal if at least three hours notice is given. From February 1 through September 30 from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given. The proposed rule change to 33 CFR 117.445 would reduce the burden on the bridge owner while maintaining the ability to operate the bridge.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. The public would need to notify the bridge owner of a required opening only one hour in advance rather than on signal.

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 needing to transit the bridge with less than a one hour advance notice. The requests for bridge openings by commercial vessels are infrequent and those vessels that do require an opening of the draw are normally able to schedule operations in conjunction with advance requests for openings. Vessels patronizing commercial facilities upstream of the bridge will be easily able to contact the bridge tender an hour prior to anticipating arrival at the bridge. The bridge provides a vertical clearance of 7 feet above high water. Thus, many small commercial or pleasure craft can safely transit under the bridge at any time.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Phil Johnson, Bridge Administration Branch, at 504–671–2128. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This 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 will 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 affect 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 023–01, and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have 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 because it simply promulgates the operating regulations or procedures for drawbridges. 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 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. § 117.445 is revised to read as follows:

§ 117.445 Franklin Canal.

The draw of the Chatsworth Bridge, mile 4.8 at Franklin, shall open on signal from 5 a.m. to 9 p.m. if at least one hour notice is given. From October 1 through January 31 from 9 p.m. to 5 a.m., the draw shall be opened on signal if at least three hours notice is given. From February 1 through September 30 from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

Dated: August 4, 2009.

Mary E. Landry,

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

[FR Doc. E9–19825 Filed 8–18–09; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0470; FRL–8946–3]

Approval and Promulgation of Air Quality Implementation Plans; California; Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve state implementation plan revisions submitted by the State of California on June 5, 2009 relating to the State's basic and enhanced vehicle inspection and maintenance (I/M) program. EPA is also proposing to find, with two exceptions, that California's program meets the requirements of the Clean Air Act and EPA regulations for basic and enhanced I/M programs. EPA is making the proposed approval contingent upon California's submittal of revisions to the enhanced program performance standard evaluations to address a different attainment year for the Western Mojave Desert 8-hour ozone nonattainment area and to address California's base-year program performance. If the necessary information is not provided, then EPA is proposing a partial approval and partial disapproval of California's June 5, 2009 I/M submittal. Under these circumstances, EPA is proposing approval of all of the submittal, except for the enhanced I/M performance standard evaluations for which EPA is proposing disapproval. The effect of this action would be to make the revisions federally enforceable as part of the California state implementation plan.

DATES: Comments must be received on or before September 18, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2009–0470, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions.

2. E-mail: *buss.jeffrey@epa.gov*.

3. Mail or deliver: Jeffrey Buss (Air-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI)

or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* portal 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 e-mail 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 disc or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jeffrey Buss, EPA Region IX, (415) 947–4152, *buss.jeffrey@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we'', ''us'', and ''our'' refer to EPA.

Table of Contents

I. Background

The general purpose of motor vehicle inspection and maintenance (''I/M'') programs is to reduce emissions from in-use motor vehicles in need of repairs and thereby contribute to state and local efforts to improve air quality and to attain the national ambient air quality standards (NAAQS).

California has operated an I/M program, also known as the ''Smog Check'' program, in certain areas of the state for over 20 years. Over these years, California has expanded both the geographical scope of the program and the types of vehicles covered by it. Under California law, the Bureau of Automotive Repair (BAR) is responsible for developing and implementing the State's I/M program. The California Air Resources Board (CARB) is designated under California law as the agency responsible for the preparation of the state implementation plan (SIP) required by the Clean Air Act (CAA or ''Act''). The I/M program is one of the many elements of the California SIP.

The CAA, as amended in 1990, requires that certain urban areas adopt either ''basic'' or ''enhanced'' I/M programs, depending on the severity of their air quality problem and their population. CAA section 182(a)(2)(B) directs EPA to publish updated guidance for state I/M programs, taking into consideration the findings of EPA's audits and investigations of these programs. The Act further directs that each area required to have an I/M program incorporate this guidance into its SIP. Based on these CAA requirements, EPA promulgated I/M regulations on November 5, 1992 (57 FR 51950), as corrected at 58 FR 59366 (November 9, 1993) and at 59 FR 32343 (June 23, 1994). EPA's I/M regulations are codified at 40 CFR part 51, subpart S (''Inspection/Maintenance Program Requirements''), sections 51.350 through 51.373.

The I/M regulations establish minimum performance standards for ''basic'' and ''enhanced'' I/M programs as well as requirements for the following: Network type and program evaluation; adequate tools and resources; test frequency and convenience; vehicle coverage; test procedures and standards; test equipment; quality control; waivers and compliance via diagnostic inspection; motorist compliance enforcement program oversight; quality assurance; enforcement against contractors, stations and inspectors; data collection; data analysis and reporting; inspector training and licensing or certification; public information and consumer protection; improving repair effectiveness; compliance with recall notices; on-road testing; SIP revisions; and implementation deadlines.

The performance standard for basic I/M programs remains the same as it has been since EPA's initial I/M policy was established in 1978, pursuant to the 1977 CAA amendments. The performance standard for enhanced I/M programs was established in 1992 pursuant to the 1990 CAA amendments and is based on a high-technology transient test, known as IM240, for 1986 and later model year vehicles, including a transient loaded exhaust short test incorporating hydrocarbons (HC), oxides of nitrogen (NO_X), and carbon monoxide (CO) cutpoints, an evaporative system integrity (pressure) test and an evaporative system performance (purge) test.

As a general matter, ''basic'' and ''enhanced'' I/M programs both achieve their objective by identifying vehicles that have high emissions as a result of one or more malfunctions, and requiring them to be repaired. An ''enhanced'' program covers more of the vehicles in operation, employs inspection methods which are better at finding high emitting vehicles, and has additional features to better assure that all vehicles are tested properly and effectively repaired.

Under subparts 2 and 3 of Part D, title I of the Act, as amended in 1990, any area having a 1980 Bureau of Census-defined (Census-defined) urbanized area population of 200,000 or more and either: (1) Designated nonattainment for ozone and classified as serious or worse or (2) designated as nonattainment for CO and classified as moderate with a design value greater than 12.7 parts per million (''ppm'') or serious must implement enhanced I/M in the 1990 Census-defined urbanized area. CAA sections 182(c)(3), 182(d), 182(e), 187(a)(6) and 187(b)(1). The Act requires basic I/M programs to be implemented in 1990 Census-defined urbanized areas within moderate ozone nonattainment areas. CAA section 182(b)(4). Any area classified as marginal ozone nonattainment or moderate CO nonattainment with a design value of 12.7 ppm or less must continue operating I/M programs that were part of its approved SIP at the time of the 1990 Act Amendments or implement any previously required program, and must update the program to meet the basic I/M requirements set forth in 40 CFR part 51, subpart S. CAA sections 182(a)(2)(B) and 187(a)(4).

In response to the various ozone and CO nonattainment area designations established for California in the wake of the 1990 CAA Amendments, BAR made

significant changes to the California I/M program during the early 1990s, culminating in a complete I/M SIP submittal dated January 22, 1996.

On January 8, 1997, we approved the California I/M statutes and regulations submitted on January 22, 1996 as strengthening the SIP and contributing specific emission reductions toward the progress, attainment, and maintenance requirements of the Act. See 62 FR 1150, at 1168. We also approved the California I/M program, statutes and regulations submitted on January 22, 1996, as meeting the requirements of section 182(b)(4) of the Act for basic I/M in applicable areas of the State classified as moderate for ozone and as meeting the requirements of section 187(a)(4) for the following areas of the State classified as moderate for CO with design values less than 12.7 ppm: Fresno, Sacramento, Modesto, Chico, Stockton and San Diego.

We also granted interim approval, to last no more than 18 months, to the California I/M submittal of January 22, 1996, as meeting the requirements of section 182(c)(3) of the CAA for enhanced I/M in applicable areas of the State classified as serious and above for ozone, and the requirements of section 187(a)(6) of the Act for enhanced I/M in the South Coast, which was classified at the time as a ''serious'' nonattainment area for CO. By the end of the 18-month period, California was to complete and submit a demonstration that the emissions reductions claimed by California for the enhanced I/M program were appropriate. California did not submit such a demonstration and thus the interim approval for the enhanced I/M program as meeting the CAA requirements under section 182(c)(3) for ozone and section 187(a)(6) for CO expired on August 7, 1998. See 40 CFR 52.241. Since August 7, 1998, with respect to ozone,[1] the California SIP no longer meets the specific requirements of the Act relating to enhanced I/M, but the State's I/M statutes and regulations remain in the SIP. 62 FR at 1168.

As approved in 1997, the California I/M program is implemented on a county-by-county basis as: (1) A high enhanced biennial program; (2) a basic biennial program; or (3) a requirement only upon change of ownership. For counties in California, the type of I/M program in effect varies depending upon air quality designations and whether the area is urbanized.

California's basic program is a decentralized test-and-repair program utilizing two-speed idle testing. California's enhanced program is a hybrid program consisting of a network of test-only testing stations as well as privately operated test-and-repair testing stations. Approximately 15 percent of the dirtiest vehicles, based upon high-emitter profile and remote sensing results as well as other factors, are targeted for test-only inspection. All vehicles in the enhanced areas are subject to loaded-mode testing. Licensing requirements for technicians are more stringent and the frequency of enforcement related activities such as on-road testing are greater in enhanced areas than in basic areas. The two programs are essentially the same in all other respects.

The approved California I/M program was intended to meet the requirements of EPA's original 1992 I/M regulations (as corrected in 1993 and 1994). EPA has subsequently revised the I/M regulations a number of times. The revisions include:

- Revision of I/M SIP requirements for certain areas subject to basic I/M that otherwise qualify for redesignation from nonattainment to attainment for the carbon monoxide or ozone NAAQS, allowing such areas to defer adoption and implementation of certain I/M requirements. See 60 FR 1735 (January 5, 1995);
- Establishment of an additional, less stringent enhanced I/M performance standard (known as the alternate ''low'' enhanced performance standard) for certain areas, revision of the ''high'' enhanced I/M performance standard to include additional inspection requirements for light-duty vehicles and light duty trucks, and revisions to waiver repair cost requirements. See 60 FR 48029 (September 18, 1995);
- Establishment of minimum requirements for inspecting vehicles equipped with on-board diagnostic systems as part of the inspections required in basic and enhanced I/M programs. See 61 FR 40940 (August 6, 1996), as amended at 61 FR 44119 (August 27, 1996); 63 FR 24429 (May 4, 1998); (April 5, 2001);
- Revisions to provide additional flexibility to state I/M programs by, among other things, modifying the enhanced I/M performance standard modeling requirements; providing states greater flexibility in how they meet the performance standard; and removing the I/M rule provision establishing the decentralized, test-and-repair credit discount. See 65 FR 45526 (July 24, 2000);
- Revision and simplification of certain provisions related to onboard diagnostic (OBD) inspections including the failure criteria for the OBD–I/M check. See 66 FR 18156 (April 5, 2001); and
- Revision of the I/M regulation to update the submission and implementation deadlines and other timing-related requirements to more appropriately reflect the implementation schedule for meeting the 8-hour ozone NAAQS. See 67 FR 17705 (April 7, 2006).

A more detailed description of these revisions can be found in the technical support document (TSD) for this proposal.

The approved California I/M program was developed in response to nonattainment designations promulgated under the CAA, as amended in 1990, for the 1-hour ozone NAAQS (as well as for the CO NAAQS). On July 18, 1997, EPA promulgated an 8-hour ozone standard of 0.08 ppm to replace the 1-hour ozone standard.[2] In 2004, EPA designated all areas of the country for the 8-hour ozone NAAQS. See 69 FR 23858 (April 30, 2004) and 40 CFR part 81, subpart C. EPA revoked the 1-hour ozone NAAQS effective June 15, 2005. See 69 FR 23951 (April 30, 2004) and 40 CFR 50.9(b).

We promulgated in two phases the final rules to implement the 1997 8-hour ozone NAAQS. The Phase 1 rule, which was issued on April 30, 2004 (69 FR 23951), establishes, among other things, the classification structure and corresponding attainment deadlines, as well as the anti-backsliding principles for the transition from the 1-hour ozone standard to the 8-hour ozone standard. I/M programs are among the ''applicable requirements'' subject to the anti-backsliding principles, which means that I/M programs continue to apply in an eight-hour ozone nonattainment area after revocation of the 1-hour NAAQS to the extent that I/M programs were required in the area by virtue of the area's previous designation and classification for the 1-hour ozone NAAQS. See 40 CFR 51.905.

The Phase 2 rule, which was issued on November 29, 2005 (70 FR 71612), addresses the remaining SIP obligations for the 1997 8-hour ozone NAAQS,

[1] For carbon monoxide, in a 2007 final action redesignating the South Coast to ''attainment'' for the carbon monoxide NAAQS, we approved California's demonstration that the State's I/M program meets the alternate ''low'' enhanced I/M performance standard in the South Coast under CAA section 187(a)(6) and 40 CFR 51.351(g). See 72 FR 26718 (May 11, 2007). In our 2007 redesignation rule, we indicated that the State's I/M program submittal of January 22, 1996 remains an approved part of the SIP. See 72 FR 26718, at 26719.

[2] In 2008 we lowered the 8-hour ozone standard to 0.075 ppm. See 73 FR 16436 (March 27, 2008). The references to the 8-hour standard in this proposed rule are to the 1997 standard as codified at 40 CFR 50.10. EPA has not yet completed the designation and classification process for the 2008 standard.

including the requirements for vehicle I/M programs.

In section II of this document, we describe the major changes in California's I/M program relative to the existing SIP-approved I/M program. In section III of this document, we evaluate the changes in light of the revisions to our I/M regulations, the 8-hour ozone designations, and the anti-backsliding principles in EPA's Phase 1 rule.

II. Summary of the California Submittal

On June 5, 2009, CARB submitted the *Revised State Implementation Plan for California's Motor Vehicle Inspection & Maintenance Program (release date April 7, 2009)* (''2009 I/M Revision'') as a revision to the California SIP. The June 5, 2009 submittal includes a copy of the 2009 I/M Revision itself plus 12 attachments; a letter dated July 16, 2007 from Sherry Mehl, BAR Chief, to Mary D. Nichols, CARB Chairman, committing BAR to work with CARB to obtain additional emissions reductions through changes to the I/M program as outlined in the State Strategy for the 2007 SIP; CARB Executive Order S–09–008 adopting the 2009 I/M Revision; public process documentation (including public comments); and tables listing the changes made to California's I/M statutes and BAR's I/M regulations from 1995 through 2008, accompanied by supporting procedural documentation for the regulatory changes.

Attachments to the 2009 I/M Revision include: Listing of Smog Check Programs Laws and Regulations; Map of Program Areas; List of Zip Codes by Program Area; Enhanced I/M Performance Modeling Files; Basic I/M Performance Modeling files; Fund Condition for Vehicle Inspection and Repair Fund (VIRF) and High Polluter Repair or Removal Account (HPRRA); Vehicle Model Years Subject to Smog Check; Estimate of the California Fleet Subject to Smog Check Program in 2008; the DMV Handbook of Vehicle Registration Procedures, Chapter 21; BAR–97 Revised Emission Inspection System Specifications (December 2002); Draft Smog Check Inspection Manual; and the Low Pressure Fuel Evaporative Tester (LPFET) Specification.

The 2009 I/M Revision reflects many changes to the program relative to the existing SIP I/M program. The most significant changes include:

- Many areas have opted into the enhanced I/M program. Such areas, referred to as ''partially enhanced'' areas, are subject to the same requirements as enhanced I/M areas except that no vehicles are directed to have their biennial inspection performed at a test-only station;
- California has expanded the existing exemption for older vehicles from the biennial inspection requirement to include vehicles between model years 1966 through 1975 and has added a new exemption, with certain exceptions, for vehicles six or less model-years old;
- Since 1998, California has conducted random roadside pullover inspections in accordance with 40 CFR 51.351(b);
- Since 2002, California has inspected 1996 and later OBD-equipped vehicles in accordance with 40 CFR 51.351(c) and 40 CFR 51.352(c);
- California has replaced the BAR–90 specification for I/M emissions inspection systems with updated BAR–97 specifications; and
- Lastly, the I/M program has been revised to include improved quality control methods, data collection systems, and more stringent requirements for certified technicians and instructors who provide training/retraining to technicians.

III. EPA Review of the SIP Revision

A. SIP Procedural Requirements

CAA sections 110(a)(2) and 110(l) require that revisions to a SIP be adopted by the State after reasonable notice and public hearing. EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F. These requirements include publication of notices, by prominent advertisement in the relevant geographic area, of a public hearing on the proposed revisions, a public comment period of at least 30 days, and an opportunity for a public hearing.

CARB's June 5, 2009 SIP revision submittal includes public process documentation for all of the specific changes in BAR regulations from 1995 through 2008. In addition, the SIP revision includes documentation of a duly noticed public hearing held by BAR on May 7, 2009 on the proposed 2009 I/M Revision. The following month, CARB adopted the 2009 I/M Revision as a revision to the California SIP and submitted it to EPA for action pursuant to CAA section 110(k) of the Act. We find that the process followed by BAR and CARB in adopting the 2009 I/M Revision complies with the procedural requirements for SIP revisions under CAA section 110 and EPA's implementing regulations.

B. Substantive I/M Requirements

EPA's requirements for basic and enhanced I/M programs are found in 40 CFR part 51, Subpart S. The SIP revision submitted by the State must be consistent with these requirements as well as meeting EPA's requirements for enforceability and section 110(l) requirements of the CAA. With the exception of our review of the 2009 I/M Revision under CAA section 110(l) (see section III.C. of this document), we are limiting the review of the I/M changes submitted as part of the 2009 I/M Revision to ozone because California no longer has any CO nonattainment areas.[3] More details on our review of the 2009 I/M Revision and the substantive program element requirements in part 51, subpart S are provided in the TSD prepared for this proposed action.

1. Applicability

Under 40 CFR 51.350, states may be required to operate either an enhanced or basic I/M program in each of their ozone nonattainment areas, depending upon the population and nonattainment classification of that area. Any area designated and classified as serious or worse nonattainment for an ozone NAAQS, and having a 1980 Census-defined urbanized area population of 200,000 or more, must implement enhanced I/M in the 1990 Census-defined urbanized area. Any area classified moderate ozone nonattainment must implement basic I/M in any 1990 Census-defined urbanized area with a population of 200,000 or more. Any area classified as marginal ozone nonattainment must continue to operate I/M programs that were part of the SIP prior to the 1990 CAA Amendments and must update these programs to meet EPA's basic I/M requirements. Any marginal ozone nonattainment area that had been required to have an I/M program under the Act, as in effect before the 1990

[3] To be redesignated from ''nonattainment'' to ''attainment,'' an area must have an approved maintenance plan under CAA section 107(d)(3)(E) and must adopt as contingency measures all measures with respect to the control of the air pollutant concerned which were contained in the SIP for the area before redesignation of the area as an attainment area but that are subsequently repealed or relaxed. See CAA section 175A(d). For all 11 California CO ''maintenance'' areas, the California I/M program as approved by EPA in 1997, as modified for the South Coast through EPA approval of the South Coast CO redesignation request in 2007, constitutes the applicable measure in the SIP for the purposes of CAA section 175A(d). We are, however, not requiring California to adopt a commitment to reinstitute the 1997 SIP version of the I/M program as a contingency measure for the 11 California carbon monoxide ''maintenance'' areas based on our finding (in section III.C. of this document) that the net effect of the changes in the I/M program under the 2009 I/M Revision would be beneficial from an emissions reduction standpoint.

Amendments, must also implement a basic I/M program.

Under 40 CFR 51.350, I/M program areas must nominally cover at least the entire urbanized area, based on the 1990 census. Exclusion of some urban population is allowed, however, as long as an equal number of non-urban residents of the same metropolitan statistical area (MSA) are included in the program to compensate. I/M SIPs must describe the applicable areas in detail and, consistent with 40 CFR 51.372, must include the legal authority or rules necessary to establish program boundaries.

Applicability for the approved I/M SIP is set forth in California Health & Safety Code (H&SC) sections 44003 and 44004. Since development of the approved I/M SIP, circumstances have changed in several ways that might affect geographic applicability of the basic and/or enhanced I/M requirement. First, several areas of California have been reclassified to higher classifications for the 1-hour ozone standard, including Sacramento (serious to severe) and San Joaquin Valley (serious to severe to extreme). None of these reclassifications changed the I/M program requirement for the area since all such areas were already subject to the enhanced I/M requirement, and in any event, the H&SC statutory provisions cited above are drafted to automatically apply to ozone areas that are classified as serious or above. According to the 2009 I/M Revision, the state continues to implement enhanced I/M in the urbanized areas within the South Coast Air Basin, Sacramento Metro, San Joaquin Valley, Western Mojave Desert, Coachella Valley, and Ventura County.

Second, we redesignated a number of areas to ''attainment'' for the 1-hour ozone NAAQS. These include the Monterey Bay Area, San Diego County, and Santa Barbara County.[4] The consequence of redesignation for the 1-hour ozone NAAQS prior to the effective date of designation under the 8-hour ozone NAAQS is that I/M is no longer an ''applicable requirement'' for the area for anti-backsliding purposes under our Phase 1 implementation rule for the 8-hour ozone NAAQS. For such areas that are designated as ''unclassifiable/attainment'' for the 8-hour ozone standard (Monterey Bay Area and Santa Barbara County), a state may request that I/M be shifted to contingency measures, consistent with sections 110(l) and 193 of the Act, but cannot remove the obligation from the SIP entirely. See 40 CFR 51.905(a)(4). For such areas designated as nonattainment for the 8-hour ozone standard (San Diego County), the state must continue to implement I/M to the extent I/M is required under the existing SIP. See 40 CFR 51.905(a)(2). According to the 2009 SIP Revision, the state continues to implement basic I/M in Monterey Bay Area and Santa Barbara County and continues to operate enhanced I/M in the urbanized area within San Diego County.

Lastly, we have promulgated area designations and classifications for the 8-hour ozone NAAQS. In California, we maintained the same geographic boundaries for nonattainment areas under the 8-hour ozone standard as under the 1-hour ozone standard. For California nonattainment areas under the 1-hour ozone NAAQS, our classifications under the 8-hour ozone NAAQS are the same or lower than under the 1-hour ozone NAAQS and thus the I/M requirement that had applied by virtue of the 1-hour ozone classification remains applicable under anti-backsliding principles. We did, however, designate several California areas as ''nonattainment'' for the 8-hour ozone NAAQS that had not been so designated under the 1-hour standard or that had been redesignated to ''attainment'' prior to the 8-hour ozone designations. All of these new nonattainment areas have not yet been classified under subpart 2 of title I of the CAA (*i.e.*, as marginal, moderate, serious, etc.). EPA has issued a proposed rule seeking comment on our proposed reclassification of these nonattainment areas under subpart 2 (74 FR 2936, Jan. 16, 2009), but until we finalize this action, these new areas are not subject to I/M program requirements under the 8-hour NAAQS. These new areas include Amador County, Calaveras County, San Diego County, Mariposa County, Tuolumne County, Sutter Buttes, and Western Nevada County. Nonetheless, although it is not yet required to do so under the CAA, the state already implements basic I/M in Western Nevada County.

Two other 8-hour ozone designations of note include Imperial County (moderate) and the San Francisco Bay Area (marginal). With respect to the former, as a moderate ozone nonattainment area for the 8-hour ozone NAAQS, but a ''section 185A'' area under the 1-hour ozone NAAQS, basic I/M would be a new applicable requirement for Imperial County but for the population criterion. Based on its limited population, there is no I/M requirement for Imperial County. With respect to the San Francisco Bay Area, as a ''marginal'' ozone area under the 8-hour ozone NAAQS and a ''not classified'' nonattainment area under the 1-hour ozone NAAQS, implementation of a basic I/M program is now a requirement because the area had been subject to the I/M requirement prior to the 1990 Clean Air Act Amendments. However, under H&SC 44003.5, which is cited in the 2009 I/M Revision, the State of California has already chosen to implement not just basic, but enhanced, I/M in the San Francisco Bay Area and thereby exceeds the requirements of the Act and EPA's regulations.

The 2009 I/M Revision includes an updated description of the applicability of the I/M program within the State of California along with updated maps and a list of each zip code, with the corresponding I/M program implemented therein. Upon review of these materials against the requirements under the Act and EPA's regulations, we find that California continues to apply the appropriate type of I/M in the appropriate urbanized areas and has chosen to extend I/M into many other areas where it is not expressly required, to meet broader air quality attainment goals. Thus, we propose to find that the state's I/M program, as revised by the 2009 I/M Revision, continues to meet the requirements of 40 CFR 51.350.

2. High Enhanced I/M Performance Standard

Under 40 CFR 51.351(f), enhanced I/M programs must be designed and implemented to meet or exceed a minimum performance standard. This performance standard is expressed as emission levels in area-wide average grams per mile (gpm), achieved from highway mobile sources as a result of a specified model I/M program design. The emission levels achieved by the state's program design must be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model and must meet or exceed the emission reductions achieved by the performance standard program both in operation and for SIP approval. For subject ozone nonattainment areas, the performance standard must be met for both NO_X and VOC unless a NO_X waiver has been approved for the area. Enhanced I/M program areas must be shown to obtain the same or lower emission levels as the model program described in section 51.351(f) by January 1, 2002 and must demonstrate through modeling the ability to maintain this level of emission

[4] We also redesignated ''East Kern County'' as ''attainment'' for the 1-hour ozone NAAQS effective June 21, 2004, several days after the effective date for our 8-hour ozone designations (June 15, 2004), and thus too late for anti-backsliding purposes.

reduction (or better) through their attainment deadline for the applicable NAAQS. See 40 CFR 51.351(f)(13).

The 2009 I/M Revision includes high enhanced I/M performance standard evaluations for the urbanized areas within eight ozone nonattainment areas: the South Coast Air Basin, San Joaquin Valley, Sacramento Metro, Coachella Valley, Ventura County, Western Mojave Desert, San Diego County, and the San Francisco Bay Area. See main body of 2009 I/M Revision, pages 2 through 12, and attachment 4 (''Enhanced I/M Performance Modeling Files''). The latter two areas, San Diego County and the San Francisco Bay Area, are not subject to the enhanced I/M performance standard requirement under the Act or EPA's regulations, and thus, we have not reviewed the submitted performance evaluations for these areas for compliance with 40 CFR 51.351(f) in this action.

For the six California areas subject to the high enhanced I/M requirement, the 2009 I/M Revision presents a comparison of the percent emissions reduction achieved under the EPA model enhanced I/M program (relative to the no I/M scenario) in 2002 for VOC and NO_x with the corresponding percent emissions reduction achieved under the California enhanced I/M program in the year before the attainment year. For South Coast Air Basin and San Joaquin Valley, the ''year before the attainment year'' corresponds to year 2023 based on the state's previous requests to reclassify these two areas to ''extreme'' for the 8-hour ozone NAAQS. Also based on the state's previous reclassification requests, the ''year before the attainment year'' for Western Mojave Desert, Sacramento Metro, Coachella Valley, and Ventura County corresponds to 2020 (severe 17), 2018 (severe 15), 2018 (severe 15), and 2012 (serious), respectively.[5] As shown in the summary tables on pages 4 through 12, the 2009 I/M Revision shows that the California enhanced I/M program would achieve greater percent emissions reductions (relative to the no I/M scenario) for VOC and NO_x in each of the six areas in the year before the attainment year than the corresponding percent emissions reductions under the EPA model enhanced I/M program in 2002.

With two exceptions discussed below, we find the high enhanced I/M performance standard evaluations in the 2009 I/M Revision to be acceptable. This conclusion is based on a review of the modeling files for each of these areas and our conclusion that the state's reliance on its reclassification requests to identify the horizon years for the performance standard evaluations is appropriate given that EPA is required to grant such requests under CAA section 181(b)(3). However, a base year modeling run is also required for the six subject areas under the California enhanced I/M program to allow for a more definitive conclusion that the California enhanced I/M program obtained the same or lower emission levels as the EPA model program by January 1, 2002, and that the California program will maintain this level of emission reduction (or better) through the applicable 8-hour ozone attainment deadlines. With only a horizon year modeling run, a conclusion to this effect can be inferred but is not definitive.

In addition, EPA interprets CAA section 181(b)(3) as disallowing state requests to reclassify ozone nonattainment areas to ''severe-17,'' which is the basis for the state's choice of 2020 as the horizon year for performance modeling for Western Mojave Desert. As such, the state must select a more appropriate horizon year for this area, such as 2009 (based on its current classification as ''moderate'' for the 8-hour ozone NAAQS) or some other horizon year pending a revised reclassification request for Western Mojave Desert.

Thus, we are making our proposed approval of the 2009 I/M Revision as meeting the enhanced I/M program requirement contingent upon receipt of: (1) base year performance modeling runs for the six subject areas under the California enhanced I/M program, and (2) a revised enhanced I/M performance standard evaluation using an appropriate attainment year for the Western Mojave Desert area. Preliminary modeling analyses of the enhanced program in the South Coast Air Basin in year 2002 indicate that California's program achieved emission reductions equivalent to EPA's model program by January 1, 2002. See the TSD for more information. Given this, we expect the modeling evaluations for other nonattainment areas subject to the enhanced program will also demonstrate equivalence with the model program in year 2002.[6] We also expect that a revised modeling evaluation for the Western Mojave Desert area based on an appropriate attainment year will demonstrate compliance with EPA's enhanced I/M performance standard in that area, given the emission reductions demonstrated in CARB's submittal.[7] We propose to fully approve the 2009 I/M Revision if we receive the required data to support these conclusions. If, however, the required modeling data is not provided, we plan to take final action approving all of the 2009 I/M Revision except for the enhanced I/M performance evaluation, as SIP strengthening, and disapproving the submitted enhanced I/M performance evaluation as failing to meet the requirements of section 182(c)(3) of the Act and 40 CFR 51.351(f). We will notify the public of any additional information that is provided to address these issues.

3. Basic I/M Performance Standard

Under 40 CFR 51.352, basic I/M programs must be designed and implemented to meet or exceed a minimum performance standard. The nature of the performance standard evaluation for basic I/M is similar to that described above for enhanced I/M, except that the model program for basic I/M is less stringent in many ways relative to the model program for enhanced I/M.

The 2009 I/M Revision includes basic I/M performance standard evaluations for seven ozone nonattainment areas: East Kern County, Sutter Buttes (Sutter County), Western Nevada County and Chico (Butte County), and the non-urbanized portions of San Joaquin Valley, San Diego County and Western Mojave Desert. See the main body of the 2009 I/M Revision beginning on page 13 through page 21, and attachment 5 (''Basic I/M Performance Modeling Files''). None of these areas is subject to the basic I/M performance standard requirement under the Act or EPA's regulations, and thus we have not reviewed the submitted performance evaluations for compliance with 40 CFR 51.352 in this action.

As noted above under section III.B.2 of this document, however, the San

[5] Through a SIP submittal dated November 16, 2007, CARB requested reclassification of San Joaquin Valley to ''extreme.'' Through a SIP submittal dated November 28, 2007, CARB requested reclassification of South Coast Air Basin and Coachella Valley to ''extreme'' and ''severe-15,'' respectively. By letter dated February 14, 2008, CARB requested reclassification of Ventura County (to ''serious''), Sacramento Metro (to ''severe-15''), and Western Mojave Desert (to ''severe-17'').

[6] We note that CARB's enhanced I/M modeling evaluations indicate California's enhanced program will achieve emission reductions generally exceeding the EPA performance standards by 3% to 10% for VOCs and by 5% to 22% for NO_X, in the horizon year for each area. See main body of 2009 I/M Revision, pp. 4–12, and attachment 4 (''Enhanced I/M Performance Modeling Files'').

[7] CARB's modeling evaluation for the Western Mojave Desert area demonstrates that by year 2020, California's enhanced I/M program will achieve emissions reductions exceeding the EPA performance standards by at least 5% for VOCs and 17% for NO_X. See main body of 2009 I/M Revision, pg. 10, and attachment 4 (''Enhanced I/M Performance Modeling Files'').

Francisco Bay Area is subject to the ''basic'' I/M requirement by virtue of its classification as ''marginal'' for the 8-hour ozone NAAQS and the fact that the area had been subject to the I/M requirement prior to the 1990 Clean Air Act Amendments. The 2009 I/M Revision presents an enhanced I/M performance evaluation for the San Francisco Bay Area that shows the California enhanced I/M program achieves the same or better percent emissions reductions in year 2006 as compared to the Federal model enhanced I/M program in 2002. In contrast, under 40 CFR 51.352(e), the comparison should be a direct comparison of the California I/M program in the San Francisco Bay Area versus the Federal model basic I/M program in year 2010 (*i.e.,* six years after designation). Nonetheless, the showing in the 2009 I/M Revision that California's I/M program, as implemented in the San Francisco Bay Area, essentially meets the EPA *enhanced* I/M model program provides sufficient demonstration that California's I/M program, as implemented in the San Francisco Bay Area, at the very least meets the EPA *basic* I/M model and thus meets the basic I/M performance evaluation requirements of 40 CFR 51.352(e).

4. Vehicle Coverage

Under 40 CFR 51.356, the performance standard for enhanced I/M programs assumes coverage of all 1968 and later model year light duty vehicles and light duty trucks up to 8,500 pounds gross vehicle weight rating (GVWR), and includes vehicles operating on all fuel types. The standard for basic I/M programs does not include light duty trucks. Under EPA's regulations, other levels of coverage may be approved if the necessary emission reductions are achieved.

The existing I/M SIP exempts certain vehicle types from biennial I/M inspection requirements, including pre-1966 model-year vehicles, diesel-powered vehicles, electric vehicles, and motorcycles. The 2009 I/M Revision amends these provisions to also exempt 1966 through 1975 model-year vehicles and vehicles six or less model-years old from biennial inspection requirements, and to exempt transfers of vehicles four or less model-years old from change-of-ownership inspection requirements. However, as described in sections III.B.2 and III.B.3 above, we have concluded that the State has demonstrated that it meets the performance standards for both the federal enhanced and basic I/M programs, contingent upon receipt of revisions to the enhanced performance standard evaluation to provide base year modeling runs and to use an appropriate attainment year for Western Mojave Desert. Thus, the increase in the types of exempt vehicles is acceptable under 40 CFR 51.356.

5. Test Procedures, Standards, and Equipment

Under 40 CFR 51.357, I/M programs must establish and implement written test procedures and pass/fail standards for each model year and vehicle type. Under 40 CFR 51.358, official emissions tests must be performed using computerized emissions test systems that are certified by the program and updated from time to time to accommodate new technology vehicles and program changes.

The existing I/M SIP requires loaded testing for vehicle inspections in enhanced areas and use of the BAR–90 two-speed idle test in basic areas. The 2009 I/M Revision updates the test procedures and standards in several ways, including: (1) To require use of the BAR–97 Emission Inspection System (EIS) Specifications in all program areas; (2) to require all vehicles subject to the program to undergo a low-pressure test of the fuel evaporative control system as part of the Smog Check inspection, unless specifically exempt; (3) to require all vehicles subject to the program to undergo a visible smoke test; and (4) to require that all vehicle inspections include a functional test of emission controls, including, for 1996 and newer model year light-duty vehicles, a test of on-board diagnostic (OBD) equipment. Each testing station must have a BAR-certified emissions inspection system that meets the specifications in the BAR–97 EIS Specifications.[8]

In addition, the 2009 I/M Revision requires that all required emission inspection systems used in the Smog Check program be connected to the internet in order to transmit required program information to BAR. Any emission inspection systems that BAR finds do not comply with the hardware and software requirements and specifications in the regulations will be disconnected from BAR's central computer database and network, and thereby prohibited from being used to perform smog checks and to transmit certificates of compliance to the Department of Motor Vehicles, until they are brought into compliance. These revisions strengthen the SIP program and satisfy the requirements for test procedures, standards, and equipment in 40 CFR 51.357 and 51.358.

C. Section 110(l) of the Act

Section 110(l) of the CAA states that a SIP revision cannot be approved if it would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. CARB's June 5, 2009 SIP submittal did not include a section 110(l) analysis for the 2009
I/M Revision. However, we can reasonably conclude, as discussed below, that the net effect of the revised I/M program would be greater emissions reductions under the California I/M program as revised through the 2009 I/M Revision than under the existing California I/M SIP, as approved in 1997.

To arrive at this conclusion, we identified the following I/M program changes that would be the most likely to result in emissions changes:
(1) Expansion of the older vehicle exemption to include 1966 through 1975 model year vehicles; (2) the addition of an exemption for newer vehicles (six or less model-years old); (3) the expansion of areas within the South Coast Air Basin, Sacramento Metro area, San Diego County, San Joaquin Valley, Western Mojave Desert, Coachella Valley, Ventura County, and San Francisco Bay Area subject to enhanced or partially enhanced I/M as opposed to basic I/M; and (4) implementation of OBD systems checks. For these areas, the emissions changes under the revised California I/M program result from a program that would require inspections of slightly fewer vehicles but increase the stringency of the I/M requirements for those vehicles subject to the program.

To qualitatively assess the net effect of these changes, we first note that the new or expanded exemptions under the revised I/M program would relate to a very small fraction of the vehicle fleet (*i.e.,* those from model years 1966 through 1975) or would relate to the cleanest portion of the vehicle fleet (those vehicles six or less model-years old) that is least likely to fail an inspection. Thus, we expect the new or expanded exemptions to have a minimal emissions effect. On the other hand, we note that California has expanded the geographic scope of the enhanced or partially enhanced program in each ozone nonattainment area subject to I/M requirements under the CAA. In addition, based on the enhanced and basic performance standard evaluations included as part of the 2009 I/M Revision, we note that significantly

[8] All test stations are subject to this requirement, except that the hardware and the software necessary to conduct dynamometer based, loaded-mode emissions are required only in enhanced areas.

greater emissions reductions are expected under enhanced or partially enhanced I/M requirements relative to those under basic I/M requirements. For instance, California enhanced I/M in San Joaquin Valley is estimated to provide 24 to 27 percent reduction in ozone precursors relative to the ''no I/M'' scenario, whereas California basic I/M in San Joaquin Valley is estimated to provide only 3 to 17 percent reduction in ozone precursors also relative to the ''no I/M'' scenario. See pages 5 and 15 of main body of 2009 I/M Revision. Finally, we note that the addition of OBD testing requirements [9] for all 1996 and newer model-year vehicles and the improvements to California's quality control methods, data collection systems, and technician training requirements adequately offset the potential emissions impacts of the revised vehicle exemptions in all program areas, including those nonattainment areas that are subject to California's basic I/M program under the existing SIP and 2009 I/M Revision and do not benefit from the more stringent requirements of the enhanced or partially enhanced I/M program.

In all then, given the minimal emissions increase associated with the new or expanded exemptions and the relatively significant emissions decrease associated with the greater geographic applicability of enhanced or partially enhanced I/M in each area subject to CAA I/M requirements, in addition to California's OBD testing requirements and improvements in program implementation and enforcement mechanisms in all program areas, we fully expect the net effect of approval of the 2009 I/M Revision to be beneficial from an emissions reduction standpoint in all California ozone nonattainment areas. Therefore, we propose to find that the 2009 I/M Revision would not interfere with any applicable requirement concerning attainment of the NAAQS or any other applicable requirement of the Act.

IV. Proposed Action and Public Comment

Under section 110(k) of the Clean Air Act, EPA is proposing to approve CARB's June 5, 2009 submittal of a revision to the California I/M program as a revision to the California SIP. Our proposed approval for one area, Western Mojave Desert, is contingent upon California's submittal of a revised evaluation of the enhanced program performance standard for the area based on an appropriate attainment year. In addition, our proposed approval of the enhanced I/M program is contingent upon our receipt of base year performance modeling evaluations for the six areas subject to enhanced I/M that demonstrate compliance with the federal performance standard in 2002. (We will notify the public of any additional information that is provided to address these issues.) With these exceptions, EPA finds that the State's submittal meets all applicable requirements of the CAA and EPA's regulations. The updated elements of the California I/M program that we propose to approve include the following:

(1) Discussion of each of the required design elements of the I/M program;

(2) Description of the current geographic coverage of the program, including updated maps and list of program requirements by zip code;

(3) I/M-related statutes and regulations;

(4) Enhanced I/M performance standard evaluations for the urbanized areas within six California ozone nonattainment areas as meeting the requirements of CAA section 182(c)(3);

(5) Basic I/M performance standard evaluation for the urbanized area within the San Francisco Bay Area ozone nonattainment area under 182(a)(2)(B); and

(6) Emission analyzer specifications and test procedures, including BAR–97 specifications.

If the necessary enhanced I/M performance standard documentation for the six areas subject to enhanced I/M is not provided, then EPA proposes a partial approval and partial disapproval of the State's 2009 I/M Revision as authorized under section 110(k)(3) of the Act. Under these circumstances, EPA is proposing approval of all portions of the 2009 I/M Revision, except for the enhanced I/M performance evaluations for the six subject areas, as improving the SIP, and is proposing disapproval of the enhanced I/M performance evaluations as failing to meet the requirements of section 182(c)(3) of the Act and 40 CFR 51.351(f). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the deficiencies within 18 months of the disapproval. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the two-year clock for the Federal implementation plan (FIP) requirement under section 110(c).

EPA is soliciting public comments on this document and on issues relevant to EPA's proposed action. We will accept comments from the public on this proposal until the date noted in the **DATES** section above.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve 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 Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

[9] OBD system tests are generally expected to achieve air quality benefits compared to tailpipe emissions tests through accurate diagnosis and early detection of needed vehicle repairs. *See http://www.epa.gov/obd/.*

In addition, this proposed 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 in 40 CFR Part 52

Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 31, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E9–19858 Filed 8–18–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0024; FRL–8943–7]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the San Joaquin Valley Unified Air Pollution Control District portion of the California State Implementation Plan. These revisions concern a local fee rule that applies to major sources of volatile organic compound and nitrogen oxide emissions within the San Joaquin Valley ozone nonattainment area. We are proposing action on a local rule that regulates these emission sources under the Clean Air Act as amended in 1990. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by *September 18, 2009.*

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0024, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

2. E-mail: *steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal

A. What Rule Did the State Submit?

The San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) adopted Rule 3170, Federally Mandated Ozone Nonattainment Fee, on May 16, 2002. This rule was submitted by the California Air Resources Board (CARB) on August 6, 2002, for incorporation into the California State Implementation Plan (SIP). On August 30, 2002, this rule submittal was found to meet the completeness criteria in 40 CFR Part 51, Appendix V.

B. What Is the Purpose of the Submitted Rule?

SJVUAPCD Rule 3170 requires certain major stationary sources of volatile organic compounds (VOCs) and nitrogen oxides (NO_X) in the San Joaquin Valley ozone nonattainment area to pay a fee to the SJVUAPCD if the area fails to attain the 1-hour national ambient air quality standard (NAAQS) for ozone by its Federally established attainment date. The fee must be paid for each calendar year after the attainment year until the area is redesignated to attainment of the 1-hour ozone standard.

C. Why Was This Rule Submitted?

Under sections 182(d)(3), (e), and 185 of the Clean Air Act as amended in 1990 (CAA or the Act), States are required to adopt an excess emissions fee regulation for ozone nonattainment areas classified as severe or extreme. The 1-hour ozone NAAQS classification for the San Joaquin Valley area is extreme (*see* 69 FR 20550, April 16, 2004). Although EPA has revoked the 1-hour ozone NAAQS (69 FR 23951, April 30, 2004), Section 185 requirements still apply for 1-hour ozone non-attainment areas (*South Coast Air Quality Management District* v. *EPA*, 472 F.3d 882, DC Cir. 2006). The fee regulation specified by the Act requires major stationary sources of VOCs in the nonattainment area to pay a fee to the State if the area fails to attain the standard by the attainment date set forth in the Act. Section 182(f) of the Act requires States to apply the same requirements to major stationary sources of NO_X as are applied to major stationary sources of VOCs. Emissions of VOCs and NO_X play a role in producing ground-level ozone and smog, which harm human health and the environment. SJVUAPCD Rule 3170 applies to major sources of both NO_X and VOCs.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), and must not relax existing requirements (*see* sections 110(l) and 193). Rule 3170 was evaluated for compliance with the requirements in CAA section 185. The rule was also

evaluated for consistency with the CAA and EPA's general SIP policies, as well as a March 21, 2008, memorandum from William Harnett, Director of the Air Quality Policy Division, to the Regional Air Division Directors, entitled, ''Guidance on Establishing Emissions Baselines under Section 185 of the Clean Air Act (CAA) for Severe and Extreme Ozone Nonattainment Areas that Fail to Attain the 1-hour Ozone NAAQS by their Attainment Date.'' Guidance and policy documents that we use to help evaluate specific enforceability requirements typically include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations'', EPA, May 25, 1988 (the Bluebook).

2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies'', EPA Region 9, August 21, 2001 (the Little Bluebook).

3. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule'', (the NO_X Supplement), 57 FR 55620, November 25, 1992.

B. Does the Rule Meet the Evaluation Criteria?

Rule 3170 improves the SIP by establishing an excess emissions fee regulation. Portions of the rule are consistent with the CAA, as well as relevant policy and guidance regarding enforceability and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below.

C. What Are the Rule Deficiencies?

The following provisions conflict with section 185 of the Act and prevent full approval of the SIP revision:

Section 4.2 of SJVUAPCD Rule 3170 exempts units that begin operation after the attainment year. CAA Section 185 does not provide for an exemption for emission units that begin operation after the attainment year, so this exemption does not fully comply with the CAA. Rather, it requires ''each major source'' to pay the fee. *See* CAA section 185(a).

Section 4.3 exempts any ''clean emission unit'' from the requirements of the rule. Section 3.6 defines a clean emission unit as a unit that is equipped with an emissions control technology that either has a minimum 95% control efficiency (or 85% for lean-burn internal combustion engines), or meets the requirements for achieved-in-practice Best Achievable Control Technology as accepted by the APCO during the 5 years immediately prior to the end of the attainment year. The District's staff report for Rule 3170 states that the exemption is intended to address ''the difficulty of reducing emissions from units with recently installed BACT.'' Although EPA understands the District's intended purpose for including the exemption, the exemption does not comply with CAA section 185, for the same reason as noted above for new emission units.

The EPA's Clean Air Act Advisory Committee (CAAAC) has recently asked EPA to review and address whether it is ''legally permissible under either section 185 or 172(e) of the Clean Air Act for a State to exercise discretion'' to develop fee program SIPs employing one or more of a list of CAAAC-identified program options (*see http://www.epa.gov/air/caaac/185wg*). One of the program options the CAAAC identified is an exemption from fees for ''well-controlled'' sources. In today's action, EPA is proposing to disapprove the ''clean emission unit'' exemption in SJVUAPCD Rule 3170 because we do not believe such an exemption is authorized by CAA section 185. However, the State has not requested that EPA review the SIP pursuant to section 172(e) and has not made a demonstration that the program it has submitted would ensure controls that are ''not less stringent'' than those required under section 172(e). Thus, EPA is not at this time addressing whether it is legally permissible under CAA section 172(e) for a State to adopt an alternative program at least as stringent as a section 185 fee program, and for the alternative program to contain a clean unit exemption.

Section 3.2.1 defines the baseline period as two consecutive years consisting of the attainment year and the year immediately prior to the attainment year. CAA Section 185(b)(2) establishes the attainment year as the baseline period. While this provision also provides the option for calculating baseline emissions over a period of more than one calendar year, that option is limited to sources with emissions that are irregular, cyclical, or otherwise vary significantly from year to year. Thus section 3.2.1 is inconsistent with the CAA because it provides a different baseline than that required by the CAA (two years instead of one) regardless of whether the emissions are irregular, *etc.*

Section 3.2.2 allows averaging over 2–5 years to establish baseline emissions. CAA Section 185(b)(2) states that EPA may issue guidance authorizing such an alternative method of calculating baseline emissions if a source's emissions are irregular, cyclical, or otherwise vary significantly from year to year. EPA issued guidance on alternative methods for calculating baseline emissions in the form of the memorandum from William Harnett, mentioned above. The averaging period allowed in Section 3.2.2 of Rule 3170 appears consistent with the March 21, 2008, guidance. However, the language in Section 3.2.2 allows such averaging ''if those years are determined by the APCO as more representative of normal source operation.'' This language is considered less stringent than the CAA criteria. The rule should be amended to specify use of the expanded averaging period only if a source's emissions are irregular, cyclical, or otherwise vary significantly from year to year.

Section 3.4 defines the term ''Major Source'' by referring to the definition in SJVUAPCD Rule 2201 (New and Modified Stationary Source Review Rule). The current SIP-approved version of Rule 2201 was adopted by the SJVUAPCD on December 19, 2002, and approved by EPA on May 17, 2004 (69 FR 27837). This version of Rule 2201 defines ''Major Source'' as a stationary source with VOC or NOx emissions of over 50,000 pounds per year (25 tons per year). The CAA defines the major source threshold as 10 tons per year for ozone nonattainment areas classified as extreme. The SJVUAPCD amended Rule 2201 on December 18, 2008, and submitted it for inclusion in the SIP on March 17, 2009. This amended version includes the 10 tons per year threshold, but has not been approved into the SIP. Therefore, Rule 3170's reliance on Rule 2201 to define major sources is not approvable at this time. If a version of Rule 2201 that contains the appropriate major source threshold is approved into the SIP prior to finalizing this proposed action, then we will no longer cite Section 3.4 as a deficiency in Rule 3170.

D. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rule to improve the SIP. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3) because the rule does not fully meet the statutory section 185 requirement. If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months. These sanctions would be imposed according to 40 CFR 52.31. A

final disapproval would also trigger the Federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rule has been adopted by the SJVUAPCD, and EPA's final limited disapproval would not prevent the local agency from enforcing it. Moreover, because the rule would be approved into the SIP, it would also be Federally enforceable.

However, the limited approval of Rule 3170 does not override specific CAA mandates. If the area fails to attain by its 2010 attainment date, fees will accrue beginning in 2011 for emissions above 80% of source baselines for clean units, new units and major sources which are exempted from fee collection under the State rule. The State must adopt and submit a rule to collect fees for 2011 and future years from those units or, consistent with the Administrator's obligation under section 185(d), EPA will collect those fees. In addition, all sources are liable for fees calculated in accordance with the baseline definition in section 185(b)(2) as further interpreted in EPA guidance issued pursuant to that provision. The State must adopt and submit a rule that ensures fees are collected for 2011 and all future applicable years based on the statutory baseline requirement. If the State fails to do so, EPA will collect any additional fees owed pursuant to a Federal program under section 185(d).

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals or disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve or disapprove requirements that the State is already imposing. Therefore, because the proposed Federal SIP limited approval/limited disapproval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or Tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the limited approval/limited disapproval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or Tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve and disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to approve or disapprove a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), 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.'' This proposed rule does not have Tribal implications, as specified in Executive Order 13175. It 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. Thus, Executive Order 13175 does not apply to this rule.

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

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a State rule implementing a Federal standard.

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

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) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 6, 2009.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. E9–19856 Filed 8–18–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0024; FRL–8943–8]

Withdrawal of Proposed Rule Revising the California State Implementation Plan; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: On July 14, 2009 (74 FR 33950), EPA published a rule proposing limited approval and limited disapproval of a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan. The revision concerned SJVUAPCD Rule 3170, Federally Mandated Ozone Nonattainment Fee. We are withdrawing this previously published rule, and in this **Federal Register**, we are publishing a proposed rule that replaces the July 14, 2009, proposed rule.

DATES: The proposed rule published on July 14, 2009 (74 FR 33950) is withdrawn as of August 19, 2009.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov*.

SUPPLEMENTARY INFORMATION: On July 14, 2009 (74 FR 33950), EPA proposed limited approval and limited disapproval of SJVUAPCD Rule 3170, Federally Mandated Ozone Nonattainment Fee. Rule 3170 is a local fee rule that applies to major sources of volatile organic compound and nitrogen oxide emissions within the San Joaquin Valley ozone nonattainment area. Due to a clerical error, the proposed rule that was published on July 14, 2009, was inconsistent with the signed document. Consequently, we are withdrawing the rule proposed on July 14, 2009, and in this **Federal Register**, we are publishing the proposed rule as originally signed. The rule being proposed in this **Federal Register** replaces the following rule published on July 14, 2009:

Title: Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District (Proposed rule, 74 FR 33950, July 14, 2009, EPA–R09–OAR–2009–0024).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 30, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E9–19857 Filed 8–18–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

42 CFR Part 73

RIN 0920–AA32

Possession, Use, and Transfer of Select Agents and Toxins—Chapare virus

AGENCY: Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: We are proposing to add Chapare virus to the list of HHS select agents and toxins. We are proposing this action because Chapare virus has been phylogenetically identified as a Clade B arenavirus and is closely related to other currently regulated South American arenaviruses that cause haemorrhagic fever, particularly Sabia virus.

DATES: Written comments must be received on or before October 19, 2009.

ADDRESSES: Comments on the proposed change to the list of HHS select agents and toxins should be marked ''Comments on Chapare virus'' and mailed to: Centers for Disease Control and Prevention, Select Agent Program, 1600 Clifton Road, NE., Mailstop A–46, Atlanta, Georgia 30333. Comments may be e-mailed to: *SAPcomments@cdc.gov*.

FOR FURTHER INFORMATION CONTACT: Robbin Weyant, Director, Division of Select Agents and Toxins, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Mailstop A–46, Atlanta, GA 30333. Telephone: (404) 718–2000.

SUPPLEMENTARY INFORMATION: The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Act) authorizes the Secretary to regulate the possession, use, and transfer of select agents and toxins that have the potential to pose a severe threat to public health and safety. These regulations are set forth at 42 CFR part 73.

Criteria used to determine whether a select agent or toxin should be included under the provisions of these regulations are based on:

• The effect on human health as a result of exposure to the agent or toxin,

• The degree of contagiousness of the agent or toxin,

• The methods by which the agent or toxin is transferred to humans,

• The availability and effectiveness of pharmacotherapies and immunizations to treat and prevent any illness resulting from infection by the agent or toxin, and

• Any other criteria, including the needs of children and other vulnerable populations that the HHS Secretary considers appropriate.

Based on these criteria, we are proposing to amend the list of HHS select agents and toxins by adding Chapare virus to the list.

After consulting with subject matter experts from CDC, the National Institutes of Health (NIH), the Food and Drug Administration (FDA), the United States Department of Agriculture (USDA)/Animal and Plant Health Inspection Service (APHIS), USDA/ Agricultural Research Service (ARS), USDA/CVB (Center for Veterinary Biologics), and the Department of Defense (DOD)/United States Army Medical Research Institute for Infectious Diseases (USAMRIID) and review of relevant published studies, (including Delgado S, Erickson BR, Agudo R, Blair PJ, Vallejo E, *et al*. Chapare Virus, a newly Discovered Arenavirus Isolated from a Fatal Hemorrhagic Fever Case in Bolivia. PLoS Pathog 4(4): e1000047, April 2008. Available at *http://www.plospathogens.org*), we believe the Chapare virus should be added to the list of HHS select agents and toxins.

The select agents and toxins that were first listed in part 73 included ''South American Haemorrhagic Fever viruses (Junin, Machupo, Sabia, Flexal, Guanarito).'' South American arenaviruses are rodent-borne viruses, some of which can be associated with large haemorrhagic fever outbreaks, and untreated case fatalities can be in excess of 30 percent. CDC prepared the list of select agents and toxins for a notice of intent to issue regulations after receiving extensive input from a group of scientists from 21 Federal government entities. Some public comments on the notice objected to the inclusion of certain other viruses. For example, one commenter indicated that monkeypox virus is not easily transmissible to humans and has not been demonstrated to result in high levels of mortality. CDC included monkeypox on the final rule list, however, in part because it has similarities with smallpox virus in that monkeypox has a similar clinical presentation. No commenters objected to the listing of South American haemorrhagic fever viruses.

In December 2003 and January 2004, a small number of South American haemorrhagic fever cases were reported in rural Bolivia. Specimens were available from one fatal case, which had a clinical course that included fever, headache, arthralgia, myalgia, and vomiting with subsequent deterioration and multiple haemorrhagic signs. Isolated virus from two patient serum samples were tested for genetic similarity with other Clade B arenaviruses known to cause haemorrhagic fever. The complete genome analysis showed that the virus identified was a distinct new virus, subsequently named Chapare. Chapare virus was found to be most closely related to Sabia virus (causative agent for Brazilian haemorrhagic fever).

We will consider comments that are received within 60 days of publication of this notice in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments that will be made to the rule as a result of the comments.

If the proposed change is made, we would also consider whether the effective date for the regulation of the possession, use, and transfer of this agent should be phased in over a period of time greater than a 30-day effective date. We recognize that entities that currently possess an agent that would become regulated as a result of this proposed amendment to the regulations may need time to come into full compliance with the requirements of the regulations. In order to accommodate these entities, we are proposing that the Responsible Official at all unregistered entities must submit registration paperwork to include the new agent(s) and any new laboratory areas, as required in 42 CFR part 73 by 30 days after the effective date and all previously unregistered entities must be in full compliance with the regulations by 180 days after the effective date to minimize the disruption of research.

Regulatory Analyses

Paperwork Reduction Act

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

Executive Order 12866 and Regulatory Flexibility Act

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

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities.

Entities most likely to be affected by this rule are laboratories and other institutions conducting research and related activities that involve the use of an agent that would become regulated as a result of this proposed amendment. Even though we believe the impact of these changes is expected to be minimal, we will consider comments on the impact of this proposed rule to determine if there will be a significant impact on small businesses.

Unfunded Mandates

The Unfunded Mandates Reform Act at 2 U.S.C. 1532 requires that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted for inflation) in any given year. This proposed rule is not expected to result in any one-year expenditure that would exceed this amount.

Executive Order 12988

This Notice of Proposed Rulemaking has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Would preempt all State and local laws and regulations that are inconsistent with this rule; (2) would have no retroactive effect; and (3) would not require administrative proceedings before parties may file suit in court challenging this rule.

Executive Order 13132

This Notice of Proposed Rulemaking has been reviewed under Executive Order 13132, Federalism. The notice does not propose any regulation that would preempt State, local, and Indian tribe requirements, or that would have any 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.

List of Subjects in 42 CFR Part 73

Biologics, Incorporation by reference, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: August 5, 2009.

Kathleen Sebelius,

Secretary.

For the reasons stated in the preamble, we are proposing to amend 42 CFR part 73 as follows:

PART 73—SELECT AGENTS AND TOXINS

1. The authority citation for part 73 continues to read as follows:

Authority: 42 U.S.C. 262a; sections 201–204, 221 and 231 of Title II of Public Law 107–188, 116 Stat. 637 (42 U.S.C. 262a).

2. Amend § 73.3 by revising the entry for ''South American Haemorrhagic Fever viruses'' in paragraph (b) and the reference to it in paragraph (f)(3)(i) to read as follows:

§ 73.3 HHS select agents and toxins.

* * * * *

(b) * * *

South American Haemorrhagic Fever viruses (Chapare, Junin, Machupo, Sabia, Flexal, Guanarito)

* * * * *

(f) * * *

(3) * * *

(i) * * * South American Haemorrhagic Fever viruses (Chapare, Junin, Machupo, Sabia, Flexal, Guanarito) * * *.

* * * * *

§ 73.5 [Amended]

3. Amend paragraph (a)(3)(i) of § 73.5 by removing the phrase ''South American Haemorrhagic Fever viruses (Junin, Machupo, Sabia, Flexal, Guanarito)'' and adding in its place ''South American Haemorrhagic Fever viruses (Chapare, Junin, Machupo, Sabia, Flexal, Guanarito)''.

§ 73.9 [Amended]

4. Amend paragraph (c)(1) of § 73.9 by removing the phrase ''South American Haemorrhagic Fever viruses (Junin, Machupo, Sabia, Flexal, Guanarito)'' and adding in its place ''South American Haemorrhagic Fever viruses (Chapare, Junin, Machupo, Sabia, Flexal, Guanarito)''.

[FR Doc. E9–19737 Filed 8–18–09; 8:45 am]

BILLING CODE 4160–17–P

FEDERAL MARITIME COMMISSION

46 CFR Part 535

[Docket No. 09–02]

RIN 3072–AC35

Repeal of Marine Terminal Agreement Exemption

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: In a proposed rule published in the Federal Register on July 2, 2009, the Federal Maritime Commission proposed to repeal the exemption from the 45-day waiting period requirement applicable to certain Marine Terminal Agreements. The Commission also proposed to correct a typographical error in its regulations. This document extends the comment period.

DATES: Comments on the proposed rule published July 2, 2009 (74 FR 31666), are due by September 8, 2009.

ADDRESSES: Address all comments concerning this proposed rule to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573–0001, *Secretary@fmc.gov*, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Peter J. King, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1018, Washington, DC 20573–0001, *generalcounsel@fmc.gov*, (202) 523–5740.

Karen V. Gregory,

Secretary.

[FR Doc. E9–19901 Filed 8–18–09; 8:45 am]

BILLING CODE P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1727; MB Docket No. 09–130; RM–11538]

Radio Broadcasting Services; Maupin, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division at the request of Maupin Broadcasting Company proposes the allotment of Channel 244C2 at Maupin, Oregon, as its first local service. A staff engineering analysis indicates that Channel 244C2 can be allotted to Maupin consistent with the minimum distance separation requirements of the Rules with a site restriction 1.2 kilometers (0.7 miles) west located at reference coordinates 45–10–24 NL and 121–05–43 WL.

DATES: Comments must be filed on or before September 24, 2009, and reply comments on or before October 9, 2009.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mathew H. McCormick, Esq., c/o Maupin Broadcasting Company, Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor. Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 09–130, adopted July 30, 2009, and released August 3, 2009. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or via e-mail *http://www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Maupin, Channel 244C2.

Andrew J. Rhodes,

Senior Counsel, Allocations, Audio Division, Media Bureau, Federal Communications Commission.

[FR Doc. E9–19872 Filed 8–18–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1795; MB Docket No. 09–146; RM–11553]

Television Broadcasting Services; Chicago, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by WLS Television, Inc. (''WLS''), the licensee of station WLS–TV, DTV channel 7, Chicago, Illinois. WLS–TV requests the substitution of transition DTV channel 44 for its post-transition DTV channel 7 at Chicago.

DATES: Comments must be filed on or before September 3, 2009, and reply comments on or before September 14, 2009.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Tom W. Davidson, Esq., Akin Gump Strauss Hauer & Feld, LLP, 1333 New Hampshire Ave., NW., Washington, DC 20026.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, *adrienne.denysyk@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 09–146, adopted August 11, 2009, and released August 12, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC, 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622(i) [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Illinois, is amended by adding DTV channel 44 and removing DTV channel 7 at Chicago.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–19875 Filed 8–18–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R8-ES-2008-0049;1111 FY08 MO-B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Ashy Storm-Petrel as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12–month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12–month finding on a petition to list the ashy storm-petrel (*Oceanodroma homochroa*) as threatened or endangered, under the Endangered Species Act of 1973, as amended (Act). After a thorough review of all available scientific and commercial information, we find that listing the ashy storm-petrel is not warranted. We ask the public to continue to submit to us any new information concerning the status of, and threats to, this species. This information will help us to monitor and encourage the conservation of this species.

DATES: The finding announced in the document was made on August 19, 2009.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/arcata/*. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, CA 95521; telephone 707-822-7201; facsimile 707-822-8411. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Randy Brown, (Acting) Field

Supervisor, U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office (see **ADDRESSES** section). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of our receipt of the petition on whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether any species is threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants. Such 12–month findings are to be published promptly in the **Federal Register**. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, and we must make a subsequent finding within 12 months.

Previous Federal Actions

On October 16, 2007, we received a petition, dated October 15, 2007, from the Center for Biological Diversity (CBD or petitioner), requesting that we list the ashy storm-petrel as a threatened or endangered species throughout its range and that we concurrently designate critical habitat (CBD 2007, pp. 1-51). In response to the petition, we sent a letter to the petitioner dated January 11, 2008, stating that we had secured funding and that we anticipated making an initial finding as to whether the petition contained substantial information indicating listing the ashy storm-petrel may be warranted in Fiscal Year 2008. We also concluded in our January 11, 2008, letter that emergency listing of the ashy storm-petrel was not warranted. On May 15, 2008, we published a 90–day petition finding (73 FR 28080) in which we concluded that the petition provided substantial information indicating that listing of the ashy storm-petrel may be warranted, and we initiated a status review. This notice constitutes the 12–month finding on the petition, dated October 15, 2007, to list the ashy storm-petrel as threatened or endangered.

Species Description

The ashy storm-petrel is a seabird species belonging to the order Procellariiformes, family Hydrobatidae. The ashy storm-petrel is one of five storm-petrel species (including fork-tailed (*Oceanodroma furcata*), Leach's (*O. leucorhoa*), black (*O. melania*), and least (*O. microsoma*) storm-petrels) that nest on islands along the west coast of North America (Harrison 1983, pp. 272-278). The ashy storm-petrel is a smoke-gray, medium-sized bird with long slender wings, a long forked tail, and webbed feet (Ainley 1995, p. 2).

Ashy storm-petrels have been confirmed to breed at 26 locations (on islands and offshore rocks) from Mendocino County, California, south to Todos Santos Islands, west of Ensenada, Baja California, Mexico (Carter *et al.* 1992, pp. 77-81; Ainley 1995, p. 2; Carter *et al.* 2006, p. 6; Carter *et al.* 2008a, p. 118). Greater than 95 percent of the species breeds in two population centers at the Farallon Islands and in the California Channel Islands (Sowls *et al.* 1980, p. 24; Ainley *et al.* 1990, p. 135; Carter *et al.* 1992, p. 86). Anacapa, San Miguel, Santa Cruz, Santa Rosa, San Clemente, San Nicholas, Santa Barbara, and Santa Catalina islands comprise the Channel Islands.

Ashy storm-petrels occur at their breeding colonies nearly year-round and occur in greater numbers from February through October (Ainley 1995, p. 5). Like other procellariids, ashy storm-petrels are highly philopatric; that is, birds usually return in consecutive years to the same breeding site or colony from which they were raised as chicks (James-Veitch 1970, p. 81; Warham 1990, p. 12). Ashy storm-petrels do not excavate burrows; rather, they nest in crevices of talus slopes, rock walls, sea caves, cliffs, and driftwood (James-Veitch 1970, pp. 87-88; Ainley *et al.* 1990, p. 147; McIver 2002, p. 1). The breeding season is protracted, and breeding activities (courtship, egg-laying, chick-rearing) at nesting locations occur from February through January of the following year (James-Veitch 1970, p. 71, Ainley *et al.* 1974, p. 301). During the pre-egg period, adult ashy storm-petrels begin to visit nesting sites in February (Ainley *et al.* 1974, p. 301; Ainley 1995, p. 5). Throughout the fledging period, the number of visiting adults declines (Ainley *et al.* 1974, p. 301). At Southeast Farallon Island, Ainley *et al.* (1974, p. 301) reported that immature (non-breeding) ashy storm-petrels visited the island from April through early July. The egg-laying period extends from late April to October, peaking in June and July (James-Veitch 1970, p. 243; Ainley *et al.* 1990, p. 148; McIver 2002, p. 17). Clutch size is one egg per year, and parents alternate incubation bouts during a 44–day incubation period (James-Veitch 1970, p. 244; Ainley 1995, p. 6). Less than about 4 percent of all eggs laid are replacement (or re-lay) eggs, laid after the failure of a first egg (Ainley *et al.* 1990, p. 148; McIver 2002, p. 18). Hatchlings are ''semi-precocial'' (James-Veitch 1970, p. 128). The term semi-precocial describes young that have characteristics of precocial young at hatching (open eyes, downy, capacity to leave the nest), but that remain at the nest and are cared for by parents until close to adult size (Sibley 2001, p. 573). Once hatched, the nestling is brooded for about 5 days, after which it remains alone in the nest site for an additional 75 to 85 days (James-Veitch 1970, pp. 141, 212; Ainley *et al.* 1990, p. 152). It is fed irregularly (1 to 3 nights on average) during brief, nocturnal visits by its parents from feeding areas at sea (James-Veitch 1970, pp. 180-208). Fledging occurs at night, from late August to January, and once they leave the nest, fledglings are independent of their parents (Ainley *et al.* 1974, p. 303; McIver 2002, p. 36). Peak fledging occurs in early to mid-October (McIver 2002, p. 18).

The nocturnal activity (return to and departure from nest) and crevice nesting of the ashy storm-petrel are believed to be adaptations to avoid predation by diurnal predators, such as western gulls (*Larus occidentalis*), peregrine falcons (*Falco peregrinus*), and common ravens (*Corvus corax*) (Ainley 1995, p. 5; McIver and Carter 2006, p. 3). Ashy storm-petrels are susceptible to predation at night by burrowing owls (*Athene cunicularia*) and barn owls (*Tyto alba*) (Ainley 1995, p. 5; McIver 2002, p. 30). Nesting in crevices and burrows on remote headlands, offshore rocks, and islands generally reduces predation of storm-petrels by mammalian predators (Warham 1990, p. 13). Known mammalian predators of ashy storm-petrels and their eggs include house mice (*Mus musculus*), deer mice (*Peromyscus maniculatus*), and island spotted skunks (*Spilogale gracilis amphiala*) (Ainley *et al.* 1990, p. 146; McIver 2002, pp. 40-41; McIver and Carter 2006, p. 3).

Obtaining direct population counts of ashy storm-petrels is difficult because the species often nests in deep, inaccessible crevices (Carter *et al.* 1992, p. 77; Sydeman *et al.* 1998a, p. 438). Techniques for estimating population size at breeding locations have included counting crevices and applying correction factors to account for burrow

occupancy, mark and recapture using mist nests, and direct observation of nest sites. Estimates of breeding ashy storm-petrels for California have ranged from 5,187 (Sowls *et al.* 1980, p. 25) to 7,209 (Carter *et al.* 1992, p. I-87). Additional colony sites and larger ashy storm-petrel numbers have been found at several locations in the Channel Islands and along the mainland coast of California (Carter *et al.* 2008a, p. 119). Table 1 provides various estimates of numbers of breeding ashy storm-petrels at 26 locations in California and Baja California Norte, Mexico.

TABLE 1. ESTIMATES OF NUMBERS OF BREEDING ASHY STORM-PETRELS AT 26 LOCATIONS IN CALIFORNIA (UNITED STATES) AND BAJA CALIFORNIA NORTE (MEXICO).

	Location	Ownership or Management[a]	Estimated No. Breeding Birds	Source for Breeding Birds Estimates[b]
1	Bird Rock near Greenwood, Mendocino County	BLM	10	1,2,3
2	Caspar, near Point Cabrillo, Mendocino County	BLM	10	1,2,3
3	Bird Rock, Marin County	NPS	10	4
4	Stormy Stack, Marin County	NPS	10	4
5a	Southeast Farallon Island	FWS	4,000	5
5b	Southeast Farallon Island	FWS	3,402	6
5c	Southeast Farallon Island	FWS	1,990	6
6	Castle/Hurricane Colony Complex, Monterey County	BLM	60	7
7	Castle Rock, Santa Barbara County	USN/NPS	200	8
8	Prince Island	USN/NPS	1,154	1
9	Shipwreck Cave, Santa Cruz Island	TNC/NPS	20	9
10	Dry Sandy Beach Cave, Santa Cruz Island	TNC/NPS	80	10,11,12,13
11	Del Mar Rock, Santa Cruz Island	NPS	10	1
12	Cave of the Bird's Eggs, Santa Cruz Island	TNC/NPS	52	10,11,12,13
13	Diablo Rocks, Santa Cruz Island	NPS	20	8
14	Orizaba (''Sppit'') Rock, Santa Cruz Island	NPS	40	10,11,12,13
15	Bat Cave, Santa Cruz Island	NPS	48	10,11,12,13
16	Cavern Point Cove Caves, Santa Cruz Island	NPS	0	10,11,12,13
17	Scorpion Rocks, Santa Cruz Island	NPS	140	1
18	Willows Anchorage Rocks, Santa Cruz Island	NPS	111	1
19	Gull Island	NPS	2	8
20	Santa Barbara Island	NPS	874	1
21	Sutil Island	NPS	586	1
22	Shag Rock	NPS	10	13
23	Ship Rock, Santa Catalina Island	BLM	2	14
24	Seal Cove Area, San Clemente Island	BLM	10	15
25	Islas Los Coronados, Mexico	MX	100	16
26	Islas Todos Santos, Mexico	MX	10	17
	Total, if using line 5a		7,569	
	Total, if using line 5b		6,971	
	Total, if using line 5c		5,559	

[a]Entity listed once if same for both ownership and management, as follows: Bureau of Land Management (BLM); Mexican Government (MX); National Park Service (NPS); The Nature Conservancy (TNC); U.S. Fish and Wildlife Service (FWS); and U.S. Navy (USN).

[b]Sources are as follows: 1-Carter *et al.* 1992; 2-Carter *et al.* 2008a; 3-Carter *et al. unpublished notes*; 4-Whitworth *et al.* 2002; 5-Ainley and Lewis 1974; 6-Sydeman *et al.* 1998a; 7-McChesney *et al.* 2000; 8-Hunt *et al.* 1979; 9-H. Carter, *unpublished data*; 10-McIver 2002; 11-McIver and Carter 2006; 12-Carter *et al.* 2007; 13-McIver *et al.* 2008; 14-FWS estimate, based on Carter *et al.* 2008a; 15-H. Carter and D. Whitworth, *unpublished data*; 16-Carter *et al.* 2006a; and 17-Carter *et al* 2006b.

Four thousand to six thousand ashy storm-petrels are usually observed in the fall in Monterey Bay, approximately 3 to 10 miles (mi) (5 to 16 kilometers (km)) offshore from the town of Moss Landing, California. As many as 10,000 ashy storm-petrels were estimated to be present in Monterey Bay in October 1977 and in September 2008 (Roberson 1985, p. 42; Shearwater Journeys 2008). However, both of these estimates were from non-standardized visual estimates.

Spear and Ainley (2007, p. 27) examined the seasonal at-sea distributions and abundance of storm-petrel species (including ashy storm-petrels) with generalized additive models, and estimated 4,207 and 7,287 birds during autumn and spring, respectively (95 percent confidence interval: 2,700 to 6,400 in autumn and 4,500 to 9,070 in spring) off of Sonoma to Monterey counties. Spear and Ainley (2007, p. 7) suggested that higher numbers of ashy storm-petrels may occur at Southeast Farallon Island, and other of the Farallon Islands, than have previously been reported. The total population of ashy storm-petrels (including breeders and non-breeders) has been estimated to be approximately 10,000 birds (Sowls *et al.* 1980, p. 24; Ainley 1995, p.1). Based on estimates at breeding locations and at-sea observations in Monterey Bay and off Sonoma to Monterey counties, we consider 7,000 to 10,000 birds to be a reasonable estimate of the total population size of ashy storm-petrels. However, based on other visual estimates mentioned above, the total population could be as high as 13,000 birds.

More ashy storm-petrels breed at Southeast Farallon Island than at any other single location (Sowls *et al.* 1980, p. 24; Carter *et al.* 1992, p. I-78). Assessing population size and trends has been done through capture-recapture techniques using audio playback and mist nets (see Ainley and Lewis 1974, p. 435; Sydeman *et al.* 1998a, p. 438). Ainley and Lewis (1974, pp. 432-435) estimated 4,000 breeding ashy storm-petrels at Southeast Farallon Island in years 1971 to 1972, from birds captured and recaptured in mist nets at night. Sydeman *et al.* (1998a, p. 438-442) re-analyzed data from Southeast Farallon Island for years 1971 and 1972 (Ainley and Lewis 1974) and included data from year 1992 to estimate 6,461 total ashy storm-petrels and 3,402 breeding ashy storm-petrels in 1971 to 1972, and 4,284 total ashy storm-petrels and 1,990 breeding ashy storm-petrels in 1992. Based on comparison of these data sets, Sydeman *et al.* (1998a, p. 442) suggested declines of 34 percent and 42 percent in the total population and breeding population of ashy storm-petrels, respectively, at Southeast Farallon Island. Sydeman *et al.* (1998a, pp. 445-446) reported that this decline occurred in prime storm-petrel nesting habitat, and suggested that this decline in population size at Southeast Farallon Island was due to, in part, an increase in the predation rate on ashy storm-petrel adults and sub-adults by western gulls and burrowing owls. We interpret these results cautiously because they are based on two data points: one from 1972 and one 20 years later from 1992. Sydeman *et al.* (1998b, pp. 1-74) conducted a population viability assessment of ashy storm-petrels at Southeast Farallon Island, quantitatively examining the effects of predation on population decrease of ashy storm-petrels. Sydeman *et al.* (1998b, pp. 1-2) estimated a 2.87 percent decline in the population of ashy storm-petrels from 1972 to 1992 and hypothesized that removal of western gull predation would produce a stable population. They also stated, given current population parameters and predation rates, the population of ashy storm-petrels faces a high probability of quasi-extinction within 50 years (Sydeman *et al.* 1998b, p. 2). Since 1992, capture-recapture of ashy storm-petrels at Southeast Farallon Island has continued and techniques have been further standardized (McChesney 2008, p. 4). Using data from 1999 to 2007, Warzybok and Bradley (2007, p. 17) describe analysis of capture-recapture data that shows increasing capture rates and increasing survival of ashy storm-petrels. Specifically, they report the mean standardized capture rate (number of birds caught per hour of effort) increased from approximately 13 birds per hour to 38 birds per hour between 1999 and 2005 but declined slightly in 2006. The mean capture rate for 2007 was 39 birds per hour (Warzybok and Bradley 2007, p. 17). The authors also note that there were a greater number of occupied nesting sites than in previous years. Although there are caveats associated with Warzybok and Bradley's (2007) analysis (See Factor C: Disease and Predation section below), their report represents the best available information to date and suggests an increasing population of ashy storm-petrels.

Research on reproductive success (or productivity, defined as number of fledged chicks per adult pair) of the ashy storm-petrel has been conducted only at Southeast Farallon Island (James-Veitch 1970, pp. 1-366; Ainley *et al.* 1990, pp. 128-162; Sydeman *et al.* 1998a, pp. 1-74; PRBO Conservation Science,) and Santa Cruz Island (McIver 2002, pp. 1-70; McIver and Carter 2006, pp. 1-6; Carter *et al.* 2007, pp. 1-32; McIver *et al.* 2008, pp. 1-23; McIver *et al.* 2009, pp. 1-30; McIver *et al.*, in preparation, pp. 1-23). Reported productivity values are presented in Table 2.

TABLE 2. AVERAGE VALUES FOR PRODUCTIVITY (FLEDGED CHICKS PER ADULT PAIR) OF ASHY STORM-PETRELS AT SOUTHEAST FARALLON ISLAND AND SANTA CRUZ ISLAND, CALIFORNIA, FOR SEVERAL STUDIES DURING 1964-1966 AND 1971-2008. SAMPLE SIZES ARE SHOWN IN PARENTHESES.

Location	Productivity	Years	Source
Southeast Farallon Island	0.42[a] (n = 184)	1964-1966	James-Veitch (1970)
Southeast Farallon Island	0.69 (n = 356)	1972-1983[b]	Ainley and Boekelheide (1990)
Southeast Farallon Island	0.74[d] (n = 540)	1971-1992[b]	Sydeman *et al.* (1998b)
Southeast Farallon Island	0.54[c] (n = 283)	1996-2007[e]	PRBO Conservation Science *unpublished data*; Warzybok and Bradley (2007)

TABLE 2. AVERAGE VALUES FOR PRODUCTIVITY (FLEDGED CHICKS PER ADULT PAIR) OF ASHY STORM-PETRELS AT SOUTHEAST FARALLON ISLAND AND SANTA CRUZ ISLAND, CALIFORNIA, FOR SEVERAL STUDIES DURING 1964-1966 AND 1971-2008. SAMPLE SIZES ARE SHOWN IN PARENTHESES.—Continued

Location	Productivity	Years	Source
Santa Cruz Island	0.55(*n* = 477)	1995-1998	McIver *et al. in preparation*, Table 4
Santa Cruz Island	0.65(*n* = 293)	2005-2008	McIver *et al. in preparation*, Table 4; McIver *et al.* (2009)

[a]Researcher disturbance (daily nest checks) negatively affected productivity.
[b]Excludes year 1977, when researcher disturbance negatively affected productivity.
[c]Sample sizes not provided for year 1996-2005, so annual sample size during this time period. assumed at 22 nests, based on average sample size in Sydeman *et al.* (1998b).
[d]Based on two data points.
[e]Based on yearly date.

No data are currently available regarding adult life span, survivorship, and age at first breeding for ashy storm-petrels (Ainley 1995, p. 8). However, like other procellariids, storm-petrels are long-lived (Warham 1996, p. 20). Some ashy storm-petrels reach 25 years old (Sydeman *et al.* 1998b, p. 7), and breeding adults over 20 years in age have been reported in the closely related Leach's storm-petrel (Morse and Bucheister 1977, p. 344). Mean age of first breeding in the Leach's storm-petrel has been reported at 5.9 years ± 1.3 years (Huntington *et al.* 1996, p. 19). Sydeman *et al.* (1998b, p. 7) concluded that 90 percent of adult ashy storm-petrels were capable of breeding at 6 years of age.

Marine Environment

Ashy storm-petrels are not as migratory as other storm-petrel species, foraging primarily in the California Current, from northern California to central Baja California, Mexico; the birds forage in areas of upwelling, seaward of the continental shelf, near islands and the coast (Ainley *et al.* 1974, p. 300; Briggs *et al.* 1987, p. 23; Mason *et al.* 2007, p. 60). The California Current flows along the west coast of North America, and like three other major, global, eastern boundary (along the eastern edges of oceanic gyres and the western edges of continents) currents, is characterized by the upwelling of cool, nutrient-rich waters, which results in increased productivity of the ocean (i.e., production of phytoplankton and zooplankton) in the region (Hickey 1993, pp. 19-70). The California Current extends about 190 mi (300 km) offshore from southern British Columbia, Canada, to Baja California, Mexico, and is comprised of a southward surface current, and a northward (poleward) undercurrent and surface countercurrents (Miller *et al.* 1999, p. 1; Dailey *et al.* 1993, pp. 8-10). Upwelling is an oceanographic phenomenon that involves wind-driven motion of dense, cooler, and usually nutrient-rich water towards the ocean surface, which replaces the warmer and usually nutrient-depleted surface water (Smith 1983, pp. 1-2). Coastal upwelling replenishes nutrients in the euphotic zone (zone of water where photosynthesis occurs), resulting in increased productivity in higher trophic levels (position within the food chain) (Batchelder *et al.* 2002, p. 37).

Crossin (1974, p. 176) observed ashy storm-petrels as far north as latitude 49° N, as far south as latitude 7° S, and approximately 300 mi (480 km) from shore near latitude 14° N. However, Spear and Ainley (2007, p. 7) disputed these observations and state that these observations likely represented misidentified dark-rumped Leach's storm-petrels. At-sea observations of ashy storm-petrels south of Islas San Benitos, Mexico (latitude 28° N) are unusual, and most observations of the species are off the coasts of California and Baja California Norte, Mexico (Briggs *et al.* 1987, p. 23; Ainley 1995, p. 2). Aerial and boat observations at-sea confirm that the species is associated with pelagic (offshore) waters along the slope of and just seaward of the Continental Shelf and the Monterey Submarine Canyon, and less often in neritic (nearshore) waters (Briggs *et al.* 1987, p. 23; Mason *et al.* 2007, pp. 56-60; Adams and Takekawa 2008, pp. 12-13). Ashy storm-petrels are not known to be associated with the deeper and warmer oceanic waters west of the California Current, unlike the closely-related Leach's storm-petrel (Ainley *et al.* 1974, pp. 299-300). Thus, the Service considers the at-sea geographic distribution (i.e., marine range) of the ashy storm-petrel to include waters off the western coast of North America, from latitude 42° N (approximately the California-Oregon State line) south to latitude 28° N (approximately Islas San Benitos, Mexico), and approximately 75 mi (120 km) out to sea from mainland and island coasts. The diet of ashy storm-petrels has not been extensively studied, but likely includes euphausiids (*Euphausia* spp., *Thysanoessa*), other crustaceans, larval lanternfish, unidentified fish, fish eggs, and squid (Warham 1990, p. 186; McChesney 1999, pers. com.; Adams and Takekawa 2008, p. 14).

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations at 50 CFR part 424 set forth procedures for adding species to the Federal List of Endangered and Threatened Wildlife. In making this finding, we summarize below information regarding the status and threats to this species in relation to the five factors in section 4(a)(1) of the Act. In our 90–day finding for this petition (73 FR 28080), we organized potential threats under the five factors according to how they were organized and described in the petition. In this 12–month finding, we analyze all of the potential threats described in the petition, but have reorganized them slightly under the factors that more appropriately categorize them. In making our 12–month finding, we considered and evaluated all scientific and commercial information available, including information received during and after the public comment period that ended July 14, 2008.

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Like most other procellariids, ashy storm-petrels feed mostly offshore or pelagically (Warham 1990, p. 10; Ainley 1995, p. 2) and return to land to breed at locations on islands and offshore rocks protected from mammalian predators (Warham 1990, p. 13; Ainley 1995, p. 3). Consequently, in this section, we describe various threats that may destroy, modify, or curtail the ashy storm-petrel's marine and terrestrial habitats and range. The petitioner asserts that the ashy storm-petrel is

being or will be negatively affected by current and future climate change (specific effects: reduction in ocean productivity; ocean acidification; and sea level rise), tourism (specific effects: disturbance of habitats and nesting birds), and introduced grasses (CBD 2007, p. 15). The petitioner further asserts that the ashy storm-petrel's at-sea foraging habitat is being degraded by artificial (human-caused) light pollution, chemical and plastics pollution, and current and future oceanic changes related to climate change resulting from greenhouse gas emissions (CBD, p. 15); We addresspotential threats posed by artificial light pollution and chemical and plastics pollution under Factor E below. In this 12–month finding, we discuss under Factor A the following potential threats: (1) Climate change and associated effects—specifically, reduced productivity, ocean acidification, and sea-level rise; (2) introduced grasses; and (3) degradation of nesting habitats from tourism and military operations. The petitioner states that global warming will likely affect the ashy storm-petrel by causing warmer water and reduced upwelling, which reduces primary productivity in the California current system that would in turn decrease ashy storm-petrel breeding success and perhaps survival; global warming is leading to more intense El Niño events that could lead to ashy storm-petrel breeding failures; sea-level rise will eliminate important ashy storm-petrel breeding habitat in sea caves and off-shore rocks in the Channel Islands; and ocean acidification may lead to declines in the prey species upon which petrels depend (CBD 2007, p 2). We discuss first below the various climate-related factors affecting ashy storm-petrels.

El Niño and Reduced Productivity

The term El Niño-Southern Oscillation (hereafter, El Niño) is used to describe periodic basin-wide changes in air-sea interaction in the equatorial Pacific Ocean region, which result in increased sea-surface temperatures, reduced flow of eastern boundary currents, and reduced coastal upwelling (Norton and McLain 1994, pp. 16,019–16,030; Schwing *et al.* 2002, p. 461). La Niña events (sometimes called anti-El Niño or cold-water events) produce effects in the northeast Pacific Ocean that tend to be the reverse of those that occur during El Niño events; during La Niña events, strong upwelling-favorable winds and a shallow thermocline (zone of rapid temperature change with increased depth that typically separates warm and cold water) result in colder, more nutrient-rich waters than usual (Murphree and Reynolds 1995, p. 52; Oedekoven *et al.* 2001, p. 266). In addition to inter-annual climate events such as El Niño and La Niña, the mid-latitude Pacific Ocean experiences warm and cool phases that occur on decadal time scales (Mantua 2000, p. 2). The term ''Pacific Decadal Oscillation'' was coined to describe long-term climate variability in the Pacific Ocean, in which there are observed warm and cool phases, or ''regime shifts'' (Mantua *et al.* 1997, pp. 1069-1079).

The California Current system is affected by inter-annual (ENSO-related (El Niño/La Niña)) and inter-decadal (Pacific Decadal Oscillation) climatic processes. The petitioner cites Behrenfeld *et al.* (2006, pp. 752-755) to describe significant global declines in net primary production between years 1997 and 2005, attributed to reduced nutrient enhancement due to ocean surface warming (CBD 2007, p. 25). Specific to the marine range of the ashy storm-petrel, the petitioner states that the California Current System has experienced some of the most well-documented changes in ocean climate due to global warming (CBD 2007, p. 25). The petition cites several examples of changes in the California Current System, which it attributes to climate change, that all relate to reduced ocean productivity, including: reduction in zooplankton biomass and increased sea surface temperatures (Roemmich and McGowan 1995, pp. 1324-1326; Lynn *et al.* 1998, pp. 25-49); upwelling of warmer, nutrient-depleted waters, which leads to breeding failures, mortality, and population declines across trophic levels (Barber and Chavez 1983, pp. 1203-1210); delay in the onset of spring upwelling (Schwing *et al.* 2006, pp. 1-5); anomalously warm water, low nutrient levels, and low primary production (Thomas and Brickley 2006, pp. 1-5); reduced zooplankton biomass (Mackas *et al.* 2006, pp. 1-7); unprecedented seabird breeding failures (Sydeman *et al.* 2006, pp. 1-5); and anomalously low recruitment of rocky intertidal organisms (Barth *et al.* 2007, pp. 3719-3724). Specific changes in the California Current that may negatively affect the ashy storm-petrel are discussed below.

Roemmich and McGowan (1995, pp. 1324-1326) described 43 years (from 1951 to 1993) of observations off the southern California coast. They reported that zooplankton had decreased by 80 percent, and that surface temperatures taken during transects off Point Conception and Orange County (approximately) warmed by an average of 2.2 °F (1.2 °C) and 2.3 °F (1.6 °C), respectively, during this period. They suggested that the zooplankton decline was directly related to and caused by the observed warming (Roemmich and McGowan 1995, p. 1325). The petitioner cited Schwing *et al.* (2006, pp. 1-5), Barth *et al.* (2007, pp. 3719-3724), and Sydeman *et al.* (2006, pp. 1-5) to describe a delay in the onset of spring upwelling in the northern California Current that resulted in breeding failures of Cassin's auklets (*Ptychoramphus aleuticus*) at Southeast Farallon Island, and at Triangle Island, British Columbia, in 2005 (CBD 2007, p. 25). At Southeast Farallon Island, Cassin's auklets also failed to breed in 2006 as well, likely as a result of warm-water conditions, reduced upwelling, and reduced availability of krill (Warzybok *et al.* 2006, pp. 12-14).

At Southeast Farallon Island, productivity (chicks fledged per breeding pair) of ashy storm-petrels was 0.56 in 2005, and 0.48 in 2006 (Warzybok *et al.* 2006, p. 7). At Santa Cruz Island, productivity of ashy storm-petrels was 0.58 in 2005, and 0.68 in 2006 (McIver *et al.* in preparation, tables 2-4). Sydeman *et al.* (2006, p. 1) reported that euphausiid crustacean (krill) biomass in the Gulf of the Farallones was reduced in 2005, but remained high south of Point Conception. To successfully raise a chick, an adult storm-petrel must obtain enough food for itself, plus one-half the food requirements of the chick, plus food to fuel the metabolic costs of transporting food to the nesting location (Quinlan 1979, p. 103). Thus, if food was less available to ashy storm-petrels foraging north of Point Conception (presumably, Southeast Farallon Island breeders) in 2005 and 2006, adverse affects may have appeared during the chick stage, and this could explain (in part) reduced breeding success at Southeast Farallon Island in 2006.

Like Cassin's auklets, ashy storm-petrels feed on krill. However, unlike Cassin's auklets, ashy storm-petrels have more extended incubation and chick-rearing periods (per egg-laying effort), and feed over a wider geographic area; thus, they are likely more able to exploit similar food resources when these resources are reduced or more patchily distributed. As stated earlier, Cassin's auklets failed to breed in 2005 and 2006, in contrast to ashy storm-petrels, which did breed. Additionally, Ainley (1990b, pp. 357-359) reported that ashy storm-petrels showed the lowest inter-annual variability in productivity of any species breeding at Southeast Farallon Island, for the years 1971 to 1983. Ashy storm-petrel productivity was 0.64 and 0.69 in 1972

(n = 36) and 1973 (n = 35), respectively; 0.81 in 1976 (n = 37); and 0.75 and 0.67 in 1982 (n = 28) and 1983 (n = 18), respectively (Ainley and Boekelheide 1990, p. 392). This is of importance because during this time period, El Niño events occurred in 1972-73, 1976, and 1982-83 (Ainley 1990a, p. 36). Ainley (1990b, p. 371) reported that breeding by other seabirds at Southeast Farallon Island was poor to nonexistent in 1973, 1976, 1978, 1982, and 1983. As noted above, ashy storm-petrels were the exception to this observation; they bred in all years of the study, and no clear correlation between warm-water years and reduced reproductive success (productivity) was evident for this species (Ainley and Boekelheide 1990, p. 392). The only response to El Niño conditions that may be evident are smaller numbers of ashy storm-petrels breeding and delayed egglaying (later in the season than in other years) (Ainley and Boekelheide 1990, p. 392; Ainley *et al* 1990, pp. 149-150). However, since regular annual monitoring of nesting activities began at Southeast Farallon Island (in 1971) and at Santa Cruz Island (in 1994), researchers have observed ashy storm-petrels (on a population level) breeding each year. In research conducted in 1995-97 and 2005-07, McIver *et al.* (*in preparation*, p. 10) report that reproductive success (productivity) of ashy storm-petrels at Santa Cruz Island did not appear to be negatively affected by El Niño conditions (although timing of breeding was later in 1998, an El Niño year), and no clear relationship between oceanographic conditions in southern California and reproductive success of ashy storm-petrels was observed. As presented above, this is supported by data from research at Southeast Farallon Island. Productivity of ashy storm-petrels at Southeast Farallon Island declined from the late 1980s to the mid-1990s (Sydeman *et al.* 2001, p. 315; CBD 2007, p. 8; Warzybok and Bradley 2007, p. 7). However, more recent data indicate that this decline in productivity has not continued. Warzybok and Bradley (2007, p. 17) describe an analysis of capture-recapture data that shows increasing capture rates and increasing survival of ashy storm-petrels on Southeast Farallon Island. Based on observed annual breeding and reproductive success values of ashy storm-petrels during El Niño events, and the low inter-annual variability in reproductive success as reported by Ainley and Boekelheide (1990, p. 392) and McIver (2002, p. 29), we conclude there is no clear relationship between reduced productivity of phytoplankton and zooplankton in the California Current due to El Niño events and reproductive success of ashy storm-petrels.

As enumerated above, the petition cited several examples of changes in the California Current System, revolving around ocean productivity, which the petition claims has had an adverse effect on ashy storm-petrels. Based on our review of the available information, we found that some species of seabirds have experienced breeding failures in certain years, which can be linked to El Niño events, warmer water, or lower primary productivity. However, productivity of the ashy storm-petrel over approximately the past 40 years does not show breeding failures in those same years. This is likely due to the species' ability to exploit a wider range of resources than other seabirds. Based on the species' response to El Niño events, we conclude the ashy storm-petrel is not likely to be adversely affected by potentially lower ocean productivity due to long-term ocean warming. In 2006, when Cassin's auklets failed to breed at Southeast Farallon Island likely as a result of warm-water conditions, reduced upwelling, and reduced availability of krill or a delay in the onset of spring upwelling, ashy storm-petrels did breed but had slightly lower productivity. Based on this information, we do not consider the delay in the onset of spring upwelling to be a threat to the species. Therefore, based on the best scientific information available to the Service regarding the effects of climate change, including the effects of El Niño and changes in the California Current on ocean productivity, we do not consider this to be a significant threat to the ashy storm-petrel at Southeast Farallon Island, at the Channel Islands, or rangewide.

Climate Change – Ocean Acidification

The petitioner claims that ocean acidification may eventually have detrimental impacts on the ashy storm-petrel's crustacean prey species (e.g., *Euphausia pacifica, Thysannoessa spinifera*) that may be impaired in building their exoskeletons in the coming decades (CBD 2007, p. 29). The petitioner cites Orr *et al.* (2005, p. 682) that mid-latitude waters, where the California Current Ecosystem is located, are experiencing the largest decreases in surface carbonate ion concentrations.

The chemical processes behind ocean acidification are well known. The presence of inorganic carbon in the ocean is largely responsible for controlling the pH (the measure of acidity) of seawater, and dissolved inorganic carbon in seawater exists in three major forms, including a bicarbonate ion, carbonate ion, and aqueous carbon dioxide (Fabry *et al.* 2008, pp. 414-415). Human industrial and land use activities are resulting in increased atmospheric concentrations of carbon dioxide (Feely *et al.* 2004, p. 362); much carbon dioxide is absorbed by the oceans (Caldiera and Wickett 2003, p. 365; Sabine *et al.* 2004, p. 370). When carbon dioxide dissolves in water, carbonic acid is formed, most of which quickly dissociates into a hydrogen ion and a bicarbonate ion; the hydrogen ion can further react with a carbonate ion to form bicarbonate (Fabry *et al.* 2008, p. 415). The effects of increased absorption of carbon dioxide by the oceans have been given the term ''ocean acidification'' and include an increase in concentrations of carbonic acid, bicarbonate, and hydrogen ions; a decrease in concentration of carbonate; and a reduction in the pH level in seawater (Caldiera and Wickett 2003, p. 365; Royal Society *et al.* 2005, p.16; Fabry *et al.* 2008, p. 415). Pure water has a pH of 7; solutions below pH 7 are acidic, and solutions above pH 7 are alkaline, or basic (summarized in Hardt and Safina 2008, p. 1). Oceans are slightly alkaline, with a pH of 8.1 (at latitude 30°N, approximately; Caldiera and Wickett 2005, p. 5). Measurements of surface ocean pH in 2005 were 0.1 unit lower than preindustrial values (prior to the 1850s) and could become 0.3 to 0.4 units lower by the end of the 21st century (Caldiera and Wickett 2005, p. 5). Marine organisms that produce shells, such as corals, mollusks, echinoderms, and crustaceans, require carbonate ions to produce their calcium carbonate shells and skeletons (Orr *et al.* 2005, p. 681; Fabry *et al.* 2008, p. 415). There are three mineral forms of calcium carbonate (magnesium-calcite, aragonite, and calcite), and each has different tendencies to dissolve (solubility) in seawater (summarized in Hardt and Safina 2008, p. 2). The reaction of excess carbon dioxide with seawater reduces the availability of carbonate ions necessary for shell and skeleton formation for these organisms (Fabry *et al.* 2008, p. 415). Generally, oceanic surface waters are saturated with calcium carbonate, deeper waters are under-saturated, and the depth where waters transition from saturated to unsaturated is called the saturation horizon (summarized in Hardt and Safina 2008, p. 2). A reduction in carbonate ions causes all forms of calcium carbonate to dissolve at shallower depths, and causes a reduction in the rate at which marine

organisms can produce calcium carbonate (summarized in Hardt and Safina 2008, p. 2). In other words, once formed, calcium carbonate will dissolve back into the water unless the surrounding seawater contains sufficiently high concentrations of carbonate ions (Royal Society *et al.* 2005, p. 10).

The major planktonic calcium carbonate producers in the ocean are coccolithophores (single-celled phytoplankton), foraminifera (amoeboid protists), and pteropods (marine mollusks) (Fabry *et al.* 2008, p. 417). Marine organisms act as a ''biological pump,'' removing carbon dioxide and nutrients from the surface ocean and transferring these elements into the deeper ocean and ocean bottom (Zondervan *et al.* 2001, p. 507; Chen *et al.* 2004, p.18).

Feely *et al.* (2008, pp. 1490-1492) conducted hydrographic surveys along the continental shelf of North America, and found evidence for undersaturated (with respect to aragonite) and low pH (less than 7.75) waters at mid-shelf depths of approximately 131 to 394 feet (ft) (40 to 120 meters (m)) from about middle California (latitude 37° N, approximately) to Baja California Sur, Mexico (latitude 26° N, approximately). Feely *et al.* (2008, p. 1492) reported that much of the corrosive character of these waters is natural as the result of respiration processes at intermediate depths below the euphotic zone. Feely *et al.* (2008, p. 1492) cautioned that the California coastal region continues to accumulate anthropogenic carbon dioxide, and concluded that seasonal upwelling processes enhance the advancement of the corrosive deep water into wide regions of the North American continental shelf. Feely *et al.* (2008, p. 1492) further reported that little was known about how intermittent exposure to acidified water might affect the development of calcifying, or shell building, organisms in this region.

The ecological effects of changing ocean carbonate chemistry are uncertain due to complexities of marine ecosystems, and research to date has focused on the impact of acidification on calcifying organisms (Antarctic Climate & Ecosystems Cooperative Research Centre 2008, p. 7). Although the chemical processes associated with ocean acidification and the biological processes involving the transport of carbon in the oceans have been studied and described in detail, little research has been conducted to assess the response of many zooplankton populations, including euphausiids (upon which ashy storm-petrels likely feed), to ocean acidification (Fabry *et al.* 2008, p. 426). However, the Service is aware of one study (Yamada and Ikeda 1999, pp. 62-67) that experimentally tested the acute (lethal) effects of lowered pH levels upon *Euphausia pacifica*, a species of krill that occurs in the northern Pacific Ocean and is a known prey item of ashy storm-petrels. Observing 5 juveniles and 20 nauplii (the free-swimming first stage of the larva) of *Euphausia pacifica*, Yamada and Ikeda (1999, pp. 65) found increased mortality with increased exposure time and decreased pH (less than 6.9). Based on their data, Yamada and Ikeda (1999, p. 66) also suggested that the ability to tolerate lowered pH may be highly variable between and possibly within species, as in the case of nauplii and juveniles of *Euphausia pacifica*. Yamada and Ikeda (1999, p. 66) suggested that information about pH levels that induce chronic (sublethal) effects would be more appropriate to estimate the long-term consequences for a given zooplankton population, in that zooplankton may survive exposure to lower pH levels but may be unable to produce normal offspring. The Service is also aware of research currently being conducted to study the possible effects of ocean acidification on euphausiids in waters near Antarctica (see Rowbotham 2008, p. 1), but this research has just begun and data are currently not available (T. Berli, personal communication 2008).

As stated in the Species Description section, the diet of ashy storm-petrels has not been extensively studied; however, like other species of storm-petrels, ashy storm-petrels likely feed on euphausiids, juvenile lanternfish, fish eggs, and other small fish that occur at the surface of the ocean. Our review of the available information did not reveal any information regarding diet studies or measurements of chick growth and weight that indicate that ashy storm-petrels are eating fewer euphausiids or are providing less food to their chicks. Additionally, our review of the available information did not find any research indicating that ocean acidification is causing acute or chronic effects to euphausiid populations that occur in the California Current, or any other species of krill that occur in the California Current, on which ashy storm-petrels feed. Although the processes and potential effects of ocean acidification on biological food webs have been described, and experimental research on *Euphausia pacifica* has tested lethal effects of exposure to low pH, our review of the available information did not reveal any evidence that demonstrates a direct link between ocean acidification and reduced abundance and survival of prey items on which ashy storm-petrels depend. Additionally, Ainley (1990b, p. 371) reported that breeding by other seabirds at Southeast Farallon Island was poor to nonexistent during warm-water years (El Niño events). However, ashy storm-petrels bred in years that other seabird species did not (Ainley and Boekelheide 1990, p. 392), which is an indication that the ashy storm-petrel is less affected by changes in ocean productivity than other species. Therefore, based on our review of the available information, we conclude that the potential effects of ocean acidification are not currently a significant threat to ashy storm-petrels based on the uncertainty of the ecological effects of changing ocean carbonate chemistry.

Published research and oceanographic modeling does show that oceans are acidifying, and we recognize that ashy storm-petrels may be susceptible to changes in the oceans' chemistry in the future. However, based on the best scientific information available to the Service regarding ocean acidification, at this time we do not consider ocean acidification to be a significant threat to the ashy storm-petrel at Southeast Farallon Island, at the Channel Islands, or rangewide.

Climate Change – Sea Level Rise

The petitioner claims that climate change will cause rises in the elevation of the oceans that will have negative consequences for ashy storm-petrels by eliminating (presumably, by inundation and submersion by seawater) important habitat in sea caves and offshore rocks in the California Channel Islands (CBD 2007, p. 28). Sea levels along the California coast are projected to rise approximately 1 ft (0.3 m) by 2050 and approximately 3 ft (0.9 m) by 2100 (California Coastal Commission 2001, pp. 14-15; Cayan *et al.* 2006, p. S71). Future sea levels along the coast of California will likely depend upon (in part): future changes in global temperatures; lag time between atmospheric changes and oceanic reactions; thermal expansion of ocean water; effects of atmospheric temperature changes on Antarctica; melting of Greenland ice and other glaciers; and local subsidence and uplift of coastal areas (California Coastal Commission 2001, p. 12). Gradual sea level rises progressively worsen the impacts of high tides (through erosion and submersion), surge, and waves resulting from storms (Cayan *et al.* 2008, pp. S57-S58).

We reviewed topographic maps and information provided in Sowls *et al.* (1980), Bunnell (1988), and Carter *et al.* (1992; 2006a; 2006b) to estimate the range of elevations above sea level of suitable ashy storm-petrel habitat at each of the 26 known breeding locations (Table 3).

TABLE 3. ESTIMATED RANGE OF ELEVATION ABOVE SEA LEVEL (ASL) IN FEET (FT) AND METERS (M) OF KNOWN NESTING HABITAT OF ASHY STORM-PETRELS.

Location Number	Breeding Location Name	Elevation ASL
1	Bird Rock near Greenwood, Mendocino County	10–40 ft (3–12 m)
2	Caspar, near Point Cabrillo, Mendocino County	10–40 ft (3–12 m)
3	Bird Rock, Marin County	10–40 ft (3–12 m)
4	Stormy Stack, Marin County	10–50 ft (3–15 m)
5	Southeast Farallon Island	10–330 ft (3–100 m)
6	Castle/Hurricane Colony Complex, Monterey County	10–100 ft (3–30 m)
7	Castle Rock, Santa Barbara County	20–80 ft (6–24 m)
8	Prince Island	20–300 ft (6–91 m)
9	Shipwreck Cave, Santa Cruz Island	5–15 ft (1.5–5 m)
10	Dry Sandy Beach Cave, Santa Cruz Island	5–15 ft (1.5–5 m)
11	Del Mar Rock, Santa Cruz Island	5–20 ft (1.5–6 m)
12	Cave of the Birds Eggs, Santa Cruz Island	5–10 ft (1.5–3 m)
13	Diablo Rocks, Santa Cruz Island	10–40 ft (3–12 m)
14	Orizaba Rock, Santa Cruz Island	10–30 ft (3–9 m)
15	Bat Cave, Santa Cruz Island	5–20 ft (1.5–6 m)
16	Cavern Point Cove Caves, Santa Cruz Island	0–10 ft (0–3 m)
17	Scorpion Rocks, Santa Cruz Island	10–40 ft (3–12 m)
18	Willow Anchorage Rocks, Santa Cruz Island	10–40 ft (3–12 m)
19	Gull Island, Santa Cruz Island	10–100 ft (3–30 m)
20	Santa Barbara Island	10–600 ft (3–183 m)
21	Sutil Island	10–250 ft (3–76 m)
22	Shag Rock	10–50 ft (3–15 m)
23	Ship Rock, Santa Catalina Island	5-20 ft (1.5–6 m)
24	Seal Cove Area, San Clemente Island	10-50 ft (3–15 m)
25	Islas Los Coronados, Mexico	10-100 ft (3–30 m)
26	Islas Todos Santos, Mexico	10-100 ft (3–30 m)

The nesting habitat at the majority of ashy storm-petrel breeding locations will likely not be affected by the sea level rise projected for California by 2100 (Table 3). Some nesting habitat at only one location at Cavern Point Cove Caves, Santa Cruz Island, would likely be submerged if projected sea level rises of 1 ft (0.3 m) by 2050 occur; much of the nesting habitat at this location would likely be submerged if the sea level rises 3 ft (0.9 m) by year 2100. Prior to the mortality event in 2008 at this location (see Factor C), Cavern Point Cove Caves had approximately 40 breeding birds annually. Some habitat at other cave locations on Santa Cruz Island may be susceptible to submersion by seawater. For example, on Santa Cruz Island in November 2008, McIver *et al.* (2009, p. 6) reported flooding by ocean water in a sea cave that likely killed one storm-petrel chick. Despite this unusual event, the majority of the nesting habitat in the sea caves at Santa Cruz Island occurs greater than 3 ft (1 m) above current sea level, and would not likely be submerged during breeding season months (April through November) within the next 40 to 50 years. Winter storm surges periodically wash all of the sea caves at Santa Cruz Island, but these storm events likely do not negatively affect ashy storm-petrels, since most ashy storm-petrels are not attending the colonies during winter months (Ainley 1995, p. 5). In fact, past winter storms have benefited ashy storm-petrels at Santa Cruz Island by creating nesting habitat; approximately 25 percent of ashy storm-petrel nest sites in Bat Cave occur among accumulated driftwood debris (both human-made and natural) that has washed into the cave during past winter storm events.

Based on information available to the Service regarding elevations (above current sea level) of breeding locations of ashy storm-petrels, and projected estimates of sea level rise along the west coast of North America during the 21st century, we conclude that a small portion of the total population of ashy storm-petrels (approximately 0.8 percent) could be negatively affected by rising sea levels by 2050. Therefore, based on the best scientific information available to the Service regarding climate change-induced sea level rise, at this time we do not consider this to be a significant threat to the ashy storm-petrel at Southeast Farallon Island, at the Channel Islands, or rangewide.

Changes in Terrestrial Breeding Habitat

Introduced Grasses

The petitioner asserts that the ashy storm-petrel's island breeding habitats are being modified and degraded by introduced species and specifically, that introduced grasses have increased at Southeast Farallon Island, causing some nesting areas to be unusable for ashy storm-petrels (CBD 2007, p. 30). In addition, the petitioner claims that introduced grasses are widespread at all ashy storm-petrel colonies and that their effects have not been evaluated (CBD 2007, p. 30). Ainley (1995, p. 9) describes introduced grasses as a factor potentially limiting the amount of available nesting habitat for ashy storm-petrels at Southeast Farallon Island. Ainley and Hyrenbach (*in press*, p. 12) report that introduced grasses have spread, thickened, and grown among the talus slopes at Southeast Farallon Island, and suggest that grasses likely limit access to cavities by ashy storm-petrels, which do not excavate nesting burrows and instead rely upon available nesting crevices. However, the petitioner did not provide, nor did our review of the available information reveal, specific information that quantifies the amount of suitable

nesting habitat at Southeast Farallon Island, or other breeding locations, that may be unavailable to ashy storm-petrels because of introduced grasses. In addition, our review of the available information found no information to indicate that introduced grasses are widespread at all breeding locations. For example, grasses do not occur in sea caves or on most offshore rocks where ashy storm-petrels nest.

Introduced grasses may occur in proximity to ashy storm-petrel nest sites on Southeast Farallon Island and on Santa Barbara Island. Based on population estimates for these areas presented in Table 1, approximately 51 to 64 percent of ashy storm-petrels breed at these locations; however, we are not aware of any evidence through direct observation or vegetation surveys that indicates that introduced grasses prevent significant numbers of ashy storm-petrels from nesting. Grasses are widespread on Santa Barbara Island, where the major plant communities include island grassland, coastal sage scrub, maritime desert scrub, and coastal bluff scrub (Schoenherr *et al.* 2003, p. 349). However, ashy storm-petrels at Santa Barbara Island likely nest in crevices that occur in steep cliffs, where grasses are less common (Carter *et al.* 1992, p. I-81). Therefore, based on the best scientific information available to the Service regarding the threat of introduced grasses, at this time we do not consider this to be a significant threat to the ashy storm-petrel at Southeast Farallon Island, at the Channel Islands, or rangewide.

Human Degradation of Nesting Habitats

The petitioner states that human disturbance and degradation of nesting habitats through tourism and military activities threaten the continued existence of the ashy storm-petrel (CBD 2007, p. 35). Regarding tourism, most breeding locations occur on federally owned or managed lands that are generally inaccessible to visitation by the public. Southeast Farallon Island contains approximately 36 to 53 percent of the total ashy storm-petrel population and has low human visitation by the Service's Refuge staff but is closed to the general public. Due to steep topography and difficult ocean and landing conditions, breeding locations on islands and offshore rocks other than Southeast Farallon Island are generally inaccessible to tourists, and our review of the available information has not revealed specific information indicating that ashy storm-petrel nesting habitats on islands, offshore rocks, and islets are being degraded by human visitation. Sea caves on Santa Cruz Island are susceptible to visitation by tourists (e.g., sea kayakers) (McIver 2002, p. 53; McIver *et al.* 2008, pp. 7-8). However, the U.S. National Park Service, Channel Islands National Park (Park) has closed two sea caves to the public, and in spring 2009, installed signs (inconspicuous from the water) within the entrances of Bat Cave and Cavern Point Cove Caves informing tourists that the caves contain nesting seabirds and are closed to visitation by the public (W. McIver, personal observation). Although there is direct evidence that tourists have occasionally visited sea caves at Santa Cruz Island where ashy storm-petrels nest (McIver *et al.* 2008, p. 5; McIver *et al.* 2009, pp. 7-8), the available information does not indicate adverse impacts of tourism upon ashy storm-petrels, such as dead birds, broken eggs, or degraded or modified nesting habitats. Due to observed lower hatching success at Cavern Point Cove Caves, in comparison to other locations at Santa Cruz Island (McIver 2002, p. 24), we cannot discount the possibility that visitation by tourists may have resulted in disturbance to and abandonment of some nests of ashy storm-petrels at this location. However, because most ashy storm-petrel breeding locations are generally inaccessible to tourists, we find it unlikely that human visitation has caused large-scale disturbance to ashy storm-petrels and subsequent abandonment of nesting efforts. Thus, based on land ownership and restricted human activities at ashy storm-petrel breeding locations on Southeast Farallon Island and on the Channel Islands, we find human tourism is currently not a substantial threat to the ashy storm-petrel at Southeast Farallon Island, at the Channel Islands, or rangewide.

Within the range of the ashy storm-petrel, military activities only occur on San Clemente Island, which is one of the Channel Islands. San Clemente Island is owned and managed by the Department of the Navy, and it is estimated that at least 10 ashy storm-petrels breed there (H. Carter and D. Whitworth,). Ashy storm-petrels are known to breed at Seal Cove Rocks (Carter *et al.* 2008a, p. 119), off the island's west side, and may breed on offshore rocks off China Point, and at or near Mosquito Cove (Hering 2008, p.4). Seal Cove Rocks occur outside of any current training areas (Hering 2005, p. 5). Offshore rocks near China Point do occur within the Shore Bombardment Area (SHOBA); however, these rocks are not targeted by bombardment activities, and ashy storm-petrels have not been confirmed as breeding there (Hering 2008, p. 5). Mosquito Cove is also within the boundaries of SHOBA, but occurs outside the impact areas (Hering 2008, p. 5). Carter *et al.* (2008c, pp.12-13) report that portions of Prince Island were used by the U.S. Navy as a target for aerial bombing and missile testing from the late 1940s to the early 1970s. Carter *et al.* (2008c, p.13) speculated that effects included: some seabirds probably were killed by explosions; loss of breeding habitats for burrow- and crevice-nesting seabirds likely occurred due to explosions; and periodic human disturbance of seabirds likely occurred from military personnel. However, our review of the available information did not reveal any specific impacts to ashy storm-petrels at Prince Island as a result of these activities, and these activities have not occurred at this breeding location for more than 35 years. Therefore, because only a small percentage (approximately 0.1 percent) of the entire population of ashy storm-petrels nests on San Clemente Island, current military activities at San Clemente Island likely do not affect ashy storm-petrel nesting areas there, and because military activities no longer occur at Prince Island, we conclude that military activities do not pose a substantial threat to the ashy storm-petrel at Southeast Farallon Island, at the Channel Islands, or rangewide.

Human visitation at Southeast Farallon Island is low, and there is no evidence to suggest degradation of nesting habitats there. At the Channel Islands, human visitation is greater near breeding habitat, but the National Park Service has taken steps to close several sea caves where ashy storm-petrels breed. Additionally, there is no direct evidence of human impacts to ashy storm-petrels or their breeding habitat at these locations. Within the range of the ashy storm-petrel, military activities only occur currently on San Clemente Island but are not targeted at breeding or nesting areas. Therefore, based on the best scientific information available to the Service, at this time we conclude that human degradation of nesting habitats by tourism and military activities is not a significant threat to the ashy storm-petrel at Southeast Farallon Island, at the Channel Islands, or rangewide.

Summary of Factor A

While there is some evidence to suggest the timing of ashy storm-petrel egg laying may be delayed as a result of El Niño events, and that fewer numbers of ashy storm-petrels may attempt to breed during El Niño years, these results do not appear significant, and we have no information to suggest that El Niño

events otherwise significantly affect ashy storm-petrel reproductive success or productivity, unlike in other sea birds. Additionally, based on the species' response to El Niño events, we conclude the ashy storm-petrel is not likely to be adversely affected by potentially lower ocean productivity due to long-term ocean warming. Based on our review of current research, there is demonstrated evidence of ongoing ocean acidification; however, current research does not demonstrate a direct link between ocean acidification and reduced abundance and survival of prey items on which ashy storm-petrels depend, nor does current research indicate that reproductive success of ashy storm-petrels is affected by ocean acidification. Projected changes in sea levels along the west coast of North America (by year 2050) may submerge nesting habitat at Cavern Point Cove Caves in the California Channel Islands, which could affect approximately 0.8 percent of all ashy storm-petrels, but the majority of currently available nesting habitat in California will not be affected by the sea level rise projected in California during the 21st century. The Service finds that there is no specific evidence indicating that the presence of introduced grasses at Southeast Farallon Island, the Channel Islands, or other breeding locations prevents ashy storm-petrels from breeding. Although there is evidence of some human visitation to sea caves on Santa Cruz Island, modification or degradation of nesting habitat by tourism activities is not a significant threat to the ashy storm-petrel because of protective measures taken by the National Park Service and the lack of evidence of human disturbance in sea caves on the Channel Islands. Additionally, military activities are not a significant threat to the species because military activities do not occur at known breeding areas. Therefore, based on the best available scientific information, we conclude that the ashy storm-petrel is not threatened by the present or threatened destruction, modification, or curtailment of its habitat or range at Southeast Farallon Island, at the Channel Islands, or rangewide.

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petitioner stated that research activities may impact ashy storm-petrels, but also stated there was no evidence that this impact has had significant negative consequences on studied populations (CBD 2007, p. 30). Our review of the available information does not indicate that research activities threaten ashy storm-petrels across all or a significant portion of their range.

Commercial Purposes

The ashy storm-petrel is not a commercially exploited or used species. We are not aware of any information that indicates that overutilization for commercial purposes threatens the ashy storm-petrel across all or in any portion of its range.

Recreational Purposes

Ashy storm-petrels are a species of interest during pelagic bird-watching trips off the coast of California. Ashy storm-petrels are generally wary of and avoid boats, including boats with birdwatchers, and it is highly unlikely that ashy storm-petrels are negatively affected by these recreational activities. Tourism at sea caves (see Factor A) located on Santa Cruz Island is a recreational activity that could affect ashy storm-petrels. However, as stated above, there is no evidence to suggest such recreational activities are significantly affecting the species. We are not aware of any information that indicates that overutilization for recreational purposes threatens the ashy storm-petrel across all or any portion of its range.

Scientific and Educational Purposes

The Service is aware of 220 ashy storm-petrel eggs and 355 study skins (includes study skins, skeletons, round skins) that have been collected and salvaged from 1885 to 2004 for scientific archival purposes. The Service obtained data from individual institutions and records held in the following institutions and accessed through the ORNIS data portal (*http://ornisnet.org*) on September 23, 2008 (Table 4).

TABLE 4. INSTITUTIONS THAT POSSESS COLLECTED SKINS OR EGGS OF THE ASHY STORM-PETREL.

Institution or Entity	Number of skins	Number of eggs
California Academy of Sciences, San Francisco, CA	181	70
Cornell University Museum of Vertebrates, Ithaca, NY	2	0
Delaware Museum of Natural History, Wilmington, DE	1	0
Field Museum, Chicago, IL	10	0
Harvard University Museum of Comparative Zoology, Cambridge, MA	6	0
Humboldt State University Natural History Museum, Arcata, CA	2	2
Los Angeles County Museum of Natural History, Los Angeles, CA	18	0
Museum of Vertebrate Zoology, Berkeley, CA	39	20
National Museum of Natural History, Washington, DC	32	6
Santa Barbara Museum of Natural History, Santa Barbara, CA	13	5
San Diego Natural History Museum, San Diego, CA	31	0
Slater Museum of Natural History, Tacoma, WA	3	3
University of Arizona Museum of Natural History, Tucson, AZ	9	0
University of California at Los Angeles - Dickey Collection, Los Angeles, CA	3	0
University of Kansas Natural History Museum and Biodiversity Research Center, Lawrence, KS	1	0
University of Washington - Burke Museum of Natural History	3	2
Western Foundation of Vertebrate Zoology, Camarillo, CA	1	112
All	355	220

In addition, for purposes of measuring eggshell thickness and organochlorine (chlorinated hydrocarbon) contamination, a total of 26 eggs have been collected from Southeast Farallon Island, and a total of 68 eggs of ashy storm-petrels have been collected and salvaged from Santa Cruz Island, between 1968 and 2008 (Coulter and Risebrough 1973, p. 254; Kiff 1994, p. 11; Welsh and Carter) and in 2008 (McIver *et al.* 2009, p. 8). The majority of ashy storm-petrel birds and eggs that occur in scientific collections were collected at Southeast Farallon Island in the first half of the 20th century. More ashy storm-petrel birds and eggs were collected in 1911 (n = 120 specimens)

than in any other year. Over a period of 124 years, an average of 2.6 ashy storm-petrel eggs per year and 2.9 birds per year have been collected over most of the geographic range of the species. The Service concludes that this low rate of collection, based on an estimated population size of 7,000 to 13,000 total birds, does not constitute a significant threat to the species.

In California, scientific research (monitoring of nesting success, mark and recapture using mist nets, radio telemetry) has been conducted on Southeast Farallon Island since the mid-1960s (James-Veitch 1970; Ainley *et al.* 1974, pp. 295-310; Ainley *et al.* 1990, pp. 128-162; Sydeman *et al.* 1998a, pp. 438-447; PRBO Conservation Science), at Santa Cruz Island since the mid-1990s (McIver 2002, pp. 1-70; McIver and Carter 2006, pp. 1-6; Carter *et al.* 2007, pp. 4-20; McIver *et al.* 2008, pp. 1-22; McIver *et al.* 2009, pp. 1-30), and at Santa Cruz and Santa Barbara Islands in 2004 and 2005 (Adams and Takekawa 2008, pp. 9-17). The Service is aware of the following disturbance (by researchers) of ashy storm-petrels: reduced hatching success at Southeast Farallon Island caused by handling of birds (James-Veitch 1970, p. 246); and reduced hatching success at Southeast Farallon Island in 1977 when ''researcher disturbance was great'' (Ainley *et al.* 1990, p. 161). Generally, however, researchers at both Southeast Farallon Island and Santa Cruz Island have implemented procedures to reduce possible disturbance to ashy storm-petrels during regular nest monitoring activities. Consequently, we find it unlikely that scientific studies have resulted in substantial disturbance of ashy storm-petrels.

Summary of Factor B

Our review of the available information does not indicate that commercial or recreational overutilization is a threat to the ashy storm-petrel. We are aware of the long history of scientific and educational collecting of ashy storm-petrel skins and eggs over the past 124 years. However, the amount and rate of collection does not represent a significant loss to the overall population of ashy storm-petrels rangewide, or in specific breeding locations. In addition, we have found that ashy storm-petrels are not currently negatively affected by scientific research. Therefore, based on the best available scientific information, we conclude that the ashy storm-petrel is not threatened by overutilization for commercial, recreational, scientific, or educational purposes at Southeast Farallon Island, at the Channel Islands, or rangewide.

Factor C: Disease or Predation

The petitioner asserts that predation by native predators, including western gulls, burrowing owls, barn owls, common ravens, peregrine falcons, deer mice, and island spotted skunks, impact ashy storm-petrel populations (CBD 2007, pp. 30-32). In addition, the petitioner asserts that nonnative predators, including house mice, black rats (*Rattus rattus*), and feral cats (*Felis catus*) affect ashy storm-petrel populations (CBD 2007, pp. 30-32).

As described in the Species Description section, native avian predators of the ashy storm-petrel include western gulls, burrowing owls, peregrine falcons, and common ravens. Native mammalian predators of ashy storm-petrel eggs and birds include deer mice and island spotted skunks. Known nonnative mammalian predators of ashy storm-petrel eggs and birds include house mice and feral cats (Ainley *et al.* 1990, p. 156; McChesney and Tershey 1998, p. 341). The black rat is a potential nonnative predator (McChesney and Tershey 1998, p. 342), although predation of ashy storm-petrels by rats has not been documented.

Predation can affect reproductive performance of storm-petrels during incubation and chick-rearing. Because ashy storm-petrel adults share egg incubation duties, the death of one adult of a breeding pair during the incubation stage could result in incomplete incubation and failure of the egg to hatch. Similarly, the death of one adult of a breeding pair of storm-petrels during the chick-rearing stage could result in death of the chick (by starvation or lack of brooding), especially if the chick is younger than about 50 days old (Mauck *et al.* 2004, p. 883).

Southeast Farallon Island – Avian Predation

The western gull and burrowing owl are the primary avian predators of ashy storm-petrels at Southeast Farallon Island (Sydeman *et al.* 1998a, pp. 445-446; PRBO Conservation Science). Approximately 30 percent of the world population of western gulls nests at Southeast Farallon Island (Penniman *et al.* 1990, p. 219). During the 1996 to 2006 period, the western gull breeding population at Southeast Farallon Island has been estimated at about 18,000 breeding birds (Service 2008, p. 42). The distribution of western gull nesting areas at Southeast Farallon Island has shifted and expanded since they were first mapped in 1959 (Ainley and Lewis 1974, p. 439; Penniman *et al.* 1990, p. 224), and since 1976, western gulls have nested densely over nearly the entire island, including Lighthouse Hill, which is considered prime ashy storm-petrel breeding habitat on Southeast Farallon Island (Ainley and Lewis 1974, p. 435; Ainley *et al.* 1990, p. 158; Sydeman *et al.* 1998a, p. 446).

The petitioner includes burrowing owls in its list of predators for the ashy storm-petrel but includes no information documenting a threat from burrowing owls (CBD 2007, p. 30). Burrowing owls do not breed on Southeast Farallon Island, but are regular fall migrants, and a few individuals (two to five per year, on average) overwinter at the island (DeSante and Ainley 1980, p. 30; Service 2008, p. 50). In the fall, burrowing owls at Southeast Farallon Island feed upon nonnative house mice when mice are seasonally abundant (Service 2008, p. 50). In late winter and early spring, after the mouse population at Southeast Farallon Island declines in numbers, burrowing owls prey upon storm-petrels, which are courting and prospecting for nesting sites (PRBO Conservation Science; Service 2008, p. 50). To reduce this cause of mortality, the Farallon National Wildlife Refuge has trapped and moved to the mainland several burrowing owls (Service 2008, p. 50). Additionally, the Service is developing a plan to eradicate the nonnative house mouse through rodenticide application and prevent future human introductions of mice (see Factor D: Inadequacy of Existing Regulatory Mechanisms below).

In the following discussion, we assess avian predation as a possible factor affecting the ashy storm-petrels by evaluating information on ashy storm-petrel productivity and mortality on Southeast Farallon Island and Santa Cruz Island. Sydeman *et al.* (2001, p. 315) reported that, among seabird species at Southeast Farallon Island laying a single-egg clutch each year, the ashy storm-petrel showed a significant pattern of change in reproductive performance, which increased through the mid-1980s, then decreased through 1997. Specifically, Sydeman *et al.* (2001, p. 317) reported that reduced reproductive performance of ashy storm-petrels in his model was related to significant changes in fledging success (numbers of chicks fledged per chicks hatched). Sydeman *et al.* (2001, p. 317) also concluded that hatching success in the 1990s was low and likely responsible for the decline in storm-petrel reproductive performance during that time period. An examination of values of productivity (fledged chicks

per adult pair) of ashy storm-petrels at Southeast Farallon Island from 1971 through 2007 (see Table 2) shows variability in fledging success. Specifically, Ainley and Boekelheide (1990, p. 392) reported an average of 0.69 ashy storm-petrel chicks per pair from 1972 to 1983, Sydeman *et al.* (1998b, pp. 42-43) reported 0.74 chicks per pair using data from 1971 and 1972 and 1992, and Warzybok and Bradley (2007, p. 24) reported 0.54 chicks per pair using yearly data from 1996 through 2007 (and noted that productivity was higher in 2007 (0.53) than in 2006 (0.46)). These averages demonstrate variation in productivity over time, but only Sydeman's (2001) study provides a statistical analysis demonstrating a quadratic trend. Further, based on our review of the best available data (see discussion below), we do not believe that these productivity values are associated with lower numbers of ashy storm-petrels.

Ainley *et al.* (1974, p. 307) and Ainley *et al.* (1990, p. 157) estimated storm-petrel mortality rates based on presence of storm-petrel remains and storm-petrel bands found in gull pellets collected in 1971 and 1972. Sydeman *et al.* (1998b, pp. 1-74) collected wings of storm-petrel carcasses found on the southwestern slope of Lighthouse Hill from 1994 through 1996. In 2000, PRBO Conservation Science searched for and collected storm-petrel wings on Lighthouse Hill and other areas on Southeast Farallon Island, and categorized collected wings by type of avian predation (such as gull or owl). In both studies, wings (which were used as a measure of predation) were collected during the course of frequent nest-monitoring activities. Ainley *et al.* (1974, p. 307) and Ainley *et al.* (1990, p. 157) estimated that about one percent of the storm-petrel population (including ashy and Leach's storm-petrels) on Southeast Farallon Island were depredated by western gulls in 1971 and 1972. Sydeman *et al.* (1998b, pp. 21-22) estimated that 22 ashy storm-petrels were preyed upon by avian predators per year from 1994 through 1996 on Lighthouse Hill. In addition, Sydeman *et al.* (1998b, p. 21) estimated a 2.5 percent annual mortality rate of breeding ashy storm-petrels at Lighthouse Hill due to avian predation during the period 1994 to 1996, based on an estimated breeding population of 651 ashy storm-petrels at Lighthouse Hill. From January 2003 through August 2008, approximately 98 percent of ashy storm-petrel kills thought to be due to avian predation on Southeast Farallon Island occurred between February and August, when stratified by month (PRBO Conservation Science). Average annual total number of ashy storm-petrels killed during January 2003 through August 2008 was 114 total individuals. If birds on Southeast Farallon Island numbered the same as they did in 1972 (6,461 individuals) or 1992 (4,284 individuals), this level of predation would be 1.8 percent or 2.7 percent of the population, respectively; however, these estimates are speculative.

Estimates of ashy storm-petrel mortality rates at Southeast Farallon Island are highly dependent upon estimated population sizes. Ashy storm-petrels are nocturnal in their visits to breeding colonies and breed mainly in deep crevices that are inaccessible to researchers, and so it is difficult to obtain direct population counts of the species. Consequently, estimates of population size of storm-petrels are often obtained using capture-recapture techniques (for example, Sydeman *et al.* 1998a, pp. 438-447). For the years 1971, 1972, and 1992, Sydeman *et al.* (1998a, p. 442) provided estimates for the total population (non-breeders and breeders) and the breeding population of ashy storm-petrels at Southeast Farallon Island proper and at Lighthouse Hill on Southeast Farallon Island, an area considered prime ashy storm-petrel nesting habitat. Based on a comparison of data from 1972 and 1992, PBRO scientists indicated a decline of 22 to 66 percent (95 percent confidence interval) for total and breeding populations over the 20–year period for Lighthouse Hill, the sampling location considered most reliable for estimation of population size and population change (Sydeman *et al.* 1998a, p. 443). We interpret these results cautiously because they are based on two data points: one from 1972 and one 20 years later, from 1992. We hesitate to consider these results conclusive because animal populations can undergo cycles, peaks, or troughs that 2 years of data separated by 20 years cannot capture. Population estimates were also imprecise owing to large standard errors (for example, population estimates for one area ranged from 660 plus or minus 423 to 1,013 plus or minus 937; Sydeman *et al.* 1998a, p. 443).

Using preliminary analyses of more recent data of ashy storm-petrels captured in mist nets from 1999 through 2007, PRBO scientists state that the Southeast Farallon Island population may have increased in years subsequent to Sydeman's (1998a) study (Warzybok *et al.* 2006, p. 16; Warzybok and Bradley 2007, p. 17). Using data from 1999 to 2007, Warzybok and Bradley (2007, p. 17) describe an analysis of capture-recapture data that shows increasing capture rates and increasing survival of ashy storm-petrels. The authors also note that there were a greater number of occupied nesting sites than in previous years, although this observation could have been influenced by a change in monitoring techniques (Warzybok and Bradley 2007, p. 17). Warzybok and Bradley's (2007) report does not consider the proportion of birds caught that are nonbreeders, or potential changes in recapture probabilities through time; however, their report represents the most up-to-date information available at this time. Taken together, the results of Warzybok and Bradley's (2007) analyses suggest an increasing population of ashy storm-petrels. There are weaknesses in both the more recent reports that are not peer-reviewed (Warzybok *et al.* (2006) and Warzybok and Bradley (2007)) and the older report by Sydeman *et al* (1998a), which is based on two data points (one from 1972 and one 20 years later from 1992). Nevertheless, the Sydeman *et al.* (1998a), Warzybok *et al.* 2006, and Warzybok and Bradley (2007) studies are the best available assessments of population trends of ashy storm-petrels for the time periods they analyzed. The Warzybok *et al.* (2006) and Warzybok and Bradley (2007) reports contain data we consider most relevant to this status review because they were collected more recently than Sydeman *et al.*'s (1998a) data, they include 8 consecutive years of mark-recapture data, and they describe empirical observations of occupied nest sites in addition to statistical estimates of population trend and survival rate. The authors note that their study does not consider the proportion of birds caught that were nonbreeders or potential changes in recapture probabilities through time. Additionally, they noted an alteration in monitoring methods that made it difficult to determine whether increased occupancy was a result of greater reproductive effort or due to an increase in the ability to detect ashy storm-petrels (Warzybok and Bradley 2007, p. 17). While we do not dispute the historic population decline indicated by Sydeman *et al* (1998a), we believe that the updated information presented in Warzybok and Bradley's (2007, p. 17) preliminary analysis is more indicative of current population trends on Southeast Farallon Island.

In an unpublished report, Sydeman *et al.* (1998b, p. 21) concluded that an annual adult ashy storm-petrel survival probability of 86.7 percent would

explain the 2.87 percent annual decrease in population size of ashy storm-petrels on Southeast Farallon Island (reported in Sydeman *et al.* 1998a, p. 443). Based on comparisons to adult survival estimates in research of other storm-petrel species, Sydeman *et al.* (1998b, pp. 21-22) presumed that an annual adult survival probability of 89.2 percent would maintain ashy storm-petrel population stability, and postulated that elimination of all gull predation would decrease adult mortality by 2.53 percent, potentially producing a stable population of ashy storm-petrels on Southeast Farallon Island. In populations of such long-lived organisms as seabirds, annual adult survival has been reported as the key parameter having the greatest influence on population growth rates in population models of seabirds (Sæther and Bakke 2000, p. 648; Cuthbert *et al.* 2001, p. 168; Doherty *et al.* 2004, p. 606).

Based on information on storm-petrel wings collected from Southeast Farallon Island from 2003 through 2008 (PRBO Conservation Science), approximately 98 percent of avian predation upon ashy storm-petrels on Southeast Farallon Island has occurred from February through August; this corresponds to the time of year of peak visitation by adults for breeding purposes and non-breeding birds prospecting for sites (James-Veitch 1970, p. 71; Ainley 1995, p. 5). During 2003 to 2008, avian predation categorized as gull, owl, and ''unknown'' accounted for approximately 57.4 percent, 34.3 percent, and 8.3 percent, respectively, of ashy storm-petrel deaths on Southeast Farallon Island (PRBO Conservation Science). This raw data allows us to infer that gulls are likely the greatest cause of ashy storm-petrel predation on Southeast Farallon Island.

Avian predation upon ashy storm-petrels at Southeast Farallon Island has probably occurred continually for decades. Based on recent reports showing possible increases in ashy storm-petrel survival and numbers (Warzybok and Bradley 2007, p. 17), we have no indication that such predation is impacting the population on Southeast Farallon Island or rangewide. We conclude that, since ashy storm-petrel populations appear to be increasing in the presence of such predation, we have no reason to believe that such predation will cause a change in that trend.

Southeast Farallon Island – House Mice

The petitioner cites Ainley *et al.* (1990, pp. 128-163) to support its claim that depredation of ashy storm-petrel eggs and chicks by nonnative house mice is the leading cause of egg failure and chick death, and significantly lowers ashy storm-petrel breeding success on Southeast Farallon Island (CBD 2007, p. 31). This claim is not supported by the information contained in Ainley *et al.* (1990, pp. 128-163). Specifically, out of a total of 274 ashy storm-petrel eggs laid during 1972-83, Ainley *et al.* (1990, p. 156) inferred predation by feral house mice of one ashy storm-petrel chick, based upon the remains of a partially eaten carcass. Twenty-six eggs (9.5 percent) were categorized as failed to hatch, 9 eggs (3.3 percent) were abandoned, 8 eggs (2.9 percent) ''disappeared,'' and 2 eggs (0.7 percent) were found broken; however, house mice were not mentioned as a significant cause of egg failure. Furthermore, our review of the available information reveals no information that suggests nonnative house mice pose a significant direct predation threat to ashy storm-petrels on Southeast Farallon Island. We have no data indicating that house mice prey upon ashy storm-petrel eggs or chicks anywhere else within the species' range.

Channel Islands – Black Rats and Feral Cats

The petitioner claims that nonnative black rats and feral cats are documented predators of seabird eggs, chicks, and adults; that black rats are extant on San Miguel, Santa Catalina, and San Clemente Islands; and feral cats may still impact ashy storm-petrel populations on Santa Catalina and San Clemente Islands (CBD 2007, p. 32). Beyond these claims, the petitioner provides no specific information documenting predation of ashy storm-petrels by nonnative black rats or feral cats.

Nonnative black rats and (feral) cats are well-documented predators of seabird eggs, chicks, and adults and have caused seabird population declines worldwide, including California (McChesney and Tershey 1999, pp. 335-347; Jones *et al.* 2008, pp. 16-26). At San Miguel Island proper, black rats have a limited distribution, primarily found in shoreline and bluff habitats on the west and north sides of the island (Erickson and Halvorson 1990, p. 13). Possible nesting of ashy storm-petrels on San Miguel Island proper has been presumed, based on birds with brood patches captured in mist nets deployed between Harris Point and Cuyler Harbor (on the island's north side) (Carter *et al.* 2008, p. 119). Ashy storm-petrels may also breed in cliffs near Hoffman Point, on San Miguel Island proper (Carter *et al.* 2008c, p. 17). However, no population estimate for ashy storm-petrels is available for San Miguel Island proper (Carter *et al.* 1992, p. I-87). As stated earlier, the black rat is a potential nonnative predator of ashy storm-petrels (McChesney and Tershey 1998, p. 342), although predation of ashy storm-petrels by rats has not been documented. Predation of ashy storm-petrels at Santa Catalina Island and San Clemente Island by feral cats has not been documented. Ashy storm-petrels have been confirmed to nest in very small numbers (approximately 0.2 percent of total breeding population) on offshore rocks at Santa Catalina Island (Ship Rock) and San Clemente Island (Seal Cove Area), locations that are likely inaccessible to feral cats on the islands proper. Therefore, we conclude that it is likely that less than one percent of the total population of ashy storm-petrels may be susceptible to predation from black rats and feral cats. We have examined the available information concerning the predation threat from nonnative black rats and feral cats and have found no direct evidence showing that black rats and cats currently prey on ashy storm-petrels in the Channel Islands, Southeast Farallon Island, or rangewide.

Santa Cruz Island – Barn Owl

The petitioner includes the barn owl on its list of native avian predators of ashy storm-petrels but provides no further information regarding this threat (CBD 2007, p. 30). Barn owls have a worldwide distribution and occur throughout the range of the ashy storm-petrel (Marti 1992, p. 1; Rudolph 1970, p. 8). Barn owls hunt mostly at night but occasionally diurnally (Marti 1992, p. 3). Most hunting is done in low flight above ground in open habitats (Bunn *et al.* 1982, p. 11), but some hunting occurs from perches (Taylor 1994, p. 58). McIver (2002, p. 46) reports that nest-site searching behaviors of adult ashy storm-petrel adults and the mobility of older chicks are activities that increase the susceptibility of ashy storm-petrels to predation by barn owls. At Santa Cruz Island, researchers have observed predation of ashy storm-petrels by barn owls. In a study at five breeding locations on Santa Cruz Island, McIver (2002, p. 69) documented 83 ashy storm-petrels (76 adults and 7 chicks) killed by barn owls from 1995 to 1997. Approximately 97.6 percent of these ashy storm-petrels were at two locations (75 birds at Bat Cave and 6 birds at Orizaba Rock) (McIver 2002, p. 69). More recent data reported that 13 ashy storm-petrels were killed by barn owls on Santa Cruz Island from 2005 to 2008 (McIver and Carter 2006, pp. 3-4;

McIver *et al.* 2008, pp. 4-6; McIver *et al.* 2009, pp. 5-10). At Santa Cruz Island, the mortality rate of ashy storm-petrel adults due to barn owl predation was approximately 5.4 percent during the 1995-97 period (n = 350 estimated number of adults in nests) and 0.8 percent during the 2005 to 2008 period (n = 304 estimated number of adults in nests) (McIver and Carter, unpublished data). Our analysis indicates that mortality of ashy storm-petrels due to barn owls was heavy during the 1995 to 1997 period (McIver 2002, p. 30), but is currently much reduced (McIver *et al.*, in preparation, p. 1); the reason for this decline is unknown. We conclude that reduced avian predation on Santa Cruz Island is the most likely explanation for the observed increase in ashy storm-petrel productivity (for ashy storm-petrels that have escaped skunk predation) there. In addition, we conclude that current levels of predation of ashy storm-petrels by barn owls at Santa Cruz Island do not constitute a substantial threat to the species. Since barn owls do not occur anywhere else within the range of the ashy storm-petrel, we also conclude that barn owls are not a threat to the ashy storm-petrel rangewide.

Santa Cruz Island – Island Spotted Skunk

Ashy storm-petrels are known to breed at 11 locations on Santa Cruz Island (Carter *et al.* 2008, p. 119), and for this status review, we have compiled information from many sources to estimate the number of ashy storm-petrels breeding in sea caves and on offshore rocks at Santa Cruz Island. Ashy storm-petrels may nest in crevices that occur in steep cliffs on Santa Cruz Island (Carter *et al.* 2008, p. 121); however, accessing and censusing these cliffs is extremely difficult for researchers, and, therefore, we can provide no estimate here of numbers of ashy storm-petrels that may nest in cliffs at Santa Cruz Island. Excluding Orizaba (''Sppit'') Rock, Carter *et al.* (1992, p. I-87) estimated 273 breeding ashy storm-petrels during the periods from 1975 to 1980 and 1989 to 1991 at offshore rocks at Santa Cruz Island, based on summaries of historical data and mark–recapture data. Based on a total of average numbers of active nests observed at each location (McIver and Carter 2006, pp. 2-3; Carter *et al.* 2007, pp. 7-9; McIver *et al.* 2008, pp. 4-6; McIver *et al.* 2009, p. 24) and other information (Carter *et al.* 1992, p. I-87; McIver *et al.* 2009, p. 24; Carter, unpublished data; McIver *et al.* in preparation), approximately 32 breeding ashy storm-petrels utilized Orizaba Rock, and 231 breeding ashy storm-petrels utilized sea caves at Santa Cruz Island during 2005 to 2008. Combining these population values, we estimate that 305 ashy storm-petrels nested on offshore rocks at Santa Cruz Island, and 230 ashy storm-petrels nested in sea caves at Santa Cruz Island from 2005 to 2008. Therefore, approximately 43 percent of ashy storm-petrels nesting at Santa Cruz Island used sea caves from 2005 to 2008. This translates to approximately 7 to 9 percent of the total ashy storm-petrel population, depending on the population estimates used.

The island spotted skunk occurs only on Santa Rosa and Santa Cruz Islands (Crooks and Van Vuren, p. 380) and constitutes no threat to ashy storm-petrels anywhere else. On Santa Cruz Island, the island spotted skunk population has increased recently from rare to abundant (Crooks and Van Vuren 1994, p. 380; Jones, *et al.* 2008, p. 76). Jones *et al.* (2008, pp. 81-84) reports that there are two explanations for this increase in spotted skunk numbers at Santa Cruz Island: competitive release (an increase in population due to reduced competition) due to decline of the island fox (*Urocyon littoralis santacruzae*), and recovery of vegetation due to removal of feral livestock. In a radio-telemetry study on Santa Cruz Island, Crooks and Van Vuren (1994, pp. 381-382) found that island spotted skunks utilized chaparral grasslands, open grasslands, and coastal sage scrub habitats; fed on deer mice, lizards, and insects; and were active only at night. Jones *et al.* (2008, p. 80) reported that island spotted skunks also utilized fennel-dominated and riparian habitats. Like other sea caves in which ashy storm-petrels nest at Santa Cruz Island, Bat Cave and Cavern Point Cove Caves occur at the base of sheer cliffs and coastal bluffs (McIver 2002, p. 8). The coastal slopes above the sea caves at Santa Cruz Island comprise coastal bluff scrub habitat (Junak *et al.* 1995, p. 14), likely utilized by island spotted skunks. Skunks may have fallen or jumped off nearby bluffs or cliffs and swam into the caves (Carter and McIver 2006, p. 4). Like other procellariids, ashy storm-petrels have a strong and distinctive musky odor (James-Veitch 1970, p. 86), and this odor can be detected at the entrances of the sea caves at Santa Cruz Island in which ashy storm-petrels nest (McIver, *personal observation*). In addition, ashy storm-petrels return to and depart their nesting colonies at night, and nighttime activities at nesting locations include vocalizations and aerial displays, including circling flights at the sea cave entrances (James-Veitch 1970, p. 24; McIver *personal observation*).

During the period from 2005 to 2008, researchers reported that island spotted skunks killed at least 100 ashy storm-petrels at two locations on the northeast coast of Santa Cruz Island: 70 ashy storm-petrels at Bat Cave in 2005 and 32 ashy storm-petrels at Cavern Point Cove Caves in 2008 (McIver and Carter 2006, p. 3; McIver *et al.* 2009, p. 7). The mortality event at Bat Cave in 2005 resulted in the temporary loss of the largest ashy storm-petrel colony at Santa Cruz Island (average of 80 nests per year in 1995-97 (McIver 2002, p. 24)) and the colony with the largest numbers of monitored nests of the ashy storm-petrel (McIver and Carter 2006, p. 4). One skunk was live-trapped and removed from the cave in June 2005, and the other was presumed to have died in or left the cave by the next year (McIver and Carter 2006, p. 3; Carter *et al.* 2007, p. 7). Ashy storm-petrel nests were documented in Bat Cave in 2006 (19 nests), 2007 (28 nests), and 2008 (40 nests), and no further evidence of skunks in the cave has been observed since 2005 (Carter *et al.* 2007, p. 7; McIver *et al.* 2008, p. 4; McIver *et al.* 2009, p. 6). The mortality event at Cavern Point Cove Caves in 2008, located approximately 0.6 mi (1 km) east of Bat Cave, resulted in the death of at least 32 adult ashy storm-petrels and complete reproductive failure at this location in 2008 (McIver *et al.* 2009, p. 7). A skunk was live-trapped and removed from Cavern Point Cove Caves in early July 2008, and marked and released on the island approximately 2.5 mi (4 km) southeast from the capture location (McIver *et al.* 2009, p. 7). Live-traps were deployed in Bat Cave and Cavern Point Cove Caves and monitored regularly for the remainder of the 2008 breeding season, to capture and remove skunks and prevent further storm-petrel deaths (McIver *et al.* 2009, p. 7). A second spotted skunk was caught in a live trap at Cavern Point Cove Caves in September 2008, but died. After the 2005 predation event at Bat Cave, researchers considered the skunk-predation incident to be an isolated, unusual event (McIver and Carter 2006, p. 4). Recent research shows that island spotted skunk population numbers at Santa Cruz Island have likely increased to carrying capacity, possibly in response to reduced numbers of island foxes (Jones *et al.* 2008, pp. 81-84). Given the additional skunk-predation incident in 2008, and known increases in island spotted skunk population numbers on the island, ashy storm-

petrels nesting in sea caves on Santa Cruz Island may be vulnerable to episodic predation by skunks (McIver *et al.* 2009, p. 14). The spotted skunk diet is largely comprised of invertebrates and vertebrates other than birds. For example, during 1992, occurrence of avian remains in spotted skunk scat occurred only in 4 percent of acquired samples. Samples in 2003 and 2004 contained no avian remains (Jones *et al.* 2008, pp. 81-84).

The future of island spotted skunk population numbers and trends at Santa Cruz Island is uncertain and may be directly related to the recovery status of the island fox (Jones *et al.* 2008, p. 83). A recovering population of island foxes may or may not be able to suppress the population of island spotted skunks to its former levels, and this may result in a new equilibrium of fox and skunk population numbers at Santa Cruz Island (Jones *et al.* 2008, p. 83). Regardless, spotted skunk predation is unlikely to increase beyond levels observed in recent years, because Jones *et al.* (2008, p. 83) suggested that skunks may have been approaching or even exceeding carrying capacity during their study. The conclusion of Jones *et al.* (2008, p. 83) was supported by a trend toward smaller skunk body size and undiminished skunk home ranges in 2003–2004 versus 1992. In addition, the proportion of juvenile skunks captured decreased during the study, from 24 percent in September 2003 to 5 percent in September 2004. This leads us to believe that the spotted skunk predation will not likely affect more than a very small percentage (approximately 7 to 9 percent) of the overall ashy storm-petrel population.

Santa Cruz Island is owned and managed by the Park and the Nature Conservancy. The Park owns and manages approximately the eastern 25 percent of the island, where two ashy storm-petrel sea-cave locations (Bat Cave and Cavern Point Cove Caves) occur; the Park also manages the offshore rocks at the island, six of which (Del Mar Rock, Diablo Rocks, Orizaba Rock, Scorpion Rock, Willow Anchorage Rocks, and Gull Island) are ashy storm-petrel breeding locations. The Nature Conservancy owns approximately the western 75 percent of the island, where three ashy storm-petrel sea caves (Shipwreck Cave, Dry Sandy Beach Cave, and Cave of the Bird's Eggs) occur. Currently, monitoring of nesting success of ashy storm-petrels at Santa Cruz Island is being conducted in association with restoration activities, funded through 2010 by the Montrose Settlements Restoration Program (Montrose Settlements Restoration Program 2005, p. 196). Researchers have proposed the development and implementation of a skunk management plan to prevent skunk predation of storm-petrels in sea caves at Santa Cruz Island; this plan is scheduled to be implemented by the Park during 2009-10 (McIver *et al.* 2009, p. 16).

Further research on population size, trends, and distribution of island spotted skunks at Santa Cruz Island is needed. Based on the relatively isolated mortality events at Bat Cave and Cavern Point Cove Caves, we characterize the threat of predation by island spotted skunks as sporadic and believe that efforts to control skunks by the Park will diminish the possibility of skunk predation even further. We estimate that approximately 7 to 9 percent of the total population of ashy storm-petrels is susceptible to this episodic threat, and therefore predation by island spotted skunks is not a significant concern at the Channel Islands, nor is it a threat in any way at Southeast Farallon Island, or rangewide.

Santa Cruz Island – Deer Mice

Deer mice occur in a variety of habitats on Santa Cruz Island, including chaparral, rocky outcrops, marsh, riparian, pine forest, oak woodland, buildings, and sea caves (Mayfield *et al.* 2000, pp. 509; McIver 2002, pp. 29-30). Egg predation by deer mice has been documented for crevice-nesting seabird species and usually occurs during periods of parental absence (Murray *et al.* 1983, p. 17; Drever *et al.* 2000, pp. 2013-2015; Blight *et al.* 1999, pp. 872-873). In a 4–year study at Santa Cruz Island, McIver (2002, pp. 40-41) reported that deer mice scavenged or preyed upon at least four ashy storm-petrel eggs, and concluded that egg predation by deer mice was likely not a major cause of egg mortality there. In addition, (McIver 2002, p. 41) reported that two ashy storm-petrel chicks were found partially eaten by mice, although it was unknown if mice killed these chicks or scavenged them after they had died of other causes. Similarly, researchers at Santa Cruz Island during 2005 to 2008 did not find predation of ashy storm-petrel eggs by deer mice to be significant (less than six total) (McIver and Carter 2006, pp. 2-4; Carter *et al.* 2007, pp. 8-24; McIver *et al.* 2008, p. 5; McIver *et al.* 2009, pp. 5-8). Our review of the available information reveals no other information that indicates predation of ashy storm-petrel eggs by deer mice is a substantial threat at the Channel Islands, Southeast Farallon Island, or rangewide.

Disease

The petitioner did not raise disease as a threat to the ashy storm-petrel. Moreover, disease in ashy storm-petrels has not been reported as a threat to the species (Ainley 1995, p. 8). Accordingly, we conclude disease is not a threat to the ashy storm-petrel on Southeast Farallon Island, the Channel Islands, or rangewide.

Summary of Factor C

Approximately 36 to 53 percent of all ashy storm-petrels breed on Southeast Farallon Island, and ashy storm-petrels are preyed upon by several predator species, the most notable being western gulls. Avian predation of ashy storm-petrels has persisted on Southeast Farallon Island at similar or increasing levels since at least 1994, yet recent reports show that ashy storm-petrel survival appears to be increasing, and their total numbers also appear to be increasing. Therefore, at this time, we do not consider predation by western gulls to be a significant threat to ashy storm-petrels. Our analysis of the available information reveals little information regarding the extent of burrowing owl predation, and predation of ashy storm-petrel eggs and chicks by nonnative house mice on Southeast Farallon Island does not pose a significant threat to ashy storm-petrels. We conclude that predation of ashy storm-petrels by island spotted skunks on Santa Cruz Island could occur on a sporadic basis, but thus far, spotted skunks have affected less than 7 to 9 percent of the total ashy storm-petrel population. Once removed, spotted skunks no longer pose a threat to ashy storm-petrels, and monitoring for skunks is planned in coming years. We conclude that predation of ashy storm-petrel adults and chicks by barn owls, and predation of ashy storm-petrel eggs by deer mice on Santa Cruz Island do not pose a threat to ashy storm-petrels. Finally, we conclude that predation of ashy storm-petrels by feral cats and nonnative black rats does not pose a significant threat to ashy storm-petrels.

Factor D: Inadequacy of Existing Regulatory Mechanisms

The petitioner asserts that existing regulatory mechanisms have been ineffective at preventing the decline of the ashy storm-petrel and in mitigating many of the threats to the species (CBD 2007, p. 32). The petitioner claims that the ineffectiveness of regulatory mechanisms is demonstrated by the failure to eradicate nonnative predators, the inadequate regulation of artificial light pollution, the failure to restrict

human disturbance at breeding sites, the lack of regulations on greenhouse gases, and the failure of the Migratory Bird Treaty Act (16 U.S.C. 703-712) to protect the species from the identified threats (CBD 2007, pp. 32-35). Consequently, in this section we discuss these and other regulatory mechanisms.

U.S. Federal Protection

National Environmental Policy Act

The National Environmental Policy Act of 1970 (NEPA) (42 U.S.C. 4371 *et seq.*) requires that all activities undertaken, authorized, or funded by Federal agencies be analyzed for potential impacts to the human environment prior to implementation. NEPA does not require adverse impacts be fully mitigated, and some impacts could still occur. Additionally, NEPA is only required for projects with a Federal nexus, and therefore, actions that do not require a Federal permit or occur on private land are not required to comply with this law.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act of 1918 (MBTA) states that it is unlawful ''to pursue, hunt, take, capture kill, or attempt to take, capture or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or eggs of any such bird, or any product, whether or not manufactured.'' The ashy storm-petrel is included in the list of migratory birds protected by the MBTA. The MBTA provides penalties for anyone in violation of its provisions. The petitioner claims that the MBTA does not provide protection from many of the threats facing the species such as plastic pollution, light pollution, nonnative predators, and changing ocean conditions as a consequence of global warming (CBD 2007, p. 36). In addition, the petitioner asserts that, unlike the Act, the MBTA provides no citizen suit provision, no requirement for designation or protection of critical habitat, no consultation provision to ensure Federal agency actions do not jeopardize the species, nor an affirmative conservation mandate to recover the species. The provisions of the MBTA prevent hunting, capturing, or killing or attempting to take, capture, or kill, or possess ashy storm-petrels. The degree to which the protections are applied are a matter of enforcement and there are likely to be instances where permits under the MBTA are not obtained and some mortality may occur. However, our analysis did not reveal information that would suggest a level of mortality that would be a significant threat to the species. Overall the MBTA provides protections for the ashy storm-petrel that would otherwise not exist.

On January 10, 2001, President Clinton issued Executive Order 13186, pertaining to responsibilities of Federal agencies to protect migratory birds, and directing executive departments and agencies to further implement the MBTA (66 FR 3853; January 17, 2001). Executive Order 13186 directs each Federal agency taking actions that have, or are likely to have, a measurable negative effect on migratory bird populations to develop and implement (within 2 years) a memorandum of understanding (MOU) with the Service that promotes the conservation of migratory bird populations. The DOD entered into a MOU with the Service on August 30, 2006 (71 FR 51580), which emphasizes a general collaborative approach to conservation of migratory birds. Conservation measures include minimizing disturbance to breeding, migration, and wintering habitats. While this MOU is non-binding and it does not authorize the take of migratory birds, it does provide an additional opportunity for the Service to continue to reduce the threat of habitat loss to the ashy storm-petrel on lands owned and managed by the DOD, including San Clemente Island. Currently, approximately 0.1 percent of the entire ashy storm-petrel population breeds on DOD lands. We are not aware that any other Federal agency has entered into a similar MOU with the Service.

National Wildlife Refuge System Improvement Act of 1997

The National Wildlife Refuge System is managed by the Service primarily for the benefit of fish, wildlife, and plant resources and their habitats (Service 2008, p. 2). The Farallon National Wildlife Refuge (Refuge) was established in 1909, is located approximately 28 miles west of San Francisco, and is composed of several islands, including Southeast Farallon Island. On December 22, 2008, we published a notice in the **Federal Register** announcing the availability of a draft Comprehensive Conservation Plan (CCP) and environmental assessment to manage natural resources at the Refuge (73 FR 78386). As stated earlier, ashy storm-petrels at Southeast Farallon Island are susceptible to predation by western gulls (which breed at the island) and burrowing owls (which do not breed at the island but are regular fall migrants and overwinter at the island). Managers at the Refuge are concerned about high levels of avian predation upon and reduced productivity and survivorship of ashy storm-petrels at Southeast Farallon Island. Consequently, within 5 years of approval of the final CCP (anticipated in year 2010), the Refuge proposes the following management actions: (1) Develop a plan to eradicate the nonnative house mouse through rodenticide application and prevent future human introductions of mice; (2) translocate to the mainland individual burrowing owls that overwinter on Southeast Farallon Island, until mice at the island are eradicated; (3) monitor western gull nests for ashy storm-petrel remains, and conduct experimental selective removal (culling) of no more than 10 western gulls annually to reduce predation upon ashy storm-petrels; and (4) monitor the ashy storm-petrel population (Service 2008, pp. 84, 98).

The management actions, once implemented, may be successful in reducing predation of ashy storm-petrels by western gulls and burrowing owls, which, in turn, may result in an increase in productivity and survivorship of ashy storm-petrels at Southeast Farallon Island. However, we are not basing our finding of whether listing is warranted on future actions contained in the draft CCP. Nevertheless, the proposed management actions in the Refuge's draft CCP, when approved and funded, will likely benefit the ashy storm-petrel at Southeast Farallon Island, where an estimated 36 to 53 percent of all breeding ashy storm-petrels occur.

National Park Service Organic Act

The National Park Service Organic Act (16 U.S.C. l *et seq.*) established the U.S. National Park Service, ''* * * to promote and regulate the use of the * * * national parks * * * which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'' On March 5, 1980, the U.S. Congress established as the Channel Islands National Park (Park) the islands of San Miguel, Santa Rosa, Santa Cruz, Anacapa, Santa Barbara, and the submerged lands and waters within one nautical mile of each island. In 2007, in accordance with 36 CFR, Chapters 1-7, the Park prohibited access by park visitors on: 1) Offshore rocks and islets in the Park; 2) Bat Cave and Cavern Point Cove Caves, Santa Cruz Island;

and 3) shorelines and cliffs at Santa Barbara Island, to protect wildlife and natural resources, including ashy storm-petrels (NPS 2007, p. 2). Thus, visitor access is prohibited at 16 ashy storm-petrel breeding locations (locations #7-22, in Table 1) managed by the National Park Service, which constitutes approximately 99 percent of the breeding locations in the Channel Islands and, depending on population estimates, approximately 44 to 60 percent of the ashy storm-petrel breeding locations rangewide.

Under the authority of the Antiquities Act of 1906, the California Coastal National Monument (CCNM) was established by Presidential Proclamation number 7264, on January 11, 2000. The Presidential Proclamation defined the CCNM as all unappropriated or unreserved lands and interest in lands owned or controlled by the United States in the form of islands, rocks, exposed reefs, and pinnacles above mean high tide within 12 nautical miles of the shoreline of the State of California. The CCNM is comprised of more than 20,000 small islands, rocks, exposed reefs, and pinnacles within the corridor extending 12 nautical miles (22.2 km) from the shoreline between Mexico and Oregon. This proclamation directed the Secretary of the Interior to manage the monument through the Bureau of Land Management (BLM). In 2005, the BLM approved a resource management plan for the CCNM (BLM 2005), which contains broad direction for the protection of the geologic formations and habitats for seabirds, and focuses on multi-agency and other partnerships and involvement of local communities as the keys to management and protection. Five ashy storm-petrel breeding locations (locations # 1, 2, 6, 23 and 24 in Table 1) are managed by the BLM, which, depending on population estimates used, comprise about 1.2 percent to 1.7 percent of the total population of breeding ashy storm-petrels.

Sikes Act

The Sikes Act of 1960 (16 U.S.C. 670 *et seq.*) authorizes the Secretary of Defense to develop cooperative plans for conservation and rehabilitation programs on military reservations and to establish outdoor recreation facilities, and provides for the Secretaries of Agriculture and the Interior to develop cooperative plans for conservation and rehabilitation programs on public lands under their jurisdiction. The Sikes Act Improvement Act of 1997 required Department of Defense (DOD) installations to prepare Integrated Natural Resources Management Plans (INRMPs). Consistent with the use of military installations to ensure the readiness of the Armed Forces, INRMPs provide for the conservation and rehabilitation of natural resources on military lands and incorporate, to the maximum extent practicable, ecosystem management principles and provide the landscape necessary to sustain military land uses. The U.S. Navy currently controls feral cats on San Clemente Island through an existing INRMP (Hering 2008, p. 6), and this may benefit the small numbers of ashy storm-petrels nesting there.

National Marine Sanctuaries Act

The National Marine Sanctuaries Act of 1972 (NMSA) (16 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce, and specifically the National Oceanic and Atmospheric Administration (NOAA), to designate and protect areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities as national marine sanctuaries. Within the range of the ashy storm-petrel, the four national marine sanctuaries (NMS) that have been designated in California are: the Channel Islands NM Sanctuary (CINMS) off the coast of southern California (1980); Gulf of the Farallons NMS (formerly Point-Reyes Farallon Islands NMS [1981]); Cordell Bank NMS off the coast of central California (1989); and the Monterey Bay NMS (1992). In 1989, Congress passed a law that prohibits the exploration for, or the development or production of, oil, gas, or minerals in any area of the Cordell Bank National Marine Sanctuary (P.L. 101-74). The Oceans Act of 1992 (P.L. 102-587) prohibits leasing, exploration of, producing, or developing oil and gas in the Monterey Bay National Marine Sanctuary; and includes a requirement for Federal agencies to consult with the program on activities that are likely to injure sanctuary resources. In 2007, NOAA expanded the state ''no-take'' marine reserves and one of the limited take marine conservation areas in the CINMS to include Federal waters out to 6 nautical miles (11 km), which prohibited or limited removal of, and injury to, any CINMS resource, including ashy storm-petrels (NOAA 2007, pp. 29208-29235). Specifically, lobster harvest and recreational fishing for pelagic finfish (with hook and line only) are allowed within the marine conservation area, while all other extraction or injury to CINMS resources is prohibited (NOAA 2007, p. 29212). These Federal marine reserves were established in conjunction with State of California regulatory processes (see ''State of California Protection'' subsection below). In addition, on March 25, 2005, the California Fish and Game Commission adopted the Market Squid Fishery Management Plan (MSFMP; California Fish and Game Commission 2005, pp. 1-558), which prohibits taking of market squid using attracting lights in all waters of the Gulf of the Farallons NMS at any time. Accordingly, there are regulatory measures that prohibit the use of bright lights for commercial fishing at 10 ashy storm-petrel breeding locations, including around Southeast Farallon Island, which constitute approximately 36 to 53 percent of the rangewide population and for approximately 16 percent of the remainder of the population rangewide, for a total of approximately 52 to 69 percent of the total population.

Outer Continental Shelf Lands Act

The Outer Continental Shelf Lands Act of 1953 (OCSLA) (43 U.S.C. 1331 *et seq.*) provides the Secretary of the Interior, on behalf of the Federal Government, with authority to manage the mineral resources, including oil and gas, on the outer continental shelf (OCS) and defines the OCS as all submerged lands lying seaward of the State and Federal boundary. The Federal Oil & Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*) mandates protection of the environment and conservation of Federal lands in the course of building oil and gas facilities. The Secretary of the Interior designated the Minerals Management Service (MMS) as the administrative agency responsible for the mineral leasing of submerged OCS lands and for the supervision of offshore operations after lease issuance. In managing the offshore oil and gas resources, the MMS conducts environmental studies, issues leases, and regulates operations conducted on the OCS. The regulatory responsibilities include issuing permits for oil and gas exploration, development, and production and inspecting operations during all of these activities. Within the range of the ashy storm-petrel, the MMS manages the offshore mineral resources of 23 active leases and 36 undeveloped leases, in coordination with other Federal, State, and local agencies and in consultation with the public (McCrary *et al.* 2003, pp. 43-45).

Deepwater Port Act of 1974

The Deepwater Port Act of 1974 (DWPA) (33 U.S.C. 1501 *et seq.*) authorizes the U.S. Coast Guard (USCG;

Department of Homeland Security) to regulate Liqufied Natural Gas deepwater ports and shoreside terminals. Originally pertaining only to oil, the Maritime Transportation Security Act of 2002 (MTSA) (33 U.S.C. 1221 *et seq.*) amended the DWPA to include natural gas. The regulations pertaining to the licensing, design, equipment and operation of deepwater ports and shoreside terminals are found in Title 33 CFR parts 148, 149 and 150. The Secretary of the Department of Homeland Security delegated the processing of DWP applications to the USCG and the Maritime Administration (MARAD), respectively. MARAD is the license issuing authority and works in concert with the USCG in developing the Environmental Impact Statement, while the USCG has primary jurisdiction over design, equipment and operations and security requirements. The DWPA established a specific time frame of 330 days from the date of publication of a **Federal Register** notice of a ''complete'' application to the date of approval or denial of a deepwater port license. Among other requirements, an applicant for a deepwater port license must demonstrate consistency with the Coastal Zone Management Plan of the adjacent coastal States. The USCG and MARAD, in cooperation with other Federal agencies, must comply with the requirements of the National Environmental Policy Act in processing deepwater port applications within the timeframes prescribed in the DWPA. To date the USCG has received the following two deepwater port applications, which are pending USCG approval, and occur within the range of the ashy storm-petrel: Clearwater Port LNG, Project NorthernStar Natural Gas; and Port Esperanza, Esperanza Energy LLC. A third proposed LNG project, the Oceanway LNG Terminal, was withdrawn by Woodside Petroleum, Ltd. in January 2009 (Woodside Petroleum Ltd. 2009, pp. 1-2).

Federal Power Act of 1920

Section 23(b)(1) of the Federal Power Act of 1920 (16 U.S.C. 791a *et. seq.*) grants jurisdiction to the Federal Energy Regulatory Commission (FERC) for the licensing of hydropower development (for example, wave energy projects) in offshore waters of the United States. We are aware of at least one proposed wave energy project that occurs within the range of the ashy storm-petrel. FERC licensing procedures include analyzing potential project effects on natural resources including, but not limited to, water quality, water use, marine mammals, fish, birds, geology, land use, ocean use, navigation, recreation, aesthetics, and cultural resources.

Oil Pollution Act of 1990 (OPA)

The Oil Pollution Act of 1990 (*33 U.S.C. 2701 et. seq.*) amended the Clean Water Act and addressed the wide range of problems associated with preventing, responding to, and paying for oil pollution incidents in navigable waters of the United States. It created a comprehensive prevention, response, liability, and compensation regime to deal with vessel- and facility-caused oil pollution to U.S. navigable waters. The OPA increased Federal oversight of maritime oil transportation and provided environmental safeguards by: setting new requirements for vessel construction and crew licensing and manning; mandating contingency planning; enhancing Federal response capability; broadening enforcement authority; increasing penalties and potential liabilities; and creating new research and development programs. Various Federal agencies are responsible for implementing the OPA. The Environmental Protection Agency (EPA) is responsible for non-transportation-related onshore facilities and incidents in the Inland Zone, the USCG is responsible for marine transportation-related facilities and incidents in the Coastal Zone, MARAD (in the Department of Transportation) is responsible for promoting the U.S. merchant marine and shipbuilding industry, and the Department of Commerce (specifically, NOAA) is responsible for natural resource damage assessments relating to oil discharges. The OPA requires a phase-out of single-hull tankers from U.S. waters by 2015. Committee on Oil Pollution Act of 1990 *et al.* (1998, p. 147) report that although the mandatory phase-out schedule of section 4115 of the OPA bans all single-hull tankers (without double bottoms or double sides) from U.S. trade after 2010, it is probable that under the deepwater port and lightering zone exemption, large single-hull vessels up to 30 years of age will operate in the United States through 2015. For this status review, we could not find specific information indicating how many single-hull tankers currently utilize California waters, and whether compliance with the double-hull provisions of section 4115 of the OPA will be achieved. The OPA imposes liability for removal costs and damages resulting from an incident in which oil is discharged into navigable waters or adjoining shorelines or the exclusive economic zone. In 2006, a damage assessment, restoration plan, and environmental assessment (Luckenbach 2006, pp. 1-165) was presented by Natural Resource Trustee Agencies (Service, NOAA, National Park Service, and California Department of Fish and Game) for natural resources (including ashy storm-petrels) injured during multiple oil spills that occurred off the coast of San Francisco, California, from 1990 to December 2003.

Clean Air Act of 1970

The Clean Air Act of 1970 (42 U.S.C. 7401 *et seq.*) EPA to develop and enforce regulations to protect the general public from exposure to airborne contaminants that are known to be hazardous to human health. In 2007, the Supreme Court ruled that gases that cause global warming are pollutants under the Clean Air Act, and that the EPA has the authority to regulate carbon dioxide and other heat-trapping gases (*Massachusetts et al.* v. *EPA* 2007 [Case No. 05-1120]). The petitioner claims that the ashy storm-petrel is threatened by a lack of regulatory mechanisms to curb greenhouse gases (GHG) that contribute to global temperature rises, ocean acidification, and sea level rise (CBD 2007, p. 34). As stated earlier, our status review did not reveal information that indicates productivity of ashy storm-petrels is adversely affected by ocean acidification, and we conclude that sea level rise within the next 40 to 50 years is not a significant threat to ashy storm-petrels.

State of California Protection

The California Department of Fish and Game (CDFG) is the State agency responsible for managing California's fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public. The ashy storm-petrel is designated as a Species of Special Concern by the CDFG (Carter *et al.* 2008, pp. 117-124). This status does not confer regulatory protection to the species and applies to animals not listed under the Act or the California Endangered Species Act (CESA), but which nonetheless (1) are declining at a rate that could result in listing, or (2) historically occurred in low numbers and known threats to their persistence currently exist. In addition, this designation is intended to result in special consideration for these animals by the CDFG, land managers, consulting biologists, and others, and is intended to: focus attention on the species to achieve conservation and recovery of these animals before they meet CESA criteria for listing as threatened or endangered; stimulate collection of additional information on the biology, distribution, and status of poorly known

at-risk species; and focus research and management attention on the species.

California Environmental Quality Act of 1970 (CEQA) does not regulate land use, but requires all local and State agencies to avoid or minimize environmental damage where feasible, during the course of proposed projects. CEQA provides protection not only for State-listed or federally listed species, but also for any species designated as species of special concern by the CDFG.

In 1999, the California legislature approved and the governor signed the Marine Life Protection Act (MLPA; Stats.1999, Chapter 1015). The MLPA requires that the CDFG prepare and present to the Fish and Game Commission a master plan that will guide the adoption and implementation of a Marine Life Protection Program, which includes a statewide network of marine protected areas. In 2003, the State of California established nine State Marine Reserves in the California Channel Islands, which (in part) prohibit within these reserves market squid fishery activities that use bright lights. In 2008, the CDFG published a revised draft plan for marine protected areas in California (CDFG 2008a). The CDFG has organized a MLPA South Coast Regional Stakeholder Group to re-examine and re-design the Marine Protected Areas in southern California, to increase their coherence and effectiveness at protecting the State's marine life, habitat, and ecosystems.

On March 25, 2005, the California Fish and Game Commission adopted the MSFMP (California Fish and Game Commission 2005, pp. 1-558), which: (1) Limits the wattage of attracting lights (see Factor E below) to a maximum of 30,000 watts per boat; (2) requires that attracting lights be shielded to direct the light downward, or situated such that the illumination is completely submerged underwater; and (3) and prohibits, at any time, the use of attracting lights for the purpose of taking of market squid in all waters of the Gulf of the Farallons NMS, that encompasses all of the ashy storm-petrels on Southeast Farallon Island and approximately 36 to 53 percent of the ashy storm-petrels rangewide.

Mexican Federal Protection

The ashy storm-petrel is currently listed as threatened under Mexican Law, NOM-059-ECOL-2001, and is proposed as endangered under a draft amendment of this law (SEMARNAT 2008, p. 39). Pursuant to this law, general criteria are to be followed in managing Mexican wildlife, including, but not limited to: preservation of biodiversity and natural species habitats; and preservation of endemic, threatened, endangered or specially protected species. These considerations apply to all of the ashy storm-petrels found in Mexico, which constitutes approximately 1 to 2 percent of the rangewide population. We have no new information on the adequacy and effectiveness of ''threatened'' or ''endangered'' status for conservation of ashy storm-petrels in Mexico.

International Agreements

Since the ashy storm-petrel ranges into Mexico, international agreements may provide some protections for the species. The North American Agreement on Environmental Cooperation (NAAEC) was negotiated and is being implemented in parallel to the North American Free Trade Agreement. NAAEC requires that each Party (United States, Mexico, and Canada) ensure that its laws provide for high levels of environmental protection. Each Party agreed to effectively enforce its environmental laws through appropriate means, such as the appointment and training of inspectors, monitoring compliance, and pursuing the necessary legal means to seek appropriate remedies for violations. The Commission for Environmental Cooperation (CEC) was created under the NAAEC and is authorized to develop joint recommendations on approaches to environmental compliance and enforcement.

Summary of Factor D

Based on our analysis of the existing regulatory mechanisms, we have found a diverse network of laws and regulations that provide protections to the ashy storm-petrel and its habitat and effectively ameliorate threats rangewide. Specific to the ashy storm-petrel, provisions of the MBTA prohibit killing or possessing of the species. An overarching protection of breeding and foraging habitat through Federal nexuses in regulatory mechanisms, such as the Outer Continental Shelf Lands Act, Federal Power Act, Oil Pollution Control Act, and the Deepwater Port Act, provide protections to breeding and foraging habitat. At Southeast Farallon Island all of the breeding locations are located on U.S. Fish and Wildlife Service, National Wildlife Refuge System lands which are covered under the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd-668ee). Additionally, the waters surrounding Southeast Farallon Island are within the Gulf of the Farallons NMS, where there is a prohibition on the use of attracting lights for market squid fishing. In the Channel Islands, approximately 16 percent of the breeding habitat is off limits to the use of attracting lights for market squid fishing due to the provisions of the National Marine Sanctuaries Act. Additionally, some sea caves on Santa Cruz Island have been closed to human visitation and the National Park Service is planning to develop and implement a island spotted skunk and nonnative mouse management plan that will provide additional protections to the ashy storm-petrel. Approximately 99 percent of the ashy storm-petrel breeding locations in the Channel Islands are located on National Park Service lands, which are covered under the National Park Service Organic Act. Regulatory mechanisms under the State of California, including CEQA, MLPA, and provisions under MSFMP, provide additional protections for the ashy storm-petrel. Based on our review of the best available scientific information, we conclude that adequate regulatory mechanisms are in place to protect the species and its habitat throughout its range, within the Channel Islands, and at Southeast Farallon Island.

Factor E: Other Natural or Manmade Factors Affecting the Continued Existence of the Species

The petitioner asserts that artificial light pollution due to California market squid fishery boats, and current and future offshore energy production platforms, threatens the continued existence of the ashy storm-petrel (CBD 2007, pp. 15-17). In addition, the petitioner claims that contamination from petroleum (from offshore energy production platforms and ocean-going vessels), chlorinated hydrocarbons, and plastics threaten the continued existence of the ashy storm-petrel (CBD 2007, pp. 18-20).

Artificial Light Pollution at Breeding Colonies – Market Squid Fishery and Tuna Aquaculture

The California market squid is found from central Baja California, Mexico, to Southeast Alaska (Roper and Sweeney 1984, p. 95-96). In California, a fishery for market squid consists of two geographically distinct components: a central California fishery off Monterey and a southern California fishery around the Channel Islands and along the mainland coast (Pomeroy and Fitzsimmons 2001, p. 3). The Service is not aware of the occurrence of market squid fishery activities at Islas Los Coronados and Islas Todos Santos, which are known ashy storm-petrel breeding locations in Mexico.

Market squid spawn in sandy substrates near islands and the coast (California Fish and Game Commission

2005, p. 37). Harvest involves luring the squid to the surface with high wattage lamps, encircling them with purse seine nets, pumping and using nets to remove the squid from the water, and finally storing them in an on-vessel fish hold (Hastings and MacWilliams 1999, p. iv).

Market squid fishery activities occur during squid mating and egg-laying: April through October in central California, and October through May in southern California (Pomeroy and Fitzsimmons 2001, pp. 2-3; California Fish and Game Commission (2005, p. 37). Market squid fishery activities coincide with the peak fledging period (early to mid-October) and pre-egg and early egg-laying periods of ashy storm-petrels (February through May) (Ainley 1995, p. 5; McIver 2002, p. 17).

According to the MSFMP (2005, p. 3), squid may not be taken using attracting lights in all waters of the Gulf of the Farallones National Marine Sanctuary at any time; this closure includes Southeast Farallon Island. In addition, squid fishery activities are not permitted within 11 marine reserves and 2 marine conservation areas in southern California, which collectively contain seven ashy storm-petrel breeding locations. In California, market squid fishery activities are permitted at 13 ashy storm-petrel breeding locations. Although we are not aware whether market squid fishing occurs at ashy storm-petrel breeding locations in Mexico, we are aware of aquaculture activities associated with the harvest of northern bluefin tuna (*Thunnus orientalis*) at Islas Los Coronados and Islas Todos Santos, Mexico, which use bright lights to illuminate at-sea tuna pens (Zertuche-Gonzáles *et al.* 2008, p.14; McIver, personal observation). Therefore, bright lights associated with commercial fishing activities (market squid fishery and tuna aquaculture) are permitted at 15 locations that collectively comprise approximately 1,915 breeding ashy storm-petrels, which is approximately 25 percent to 34 percent of all breeding ashy storm-petrels, depending on population estimates used.

Evidence from several studies, anecdotal observations, and museum specimens indicate that ashy storm-petrels and related species are attracted to lights, which puts them at risk for light-induced mortality (Reed *et al.* 1985, pp. 377-383; Le Corre *et al.* 2002, pp. 93-102). In their study of four species of procellariids (specifically, Barau's petrel (*Pterodroma baraui*), Mascarene petrel (*Pseudobulweria aterrima*), Audubon's shearwater (*Puffinus lherminieri bailloni*), and wedge-tailed shearwater (*Puffinus pacificus*)) on Réunion Island in the Indian Ocean, Le Corre *et al.* (2002, p. 93) reported that birds that collided with lights then fell to ground with fatal injuries, were killed by predators, or died of starvation, and that 94 percent of these procellariids were juveniles. Light-induced collisions and mortality of storm-petrels at breeding locations have been reported by researchers. James-Veitch (1970, p. 40) reported that ashy storm-petrels collided with a lamp post on Southeast Farallon Island. Wolf (2008, p. 8) reported personal observations of storm-petrels flying around the lighthouse light at West San Benito Island, Mexico, a breeding location for Leach's and least storm-petrels. She also observed many hundreds of dead storm-petrels that had accumulated below the window that enclosed the lighthouse light, after attraction to the light and apparent collision with the glass. The period over which the storm-petrels collided with and accumulated under the window is unknown. Additionally, we are aware of 15 museum specimens of ashy storm-petrels that were collected at lighted offshore energy platforms (n = 2) or brightly lit coastal mainland locations (n = 13) (Carter *et al.* 2000, p. 443; Ornithological Information System [ORNIS] 2008), and ashy storm-petrels have been observed circling bright lights at a coastal mainland sporting venue on several occasions (Capitolo 2005, 2008; LeValley 2008) (see following ''At-sea Artificial Light Pollution - Offshore Energy Platforms'' section). These museum collections and direct observations demonstrate that ashy storm-petrels are attracted to light that occurs far from ashy storm-petrel breeding locations, where attendance by storm-petrels is lower than at breeding locations. Therefore, it is reasonable to assume that near breeding locations ashy storm-petrels are similarly attracted to commercial fishery lights, and that mortality of ashy storm-petrels as a result of this attraction, although not quantified, likely occurs.

Several researchers (Gross [1935, p. 387]; James-Veitch [1970, p. 65]; Ainley [1995, p. 5]) have reported decreases in the amount of aerial activities by storm-petrels at night at their nesting grounds on bright, moonlit nights. Watanuki (1986, pp. 14-22) showed that colony activity levels of Leach's storm-petrels were inversely correlated with light intensities and the corresponding risk of predation by slaty-backed gulls (*L. schistisagus*). Oro *et al.* (2005, p. 425) reported that predation of European storm-petrels (*Hydrobates pelagicus*) by yellow-legged gulls (*L. michahellis*) was much higher at a cave that received stronger illumination from the city of Benidorm, Spain, located approximately 1.9 mi (3 km) from the storm-petrel colony. Data in Keitt (2004, p. 176) supported their hypothesis that a function of nocturnal activity patterns in the black-vented shearwater (*Puffinus opisthomelas)* was reduction in the likelihood of predation by western gulls. Since procellariids have been shown to use the cover of darkness as a defense against predation at their nesting colonies, it is paradoxical that procellariids, including storm-petrels, are also attracted to bright lights (Montevecchi 2006, p. 94). Imber (1975, p. 305) suggested that the attraction of procellariids to bright lights is an artifact of their visual cueing towards bioluminescent prey.

Our review of the available information revealed no direct observations or evidence of mortality of ashy storm-petrels through attraction to squid fishery lights; however, examining measures of reproductive success provides indirect evidence of an effect of squid fishery lights on ashy storm-petrels at breeding locations. From 1992 to 2000, Maxwell *et al.* (2004, p. 665) documented intense market squid harvesting near Santa Rosa, Santa Cruz, Anacapa, and Santa Catalina islands. During October 1995, 1996, and 1997, squid fishing activity was relatively high along the north coast of Santa Cruz Island from the west end to Orizaba Rock (Maxwell *et al.* 2004, p. 668). At Orizaba Rock, the number of active storm-petrel nest sites was 60 percent and 75 percent lower in 1997 than in 1995 and 1996, respectively (McIver *et al.*, in preparation), and the numbers of active nests (counted during mid-summer surveys) declined significantly (10 percent per year) from 1996 through 2005 (Carter *et al.* 2007, p. 7). However, the number of ashy storm-petrel nests at Orizaba Rock increased in 2006 and 2007 (Carter *et al.* 2007, p. 7; McIver *et al.* 2008, p. 6). Reasons for an increase in numbers of active nests at Orizaba Rock are not fully understood and may reflect reduced use of bright night lights, movements of some adult storm-petrels from Bat Cave after skunk predation in 2005, and other factors (McIver *et al.* in preparation). Human disturbance of nest sites on Orizaba Rock has not been documented, so this may not explain the reduction of nests from 1996 to 2005. Based on our conclusion that ashy storm-petrels are less affected by such environmental factors as reduced ocean productivity, and the study by Adams and Takekawa (2008, p. 14) that showed that ashy

storm-petrels captured at three separate breeding locations in southern California forage in similar areas of ocean, we believe it is unlikely that oceanographic conditions explain the reduced reproductive success and numbers of nests of ashy storm-petrels at Orizaba Rock. Our review of the available information suggests that bright lights used in the market squid fishery at Orizaba Rock may have been a factor in the observed decline in numbers of active nests from 1996 through 2005, and low reproductive success observed there in 1996 and 1997. However, our review of available information did not reveal any data regarding the reproductive success or mortality rates of ashy storm-petrels at other Southern California locations, such as Santa Barbara Island and adjacent Sutil Island, where larger numbers of ashy storm-petrels nest than at Oriziba Rock. The absence of any data at these locations does not permit a meaningful or reliable extrapolation of trends regarding ashy storm-petrel reproductive success and numbers of active nests observed at Orizaba Rock, including the possible effects of squid fishery lights at that location, or to other ashy storm-petrel nesting locations in Southern California.

Acknowledging the potential for impacts to breeding seabirds, the MSFMP requires that squid fishery boats in California limit wattage (per boat) to 30,000 watts maximum and maintain shields on lights that are parallel to the deck of the vessel (MSFMP 2005, Section 1-ii) in order to reduce the potential for predation as a result of illumination of seabird breeding locations on islands adjacent to fishing locations. However, ambient and artificial light intensity at seabird (including ashy storm-petrel) breeding locations in California has not been studied, and therefore the efficacy of the MSFMP measures to reduce potential predation associated with illumination at islands is not known.

Measures to reduce the potential for predation as a result of illumination of seabird breeding locations, such as reduced wattage of lights and reduced upward radiation of light, are likely less effective in reducing the potential for attraction and collision of ashy storm-petrels that approach lighted fishing boats. While foraging and while in transit, ashy storm-petrels fly from a few centimeters (inches) to a few meters (yards) over the surface of the ocean, and upon approaching lighted boats, are exposed to the lights. Mortality to breeding and non-breeding ashy storm-petrels could occur through direct collision with lights, and ashy storm-petrels, exhausted after constant circling of lights, could be susceptible to predation by gulls, which are also known to concentrate around lighted squid fishery boats, presumably to feed on squid (Shane 1995, p. 10; W. McIver, personal observation). Two dead ashy storm-petrels were collected from boats at sea off the coast of southern California, presumably due to attraction to bright lights (ORNIS 2008).

Squid fishery activities also occur in the southern part of Monterey Bay between Point Pinos and Fort Ord (Recksiek and Frey 1978, p. 9). Market squid fishing in general coincides with spawning events, and in central California squid spawning occurs from April to October (CDFG 2005, pp. 1-21). During autumn months (generally September and October), thousands of ashy storm-petrels congregate in the bay in deeper waters over the Monterey Submarine Canyon (Roberson 1985, p. 43); depending on location, flocks generally occur 3 to 25 mi (5 to 40 km) away from squid fishing areas. Shearwater Journeys, a bird-watching concessionaire in Monterey, California, observed large flocks (estimated 7,000 to 10,000 birds) of ashy storm-petrels in September 2008 on Monterey Bay (Shearwater Journeys 2008, *http://www.shearwaterjourneys.com/index.shtml*). Based on known attraction of storm-petrels to boats and brightly lit facilities on the mainland, there is the potential for ashy storm-petrels in the large flocks to be attracted to these lights if boats are present at night in Monterey Bay during autumn months. Assuming a total population of 10,000 ashy storm-petrels, and autumn flock sizes of 4,000 to 7,000 ashy storm-petrels in Monterey Bay, approximately 40 percent to 70 percent of the total population of ashy storm-petrels theoretically could be exposed to this potential threat. This estimate includes ashy storm-petrels that come from Southeast Farallon Island only at this time of year for a short time. However, market squid fishing in Monterey Bay is largely observed to occur during daylight hours (CDFG 2008b, p. 20; Pacific Fishery Management Council 2008, p. 44) rather than at night, when ashy storm-petrels exclusively feed. While attracting lights may be used during daylight hours in this fishery, because ashy storm-petrels exclusively feed at night we do not expect that ashy storm-petrels are significantly affected by the market squid fishery in Monterey Bay. As stated above, we have no data indicating any ashy storm-petrel mortality associated with market squid fishing in Monterey Bay and are aware of only two dead ashy storm-petrels collected from boats at sea off of the Southern California coast. Accordingly, based on our review of the available information regarding light pollution from market squid fishery boats and tuna farms near ashy storm-petrel breeding colonies, we conclude that some low level of mortality of ashy storm-petrels may be occurring as a result of squid fishery lighting, resulting in a temporaily reduced number of birds within limited geographic locations.

Approximately 26 percent to 34 percent of the total ashy storm-petrels at breeding locations may be exposed to lighting. This estimate does not include ashy storm-petrels at Southeast Farallon Island, where squid fishing is prohibited. However, available data does not indicate that the potential threat from bright lights is causing significant mortality to the overall population of ashy storm-petrels. Further, our review of the available information does not suggest that the threat of fishery-related lighting is expected to increase to any large degree in the foreseeable future due to implementation of regulations limiting wattage of lighting and location of fishing activities. While not basing our conclusion on this factor, we are aware that the State of California has issued regulations that limit the wattage of lighting and location of fishing activities. Therefore, we do not consider artificial light pollution from the market squid fishery or tuna aquaculture operations to be a significant threat to ashy storm-petrels at breeding colonies anywhere within the species' range at this time.

At-sea Artificial Light Pollution - Offshore Energy Platforms

The petitioner asserts that the ashy storm-petrel's marine environment is being (and will be) modified and degraded by artificial light pollution from current (and future) offshore energy platforms (oil production platforms and liquefied natural gas (LNG) terminals) and vessels (CBD 2007, pp. 15-16). Specifically, the petitioner claims that ashy storm-petrels are (or would be) attracted to bright lights and die from exhaustion after constant circling of the lights, or die by direct collision with the lights or platforms.

Offshore oil operations in California are conducted from 23 platforms in Federal waters (greater than 3 mi (4.8 km) from shore) and 10 platforms and related facilities in State waters (less than 3 mi (4.8 km)), distributed over an area of about 7,700 square mi (20,000 square km) along the southern coast of the State (McCrary *et al.* 2003, p. 43).

All of the currently operational platforms occur within the at-sea range of foraging ashy storm-petrels (Briggs *et al.* 1987; p. 23 Mason *et al.* 2007, pp. 56-59; Adams and Takekawa 2008, pp. 12-13). Offshore oil production platforms in California are illuminated at night by bright, incandescent lights that serve as maritime navigational aids and illuminate working platforms and walkways.

Russell (2005, pp. 1-330) studied the interactions between migrating birds and offshore oil and gas platforms in the northern Gulf of Mexico; however, our review of the available information did not reveal any surveys that have been conducted to assess storm-petrel (or other bird species) attraction to oil production platforms off the coast of California, or any direct observations of ashy storm-petrels flying around the lights of offshore oil production platforms. However, Carter *et al.* (2000, p. 443) reported two specimens of ashy storm-petrels (archived at the Santa Barbara Natural History Museum, Santa Barbara, California (SBNHM)) that were recovered dead on an offshore oil platform (Platform Honda), located approximately 5 mi (8 km) off the coast of southern California. Ashy storm-petrels have also been collected dead from mainland locations with bright lights, indicating that the birds were attracted to and died as result of association with bright lights. Carter *et al.* (2000, p. 443) reported six ashy storm-petrel carcasses (also archived at SBNHM) that were recovered from six mainland locations (from Goleta to Point Mugu) with bright lights in southern California. The Service is aware of at least seven additional museum specimens of ashy storm-petrels that were collected at mainland locations in California with bright lights; all were collected during autumn months (Ornithological Information System [ORNIS] 2008). Ashy storm-petrels have also been observed flying at night around bright lights at a stadium adjacent to San Francisco Bay on several occasions during autumn months over the past several years (Capitolo 2005, 2008; LeValley 2008). LeValley (2005, 2008) described the storm-petrels as juveniles, based upon plumage characteristics, and observed on at least two occasions that the storm-petrels flew to and landed in the lights.

The museum specimens are evidence that ashy storm-petrels are attracted to bright lights, even those that occur in metropolitan areas, far from their at-sea foraging range. This indicates that bright lights on oil production platforms that occur within their marine range likely attract more ashy storm-petrels than are indicated by random collection and museum records. The direct observations of ashy storm-petrels around bright lights during autumn months support an examination by Imber (1975, p. 304), who states that juvenile procellariids are likely attracted to lights more often than adults. Similarly, most of the museum specimens from mainland locations and the offshore platforms were collected in the fall and may have been juvenile birds. In a study of migratory passerine birds in the Gulf of Mexico, Russell (2005, p. 4) reported that offshore platforms attract birds, induce nocturnal circulations of platforms and result in mortality of birds through collision. This is commensurate with reported observations of ashy storm-petrels flying around and into bright lights at coastal mainland sporting events. Field demonstration tests on an offshore oil platform in the North Sea, involving the exchange of lighting with a greenish light, and reductions in lighting, have been shown to reduce passerine bird occurrence at the platform by 50 to 90 percent (Marquenie and van de Laar 2004, p. 6; Marquenie *et al.* 2008, pp. 2-4). Our review of the available information did not find any similar demonstration on oil production platforms in southern California.

Two LNG projects are proposed off the coast of southern California (California Energy Commission 2009). The proposed Clearwater Port Project (owned by Northern Star Natural Gas Inc.) would be located approximately 13 mi (21 km) offshore of the City of Oxnard, Ventura County, in the Santa Barbara Channel. Clearwater Port would reconfigure an existing offshore oil production platform (Platform Grace). Reconfiguration of the platform would involve installing an LNG transfer system, a cool down system, pumps, and ambient air vaporizers, and reinstalling and upgrading the platform's power-production capability. The proposed Port Esperanza (owned by Esperanza Energy, LLC, a subsidiary of Tideland Oil & Gas Corporation) would be located approximately 15 mi (24 km) south of the port of Long Beach, and would include two unmoored, self-propelled, re-gasification units, each connected to its own permanently moored buoy. The application for a third LNG project, the Oceanway LNG Terminal Project, was withdrawn by Woodside Petroleum Ltd., in January 2009 (Woodside Petroleum Ltd. 2009, pp. 1-2). Our review of the available information did not find specific plans that describe the lighting configurations of these proposed terminals, but assumes that lighting configurations and intensities would be similar in nature to current offshore oil platforms in California.

As stated earlier, Le Corre *et al.* (2002, p. 97) found that the geographic distribution of the mortality to Barau's petrel (due to attraction to bright lights at night) depended on location of urban and industrial areas in relation to the distribution of breeding colonies. At Réunion Island, light sources were urban, stationary, and functioned (at night) continuously (Le Corre *et al.* 2002, p. 96). In southern California, continuously functioning sources of light include extensive mainland metropolitan areas, and 33 offshore oil production platforms (McCrary *et al.* 2003, p. 43). The oil production platforms are located within 150 mi (240 km) of all southern California ashy storm-petrel breeding locations, well within the distance from breeding colonies that the species has been observed to forage (220 mi [360 km]) (Adams and Takekawa 2008, p. 13). Accordingly, we conclude that about 50 percent of the total population of ashy storm-petrels (approximately 100 percent of the ashy storm-petrels that breed in the California Channel Islands) may be exposed to this potential threat. In summary, based on observations of ashy storm-petrels collected dead from an offshore oil platform and from brightly lit mainland locations, and recent observations of ashy storm-petrels observed in association with bright lights at a sporting facility, we have information that ashy storm-petrels are susceptible to bright lights on current structures that occur in their oceanic environment. This threat likely results in some (but unknown) level of mortality. At this time, the existing population information does not indicate that mortality associated with offshore energy platforms is a significant threat to the species at Southeast Farallon Island, at the Channel Islands, or rangewide. However, should offshore energy development increase significantly in the future, it would likely be appropriate to monitor and provide conservation measures that would eliminate or minimize the potential for mortality.

Oil Pollution – Offshore Energy Production Platforms

The largest oil spill from offshore oil operations in California was the 80,000-barrel (3,360,000-U.S. gallon) Santa Barbara spill from Platform A in 1969, which resulted in the death of thousands of birds (McCrary *et al.* 2003, p. 46). Since 1969, only one spill from oil and gas operations offshore of

California has resulted in documented seabird mortality (more than 700 birds), the 163-barrel (7,000-gallon) Platform Irene pipeline spill, off Point Arguello in 1997 (Torch/Platform Irene Trustee Council 2007, p. 3; McCrary *et al.* 2003, p. 46). Oiled ashy storm-petrels were not documented during either of these spills. Applying information on estimated spill size and spill probability to potential impacts on seabirds is difficult because of many factors, including the type, rate, location, and volume of oil spilled, weather and oceanographic conditions, timing within year of the spill, distribution of seabird species near a spill, and behavior of seabirds in reaction to oil slicks (Ford *et al.* 1987, p. 549; McCrary *et al.* 2003, p. 46). Minerals Management Service (2001, p. xix) reported that without the development of 36 currently undeveloped leases, the probabilities that one or more oil spills will occur from existing Outer Continental Shelf oil and gas activities (during years 2002 to 2030) are 73.9 percent for a spill of 200 barrels (8,600 U.S. gallons) or less, and 59.1 percent for a spill of 2,000 barrels (86,000 U.S. gallons).

A Federal moratorium on offshore drilling and platform development off the coast of California was initiated by the U.S. Congress in 1982 (U.S. Department of Energy 2005). On October 1, 2008, the 1982 offshore drilling moratorium expired and was not renewed by the U.S. Congress. On September 16, 2008, the U.S. House of Representatives passed bill H.R. 6899, the Comprehensive American Energy Security and Consumer Protection Act, which would allow oil and natural gas exploration and production between 50 and 100 mi (80 and 161 km) off the U.S. coasts. The U.S. Senate has received but not yet voted on H.R. 6899. Fossil fuel (such as petroleum and natural gas) energy use and production is and will likely continue to be a significant societal issue for the United States in the foreseeable future. Consequently, it is foreseeable that within the next 15 years, additional offshore oil and gas platform development will occur off the California coast, within the marine range of ashy storm-petrels.

Based on information available to the Service regarding offshore oil production, we conclude that about 50 percent of the total population of ashy storm-petrels could potentially be exposed to oil spills. However, predicting the possible effects of an oil spill from an offshore energy production platform is difficult and would depend on the timing and amount of a spill, prevailing ocean currents and conditions, and locations of ashy storm-petrels at the time of a spill. We conclude that a relatively small proportion of the population would likely be exposed to any single oil spill, and consequently oil spills are not considered to be a significant threat to ashy storm-petrels anywhere within the species' range.

Oil Pollution - Vessels

Hampton *et al.* (2003, p. 29) summarized previous reports and showed that, during the 20th century, hundreds of thousands to millions of seabirds, especially common murres (*Uria aalge*), were killed by oil pollution from oil tankers and other marine vessels in central California. Hampton *et al.* (2003, p. 30) estimate that approximately 20 tankers per week arrive at and depart ports in California. In California, large oil transfer facilities occur in San Francisco Bay and Long Beach Harbor (Los Angeles) (California Resources Agency 2008, p. 5F-6). Ports for non-tanker marine vessels (e.g., dredges, cargo vessels) occur at numerous locations along the California and northwestern Baja California coasts. Tankers traveling along the coast, in accordance with a voluntary agreement with California State and U.S. Federal agencies, stay about 50 mi (80 km) offshore (Hampton *et al.* 2003, p. 31). Hampton *et al.* (2003, p. 30) showed that oil spill accidents regarding non-tanker vessels are the most common in California, and that small volumes of oil may kill large numbers of birds. In an examination of shipping practices, Hampton *et al.* (2003, pp. 30-32) suggested that the dumping of tanker washings could occur several times per week off the California coast, regular tank washings could produce the equivalent of a small (~10,000-U.S. gallon) oil spill, and that dumping of tanker washings could pose a greater threat to offshore (e.g., greater than 50 mi (80 km) out) seabird species, including ashy storm-petrels, than to species occurring closer inshore. Minerals Management Service (2001, p. xix) reported a 90.5 percent probability of a 22,800-barrel (957,600 U.S. gallons) tanker spill occurring in waters of the Outer Continental Shelf during 2002 to 2030.

Oiled ashy storm-petrels have been collected in California. Two ashy storm-petrels were collected between 1997 and 2003, in association with ''mystery spills'' attributed to the *S.S. Jacob Luckenbach*, which sank in the Gulf of the Farallones in 1953 and leaked oil as it decayed on the ocean floor (Luckenbach Trustee Council 2006, pp. i, 65). Major oiling events attributed to the *S.S. Luckenbach* occurred every few years from 1973 through 2002 (Luckenbach Trustee Council 2006, pp. i, 65). Small seabirds (including ashy storm-petrels) may be more susceptible to mortality due to predation after oiling, and the degree of at-sea loss is likely higher with offshore species (Ford *et al.* 1987, pp. 549-550). Although specific mortality for ashy storm-petrels was not estimated during the *S.S. Luckenbach* spill event, it was presumed that the ratio of actual dead to recovered dead was similar to that of ancient murrelets (*Synthliboramphus antiquus*) and Cassin's auklets, and that total mortality for ashy storm-petrels was approximately 21 individuals (Luckenbach Trustee Council 2006, p. 65).

Based on information available to the Service regarding oil tanker traffic off the coast of California, ashy storm-petrels are exposed to the threat of oil spills. In addition, because oiled ashy storm-petrels have been recovered from vessel-related spills (the *S.S Luckenbach*), we know that the species is susceptible to oiling. Predicting the possible effects of an oil spill from tankers is difficult and would depend on the timing and amount of a spill, prevailing ocean currents and conditions, and locations of ashy storm-petrels at the time of a spill. Since thousands of ashy storm-petrels congregate in Monterey Bay every fall, the species could be vulnerable to a tanker spill near Monterey Bay at that time of year. However, the Service has no information indicating that tanker spills in the Monterey Bay are predictable or even likely. Therefore, we consider oiling from tanker spills to be insignificant to ashy storm-petrels anywhere within the species' range.

Organochlorine Contaminants

The petitioner asserts that the ashy storm-petrel is threatened or endangered by the presence, in the marine environment, of organochlorine pollutants—specifically, dichlorodiphenyltrichloroethane (DDT), polychlorinated biphenyls (PCBs), and their breakdown products (CBD 2007, p. 18). The petitioner asserts that, as a result of the presence of these pollutants in the waters off California, eggshell thinning occurred in collected eggs of the ashy storm-petrel, and reproductive success of the species has been reduced (CBD 2007, p. 19).

During the period from the late 1940s to the early 1970s, Los Angeles area industries discharged and dumped thousands of tons of DDT and PCBs into ocean waters off the Southern California coast (Department of Commerce 2001, p.

51391). Almost all of the DDT originated from the Montrose Chemical Corporation's manufacturing plant in Torrance, California, and was discharged into Los Angeles County sewers that empty into the Pacific Ocean at White Point, on the Palos Verdes shelf (Department of Commerce 2001, p. 51391). In addition, large quantities of PCBs from numerous sources throughout the Los Angeles basin were released into ocean waters through the Los Angeles County sewer system (Department of Commerce 2001, p. 51391).

Most organochlorine pesticides are hydrophobic (meaning that they tend not to combine with, or are incapable of dissolving in water) and show a high affinity for lipids (Portman and Bourne 1975, p. 294). Bioaccumulation is defined as an increase in the amount of a substance in an organism or part of an organism that occurs because the rate of intake exceeds the organism's ability to remove the pesticide from the body (Holland 1996, p. 1170). Biomagnification is defined as the bioaccumulation of a pesticide through an ecological food chain by transfer of residues from the diet into body tissues, in which the tissue concentration increases at each trophic level in the food web (Holland 1996, p. 1171). Storm-petrels feed on prey that occur at the ocean's surface and that contain high concentrations of lipids, such as euphausiids, larval fish, fish eggs, and squid (Watanuki 1985, p. 885; Warham 1990, p. 186). As mentioned in the **Species Description** section above, the diet of ashy storm-petrels has not been well-studied, but likely includes euphausiids, larval fish, and fish eggs, which would make ashy storm-petrels susceptible to bioaccumulation and biomagnification.

Eggshell thinning caused by DDE (dichlorodiphenyldichloroethylene, a metabolite of DDT), which results in eggs getting crushed during incubation and thus breeding failure of many fish-eating birds, is probably the best documented effect of environmental pollutants on birds (Fry 1995, p. 168). DDT-induced eggshell thinning caused reproductive failures of brown pelicans, bald eagles, and peregrine falcons in the California Channel Islands (Hickey and Anderson 1968, pp. 271-273; Risebrough *et al.* 1971, pp. 8-9; Gress *et al.* 1973, pp. 197-208).

Coulter and Risebrough (1973, pp. 254-255) first reported eggshell thinning in the ashy storm-petrel in the early 1970s. Ashy storm-petrel eggs were also collected for contaminant analyses and measurements of eggshell thinning in 1992 (Fry 1994; Kiff 1994), 1995-97 (D. Welsh, unpublished data), and 2008 (Cater *et al.* 2008). For eggs collected in 1992, the highest levels of total DDT and PCBs, relative to other seabird species, were contained in ashy storm-petrel eggs, and the averages for total DDT and PCBs in ashy storm-petrel eggs were the highest measured for any of the 13 species that were examined, and measured almost twice the levels observed in the second-most contaminated eggs (Fry 1994, p. 30). Kiff (1994, pp. 1-29) compared eggshell thicknesses of ashy storm-petrel eggs that were collected before 1947 (pre-contamination reference material) to eggshell thicknesses of eggs collected in 1992 and reported that 27.8 percent of the ashy storm-petrel eggs collected from Santa Cruz Island (n = 18) were 15 percent thinner than the pre-1947 average. Concentrations of DDE in ashy storm-petrel eggs have been linked with eggshell thinning and lower hatching success (Carter *et al.* 2008c, p. 4). Based on findings from 12 ashy storm-petrel eggs collected in 2008, Carter *et al.* (2008, p. 4) reported statistically significant declines ($p<0.0001$) in levels of DDE and PCBs in ashy storm-petrel eggs collected in 2008, compared to eggs collected in the 1990s. Data are currently not available on eggshell thicknesses of ashy storm-petrel eggs collected in 2008, but the Service anticipates that additional work will be funded in 2009 to further analyze organochlorine contaminant data and examine changes in eggshell thinning in randomly collected and salvaged eggs.

Carter *et al.* (2008, p. 5) speculated organochlorine contaminant concentrations from the 1960s to the 1980s were greater in ashy storm-petrels, as compared to other breeding seabirds in southern California, such as brown pelicans (*Pelecanus occidentalis*) and double-crested cormorants (*Phalacrocorax auritus*). Organochlorine contaminant levels and reproductive success of ashy storm-petrels in southern California were not measured or monitored prior to the 1990s; however, Carter *et al.* (2008, p. 5) suggest that higher organochlorine concentrations may have contributed to lower hatching success and lower population size of ashy storm-petrels in southern California during the 1960s to 1980s than observed in the 1990s. During 1995 to 1997, a higher proportion of broken eggs were found than in 2005 to 2007 (McIver *et al.* in preparation). McIver *et al.* (in preparation) reported that hatching success at Santa Cruz Island differed significantly among years, with lowest success in 1996 (53.5 percent, n = 187) and highest success in 2006 (82.0 percent, n = 61). McIver *et al.* (in preparation) speculated that DDE-induced eggshell thinning likely contributed to lower hatching success at Santa Cruz Island from 1995 to 1997 and likely explained (in part) the relatively high proportion of broken eggs found at all Santa Cruz Island locations monitored. Carter *et al.* (2008, p. 5) concluded that DDE and total PCBs decreased to much lower levels between 1992 and 2008, and that, from 1992 to 1997, relatively high contaminant levels and associated eggshell thinning and premature embryo deaths likely were significant contributing factors to relatively low hatching success observed during this period.

Based on information available to the Service regarding organochlorine contamination of ashy storm-petrels, ashy storm-petrels have been exposed (likely, through their food resources) to organochlorine contaminants throughout their foraging range, but this exposure has likely been greater for ashy storm-petrels breeding in southern California and foraging in nearby waters. We conclude that organochlorine contaminants are still present in ashy storm-petrels, but preliminary results indicate that current levels of contaminants are much reduced compared to levels observed in the 1990s. In addition, fewer numbers of broken eggs and higher hatching success of ashy storm-petrels at Santa Cruz Island may be explained, in part, by reduced organochlorine contamination. Therefore we consider this threat to be insignificant to ashy storm-petrels at Southeast Farallon Island, at the Channel Islands, or rangewide.

Ingestion of Plastics

The petitioner asserts that the ashy storm-petrel is threatened by the ingestion of plastic particles floating at the ocean's surface (CBD 2007, pp. 20-21). Ingestion of plastics by seabirds is well-documented, and plankton-feeding seabirds, such as ashy storm-petrels, are more likely to confuse plastic pellets for their prey than are fish-eating seabirds; therefore, the plankton-feeding seabirds show a higher incidence of ingested plastics (Azzarello and Van Vleet 1987, p. 295). Two studies have documented the presence of plastic particles in storm-petrel species that foraged in waters of the California Current. Blight and Burger (1997, p. 323-324) dissected seabirds caught as bycatch in the eastern North Pacific; they found plastic in all eight storm-petrel (Leach's and fork-tailed) carcasses they collected, and the number of pieces of plastic in each bird was highest for the two species of storm-

petrels and in a Stejneger's petrel (*Pterodroma longirostris*). Shuiteman (2006, p. 23) found plastic particles in regurgitation samples of Leach's storm-petrels caught in mist nets on Saddle Rock, Oregon.

At-sea surveys for plastic particles off the coast of southern California (Moore *et al.* 2004, pp.1-6) in 2000 and 2001 are the only research that the Service is aware of that has attempted to quantify the amount of plastics observed in waters within or near the foraging range of ashy storm-petrels. Moore *et al.* (2004, pp. 2-3) reported densities of up to 7.25 pieces per cubic meter of water sampled for plastic pieces that were less than about 0.2 inches (5 millimeters) in diameter. As stated in the **Species Description** section above, like other storm-petrel species, ashy storm-petrels feed by picking prey from the surface of the ocean. Because plastic ingestion by storm-petrels has been well-documented, we assume that ashy storm-petrels also ingest plastic. However, the incidence of plastic ingestion by ashy storm-petrels has not been specifically evaluated (such as by necropsy or analysis of regurgitations). In addition, plastic ingestion has not been reported as a cause of death of ashy storm-petrel chicks or adults (Ainley *et al.* 1990, pp. 128-162; McIver 2002, pp. 17-49), and the degree to which the ingestion of plastic may affect ashy storm-petrels is not known (Ainley 1995, p. 9).

Based on information available to the Service regarding the presence and availability of plastic particles in the marine environment used by ashy storm-petrels, and the propensity for storm-petrels to ingest plastic, we recognize that nearly all ashy storm-petrels have the opportunity to ingest plastic, but we have no information on the rate of ingestion. We also recognize plastic particles will continue to be ubiquitous in the future in the waters of the California Current, where ashy storm-petrels feed. Although plastic ingestion has been observed in other species of storm-petrels and likely occurs with ashy storm-petrels, our review of the available information revealed no direct evidence that suggests ashy storm-petrels are currently being negatively affected by this potential threat. Therefore, we consider this threat to be insignificant to ashy storm-petrels at Southeast Farallon Island, at the Channel Islands, or rangewide.

Summary of Factor E

Regarding other natural or manmade factors affecting the continued existence of the species, the Service concludes that the presence of bright lights associated with commercial fishing operations (for example, market squid fishery and tuna aquaculture) at ashy storm-petrel breeding locations and (to a lesser extent) near large at-sea congregations of ashy storm-petrels, causes mortality in adult and fledgling ashy storm-petrels through direct collision with lights and predation, but is unlikely to affect the species at a population level.

The Service concludes that the presence of constantly shining lights (at night) on oil and gas production platforms (current and future) off the California coast, causes mortality in foraging ashy storm-petrels, which may collide with lights or become exhausted after constant association with the lights. However, there is no information suggesting that populations are currently unstable or decreasing as a result of these mortality sources.

The Service concludes that potential oil spills from existing or proposed platforms pose a threat to small numbers of ashy storm-petrels off southern California, and that spills from oil tankers moving off the coast of California may pose a threat to foraging and flocking ashy storm-petrels. The scale of threat would depend on the size, location, and timing within year of the spill. The Service concludes that it is unlikely that such oil spills will be of a size that would pose a significant threat to ashy storm-petrels.

The Service concludes that organochlorines still contaminate eggs of ashy storm-petrels but that current observed levels of contaminants are reduced, compared to levels observed in eggs collected during the 1990s, and that organochlorine contamination does not appear to be reducing hatching success of ashy storm-petrels. The Service concludes that, like other storm-petrels, ashy storm-petrels likely ingest plastic while foraging, but the degree to which plastic ingestion threatens ashy storm-petrels is not known and is not considered to be a threat. Finally, we have no reason to believe that any of these threats are likely to increase in the foreseeable future. Therefore, we consider these threats to be insignificant to ashy storm-petrels at Southeast Farallon Island, at the Channel Islands, or rangewide.

Foreseeable Future

In considering the foreseeable future as it relates to the status of the ashy storm-petrel, we take into consideration our analysis of the potential threats to the species as described above. No data are currently available regarding adult life span of the species; however, ashy storm-petrels are thought to live on the order of 20 to 25 years (Sydeman *et al.* 1998b, p.7). Oceanographic and climatic processes potentially affecting ashy storm-petrels operate on the order of single year to multi-decadal scales. For example, the marine environment off the west coast of North America is affected by oceanographic processes, such as El Niño and La Niña, which occur on annual scales, and the Pacific Decadal Oscillation, which occurs on decadal scales. Based on historical and recent trends of oceanographic phenomena, such as El Niño events, and our above analysis of how ashy storm-petrels are affected by El Niño events, we conclude the potential threat from changes in the ocean environment over the timescales at which they currently operate are not significant to the ashy storm-petrel.

Principle among the potential threats to the ashy storm-petrel is mortality from avian predators. There was likely a decline in the population of ashy storm-petrels at Southeast Farallon Island in the mid-1970s to the early 1990s (Sydeman *et al.* 1998a, p. 443). However, more recent data (Warzybok and Bradley 2007, p. 17) suggest an increasing population of ashy storm-petrels at Southeast Farallon Island. Additionally, mortality due to predation from owls seems to show a decreasing trend over recent years, and mortality due to predation from skunks is likely a sporadic event without a specific identifiable time element. Given these recent trends, we do not expect an increase in mortality of ashy storm-petrels in any one location or across their range.

Ashy storm-petrel breeding locations occur primarily on federally owned and managed lands in the United States and Mexico. A broad network of Federal, State, and International protections have been and are currently in place that protect the ashy storm-petrel. Based on historical and recent trends of land management policies on federally owned lands in the United States, we find it unlikely that substantial changes to current land management practices or regulations that would negatively affect ashy storm-petrels are likely to occur in the near term, and any changes are most likely on the order of decades in the future.

Based on the trend to restrict use of attracting lights used in the market squid fishery, we conclude this potential threat is not likely to increase over time. The threat of eggshell thinning from organochlorine exposure has steadily decreased over time and is not likely to increase in the future because their use is banned. The

incidence of oil spills of sufficient size to significantly affect ashy storm-petrels is largely stochastic. There is no evidence of an increasing trend in the incidence of spills, and based on increased measures to ensure the safety of oil and gas transportation, we do not consider this potential threat to increase in the future. Plastics ingestion is currently not a significant threat to the ashy storm-petrel and, based on historic information, we do not believe this threat would increase in the future. Therefore, we consider the foreseeable future to encompass the timeframe over which the effects of potential threats as described above can be reasonably anticipated.

Finding

We assessed the best available scientific and commercial information regarding threats faced by the ashy storm-petrel. We reviewed numerous information sources including literature cited in the petition, information in our files, and information submitted to us following our 90–day petition finding (73 FR 28080; May 15, 2008) related to potential threats to the ashy storm-petrel (climate change, ocean acidification, sea level rise, predation, light attraction, contamination by chlorinated hydrocarbons, and plastic pollution) on ashy storm-petrels and the California Current marine environment.

We found evidence that the ashy storm-petrel is less affected by El Niño events than most seabirds in the California Current System. This is not to imply that ashy storm-petrels are not affected by El Niño events; fewer numbers of ashy storm-petrels may attempt to breed during El Niño events, and timing of breeding within year may be slightly delayed. However, ashy storm-petrels show low between-year variability in fledgling production, and unlike other seabirds, have bred in every year for which there are observations of nesting activities. Because ashy storm-petrels forage over a wide geographic area and have an extended egg-laying and chick-rearing period, they are likely more able to exploit prey resources that may be more scarce and patchily distributed. Ocean acidification is occurring, but current research does not demonstrate a link between ocean acidification and reduced abundance and survival of prey items on which ashy storm-petrels depend, nor does our analysis or current research indicate that reproductive success of ashy storm-petrels is affected by ocean acidification. Based on current projections of sea level rise that predict a 3-ft (0.9-m) rise by 2100, we found that the majority of nesting habitat is at least 4.9 ft (1.5 m) above current sea level. The exception is some nesting habitat in the Channel Islands at Cavern Point Cove Caves that may become submerged. However, this location represents a small percentage of the rangewide nesting population, and we do not consider this to be a significant threat. Introduced grasses are present on Southeast Farallon Island; however, we do not have specific information that quantifies the amount of suitable nesting habitat at Southeast Farallon Island, or other breeding locations, that may be unavailable to ashy storm-petrels because of introduced grasses. In addition, the petitioner claims that introduced grasses are widespread at all breeding locations. For example, grasses do not occur in sea caves or on most offshore rocks where ashy storm-petrels nest.

Therefore, we find that the ashy storm-petrel is not threatened by the present or threatened destruction, modification, or curtailment of the species' habitat or range, now or in the foreseeable future.

While collection of ashy storm-petrel adults and eggs has occurred throughout its breeding range over the past 124 years, the rate of specimen collection has been low and sporadic and not concentrated in any one location. The number of specimens collected to date is very small compared to the current estimated total population size. Consequently, we find that the ashy storm-petrel is not threatened by overutilization of the species for commercial, recreational, scientific, or educational purposes now or in the foreseeable future.

Predation by western gulls and owls at Southeast Farallon Island does not pose a significant threat to the ashy storm-petrel. Although populations of ashy storm-petrels at Southeast Farallon Island may have decreased from 1979 to 1992 as a result of predation, we find that the best available scientific information indicates that populations are increasing in recent years. While predation of ashy storm-petrels is likely to continue within the foreseeable future, we find that predation at Southeast Farallon Island is not a significant threat to the species. Mortality due to predation by island spotted skunks at Santa Cruz Island is not a significant threat to the ashy storm-petrel. Although sporadic island spotted skunk predation events will likely continue over time, there is no information suggesting that spotted skunk predation is a significant threat to the species. We found evidence that deer mice and house mice are likely predators or scavengers of small numbers of ashy storm-petrel eggs and small chicks, but this likely does not substantially affect the productivity of the species. Consequently, we find that the ashy storm-petrel is not threatened by disease or predation now or in the foreseeable future.

Based on our review of the best available information, we find there is a network of existing regulatory mechanisms that serve to protect the species. As much as 75 percent of ashy storm-petrel breeding locations are included in marine reserves designed to limit the use of bright lights associated with squid fishery activities, and the implementation of the Market Squid Fishery Management Plan should be effective in offering protection for ashy storm-petrels. We found no support for the petitioner's claim that a lack of regulatory mechanisms regarding the MBTA poses a threat to the ashy storm-petrel. While compliance with MBTA is not universally applied, this law provides protections from killing, taking, and possessing the ashy storm-petrel. We find that a lack of regulatory mechanisms to control GHG does not threaten the ashy storm-petrel, because we determined that processes associated with climate change, such as ocean acidification, sea level rise, and possible increases in sea surface temperatures (see Factor A) have not been shown to directly impact the ashy storm-petrel. Therefore, we find the ashy storm-petrel is not threatened by the inadequacy of existing regulatory mechanisms.

Ashy storm-petrels are attracted to bright lights. Bright lights associated with the market squid fishery may result in the reduced number of birds within specific geographic areas; however, our review of the available information does not indicate that the threat from market squid fishery lighting is contributing to mortality that results in large-scale population declines. Ashy storm-petrels that congregate in Monterey Bay in the fall months do not appear to be at particular risk from squid fishing activities because the available information indicates much of the fishing occurs during the day, whereas ashy storm-petrels feed exclusively at night. Bright lights on offshore energy platforms may contribute to small levels of ashy storm-petrel mortality; however, we found no indication that this is a significant threat to the species. Furthermore, our review of the available information does not suggest that the threat of lighting from the market squid fishery or other sources is expected to increase to any large degree in the foreseeable future. Therefore, we do not consider bright lights associated with market squid fishing or offshore energy

platforms to be a significant threat to the ashy storm-petrel.

We find oil pollution does not pose a significant threat to the ashy storm-petrel. Although there is a high probability of spills from oil production platforms or tankers within the range of foraging ashy storm-petrels, this source of mortality is not expected to result in severe impacts to major portions of the population. We conclude that a relatively small proportion of the population would likely be exposed to any single oil spill, and, consequently, oil spills are not considered to be a significant threat to ashy storm-petrels. We find organochlorine contamination does not pose a significant threat to ashy storm-petrel, because this threat likely occurred in the past, is currently much reduced, and that contamination of ashy storm-petrels by organochlorines currently does not significantly reduce hatching success. Ingestion of plastic by ashy storm-petrels does not pose a significant threat to the species. We found evidence that small plastic particles occur at the ocean's surface within the feeding range of ashy storm-petrels, and we found that many species of procellariids, including storm-petrels, ingest plastics. It is likely that ashy storm-petrels ingest plastic while foraging; however, we found no direct evidence, such as dead chicks or adults, underweight chicks or adults, or observation of plastics in regurgitations that indicates that plastic ingestion is a threat to ashy storm-petrels. Therefore, we find the ashy storm-petrel is not threatened by other natural or manmade factors now or in the foreseeable future.

On the basis of our status review, we conclude the listing of the ashy storm-petrel rangewide is not warranted.

Significant Portion of the Range (SPR) Analysis

The Act defines an endangered species as one ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as one ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Having determined that the ashy storm-petrel does not meet the definition of a threatened or endangered species, we must now consider whether there are any significant portions of the range where the species is in danger of extinction or likely to become so in the foreseeable future.

On March 16, 2007, a formal opinion was issued by the Solicitor of the Department of the Interior, ''The Meaning of 'In Danger of Extinction Throughout All or a Significant Portion of Its Range' '' (DOI 2007). We have summarized our interpretation of that opinion and the underlying statutory language below. A portion of a species' range is significant if it is part of the current range of the species and is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability of the species to persist.

The first step in determining whether a species is endangered in an SPR is to identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose in analyzing portions of the range that are not reasonably likely to be significant and threatened or endangered. To identify those portions that warrant further consideration, we determine whether there is substantial information indicating that (i) the portions may be significant and (ii) the species may be in danger of extinction there. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that are unimportant to the conservation of the species, such portions will not warrant further consideration.

We acknowledge that the Ninth Circuit Court of Appeals decision in *Defenders of Wildlife* v. *Norton*, 258 F.3d 1136 (2001) can be interpreted to require that in determining whether a species is threatened or endangered throughout a significant portion of its range, the Service should consider whether lost historical range (as opposed to current range) constitutes a significant portion of the range of the species at issue. While this is not our interpretation of the case or the statute, we conclude that there are no such areas for the ashy storm-petrel. We have no evidence to suggest that the occupied range of the ashy storm-petrel is different from its historical range, and there is no evidence to suggest a range contraction for the species. Therefore, we will not further consider lost historical range as a significant portion of the species range.

The ashy storm-petrel breeds in two main geographic areas: in the northern portion of the species range on Southeast Farallon Island, where approximately 36 to 53 percent of the entire population occurs, and in the southern portion of the species range on the California Channel Islands, where approximately 44 to 60 percent of the breeding population occurs. About 1.5 to 2 percent nests in Mexico. The two California areas are geographically separated by approximately 250 miles (402 km); however, there is no indication that the populations are genetically different, which is logical, since the ashy storm-petrel ranges widely in foraging activities. Southeast Farallon Island is located in the California Current, a cold water current; in contrast, the California Channel Islands are more affected by the Davidson Current, which is a comparatively warm water current. No other areas within the species' range contain a significant number of breeding locations. Ashy storm-petrels occur at their breeding colonies nearly year-round and occur in greater numbers from February through October (Ainley 1995, p. 5). For this reason, we consider breeding locations to be most significant to the species. The loss of all breeding ashy storm-petrels at either Southeast Farallon Island or in the Channel Islands would reduce the rangewide population of the species by approximately 50 percent, which could result in a decrease in the ability of the species to persist.

To determine whether Southeast Farallon Island or the Channel Islands may warrant further consideration as a significant portion of the range, we evaluated these two areas of the range of the ashy storm-petrel. Under our five-factor analysis for the ashy storm-petrel rangewide, we did not find any threats that were significant to the species rangewide or that were concentrated in any one particular area. The potential threat of ocean acidification, and reduced ocean primary productivity, is a rangewide threat that we concluded was not significant. This is due to the ability of the ashy storm-petrel to forage more widely than other species and because the ashy storm-petrel has not demonstrated population breeding failures as seen in other seabird species. The threat of human degradation of nesting habitats may be more evident in the Channel Islands as compared to Southeast Farallon Island, but we did not find it to be a significant threat in either area. We did find potential threats were different in the northern portion of the range compared to the southern portion of the range. Our rangewide analysis was conducted at a stepped-down geographic scale due to the natural concentration of breeding birds at Southeast Farallon Island and in the Channel Islands. On Southeast Farallon

Island, we identified a potential threat of mortality due to predation by western gulls and burrowing owls. Populations of ashy storm-petrels at Southeast Farallon Island may have decreased from 1979 to 1992 as a result of predation (Sydeman *et al.* 1998a, p. 443); however, more recent information suggests that populations are increasing in recent years (Warzybok and Bradley 2007, p. 17). Predation of ashy storm-petrels is likely to continue within the foreseeable future; however, as described above in our five-factor analysis of the rangewide population, we find that predation at Southeast Farallon Island is not a significant threat to the species. This particular predation threat from western gulls is not found in the Channel Islands; however, although predation from skunks was identified as a potential threat, we found it not to be a significant threat. Rising sea levels due to climate change may affect a small portion of the breeding population in the Channel Islands, but the large majority of nesting sites are above projected sea level rise into 2100. The use of bright, attracting lights in the market squid fishery was identified as a potential threat to breeding birds in the Channel Islands, but not to breeding birds on Southeast Farallon Island due to regulatory restrictions around the island. Our analysis of the potential threat of squid boat lights to ashy storm-petrels in the Channel Islands concluded that some low level of mortality may occur, but our review of the available information did not indicate that any such mortality would lead to a large-scale population decline and we found that adequate regulatory protections are in place. The threat of an oil spill is greater in the Channel Islands due to a greater concentration of oil producing facilities; however, predicting the possible effects of an oil spill from an offshore energy production platform is difficult and would depend on the timing and amount of a spill, prevailing ocean currents and conditions, and locations of ashy storm-petrels at the time of a spill. Similarly, the threats of plastic ingestion and organochlorine contaminants may occur in both the northern and southern portions of the ashy storm-petrel's range, but these threats are not considered to be significant anywhere within the species' range.

Therefore, based on the analysis above, we conclude that neither the ashy storm-petrels on the Southeast Farallon Island or the Channel Islands are in danger of extinction (the second step in determining whether an area is a significant portion of the range), because there is not substantial information to suggest that the ashy storm-petrel in either portion may become an endangered species within the foreseeable future.

We request that you submit any new information concerning the status of, or threats to, the ashy storm-petrel to the address listed in the **ADDRESSES** section of this notice whenever it becomes available. New information will help us monitor this species and encourage its conservation. If an emergency situation develops for this species or any other species, we will act to provide immediate protection.

References Cited

A complete list of all references cited herein is available, upon request, from the Arcata Fish and Wildlife Office (see **ADDRESSES**).

Author

The primary authors of this notice are the staff of the Arcata Fish and Wildlife Office (see **ADDRESSES**).

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 11, 2009.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E9–19700 Filed 8–18–09; 8:45 am]

BILLING CODE 4310–55–S

Notices

Federal Register
Vol. 74, No. 159
Wednesday, August 19, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Form FNS–380–1, Supplemental Nutrition Assistance Program's Quality Control Review Schedule

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collection of Form FNS–380–1, Supplemental Nutrition Assistance Program's Quality Control Review Schedule. The proposed collection is a revision of collection currently approved under OMB No. 0584–0299.

DATES: Written comments must be submitted on or before October 19, 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 has 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; (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Tiffany Susan Wilkinson, Program Analyst, Quality Control Branch, Program Accountability and Administration Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 822, Alexandria, VA 22302. You may also download an electronic version of this notice at *http://www.fns.usda.gov/fsp/rules/regulations/default.htm* and comment via e-mail at *SNAPHQ–Web@fns.usda.gov* or use the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All written comments 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 822, Alexandria, Virginia 22302.

All responses to this notice will be included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instruction should be directed to Tiffany Susan Wilkinson at (703) 305–2410.

SUPPLEMENTARY INFORMATION:

Title: Quality Control Review Schedule.

OMB Number: 0584–0299.

Expiration Date: January 31, 2010.

Type of Request: Revision of a currently approved collection.

Abstract: FNS 380–1 is the Supplemental Nutrition Assistance Program's (SNAP) Quality Control (QC) Review Schedule which collects QC and household characteristics data. The information needed to complete this form is obtained from the SNAP case record and state quality control findings. The information is used to monitor and reduce errors, develop policy strategies, and analyze household characteristic data. We estimate that it takes 1.05 hours per response and .0236 hours per record for recordkeeping to complete the form.

The annual reporting burden for this collection is 58,065 hours and the annual recordkeeping burden for this collection is 1,322 hours. Overall, the annual reporting and recordkeeping burden associated with the completion of the FNS 380–1 is being decreased from 61,352 hours to 58,868 hours. This is a 2,484 hour decrease in the current burden, which is a result of the State agencies' reduction in the number of cases being pulled for review over the minimum required review amount. We previously cleared the reporting and recordkeeping burden for this form under Office of Management and Budget (OMB) clearance number 0584–0299. OMB approved the burden through January 31, 2010. Based on the most recent table of active case sample sizes and completion rates (FY 2007), we estimate 56,065 FNS 380–1 worksheets and interviews will now be completed annually.

Affected Public: Individuals or Households.

Estimated Number of Reporters: 56,065 households.

Estimated Number of Reports per Household: 1.

Estimated Hours per Report: 1.05 hours.

Total Annual Reporting Burden: 58,868 hours.

Affected Public: State or local governments.

Estimated Number of Respondents and Record keepers: 53 State agencies.

Estimated Total Number of Responses per Year: 56,065 responses.

Estimated Hours per Reporting Response: 1.05 hours.

Estimated Number of Records: 56,065 records.

Estimated Number of Records per Record keeper: 1,057 records.

Estimated Total Reporting: 58,868.

Estimated Hours per Recordkeeping: 0.0236 hour.

Estimated Total Annual Record Keeping Burden: 1,322 hours.

Total Annual Reporting and Record Keeping Burden: 60,190 hours.

Estimated Grand Total: 119,058.

Dated: August 11, 2009.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. E9–19844 Filed 8–18–09; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fresno County Resource Advisory Committee will be meeting in

Clovis, California on September 16th. The purpose of this meeting will be to discuss monitoring of the projects funded through the amended and reauthorized Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 110–343) for expenditure of Payments to States Fresno County Title II funds and to begin discussing the timeline for accepting project applications for the next funding cycle.

DATES: The meeting will be held on September 16, 2009 from 6 p.m. to 8 p.m. in Clovis, CA.

ADDRESSES: The meeting will be held at the Sierra National Forest Supervisors Office, 1600 Tollhouse Rd. Clovis, CA. Send written comments to Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, c/o Sierra National Forest, High Sierra Ranger District, 29688 Auberry Road, Prather, CA 93651 or electronically to *rekman@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, (559) 855–5355 ext. 3341.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Fresno County Title II project matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Agenda items to be covered include: (1) Monitoring (2) Project submission timelines.

Dated: August 12, 2009.

Ray Porter,

District Ranger.

[FR Doc. E9–19760 Filed 8–17–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 0612242720–91220–04]

Coastal and Estuarine Land Conservation Program—Re-opening of FY 2010 Competition

AGENCY: NOS Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of funding availability; amendment.

SUMMARY: NOAA publishes this notice to amend the Federal Funding Opportunity (NOS–OCRM–2010–2001655) entitled ''Coastal and Estuarine Land Conservation Program (CELCP)—FY 2010 Competitive List'' which was originally announced in the Federal Register on January 2, 2009 (74 FR 82). This notice announces changes to the eligibility criteria, program priorities, and selection criteria to implement the requirements of the Omnibus Public Lands Management Act of 2009 (March 30, 2009). As a result of these changes, the application period for proposals is re-opened to provide eligible states and territories with the opportunity to adjust project proposals to comport with the changes, which are summarized in this notice and more fully described in the full Federal Funding Opportunity (FFO) Announcement for this competition.

DATES: Final Applications must be received by Grants.gov (*http://www.grants.gov*) or be delivered to the OCRM office (address listed in this announcement) no later than 6 p.m. EDT on September 18, 2009. No facsimile or electronic mail applications will be accepted. Paper applications delivered after the deadline will not be accepted, regardless of postmark date. Any application received after the deadline will not be considered for funding in this competition.

Applications delivered in hard copy will be date and time stamped when they are received. Applications submitted through Grants.gov will have a date and time indication on them. Please Note: It may take Grants.gov up to two (2) business days to validate or reject the application. Please keep this in mind in developing your submission timeline.

ADDRESSES: All application materials can be found at the grants.gov portal at *http://www.grants.gov* or NOAA's CELCP Web site under ''Funding Opportunities'' (*http://coastalmanagement.noaa.gov/land/celcp_fundingop.html*). They may also be requested by contacting the program officials identified below.

To Request an Application Package or for Further Information Contact: Elaine Vaudreuil (301) 713–3155 ext 103; E-mail: *Elaine.Vaudreuil@noaa.gov;* Fax: (301) 713–4370 or Elisabeth Morgan (301) 713–3155 ext 166; E-mail: *Elisabeth.Morgan@noaa.gov;* Fax: (301) 713–4367.

SUPPLEMENTARY INFORMATION:

The National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), announces that it is amending the FY 2010 solicitation for the Coastal and Estuarine Land Conservation Program (CELCP), originally published on January 2, 2009 (74 FR 82), to implement requirements in the Omnibus Public Lands Management Act of 2009, Public Law 111–11 (March 30, 2009). The program makes the following changes to the program requirements: at least 15% of appropriated funds shall now be available for CELCP projects that benefit National Estuarine Research Reserves; the program allows newly-eligible sources of in-kind match, including lands or interests in lands (easements) held by qualified non-governmental organizations and costs associated with lands or easements proposed for use as in-kind match, such as land acquisition expenses, land management planning, remediation, restoration or enhancement, that were not previously eligible; the value of in-kind match properties will now be based on the appraised value of the land or easement at the time of grant closing (which, for the purposes of this competition, valuation should be conducted within the nine months preceding the award expiration date) rather than at the time the property is acquired or donated; applicants must demonstrate that property sellers are willing participants in negotiations for sale of property at a mutually agreeable price; coastal states and territories must now ensure that proposed projects complement working waterfront needs; greater emphasis will be placed on applicants' ability to demonstrate successful leveraging of funds; and NOAA may now select projects from this competition for additional FY 2010 funding requested in the President's Budget as part of EPA's Great Lakes Restoration Initiative, if appropriated.

Due to the amendments to the program, the due date for applications is extended until September 18, 2009. It is anticipated that projects funded under this announcement will still have a grant start date between March 1, 2010, and October 1, 2010.

Under this amended solicitation, NOS allows for modifications to applications originally received under the initial announcement, and allows new applications for projects from eligible applicants. Any proposal that was submitted to the initial solicitation within the initial deadline is not required to be resubmitted to be considered under this amendment. However, changes to the solicitation announced by this amendment may impact the viability or scoring of proposals submitted by applicants in response to the initial announcement. Applicants may revise proposals to address these changes; however, any revisions to such proposals must be

submitted by the new deadline in order for the revised changes to be considered under this amended solicitation. An applicant may submit up to three projects for this competition. The maximum amount that may be requested for the Federal share of each project is $3,000,000.

The following sections of that Federal Funding Opportunity have been amended to reflect the changes announced in this notice: ''Dates,'' ''Funding Opportunity Description,'' ''Award Information,'' ''Eligibility Information,'' ''Application and Submission Information'', ''Application Review Information,'' and ''Award Administration Information''.

Electronic Access: The full text of the full funding opportunity announcement for this program can be accessed via the Grants.gov Web site at *http://www.grants.gov* or NOAA's CELCP Web site under ''Funding Opportunities'' (*http://coastalmanagement.noaa.gov/land/celcp_fundingop.html*). The announcement will also be available by contacting the program officials identified under **FOR FURTHER INFORMATION CONTACT.** Applicants must comply with all requirements contained in the full funding opportunity announcement.

Statutory Authority: Public Law 111–11 (March 30, 2009) (formerly 16 U.S.C. l456d).

Funding Availability: NOAA anticipates that approximately 20–60 projects may be included on a competitively-ranked list of projects that are ready and eligible for funding in FY 2010. Funding for projects is contingent upon availability of Federal appropriations for FY 2010. Applicants are hereby given notice that funds have not yet been appropriated for this program. The FY 2010 President's request for CELCP is $15 million, and the request for EPA's Great Lakes Restoration Initiative includes an additional $5 million for CELCP projects in Great Lakes states. Annual appropriated funding levels for the CELCP have ranged from $8–$50 million from FY 2002–2009. Eligible applicants may submit up to three projects for this competition. The maximum amount that may be requested for the Federal share of each project is $3,000,000.

The standard grant award period is 18 months. NOAA may extend the performance period for project grants up to an additional 18 months (for a maximum total performance period of 3 years) if circumstances warrant and if progress on the project is being demonstrated.

CFDA: 11.419 Coastal Management Administration Awards.

Eligibility: Only coastal states and territories with a Coastal Zone Management Program or National Estuarine Research Reserve approved under the CZMA and which have submitted a draft CELCP plan on or before February 24, 2009, are eligible to participate in this competition. A list of the status of each state and territory's CELCP plan, including the states and territories eligible for this competition, is available at *http://coastalmanagement.noaa.gov/land/media/CELCPplans_web.pdf.* The designated lead agency for implementing CELCP in each state or territory (''lead agency'') is eligible to submit projects for funding under this competition. A list of lead contacts for each state and territory is available on the CELCP Web site at *http://coastalmanagement.noaa.gov/land/meadia/celcpstateleadcontacts.pdf,* or by contacting the program officials identified in **FOR FURTHER INFORMATION CONTACT**. The designated lead agency may solicit, and include in their application, project proposals from additional eligible state or territorial agencies, local governments as defined at 15 CFR 24.3, or entities eligible for assistance under section 306A(e) of the CZMA (16 U.S.C. 1455a(e)), provided that each has the authority to acquire and manage land for conservation purposes. Interested parties should contact the appropriate CELCP lead in each state or territory.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs'' for states that participate in this process. A list of the participating states and the clearinghouse points of contact can be found at *http://www.whitehouse.gov/omb/grants/spoc.html.*

Limitation of Liability

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds. Recipients and subrecipients are subject to all Federal laws and agency policies, regulations and procedures applicable to Federal financial assistance awards.

National Environmental Policy Act (NEPA):

NEPA and the Council on Environmental Quality (CEQ) implementing regulations (40 CFR parts 1500 through 1508) require that an environmental analysis be completed for all major Federal actions significantly affecting the environment. NEPA applies to the actions of Federal agencies and may include a Federal agency's decision to fund non-Federal projects under grants and cooperative agreements. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://nepa.noaa.gov/,* including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.ped* and CEQ implementation regulations, *http://ceg.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm.* Consequently, as part of all project application packages, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7686) are applicable to this solicitation.

Paperwork Reduction Act:

This collection of information contains requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B and SF–LLL and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective

control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046 and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866:

It has been determined that this notice is not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism):

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act:

Prior notice and comment are not required under 5 U.S.C. 553, or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)). Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Dated: August 13, 2009.

John H. Dunnigan,

Assistant Administrator, National Ocean Service, NOAA.

[FR Doc. E9–19821 Filed 8–18–09; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

Coastal Nonpoint Pollution Control Program: Approval Decision on the New Jersey Coastal Nonpoint Pollution Control Program

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and Environmental Protection Agency.

ACTION: Notice of intent to approve the New Jersey Coastal Nonpoint Program; invitation for public comment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) and Environmental Protection Agency (EPA) invite public comment on the agencies' intention to fully approve New Jersey's Coastal Nonpoint Source Pollution Control Program. Federal approval of such state programs is required under the Coastal Zone Act Reauthorization Amendments. Final approval would satisfy conditions that the agencies previously identified to the State to ensure conformity with required guidance specifying management measures to protect coastal waters from nonpoint source pollution.

DATES: Individuals or organizations wishing to submit comments on the draft decision document should do so by September 18, 2009.

ADDRESSES: Comments should be made to: John King, Chief, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, phone (301) 713–3155, x188, e-mail *John.King@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Allison Castellan, Coastal Programs Division, (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, phone (301) 713–3155, x125, e-mail *Allison.Castellan@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Notice is hereby given of the intent to fully approve the New Jersey Coastal Nonpoint Pollution Control Program (coastal nonpoint program) and of the availability of the draft decision document on conditions for the New Jersey coastal nonpoint program. Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA), 16 U.S.C. 1455b, requires States and Territories with coastal zone management programs that have received approval under section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint programs. Coastal States and Territories were required to submit their coastal nonpoint programs to NOAA and EPA for approval in July 1995. NOAA and EPA conditionally approved the New Jersey coastal nonpoint program on November 18, 1997. NOAA and EPA have drafted a decision document describing how New Jersey has satisfied the conditions placed on its program and therefore has a fully approvable coastal nonpoint program.

NOAA and EPA are making the draft decision document for the New Jersey coastal nonpoint program available for a 30-day public comment period.

Copies of the draft decision document can be found on the NOAA Web site at *http://coastalmanagement.noaa.gov/czm/16217/findings.html* or may be obtained upon request from: Allison Castellan, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, phone (301) 713–3155, x125, e-mail *Allison.Castellan@noaa.gov.*

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: August 11, 2009.

John H. Dunnigan,

Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

July 24, 2009.

Michael H. Shapiro,

Acting Assistant Administrator, Office of Water, Environmental Protection Agency.

[FR Doc. E9–19820 Filed 8–18–09; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–839]

Carbazole Violet Pigment 23 from India: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Sean Carey or Dana Mermelstein, 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) (202) 482–3964 and (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 27, 2009, in response to a timely request from Alpanil Industries, Ltd. (Alpanil) the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on carbazole violet pigment 23 (CVP–23) from India. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 74 FR 5821 (February 2, 2009). This administrative review covers the period January 1, 2007 through December 31, 2007. The preliminary results of this administrative review are currently due no later than September 2, 2009.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(1), the Department shall issue preliminary results in an administrative review of a countervailing duty order within 245 days after the last day of the anniversary month of the order for which the administrative review was requested. However, if the Department determines that it is not practicable to complete the review within the aforementioned specified time limits, section

751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) allow the Department to extend the 245-day period to 365 days.

Pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we determine that it is not practicable to complete the results of this review within the original time limit. The Department needs additional time to analyze the supplemental questionnaire responses, which were recently submitted, and to determine whether any additional information is required. In accordance with section 751(a)(3)(A) of the Act, the Department has decided to extend the time limit for the preliminary results from 245 days to 365 days; the preliminary results will now be due no later than December 31, 2009. Unless extended, the final results continue to be due 120 days after the publication of the preliminary results, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1) of the Department's regulations.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: August 10, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–19923 Filed 8–18–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

NOAA Ocean and Coastal Mapping Contracting Policy

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Soliciting Public Comments on Draft Revised NOAA Contracting Policy.

SUMMARY: The NOAA National Ocean Service (NOS) is soliciting public comments on the draft NOAA Ocean and Coastal Mapping Contracting Policy. Current NOAA contracting policy and relevant legislation are available for review on the following Web site: *http://www.nauticalcharts.noaa.gov/ocs/hsrp/hsrp.htm.* Written public comments should be submitted to Roger L. Parsons by September 9, 2009.

Date and Time: Written public comments are due by September 9, 2009.

ADDRESSES: Submit written comments by mail, e-mail, or fax to Roger L. Parsons using one of the following: (1) Mail—Roger L. Parsons, NOAA Office of Coast Survey (N/CS), 1315 East West Highway, Silver Spring, MD 20910; (2) e-mail—*Roger.L.Parsons@noaa.gov;* or (3) fax (301) 713–4019.

FOR FURTHER INFORMATION CONTACT: Roger L. Parsons, NOAA Office of Coast Survey (N/CS), 1315 East West Highway, Silver Spring, MD 20910; e-mail: *Roger.L.Parsons@noaa.gov;* or phone: 301–713–2776 x205.

SUPPLEMENTARY INFORMATION: This is a draft NOAA Ocean and Coastal Mapping Contracting Policy. Current NOAA contracting policy and relevant legislation are available for review on the following Web site: *http://www.nauticalcharts.noaa.gov/ocs/hsrp/hsrp.htm.*

Background

The current NOAA Hydrographic Services Contracting Policy was published in the **Federal Register** on August 15, 2006. The proposed revision to this contracting policy (Draft NOAA Ocean and Coastal Mapping Contracting Policy) is in response to provisions of the Ocean and Coastal Mapping Integration Act of 2009.

Draft NOAA Ocean and Coastal Mapping Contracting Policy

The National Oceanic and Atmospheric Administration (NOAA) recognizes that qualified commercial sources can provide competent, professional, and cost-effective ocean and coastal mapping services, including hydrographic services, to NOAA in support of its diverse surveying, mapping and charting missions. NOAA also recognizes that providing mapping services is a core mission requirement of NOAA under the 1947 Coast and Geodetic Survey Act, Hydrographic Services Improvement Act of 1998 (as amended), and other laws and authorities. In the interest of public and environmental safety and the furtherance of scientific knowledge, the Federal Government's responsibility for executing its ocean and coastal mapping missions is manifest and non-delegable. However, it is incumbent upon NOAA, as recommended by the Hydrographic Services Review Panel, to maintain operational ocean and coastal mapping core capabilities and supplement its operational capacity by contracting for mapping services where appropriate and to the extent of available funding.

This policy statement documents the framework and conditions under which contracting will be employed to ensure an open and consistent approach. To support this policy, NOAA will maintain a dialogue with private sector organizations and constituent groups. As defined in the Hydrographic Services Improvement Act, the term ''hydrographic services'' means the management, maintenance, interpretation, certification, and dissemination of bathymetric, hydrographic, shoreline, geodetic, geospatial, geomagnetic, current information, and tide and water level, including the production of nautical charts, nautical information, data bases, and other products derived from hydrographic data. The term ''ocean and coastal mapping'' includes hydrographic services and other activities such as coral, benthic habitat, and land cover mapping. It is NOAA's intent to advance contracting and adhere to the principles of this policy to meet its diverse mapping requirements.

In general, it is the intent of NOAA to contract for ocean and coastal mapping services when qualified commercial sources exist, when such contracts are determined to be the most cost effective method of conducting these functions, and to the extent funding is available. NOAA will procure ocean and coastal mapping services from qualified sources in accordance with its legal authorities, the Federal Acquisition Regulations (FAR), and the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.). Where required by law or where otherwise deemed appropriate, NOAA will procure the acquisition of hydrographic data[1] in accordance with Title IX of the Federal Property and Administrative Services Act.[2]

[1] Hydrographic data means information that is acquired through hydrographic, bathymetric, photogrammetric, lidar, radar, remote sensing, or shoreline and other ocean- and coastal-related surveying; geodetic, geospatial, or geomagnetic measurements; tide, water level, and current observations; and is used in providing hydrographic services.

[2] Commonly known as the ''Brooks Act'' or A&E (Architectural or Engineering) contracting services, Title IX contracts are negotiated and awarded on the basis of demonstrated competence and

Continued

NOAA may determine that a particular surveying or mapping activity is inherently governmental or otherwise not subject to contracting. NOAA surveying and mapping activities not subject to contracting may include, but are not limited to, services necessary to: (1) Monitor the quality of NOAA products; (2) promulgate and promote national and international technical standards and specifications; (3) conduct basic research and development and ensure the rapid transfer of derived technologies to the private sector; (4) maintain the integrity and accuracy of Federal geodetic and navigational databases; (5) support coastal stewardship ecosystem applications; and (6) support Maritime Domain Awareness and Homeland Security preparation and response activities; as well as (7) services that can only be carried out aboard a NOAA ship or aircraft because the survey platform possesses unique operational capabilities not available in the private sector. To carry out the aforementioned activities and to adequately monitor contracted services, NOAA will maintain core operational surveying and mapping capabilities.

To facilitate the leveraging of government mapping resources, NOAA will continue to make its geospatial and hydrographic services contracts available to State and local government entities that have a need for the services provided by these contracts and can provide adequate funding.

NOAA may task qualified commercial sources with ocean and coastal mapping services in any part of the U.S. Exclusive Economic Zone, territorial sea, Great Lakes, inland waters, and coastal watersheds for any mission-related purpose. The government's interests in and responsibilities for mapping vary broadly and experience has shown that maintaining flexibility is key to responding to the Nation's changing needs for geospatial data.

Ancillary Statements and Actions

As recommended by the Hydrographic Services Review Panel, NOAA will continue to utilize a mix of in-house and private-sector resources to accomplish its ocean and coastal mapping missions. Costs and productivity will be monitored within each category (*i.e.,* public and private) to ensure best use of mapping resources. NOAA will continue to seek the optimal resource allocation between in-house and private-sector resources based on the strength of the governmental interest, the total requirement for ocean and coastal mapping services, and the particular operational capabilities of either government or private-sector resources that may make one more suitable for a given situation.

NOAA will continue to examine ways to improve its contracting process, including minimizing the turnover frequency of contracting personnel and reducing the length of time required to award contracts and task orders. NOAA will continue to offer debriefings to successful and unsuccessful contractors after final contractor selection has been made in order to assist contractors with identifying significant weaknesses or deficiencies in their submissions. NOAA will continue with its efforts to establish a Ocean and Coastal Mapping Training Center which, as conceived, will support NOAA's in-house hydrographic and acoustic surveying training requirements. In addition, the Center would provide training to NOAA and private sector contractors in techniques, standards and technologies that support NOAA's many shoreline, coastal and ocean mapping activities. Such training would be beneficial to current or prospective NOAA contractors seeking to improve their capabilities and proposal submissions.

Dated: August 5, 2009.

Steven R. Barnum,

NOAA Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. E9–19819 Filed 8–18–09; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Certain Polyester Staple Fiber from the Republic of Korea: Partial Rescission of Ninth Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 19, 2009.

FOR FURTHER INFORMATION CONTACT: Shelly Atkinson or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0116 and (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION: On May 1, 2009, the Department issued a notice of opportunity to request an administrative review of this order for the period of review (''POR'') May 1, 2008, through April 30, 2009. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 20278 (May 1, 2009). On May 29, 2009, Huvis Corporation (''Huvis'') requested an administrative review of its entries that were subject to the antidumping duty order for this period. On that same date, the Department also received a request from Wellman, Inc., DAK Americas LLC, and Invista, S.a.r.L. (collectively, ''the petitioners'') for a review of Huvis and Saehan Industries, Inc. (''Saehan''). On June 24, 2009, the Department published the notice of initiation of this antidumping duty administrative review, covering Huvis and Saehan. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 30052 (June 24, 2009). On July 1, 2009, the petitioners submitted a letter noting that the Department issued a changed circumstances determination on August 20, 2008, and found that Woongjin Chemical Co., Ltd. (''Woongjin'') was the successor–in-interest to Saehan. *See Notice of Final Results of Changed Circumstances Antidumping Duty Review: Certain Polyester Staple Fiber from the Republic of Korea*, 73 FR 49168 (August 20, 2008). At the same time the petitioners clarified that their review request covered entries by Saehan and its successor Woongjin, as shipments may have been made under either name. *See* Letter from the Petitioners, to the Secretary of Commerce, entitled, ''Polyester Staple Fiber from Korea,'' dated July 1, 2009, at 2 and Attachment 1. On July 14, 2009, the petitioners timely withdrew their review request for Saehan and its successor company, Woongjin.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party who requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Because the petitioners withdrew their request for review of Saehan and Woongjin within the 90–day period and no other party requested a review of Saehan's or Woongjin's entries, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review with respect to Saehan and Woongjin.

The Department intends to issue appropriate assessment instructions directly to the U.S. Customs and Border Protection (''CBP'') 15 days after the publication of this notice. The

qualifications (qualification-based selections or QBS) as opposed to price.

Department will direct CBP to assess antidumping duties at the cash deposit rate in effect on the date of entry for entries of subject merchandise produced and/or exported by Saehan or Woongjin, during the period May 1, 2008, through April 30, 2009.

This notice is published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: August 13, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–19907 Filed 8–18–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XQ19

Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar

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

ACTION: Notice; issuance of two Letters of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that NMFS has issued two one-year Letters of Authorization (LOAs) to take marine mammals by harassment incidental to the U.S. Navy's operation of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar operations to the Chief of Naval Operations, Department of the Navy, 2000 Navy Pentagon, Washington, DC 20350 and persons operating under his authority.

DATES: Effective from August 16, 2009, through August 15, 2010.

ADDRESSES: Copies of the Navy's April 1, 2009, LOA application letter, the LOAs, the Navy's 2008 annual report and the Navy's 2007 5–Year Comprehensive Report are available by writing to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, Office of Protected Resources, NMFS (301) 713–2289.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a military readiness activity if certain findings are made and regulations are issued.

Authorization may be granted for periods of 5 years or less if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to the U.S. Navy's operation of SURTASS LFA sonar were published on August 21, 2007 (72 FR 46846), and remain in effect through August 15, 2012. They are codified at 50 CFR part 216 subpart Q. These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals by the SURTASS LFA sonar system. For detailed information on this action, please refer to the August 21, 2007 **Federal Register** Notice and 50 CFR part 216 subpart Q.

Summary of LOA Request

NMFS received an application from the U.S. Navy for two LOAs, one covering the USNS ABLE (T-AGOS 20) and one covering the USNS IMPECCABLE (T-AGOS 23), under the regulations issued on August 21, 2007 (72 FR 46846). (The R/V Cory Chouest has been retired and has been replaced by the USNS ABLE.) The Navy requested that these LOAs become effective on August 16, 2009. The application requested authorization, for a period not to exceed one year, to take, by harassment, marine mammals incidental to employment of the SURTASS LFA sonar system for training, testing and routine military operations on the aforementioned ships in areas of the North Pacific Ocean.

Monitoring and Reporting

In compliance with NMFS' 2007 SURTASS LFA sonar regulations, the Navy submitted an annual report for SURTASS LFA sonar operations during 2007–2008. The Navy also submitted a comprehensive report on SURTASS LFA sonar operations and the mitigation and monitoring activities conducted under the LOAs issued under its previous rule for the 2002 through 2007 period. A copy of these reports can be viewed and/or downloaded at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

In accordance with the current SURTASS LFA sonar regulations (50 CFR 216.186), the Navy's has submitted classified quarterly mission reports, and its annual report for the 2008–2009 LOA is due on September 30, 2009. Upon receipt, NMFS will post this annual report on the same Internet address.

Authorization

NMFS has issued two LOAs to the U.S. Navy, authorizing the incidental harassment of marine mammals incidental to operating the two SURTASS LFA sonar systems for training, testing and routine military operations. Issuance of these two LOAs is based on findings, described in the preamble to the final rule (August 21, 2007, 72 FR 46846)) and supported by information contained in the Navy's required reports on SURTASS LFA sonar, that the activities described under these two LOAs will have no more than a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected marine mammal stocks for subsistence uses.

These LOAs remain valid through August 15, 2010, provided the Navy remains in conformance with the conditions of the regulations and the LOAs, and the mitigation, monitoring, and reporting requirements described in 50 CFR 216.184–216.186 (August 21, 2007, 72 FR 46846) and in the LOAs are undertaken.

Dated: August 13, 2009.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–19873 Filed 8–18–09; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Notice of Availability of a Statement of Policy: Interpretation and Enforcement of Section 103(a) of the Consumer Product Safety Improvement Act

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of Availability.

SUMMARY: The Consumer Product Safety Commission (''Commission'') is announcing the availability of a document titled, ''Statement of Policy: Interpretation and Enforcement of Section 103(a) of the Consumer Product Safety Improvement Act'' (''Statement of Policy''). Section 103(a) of the Consumer Product Safety Improvement Act (''CPSIA'') requires manufacturers of children's products to mark their products so that certain identifying information is ascertainable by the manufacturer and the consumer. The Statement of Policy clarifies the Commission's interpretation of certain aspects of the statutory requirement and provides guidance on how the Commission intends to enforce the requirement.

ADDRESSES: The Statement of Policy is available from the Commission's Web site at *http://www.cpsc.gov/about/cpsia/sect103policy.pdf*. Copies also may be obtained from the Consumer Product Safety Commission, Office of the Secretary, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; 301–504–7923.

FOR FURTHER INFORMATION CONTACT: Anthony Cooke, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7628; *acooke@cpsc.gov.*

SUPPLEMENTARY INFORMATION: On August 14, 2008, the CPSIA (Pub. L. 110–314) was enacted. Section 103 of the CPSIA, titled ''Tracking Labels for Children's Products,'' requires ''distinguishing marks'' on all children's products that will enable the manufacturer and the ultimate purchaser to ''ascertain'' certain source and production information. These requirements become effective August 14, 2009.

The Commission has prepared a document titled, ''Statement of Policy: Interpretation and Enforcement of Section 103(a) of the Consumer Product Safety Improvement Act,'' which provides guidance on the Commission's interpretation of the tracking label provision and how the Commission intends to enforce the provision. The Statement of Policy is available on the Commission's Web site at *http://www.cpsc.gov/about/cpsia/sect103policy.pdf* and from the Commission's Office of the Secretary at the location listed in the **ADDRESSES** section of this notice.

Dated: August 13, 2009.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E9–19816 Filed 8–18–09; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Acquisition University Board of Visitors Meeting

AGENCY: Defense Acquisition University, DoD.

ACTION: Notice of meeting.

SUMMARY: The next meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) will be held at DAU Midwest Region in Kettering, Ohio. The purpose of this meeting is to report back to the BoV on continuing items of interest.

DATES: September 16, 2009 from 0900–1500.

ADDRESS: Holiday Inn Dayton Mall, 31 Prestige Plaza Drive, Miamisburg, OH 45342.

FOR FURTHER INFORMATION CONTACT: Ms. Christen Goulding at 703–805–5134.

SUPPLEMENTARY INFORMATION: The meeting is open to the public; however, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Ms. Christen Goulding at 703–805–5134.

Dated: August 12, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–19794 Filed 8–18–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notification of an Open Meeting of the National Defense University Board of Visitors

AGENCY: Department of Defense; National Defense University.

ACTION: Notice of open meeting.

SUMMARY: The National Defense University, Designated Federal Officer, has scheduled a meeting of the Board of Visitors. The National Defense University Board of Visitors is a Federal Advisory Board. The Board meets twice a year in proceedings that are open to the public.

DATES: The meeting will be held on November 12 & 13, 2009 from 1130–1700 on the 12th and continuing on the 13th from 0800–1200.

ADDRESSES: The Board of Visitors meeting will be held at Building 62, Marshall Hall, Room 155, National Defense University, 300 5th Avenue, Fort McNair, Washington, DC 20319–5066.

FOR FURTHER INFORMATION CONTACT: The point of contact for this notice of an open meeting is Jeanette Tolbert @ (202) 685–3955, Fax (202) 685–3328 or *TolbertJ@ndu.edu.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public; limited space is made available for observers and will be allocated on a first-come, first-serve basis.

Dated: August 12, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–19799 Filed 8–18–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2009–OS–0128]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to delete two Systems of Records.

SUMMARY: The Office of the Secretary of Defense is deleting two systems of records notices from 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 18, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Office of Freedom of Information, 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 Office of the Secretary of Defense proposes to delete two system of records notices from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletions 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: August 12, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

Deletions:

WUSU 06, USUHS Family Practice Medical Records (February 22, 1993, 58 FR 10920).

Reason

Based on the review of WUSU 06, and discussion with the system manager and HA Privacy POC, it has been concluded that the USUHS Family Practice Medical Records are covered under the umbrella SORN, DHA 07 (Military Health Information System). HA/GC supports the determination to delete WUSU 06.

DWHS P20, Report of Personnel Assigned Outside of Department of Defense (February 22, 1993, 58 FR 10227).

Reason

Review of DWHS P20, and a discussion with the program manager, revealed that no PII is solicited in the process and that records are not retrieved by name. This collection of information is not a Privacy Act system of records and does not require a system of records notice; therefore, DWHS P20 can be deleted.

[FR Doc. E9–19864 Filed 8–18–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2009–OS–0129]

Privacy Act of 1974; Systems of Records

AGENCY: National Security Agency/ Central Security Service, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The National Security Agency (NSA) is proposing to amend a system of records notice 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 18, 2009 unless comments are received which would result in a contrary determination.

ADDRESSES: Send comments to the National Security Agency/Central Security Service, Freedom of Information Act and Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Hill at (301) 688–6527.

SUPPLEMENTARY INFORMATION: The National Security Agency's system 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 system 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: August 12, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

GNSA 14

SYSTEM NAME:

NSA/CSS Library Patron File Control System (February 22, 1993, 58 FR 10531).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''File consists of borrower's name, Standard Identifier (SID), work organization, work telephone number, contracting sponsor's name, and library materials borrowed''.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''Section 10 of the National Security Agency Act of 1959, Public Law 86–36 (50 U.S.C. 402 note).''

* * * * *

STORAGE:

Delete entry and replace with ''Electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''By name, Standard Identifier (SID), or by title of the library material borrowed.''

SAFEGUARDS:

Delete entry and replace with ''Buildings are secured by a series of guarded pedestrian gates and checkpoints. Access to facilities is limited to security-cleared personnel and escorted visitors only. Access to electronic records is limited and controlled by computer password protection.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Chief, Advanced Intelligence Research Services, National Security Agency/ Central Security Service, Ft. George G. Meade, MD 20755–6000.''

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 National Security Agency/Central Security Service, Freedom of Information Act/ Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

Written inquiries should contain the individual's full name, and mailing address.''

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 National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

Written inquiries should contain the individual's full name, and mailing address.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.''

RECORD SOURCE CATEGORIES;

Delete entry and replace with ''Contents of the record are obtained from the individual borrower and from the Searchlight database.''

* * * * *

GNSA 14

SYSTEM NAME:

NSA/CSS Library Patron File Control System

SYSTEM LOCATION:

National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Borrowers of library materials from NSA/CSS libraries.

CATEGORIES OF RECORDS IN THE SYSTEM:

File consists of borrower's name, Standard Identifier (SID), work organization, work telephone number, contracting sponsor's name, and library materials borrowed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 10 of the National Security Agency Act of 1959, Public Law 86–36 (50 U.S.C. 402 note).

PURPOSE(S):

To track and administer the use of NSA/CSS library materials.

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, these records or information contained therein 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' set forth at the beginning of the NSA/CSS' 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:

Electronic storage media.

RETRIEVABILITY:

By name, Standard Identifier (SID), or by title of the library material borrowed.

SAFEGUARDS:

Buildings are secured by a series of guarded pedestrian gates and checkpoints. Access to facilities is limited to security-cleared personnel and escorted visitors only. Access to electronic records is limited and controlled by computer password protection.

RETENTION AND DISPOSAL:

Once a borrower has registered with the library, the borrower remains registered until he/she leaves the Agency. Disposal of records is accomplished by deletion from the database.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Advanced Intelligence Research Services, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

Written inquiries should contain the individual's full name, and mailing address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

Written inquiries should contain the individual's full name, and mailing address.

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

RECORD SOURCE CATEGORIES:

Contents of the record are obtained from the individual borrower and from the Searchlight database.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this file may be exempt under 5 U.S.C. 552a(k)(4), as applicable.

An exemption rule for this record system has been promulgated according to the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 322. For additional information contact the system manager.

[FR Doc. E9–19868 Filed 8–18–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2009–OS–0126]

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 proposes to alter 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 would be effective without further notice on September 18, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense 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 August 5, 2009, to the House Committee on Oversight and Government Reform, the Senate Committee on 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: August 12, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

DWHS E06

SYSTEM NAME:

Correspondence Control System (July 2, 2009, 74 FR 31712) Changes:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Enterprise Correspondence Control System (ECCS).''

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete existing entry and replace with ''Members of the public who initiated communications with the Office of the Secretary of Defense and Department of Defense personnel (uniformed or civilian) for whom workforce and/or organizational actions are processed and coordinated in the Enterprise Correspondence Control System.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, Social Security Number (SSN), date and place of birth, pay grade, salary and contact information (mailing address, telephone number, fax number, email address). Inquiries and other communications pertaining to any matter under the cognizance of the Office of the Secretary of Defense. Record types may include, but are not limited to, complaints, appeals, grievances; personnel actions, assignment requests, awards, nominations and presidential support letters; condolence letters, retirement letters, letters of appreciation, Senior Executive Service letters and pay adjustments; certificates, Secretary of Defense and OSD Component letters of appreciation; travel requests and military airlift requests; evaluative data; actions taken and responses from the Secretary to the President, White House staff, other Cabinet officials, Congress, state, local officials, and corporate officials; and similar documents.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete existing entry and replace with ''5 U.S.C. 301, Departmental Regulations; DoD Directive 5110.4, Washington Headquarters Services (WHS); and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete existing entry and replace with ''The Enterprise Correspondence Control System (ECCS) comprises two sub-systems (the Correspondence Control System (CCS) and the Staff Action Control and Coordination Portal (SACCP)).

CCS supports the Secretary of Defense by tracking actions taken and responses from the Secretary to the President, White House staff, other Cabinet officials, Congress, state and local officials, corporate officials, members of the Department of Defense and the public.

SACCP is used by Component Offices of the Secretary of Defense to facilitate and control the processing and coordination of workforce and/or organizational actions to, from, and within components in conduct of official daily business.''

* * * * *

DWHS E06

SYSTEM NAME:

Enterprise Correspondence Control System (ECCS).

SYSTEM LOCATION:

Correspondence Control Division, Executive Services Directorate, Washington Headquarters Services, Room 3C843, 1155 Defense Pentagon, Washington, DC 20301–1155.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the public who initiated communications with the Office of the Secretary of Defense and Department of Defense personnel (uniformed or civilian) for whom workforce and/or organizational actions are processed and coordinated in the Enterprise Correspondence Control System.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN), date and place of birth, pay grade, salary and contact information (mailing address, telephone number, fax number, email address). Inquiries and other communications pertaining to any matter under the cognizance of the Office of the Secretary of Defense. Record types may include, but are not limited to, complaints, appeals, grievances; personnel actions, assignment requests, awards, nominations and presidential support letters; condolence letters, retirement letters, letters of appreciation, Senior Executive Service letters and pay adjustments; certificates, Secretary of Defense and OSD Component letters of appreciation; travel requests and military airlift requests; evaluative data; actions taken and responses from the Secretary to the President, White House staff, other Cabinet officials, Congress, state, local officials, and corporate officials; and similar documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoD Directive 5110.4, Washington Headquarters Services (WHS); and E.O. 9397 (SSN), as amended.

PURPOSE(S):

The Enterprise Correspondence Control System (ECCS) comprises two sub-systems (the Correspondence Control System (CCS) and the Staff Action Control and Coordination Portal (SACCP)).

CCS supports the Secretary of Defense by tracking actions taken and responses from the Secretary to the President, White House staff, other Cabinet officials, Congress, state and local officials, corporate officials, members of the Department of Defense and the public.

SACCP is used by Component Offices of the Secretary of Defense to facilitate and control the processing and coordination of workforce and/or organizational actions to, from, and within components in conduct of official daily business.

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 Department of Defense as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the 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:

Maintained in paper files and electronic storage media.

RETRIEVABILITY:

Last name and first name initial of the individual, subject and date of the document.

SAFEGUARDS:

Records are 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 need-to-know. Access to computerized data is restricted by Common Access Card (CAC).

RETENTION AND DISPOSAL:

Records are cut off annually and destroyed when 7 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Correspondence Control Division, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Correspondence Control Division,

Executive Services Directorate, Washington Headquarters Services, Room 3C843, 1155 Defense Pentagon, Washington, DC 20301–1155.

The requests should contain the individual's last name, first name initial, subject and document date.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act, Requester Service Center, Office of Freedom of Information, 1155 Defense Pentagon, Washington, DC 20301–1155.

Individuals should provide the name and number of this system of records notice, the individual's last name, first name initial, subject, date of document 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:

Individuals and those writing on their behalf, and official records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of preparing a response to some types of incoming communications from the public, exempt materials from other systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this correspondence case record, the Office of the Secretary of Defense hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 311. For additional information contact the system manager.

[FR Doc. E9–19867 Filed 8–18–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2009–OS–0130]

Privacy Act of 1974; Systems of Records

AGENCY: National Security Agency/Central Security Service, DoD.

ACTION: Notice to add a System of Records.

SUMMARY: The National Security Agency/Central Security Service proposes to add a system 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 18, 2009 unless comments are received which would result in a contrary determination.

ADDRESSES: Send comments to the National Security Agency/Central Security Service, Freedom of Information Act and Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Hill at (301) 688–6527.

SUPPLEMENTARY INFORMATION: The National Security Agency's record system notices for records systems 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 August 12, 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 August 09, 2009 61 FR 6427).

Dated: August 12, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

GNSA 26

SYSTEM NAME:

NSA/CSS Accounts Receivable, Indebtedness and Claims.

SYSTEM LOCATION:

National Security Agency/Central Security Service, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former civilian employees, current and former military assignees, dependents of employees, military assignees, and other individuals who may be indebted to the National Security Agency/Central Security Service (NSA/CSS),another government agency, or have a claim pending against NSA/CSS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system include documentation pertaining to telephone bills; dishonored checks; erroneous payments; property losses and damages; administratively determined indebtedness; cash collection vouchers; correspondence from or to the debtor or claimant; applications for waiver of erroneous payments or for remission of indebtedness with supporting documentation; claims of individuals requesting additional payments with supporting documentation; and litigation records or reports from probate courts and bankruptcy courts. Records may contain names, Social Security Numbers (SSNs), debt amounts, interest and penalty amounts, debt reasons, debt status, demographic information, such as grade or rank, sex, date of birth, duty and home address, and any other information necessary to identity the individual, the amount, and the history of the claim or debt.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapter 55, subchapter II, Pay Administration, Withholding Pay; 31 U.S.C. Chapter 35, Accounting and

Collection; 31 U.S.C. Chapter 37, Claims; 31 CFR Part 285, Debt Collection Authorities Under the Debt Collection Improvement Act of 1996; 31 CFR 31, Parts 900–904, Federal Claims Collection Standards, and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To support the NSA/CSS debt management program in identifying, recovering, and collecting debts owed by individuals to the U.S. government, as appropriate.

To manage, evaluate and process claims against NSA/CSS.

Also used as a management tool for statistical analysis, tracking, reporting, evaluating program effectiveness and conducting research.

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 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 U.S. Government Accountability Office, the U.S. Department of Justice, Internal Revenue Service, U.S. Department of the Treasury, or other federal agencies for further collection action on any delinquent account when circumstances warrant.

To any entity or individual under contract with NSA/CSS for the purpose of providing debt management related services.

To the U.S. Department of Treasury (DOT) for centralized administrative or salary offset, including the offset of federal income tax refunds, for the purpose of collecting debts owed the U.S. Government; to the DOT contracted private collection agencies for the purpose of obtaining collection services, including administrative wage garnishment in accordance with the Debt collection Improvement Act of 1996 (Pub. L. 104–134) to recover moneys owed to the U.S. Government.

To any party, counsel, representative, and/or witness, in any legal proceeding, where pertinent, to which DoD is a party before a court or administrative body including, the Equal Employment Opportunity Commission and Merit System Protection Board.

The DoD 'Blanket Routine Uses' published at the beginning of the NSA/CSS's compilation of record systems also apply to this record 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 such disclosures is to aid in the collection of outstanding debts owed to the Federal Government. The disclosures typically provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records.

All disclosures are limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number (SSN)); the amount, status, and history of the claim, and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report. Any such disclosures will only be made after the procedural requirement of 31 U.S.C. 3711(f), Collection and Compromise has been followed.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By Name, Social Security Number (SSN).

SAFEGUARDS:

Buildings are secured by a series of guarded pedestrian gates and checkpoints. Access to facilities is limited to security-cleared personnel and escorted visitors only. Within the facilities themselves, access to paper and computer printouts are controlled by limited-access facilities and lockable containers. Access to electronic means is controlled by computer password protection.

RETENTION AND DISPOSAL:

Records relating to claims and the waiver of claims against the United States are retained for 6 years and 3 months and then destroyed.

Records relating to claims due to the United States paid in full are retained 6 years and 3 months and then destroyed.

Records relating to claims that are affected by a court order or that are subject to litigation are destroyed when the court order is lifted, litigation is concluded or when 6 years and 3 months old, whichever is later.

All records are destroyed by pulping, burning, shredding, or erasure or destruction of magnet medial.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Accounts Receivable, National Security Agency/Central Security Service, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if records about themselves are contained in this record system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquires should include individual's full name, address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquires should include individual's full name, address, and telephone number.

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, Suite 6248, Ft. George G. Meade, MD 20755–6248.

RECORD SOURCE CATEGORIES:

Information is collected from the individual and the individual's supervisor, the hiring activity's personnel office and/or finance office, and from travel and expense forms.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to the information

exempt to the extent that disclosure would reveal the identity of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

An exemption rule for this record system has been promulgated according to the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 322. For additional information contact the system manager.

[FR Doc. E9–19866 Filed 8–18–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2009–OS–0131]

Privacy Act of 1974; System of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Intelligence Agency is proposing to alter a system of records in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on September 18, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: Freedom of Information Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd., Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency system 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 August 12, 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: August 12, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

LDIA 05–0001

SYSTEM NAME:

Human Resources Management System (HRMS) (March 6, 2008, 73 FR 12146).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add routine use ''To the Office of the Director of National Intelligence (ODNI) for Intelligence Community-aggregrate workforce planning, analysis and reporting purposes. Records provided to the ODNI for this routine use will not include any individual's name or Social Security Number (SSN).''

* * * * *

LDIA 05–0001

SYSTEM NAME:

Human Resources Management System (HRMS).

SYSTEM LOCATION:

Defense Intelligence Agency, Washington, DC 20340–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former military and civilian personnel employed by or temporarily assigned to the DIA; current and former contract personnel; current and former civilian dependents, current and former military dependents assigned to the Defense Attaché System; and individuals applying for possible employment. DoD military, civilian, or contractor personnel nominated for security clearance/SCI access by DIA, and other DoD agencies and offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include, but are not limited to employment, security, education, training & career development, organizational and administrative information such as employee name, Social Security Number (SSN), addresses, phone numbers, emergency contacts and employee identification number, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, (50 U.S.C. 401 *et seq.*); 10 U.S.C. 113, Secretary of Defense; 5 U.S.C. 301, Departmental Regulations; 44 U.S.C. 3102, Establishment of program of management; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To collect employment and related information to perform numerous administrative tasks, to include preparing, submitting, and approving official personnel actions; personnel appraisals; and making decisions on benefits & entitlements. HRMS provides a central, official data source for the production of work force demographics, reports, rosters, statistical analysis, and documentation/studies.

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, these records or information 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' set forth at the beginning of the Defense Intelligence Agency's compilation of systems of records notices apply to this system.

To the Office of the Director of National Intelligence (ODNI) for Intelligence Community-aggregrate workforce planning, analysis and reporting purposes. Records provided to the ODNI for this routine use will not include any individual's name or Social Security Number (SSN).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic storage media.

RETRIEVABILITY:

Name and employee identification number.

SAFEGUARDS:

The server hosting HRMS is located in a secure area under employee supervision 24/7. Records are maintained and accessed by authorized personnel via Defense Intelligence Agency's internal, classified network. These personnel are properly screened, cleared and trained in the protection of privacy information.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration has approved retention and disposition of these records, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Defense Intelligence Agency, Directorate of Human Capital, Office for Human Capital Online Services.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Freedom of Information Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd., Washington, DC 20340–5100.

Individuals should provide their full name, current address, telephone number and Social Security Number (SSN).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves, contained in this system of records, should address written inquiries to the Freedom of Information Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd., Washington, DC 20340–5100.

Individuals should provide their full name, current address, telephone number and Social Security Number.

CONTESTING RECORD PROCEDURES:

Defense Intelligence Agency's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Regulation 12–12 ''Defense Intelligence Agency Privacy Program''; 32 CFR part 319—Defense Intelligence Agency Privacy Program; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Agency officials, employees, educational institutions, parent Service of individual and immediate supervisor on station, and other Government officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–19870 Filed 8–18–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2009–OS–0127]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to delete five systems of records.

SUMMARY: The Office of the Secretary of Defense is deleting five systems of records notices 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 18, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Office of Freedom of Information, 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 Office of the Secretary of Defense proposes to delete five systems of records notices from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletions 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: August 12, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

DMDC 09

DELETIONS:

Archival Purchase Card File (February 19, 2008, 73 FR 9100).

REASON:

Based on review of DMDC 09, it has been concluded that this system is covered by GSA/Govt 6, GSA SmartPay Purchase Charge Card Program, a government umbrella system, and can therefore be deleted.

DMDC 06

Federal Creditor Agency Debt Collection Data Base (October 2, 2007, 72 FR 56069)

REASON:

Based on review of DMDC 06, it has been concluded that this system is no longer maintained. It has been confirmed that all past records have been deleted in accordance with established OSD records instructions and that the Federal Creditor Agency Debt Collection Data Base program is no longer in use at DMDC.

WUSU 15

USUHS Security Status Master List (February 22, 1993, 58 FR 10920).

REASON:

Based on review of WUSU 15, it has been concluded that this system is covered by DSS V5–05, Joint Personnel Adjudication System, a DoD umbrella system and can therefore be deleted.

WUSU 02

Uniformed Services University of the Health Sciences (USUHS) Payroll System (February 22, 1993, 58 FR 10920).

REASON:

Based on review of WUSU 02, it has been concluded that this system is covered under a DoD umbrella SORN, T7335, Defense Civilian Payroll System (DFAS) and can therefore be deleted.

DMDC 03

Defense Outreach Referral System (DORS) (October 2, 2007, 72 FR 56066).

REASON:

Based on review of DMDC 03, it has been concluded that this system is no longer maintained. It has been confirmed that all past records have been deleted in accordance with established DoD records instructions and that the Defense Outreach Referral System program is no longer in use at DMDC.

[FR Doc. E9–19874 Filed 8–18–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2009–OS–0125]

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 a system of records notice 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 18, 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: August 12, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

T7206

SYSTEM NAME:

General Accounting and Finance System—Base Level (GAFS–BL) (August 13, 2007, 72 FR 45232).

* * * * *

CHANGES:

Change system ID to ''T7206a''.

* * * * *

T7206a

SYSTEM NAME:

General Accounting and Finance System—Base Level (GAFS–BL).

SYSTEM LOCATION:

Defense Information Systems Agency, Defense Enterprise Computing Center, Ogden, 7879 Wardleigh Road, Hill Air Force Base, Utah 84058–5997.

Defense Finance and Accounting Service, DFAS–Denver, 6760 E. Irvington Place, Denver, CO 80279–8000.

Defense Finance and Accounting Service, DFAS–Limestone, 27 Arkansas Road, Limestone ME 04751–1500.

Defense Finance and Accounting Service, DFAS–Japan, Building 206 Unit 5220, APO AP 96328–5220.

Defense Finance and Accounting Service, DFAS–Columbus, 3990 East Broad St, Columbus, OH 43213–1152.

Defense Finance and Accounting Service, DFAS–Pacific, 477 Essex Street, Pearl Harbor, HI 96860–5806.

Air Force Bases—For list of Air Force Bases, contact DFAS–Omaha, (DFAS–AD/OM), Post Office Box 7030, Bellevue NE 68005–1930.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active and Reserve duty United States Air Force (USAF), Army, Navy, Marine Corps, guard members, Defense Security Service and National Geospatial-Intelligence Agency civilian employees, Department of Defense (DoD) civilian employees, and other Federal civilian employees paid by appropriated funds and whose pay is processed by the Defense Finance and Accounting Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Social Security Number (SSN), financial status reports, and appropriation for processing accounting transactions.

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; 31 U.S.C. Sections 3511, and 3513; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

For use in tracking the budget execution of appropriated funds. It will contain accounting records for funding authority, commitments, obligations, and provides balances of available funds. The system will produce monthly financial status reports and receive transaction and payment data from the Defense Travel System (DTS).

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 DoD 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 in file folders and electronic storage media.

RETRIEVABILITY:

Social Security Number (SSN).

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 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 may be temporary in nature and deleted when actions are completed, superseded, obsolete, or no longer needed. Other records may be cut off at the end of the payroll year, and then destroyed up to 6 years and 3 months after cutoff. Records are destroyed by degaussing the electronic media and recycling hardcopy records. The recycled hardcopies are destroyed by shredding, burning, or pulping.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Finance and Accounting Service, Denver, System Management Directorate, Accounting and Cash Systems, 6760 E. Irvington Place, Denver, CO 80279–8000.

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, 6760 E. Irvington Place, Denver, CO 80279–8000.

Requests should contain individual's full name, Social Security Number (SSN), current address, telephone number, and provide a reasonable description of what the requestor is seeking.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Requests should contain individual's full name, Social Security Number (SSN), current address, telephone number, and provide a reasonable description of what the requestor is seeking.

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 Defense Finance and Accounting Service, Freedom of Information/ Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

RECORD SOURCE CATEGORIES:

From the individual, DoD Components, and other Federal agencies such as Health and Human Services and Department of Veterans Affairs.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–19871 Filed 8–18–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2009–0024]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is proposing to alter a system of records in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on September 18, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Mr. Leroy Jones, (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army 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 August 12, 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: August 12, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0040–5a DASG DoD

SYSTEM NAME:

Defense Medical Surveillance System (April 30, 2009, 74 FR 19944).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Department of Defense military personnel (active and reserve) and their family members; separated service members and retirees; DoD civilian personnel; contract personnel deploying with the Armed Forces; applicants for military service; and individuals who participate in DoD health surveys.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Information in this system of records originates from personnel systems, medical records, health surveys (e.g., Pentagon Post Disaster Health Assessment, periodic, pre and post deployment health assessments) and/or health assessments made from specimen collections (remaining serum from blood samples) from which serologic tests can be performed (serum number, specimen locator information, collection date, place of collection). Records being maintained include but are not limited to individual's name, Social Security Number, date of birth, sex, branch of service, home address, age, occupation, job series, rank, grade, education level, Armed Forces Qualification Test data, marital status, number of dependents, medical encounters, medical treatment facility, condition of medical and physical health and capabilities, responses to survey questions, register number assigned, and similar records, information and reports, relevant to the various registries; and specimen collections (remaining serum from blood samples) from which serologic tests can be performed (serum number, specimen locator information, collection date, place of collection).''

* * * * *

A0040–5a DASG DoD

SYSTEM NAME:

Defense Medical Surveillance System.

SYSTEM LOCATION:

Armed Forces Health Surveillance Center, Building T–20, Room 213, 6900 Georgia Avenue, NW., Washington, DC 20307–5001; and Armed Forces Health Surveillance Center, 503 Robert Grant Avenue, Silver Spring, MD 20910–7500.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense military personnel (active and reserve) and their family members; separated service members and retirees; DoD civilian personnel; contract personnel deploying with the Armed Forces; applicants for military service; and individuals who participate in DoD health surveys.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system of records originates from personnel systems, medical records, health surveys (*e.g.*, Pentagon Post Disaster Health Assessment, periodic, pre and post deployment health assessments) and/or health assessments made from specimen collections (remaining serum from blood samples) from which serologic tests can be performed (serum number, specimen locator information, collection date, place of collection). Records being maintained include but are not limited to individual's name, Social Security Number, date of birth, sex, branch of service, home address, age, occupation, job series, rank, grade, education level, Armed Forces Qualification Test data, marital status, number of dependents, medical encounters, medical treatment facility, condition of medical and physical health and capabilities, responses to survey questions, register number assigned, and similar records, information and reports, relevant to the various registries; and specimen collections (remaining serum from blood samples) from which serologic tests can be performed (serum number,

specimen locator information, collection date, place of collection).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 3013, Secretary of the Army, 10 U.S.C. 8013, Secretary of the Air Force, 10 U.S.C. 5013, Secretary of the Navy; DoD Instruction 1100.13, Surveys of DoD Personnel; DoD Directive 6490.2, Comprehensive Health Surveillance; DoD Directive 6490.3, Deployment Health; DoD Instruction 6485.01, Human immunodeficiency Virus; DoD Directive 1404.10, Civilian Expeditionary Workforce; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

The Defense Medical Surveillance System (DMSS) supports a systematic collection, analysis, interpretation, and reporting of standardized, population based data for the purposes of characterizing and countering medical threats to a population's health, well-being and performance. The Armed Forces Health Surveillance Center, which operates the DMSS, routinely publishes summaries of notifiable diseases, trends of illnesses of special surveillance interest and field reports describing outbreaks and case occurrences in the Medical Surveillance Monthly Report, the principal vehicle for disseminating medical surveillance information of broad interest. Through DMSS, the Armed Forces Health Surveillance Center provides the sole link between the DoD Serum Repository and other databases. This repository contains over 46 million frozen serum specimens and is the largest of its kind in the world.

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 contained therein 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'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system, except that these routine uses do not apply to the Serum Repository.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Information is retrieved by individual's name, Social Security Number (SSN), registry number and specimen number.

SAFEGUARDS:

Records are maintained within secured buildings in areas accessible only to persons having official need, and who therefore are properly trained and screened. Automated segments are protected by controlled system passwords governing access to data.

RETENTION AND DISPOSAL:

Records are destroyed when no longer needed for reference and for conducting business.

SYSTEM MANAGER(S) AND ADDRESS:

Director of the Armed Forces Health Surveillance Center, The Army Surgeon General, Headquarters, Department of the Army, 5109 Leesburg Pike, Falls Church, VA 22041–3258.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Armed Forces Health Surveillance Center, 503 Robert Grant Avenue, Silver Spring, MD 20910–7500.

For verification purposes, individual should provide their full name, Social Security Number (SSN), any details which may assist in locating record, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director of the Armed Forces Health Surveillance Center, 503 Robert Grant Avenue, Silver Spring, MD 20910–7500.

For verification purposes, individual should provide their full name, Social Security Number, any details which may assist in locating record, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, personnel and medical records, and mortality and casualty reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–19865 Filed 8–18–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 19, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires

that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 13, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

National Institute for Literacy

Type of Review: New.

Title: Understanding Effective K–3 Reading Programs Based on Scientific Reading Research.

Frequency: One time.

Affected Public: Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 87.
Burden Hours: 1,037.

Abstract: The National Institute for Literacy (NIFL) is authorized under the No Child Left Behind Act, Public Law 107–110, part B, subpart 1, section 1207 to ''* * * identify and disseminate information about schools, local educational agencies, and State educational agencies that have effectively developed and implemented classroom reading programs that meet the requirements of this subpart (Reading First)* * *''. To carry out this authorized activity, the NIFL is first conducting a set of case studies, identifying Schools with Effective Reading Programs, to be implemented by a research team from Education Development Center, Inc. (EDC). The NIFL then will publish findings from the case studies as a report and print and distribute it widely among educators and administrators working with children in kindergarten through third grades as well as reading researchers. The NIFL needs to collect the information proposed in this package to be able to describe in reasonable detail the school- and classroom-based reading strategies employed by schools with high-performing students. The NIFL understands its statutory charge to mean providing information that explains what the schools did and how they did it rather than general information from sources such as school Web sites. While the findings from case studies should not be construed as guidance to schools seeking to improve their K–3 students' reading outcomes, the information from this study may bring to light detail that contributes to deeper understanding of effective reading instruction and informs future research on K–3 reading instruction. The respondents will be drawn from two schools in each of three districts that have been identified as having positive student outcomes in reading according to a comprehensive approach established as part of the study. The estimated number of respondents will be: 6 Principals, 6 Reading Specialists/Literacy Specialists, 3 English Language Arts District Coordinators, 72 Teachers (estimated). Only an estimate of the number of teacher respondents is possible until we have agreements from the participating schools. The estimate is based on three teachers per grade level, K–3, at each school.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 4001. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–19842 Filed 8–18–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, September 3, 2009, 6 p.m.

ADDRESSES: Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: David Kozlowski, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–2759, *David.Kozlowski@lex.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda.
- Approval of August Meeting Minutes.
- Public Comments.
- Deputy Designated Federal Officer's Comments.
- Federal Coordinator's Comments.
- Liaisons' Comments.
- Presentations.
- *Administrative Issues:*
  - Committee Updates.
  - Motions.

- Public Comments.
- Final Comments.
- Adjourn.

Breaks taken as appropriate.

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact David Kozlowski at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Kozlowski at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling David Kozlowski at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.ports-ssab.org/publicmeetings.html.*

Issued at Washington, DC, on August 14, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–19898 Filed 8–18–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, September 30, 2009, 2 p.m.–8 p.m.

ADDRESSES: Holiday Inn Santa Fe, 4048 Cerillos Road, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; Fax (505) 989–1752 or E-mail: *msantistevan@doeal.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

2 p.m. Call to Order by Deputy Designated Federal Officer, Jeff Casalina
Establishment of a Quorum, Lorelei Novak
- Roll Call
- Excused Absences

Welcome and Introductions, J.D. Campbell
Approval of Agenda
Approval of July 29, 2009 Meeting Minutes

2:15 p.m. Old Business
- Written Reports
- Open Discussion from Board Members
- Voting Procedures

2:45 p.m. New Business
- Report from Nominating Committee, Deb Shaw
- Election of Chair and Vice Chair for Fiscal Year (FY) 2010
- Consideration and Action on Meeting Schedule for FY 2010
- Appoint Ad Hoc Committee for Annual Evaluation

3:15 p.m. Deputy Designated Federal Officer Report, Jeff Casalina
3:30 p.m. Break
3:45 p.m. Ad Hoc Committee Reports
- Community Outreach
- Board Processes
- Budget Priorities for FY 2011

4 p.m. Standing Committee Reports
- Presentation of FY 2010 Committee Work Plans
- Consideration and Action on Committee Work Plans for Submittal to DOE

5 p.m. Dinner Break
6 p.m. Public Comment Period
6:15 p.m. Consideration and Action on Recommendation(s)
7:45 p.m. Round Robin Discussion
8 p.m. Adjourn, Jeff Casalina

Public Participation: The EM SSAB, Northern New Mexico, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org/.*

Issued at Washington, DC on August 14, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–19899 Filed 8–18–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13375–000]

Community Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

August 12, 2009.

On February 20, 2009, Community Hydro, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Falls Lake Dam Hydroelectric Project, located on the Neuse River, Wake County, North Carolina. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) Six turbine-generators with a total installed capacity of 2,500 kW; (2) a 700-foot-long, 13.8 kV transmission line; and (3) appurtenant facilities. The proposed project would generate about 8,300 megawatt-hours annually.

Applicant Contact: Lori Barg, Community Hydro LLC, 113 Bartlett Road, Plainfield, VT, phone: (802) 454–1874.

FERC Contact: Sergiu Serban, 202–502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13375) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–19828 Filed 8–18–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP03–75–006 and CP05–361–004]

Freeport LNG Development, L.P.; Freeport LNG Expansion, L.P.; Notice of Filing

August 12, 2009.

Take notice that on August 3, 2009, Freeport LNG Development, L.P. and Freeport LNG Expansion, L.P. (Freeport LNG), 333 Clay Street, Suite 5050, Houston, TX 77002, filed an application, pursuant to section 3(a) of the Natural Gas Act (NGA) and parts 153 and 380 of the Commission's Rules and Regulations, for a limited amendment to its certificates issued on June 18, 2004 and September 26, 2006 in Docket Nos. CP03–75–000 and CP05–361–000, respectively. Freeport LNG requests authorization to construct and operate a natural gas liquids (NGL) extraction system at the Quintana Island terminal. The application is on file with the Commission and open for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's 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.

The NGL extraction system will enable Freeport LNG to extract and recover NGLs (primarily ethane, propane, and butane) from the terminal's LNG throughput. The NGL extraction system involve the construction and operation of the following facilities (i) two 400 MMcf/day NGL extraction trains, collectively providing 0.80 Bcf/day of NGL extraction capability; (ii) a 60,000 barrels per day depropanizer, (iii) associated non-modular equipment; (iv) two co-located NGL plant pipelines (8-inch and 12-inch diameter); and (v) and NGL delivery pipeline and associated metering, pigging and valve facilities. The proposed facilities will be constructed within the authorized operational area of the Quintana Island terminal. Freeport LNG proposes a service date of June 2011.

Any questions regarding the application are to be directed to Michael Johns, Freeport LNG Development, L.P., 333 Clay Street, Suite 5050, Houston, TX 77002; phone number (979) 415–8720 or Lisa M. Tonery, Fulbright & Jaworski L.L.P., 666 Fifth Avenue, New York, NY 10103; phone number (212) 318–3009, *ltonery@fulbright.com*.

Any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper, see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: September 2, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–19830 Filed 8–18–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1554–000]

RMH Energy, LP; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

August 12, 2009.

This is a supplemental notice in the above-referenced proceeding of RMH Energy. LP's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 1, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the

FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–19829 Filed 8–18–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–8431–3]

Access to Confidential Business Information by Abt Associates' Wholly-Owned Subsidiary Abt SRBI

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor's Wholly-Owned Subsidiary, Abt SRBI of New York, NY, to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than August 26, 2009.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Scott Sherlock, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8257; fax number: (202) 564–8251; e-mail address: *sherlock.scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

Under EPA contract number EP-W-08-010, contractor Abt SRBI of 275 Seventh Avenue, Suite 2700, New York, NY will assist the Office of Pollution Prevention and Toxics (OPPT) in performing economic and market analysis related to new and existing chemicals. These analyses will largely be of the costs, economic impacts, benefits, and regulatory impacts of actual or potential EPA actions taken under TSCA. They will also support the voluntary Design for the Environment and Green Chemistry Programs.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number EP-W-08-010, Abt SRBI will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. Abt SRBI personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide Abt SRBI access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters; and Abt Asscociates, Inc. sites at 4800 Montgomery Lane, Bethesda, MD and 55 Wheeler Street, Cambridge, MA.

Abt SRBI will be authorized access to TSCA CBI at EPA Headquarters and Abt Associates Inc.'s sites under the EPA *TSCA CBI Protection Manual*.

Access to TSCA data, including CBI, will continue until March 30, 2014. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

ABT SRBI personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential Business Information.

Dated: August 5, 2009.

Matthew Leopard,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E9–19461 Filed 8–18–09; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2009–0297; FRL–8943–9]

RIN 2040–AF08

Drinking Water: Perchlorate Supplemental Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Agency is seeking comments on additional approaches to analyzing data related to EPA's perchlorate regulatory determination. These additional comments are sought in an effort to ensure consideration of all the potential options for evaluating whether there is a meaningful opportunity for human health risk reduction of perchlorate through a national primary drinking water rule. EPA will make a final regulatory determination for perchlorate after considering comments and information provided in the 30-day comment period following this notice.

DATES: Comments must be received on or before September 18, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2009–0297, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Water Docket, EPA Docket Center (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2009–0297. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Unit I.A of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Eric Burneson, Office of Ground Water and Drinking Water, Standards and Risk Management Division, at (202) 564–5250 or e-mail *burneson.eric@epa.gov.* For general information, contact the EPA Safe Drinking Water Hotline at (800) 426–4791 or e-mail: *hotline-sdwa@epa.gov.*

Abbreviations and Acronyms

>—greater than
<—less than
BW—body weight
CBI—confidential business information
CDC—Centers for Disease Control and Prevention
DWI—drinking water intake
EPA—U.S. Environmental Protection Agency
FDA—U.S. Food and Drug Administration
FR—Federal Register
HA—Health Advisory
HRL—health reference level
IRIS—Integrated Risk Information System
kg—kilogram
L—liter
mg/kg—milligram per kilogram of body weight
mg/L—milligrams per liter (equivalent to parts per million [ppm])
MRL—Method Reporting Limit
NAS—National Academy of Science
NHANES—National Health and Nutrition Examination Survey
NOAEL—no observed adverse effect level
NOEL—no observed effect level
NRC—National Research Council
OW—Office of Water
PBPK—Physiologically-Based Pharmacokinetic
POD —point of departure
RAIU—Radioactive Iodide Uptake
RfD—reference dose
RSC—relative source contribution
SDWA—Safe Drinking Water Act
UCMR—Unregulated Contaminant Monitoring Regulation
µg—microgram (one-millionth of a gram)
US—United States
USDA—U.S. Department of Agriculture

SUPPLEMENTARY INFORMATION

I. General Information

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** (FR) citation related to your comments.

II. Background

The statutory and regulatory background for this action is described in detail in the October 10, 2008, FR notice discussing EPA's initial regulatory determination for perchlorate (USEPA, 2008a). Briefly, the Safe Drinking Water Act (SDWA) section 1412, as amended in 1996, requires EPA to make a determination whether to regulate at least 5 contaminants from its contaminant candidate list (CCL) every 5 years. Once EPA determines to regulate a contaminant in drinking water, EPA must issue a proposed national primary drinking water regulation (NPDWR) and final NPDWR within certain set time frames. To regulate a contaminant in drinking water, EPA must determine that it meets three criteria: (1) The contaminant may have an adverse effect on human health, (2) the contaminant is known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at levels of public health concern, and (3) regulation of such contaminant presents a meaningful opportunity for health risk reduction for persons served by public water systems. To date, EPA has made final regulatory determinations for 20 contaminants from CCL1 and CCL2 and has not found that any of these contaminants meet all three criteria.

On October 10, 2008, EPA published a preliminary regulatory determination for perchlorate, requesting public comment on its determination that perchlorate did not meet the second and third criteria for regulation. The October 2008 notice describes in detail the bases for EPA's determination (USEPA, 2008a). EPA received extensive public comment on that notice.

Today, the Agency is seeking comments on additional approaches to analyzing data related to EPA's perchlorate regulatory determination. The EPA is requesting the additional comments in an effort to ensure that the Agency considers the potential options for evaluating whether there is a meaningful opportunity for human health risk reduction from perchlorate through a national primary drinking water rule. EPA's final decision may be a determination to regulate. As discussed below, the additional alternatives under consideration could result in health reference levels which are much lower than the level identified in the October 2008 notice. The public comments EPA received pursuant to the October 10, 2008, notice of preliminary regulatory determination [1] and from the peer review of the supporting documents underscore the complexity of the scientific issues regarding the regulatory determination for perchlorate in drinking water.

EPA received 32,795 comment letters of which 31,632 (96%) letters were from seven different apparent mass mailing letter writing campaigns that did not support the preliminary determination. Of the remaining 1,163 comment letters that would be considered ''unique,'' 30 commenters provided EPA with detailed comments. Of those 30 comment letters, six supported EPA's preliminary determination. These comments and other docket materials are available electronically at *http://www.regulations.gov* (Docket ID No. EPA–HQ–OW–2008–0692).

In its October 2008 FRN, EPA referred to a draft report entitled ''Inhibition of the Sodium-Iodide Symporter by Perchlorate: An Evaluation of Lifestage Sensitivity Using Physiologically-Based Pharmacokinetic (PBPK) Modeling'' (USEPA, 2008b). This draft report, which is described in Section III.A.1, was peer reviewed during the comment period on the regulatory determination. The report (USEPA, 2008c) and a summary of significant comments made by the external peer reviewers and EPA's responses (USEPA, 2008e) can be found at *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=212508*. The peer review comments were complimentary and supportive of EPA's modeling analysis and support document.

On January 8, 2009, EPA issued an interim health advisory (HA) to provide guidance to state and local officials in their efforts to address perchlorate contamination while EPA was reviewing scientific issues. A draft of the HA was peer reviewed by four external peer reviewers. The HA peer reviewers comments are discussed in Section III.A.2 of this notice. The Interim Health Advisory (USEPA. 2008d) can be found at *http://www.epa.gov/safewater/contaminants/unregulated/perchlorate.html* and the summary of significant comments made by the external peer reviewers (USEPA. 2008e) can be found at *http://www.epa.gov/ogwdw/contaminants/unregulated/pdfs/perchlorate_ha_comment_response.pdf*.

In January of this year, EPA announced that we planned to seek additional input from the National Research Council (NRC) on perchlorate. The NRC previously studied perchlorate health implications from March, 2003 until they issued their report in January, 2005 (NRC, 2005). EPA has compiled and evaluated additional scientific studies relevant to perchlorate health effects and exposure available since publication of the 2005 NRC report. As previously stated, EPA also has obtained peer review and public comment on the Agency's analysis of a number of these studies. The Agency believes that further review by the NRC would unnecessarily delay regulatory decision making for perchlorate. Therefore, EPA is not, at present, planning to request additional NRC review of issues related to perchlorate. Instead, EPA is issuing this notice and seeking comment on a broad range of alternative approaches to the interpretation of the scientific data relevant to a regulatory determination for perchlorate in drinking water. However, EPA requests comment upon whether further review by the NRC is warranted. EPA also notes that if the Agency were to make a final determination to regulate perchlorate, the Agency, in accordance with the SDWA, would seek review by the Science Advisory Board prior to proposal of any maximum contaminant level goal and national primary drinking water rule.[2]

In issuing this supplemental notice, EPA is not making a final regulatory determination for perchlorate nor are we changing the Interim Health Advisory Level of 15 µg/L. EPA will consider comments on the information received on this notice, as well as those received on the October 10, 2008, FR notice, and those received on the peer review of supporting documents before completing its regulatory determination for perchlorate. EPA may also revise the Interim Health Advisory as part of this process.

III. Alternative Approaches To Analyzing Scientific Data Related to Perchlorate in Drinking Water

EPA is requesting comment on key issues related to the regulatory determination for perchlorate in drinking water. EPA is now considering a broader range of alternatives for interpreting the available data on: the level of health concern, the frequency of occurrence of perchlorate in drinking water, and the opportunity for health risk reduction through a national

[1] On November 12, 2008, EPA extended the comment period for 15 days regarding EPA's preliminary regulatory determination for perchlorate.

[2] The requirement for national drinking water regulations are in SDWA Section 1412. EPA's Web page describes the regulatory development process (see *http://www.epa.gov/safewater/standard/setting.html*). SDWA section 1412.e requires that EPA request comment from the Science Advisory Board prior to proposal of a maximum contaminant level goal and national primary drinking water regulation.

primary drinking water standard. These alternative interpretations may impact the Agency's final regulatory determination for perchlorate. Therefore, EPA seeks comment on these issues and the alternative approaches the Agency is considering.

A. Interpretation of the Physiologically-Based Pharmacokinetic (PBPK) Modeling

1. EPA's PBPK Modeling Analysis in the October 2008 FR Notice

The NRC (NRC, 2005) found that the inhibition of iodide uptake by the thyroid should be used as the basis for a perchlorate risk assessment. In the October, 2008, FR notice, EPA describes a Physiologically-Based Pharmacokinetic (PBPK) modeling analysis prepared by the Agency utilizing a series of papers (*e.g.*, Clewell *et al.*, 2007) discussing PBPK models that estimated the effect of perchlorate on iodide uptake for the pregnant woman and fetus, the lactating woman and neonate, and the young child. EPA used the PBPK modeling analysis to estimate the iodide uptake inhibition for these sensitive life stages consuming food containing perchlorate at mean levels, and drinking water containing perchlorate at an HRL of 15 µg/L at the 90th percentile consumption rate.

EPA found that the predicted radioactive iodide uptake (RAIU) inhibition for all subgroups was comparable to, or less than, the RAIU at the no observed effect level (NOEL) selected by the NRC. Based on this outcome, EPA concluded that by protecting the fetus of the hypothyroid or iodide-deficient woman from the effects of perchlorate on the thyroid, all other life stages and subgroups would be protected.

EPA requested comment on the model in the October 2008 FR notice in addition to conducting a peer review on the application of the model to non-adult life stages.

2. What Were the Key Scientific Issues Raised by Commenters

Many of the public comments EPA received on the PBPK model in response to the October 2008 FR notice objected to the Agency's use of a model that had not been peer reviewed. Concurrently with the public comment period, the PBPK model analysis underwent a rigorous peer review by eight experts. Response by the PB model analysis peer reviewers indicated that the modifications made to the model and the changes to physiological parameters were an improvement over the Clewell model, and all reviews were generally supportive of the analysis. Based on the external peer review comments, the models and the report entitled, ''Inhibition of the Sodium-Iodide Symporter by Perchlorate: An Evaluation of Lifestage Sensitivity Using Physiologically-Based Pharmacokinetic (PBPK) Modeling'' were revised.

As previously discussed, comments were also received from four peer reviewers for the Interim Drinking Water Health Advisory (HA) on the application of the model in identifying sensitive life stages. One HA peer reviewer noted that the use of the PBPK model did ''provide an estimate of perchlorate exposure to average weight babies of healthy breastfeeding women.'' However, this HA peer reviewer continued on to recommend that the exposure estimate be expanded to include consideration of small birth weight and preterm infants.

Another peer reviewer recommended that the uncertainty inherent in the modeling exercise should be made more transparent to the public. This uncertainty was linked to the modeling code, the availability of data for the many variable parameters in the model, the combination and handling of the data selected for use in simulations, and, in particular, the lack of human data for specific life stages including pregnant women and their fetuses, lactating women and their babies, and bottle-fed infants for which rat data were adapted. The inability of the model to reflect iodide nutritional status also was cited by three peer reviewers as an important limitation.

Individual peer reviewers raised two additional concerns: (1) That the use of animal data to predict human responses appears to run counter to the NRC finding that animal data cannot be used to quantitatively predict the response of humans due to species differences, and (2) that EPA appeared to use the PBPK model to modify the reference dose (RfD) for infants, justifying the allowance of exposures that clearly exceeded the RfD established by the NRC.

Peer reviewers further noted that the PBPK model and the EPA assessment did not account for the activity of other compounds with similar actions on the thyroid. This issue was also raised by EPA's Office of Inspector General (OIG) in reference to EPA's perchlorate risk assessment (see section III.C.2 for more information). One reviewer stated that the application of the PBPK model by the Agency as cited in the Interim Health Advisory implied an inappropriate certainty in the results that was not warranted. This reviewer recommended confining the use of the PBPK model to exploring the impact of varying physiological parameters and exposure data among life stages.

3. Alternative Approaches EPA Is Also Now Considering

Based on the comments received on the application of the PBPK model as described in the October 2008 notice and the Interim HA, EPA is re-evaluating how best to incorporate the PBPK modeling analysis into its evaluation of perchlorate, if at all.

One approach might be to use the PBPK modeling analysis to explore the relative sensitivity of the various life stages of concern to a fixed dose such as the point of departure (POD) or the reference dose (RfD). For example, EPA has examined the effect of a dose equal to the POD on RAIU for a number of different life stages. The POD for the perchlorate risk assessment (7 µg/kg/day) was recommended by the NRC. The POD is the lowest dose administered in the Greer *et al.* (2002) clinical study, and resulted in a ''very small decrease (1.8%) in radioiodide uptake * * * well within the variation of repeated measurements of normal subjects (NRC, 2005).'' The POD used was determined by NRC to be a No Observed Effect Level (NOEL). The NRC stated that use of a NOEL differs from the traditional approach to deriving an RfD, which bases the critical effect on an adverse outcome, and that using a nonadverse effect that is upstream of the adverse effect is a more conservative and health-protective approach to perchlorate hazard assessment. The NRC also recommended that EPA derive an RfD by applying a 10-fold uncertainty factor to the POD to account for differences between healthy adults and the most sensitive population, fetuses of pregnant women who might have hypothyroidism or iodide deficiency. When compared to the average adult, the 7-day old breast-fed infant and the fetus of the pregnant woman at gestation week 40 were identified by EPA's analysis as the most sensitive subgroup with respect to percent RAIU inhibition at a dose to the lactating or pregnant women equal to the POD. (See Table 1 for the model-predicted RAIU inhibition and relative sensitivity at the POD of different subgroups compared to the average adult, based on EPA's modified PBPK model.)

The predicted percent RAIU inhibition is approximately 7.8-fold higher for the 7-day old breast-fed infant and 6.7-fold higher for the fetus (at gestational week 40) than for the average adult. (Simulations at earlier gestation weeks indicate that the fetus is more

sensitive than the adult throughout pregnancy, but data available for validation of these parameters are minimal and are considered too quantitatively uncertain to assign exact relative sensitivities.) The same analysis shows that the predicted percent RAIU inhibition is approximately one and a half-fold higher for the bottle-fed infant (7–60 days) compared to the average adult, and is approximately equal for the 1–2 year old child and the average adult. However, the drinking water exposure data discussed in section III.B.3 show that infants less than six months in age generally consume five to eight times more water than pregnant women or women of child bearing age on a per body weight basis, and so will receive a higher dose for any given drinking water concentration.

TABLE 1—MODEL-PREDICTED RADIOACTIVE IODIDE UPTAKE (RAIU) INHIBITION AND RELATIVE SENSITIVITY OF DIFFERENT SUBGROUPS COMPARED TO THE AVERAGE ADULT AT A DOSE EQUAL TO THE POINT-OF-DEPARTURE (POD) BASED ON THE EPA'S MODIFIED PBPK MODELS

Population or life stage	Body weight (kg)	Dose [i] (μg/kg-d)	RAIU inhibition	Relative sensitivity vs. average adult
Average Adult [a]	70	7	1.6%	1
Woman (child-bearing age)	68	7	[b] 3.0%	1.8
Pregnant woman and Fetus (Gestation Week 40)	Mom: 79	7	[c] 6.1%	3.7
	Fetus: 3.5		[c] 11%	6.7
Lactating woman and Breast-fed infant (7 d)	Mom: 74	7	[d] 2.1%	1.3
	Infant: 3.6	Mom = 7	[d,e] 12.5%	7.8
		Infant = 7 (Mom = 2.7)	[d,e,f] 5.4%	3.3
Lactating woman and Breast-fed infant (30 d)	Mom: 73	7	[d] 2.0%	1.2
	Infant: 4.2	Mom = 7	[d,e] 9.8%	6.1
		Infant = 7 (Mom = 3.0)	[d,e,f] 4.4%	2.7
Lactating woman and Breast-fed infant (60 d)	Mom: 72	7	[d] 2.0%	1.2
	Infant: 5.0	Mom = 7	[d,e] 7.9%	4.9
		Infant = 7 (Mom = 3.6)	[d,e,f] 4.2%	2.7
Bottle-fed infant (60 d)	Infant: 5.0	7	[e] 2.5%	1.5
Child (0.97 yr) [g]	Child: 10	7	[h] 1.7%	1.1
Child (2 yr)	Child: 14	7	[h] 1.7%	1.1

[a] The body weight (70 kg) for the average adult is the default weight used by EPA for past regulatory determinations. All other body weights are generated by the model.

[b] Maternal body weight was held at the value defined at the start of pregnancy (BW = 67.77 kg), and the ''average adult'' urinary clearance values as published by Merrill *et al.* (2005) were used.

[c] Results are based on using the maternal urinary clearance as published in Clewell *et al.* (2007), which equal about half of the average adult clearance.

[d] Results are based on setting the maternal clearance rates of both perchlorate and iodide during lactation equal to that of the average adult. Clewell *et al.* (2007) used an iodide clearance rate equal to that of an average adult, but a perchlorate rate only half that of the average adult.

[e] %RAIU inhibition given for the infant is provided based upon a value of urinary clearance scaled from the adult by $BW^{2/3}$ to approximate surface-area scaling, and then multiplied by a rising fraction vs. age based on data (DeWoskin and Thompson, 2008) to reflect the reduction in glomerular filtration rates. Clewell *et al.* (2007) scaled urinary clearance by $BW^{0.75}$, rather than adjusting based on GFR.

[f] These %RAIU inhibition values are based on an internal dose to the breast-fed infant of 7 μg/kg-day, the same as for the other subgroups. Maternal dose rates lower than the POD are needed to provide 7 μg/kg-day to the infant as shown in the table. These doses differ due to changes in body weights and other PK factors with age.

[g] Because EPA typically uses a 10 kg child as a default assumption for its drinking water health advisories, the model was run for a child at 0.97 yr, the age at which the model-simulated body weight for a child is 10 kg.

[h] Results were obtained by setting urinary clearance constants for the older child equal to the average adult (Merrill *et al.,* 2005) and scaling by BW^{1}.

[i] The dose equal to the POD is 7 μg/kg-day which is 10-fold greater than the RfD. The predicted RAIU inhibition at the RfD would be less than those shown in Table 1.

The modeling analysis may be used as a tool to predict the impact of different perchlorate drinking water concentrations on RAIU across life stages. Understanding the potential impact of reducing perchlorate concentrations may be especially important for considering bottle-fed infants for whom a major portion of the diet may consist of water used to rehydrate formula.

Another approach EPA is also considering would be to not use the PBPK modeling analysis to inform the selection of the HRL for its regulatory determination but instead apply the RfD directly to the exposures of other sensitive life stages to develop separate HRLs for these life stages as described in Section III.B.

4. Request for Comment on Alternative Approaches

EPA Seeks Comments on the Following Issues:

a. EPA requests comment on using the PBPK model to evaluate the relative sensitivity of the various life stages to perchlorate exposure in drinking water.

b. EPA requests comment on the utility of the PBPK model for predicting the impact of different perchlorate drinking water concentrations on sensitive life stages to inform HRL selection.

c. EPA requests suggestions for ways to use the PBPK modeling analysis to inform the regulatory determination for perchlorate that are different from those described in this notice or the October 10, 2008, notice.

B. Alternative HRLs Based Upon Body Weight and Water Consumption of Other Life Stages

1. Analysis and Interpretations From the October 2008 FR Notice

In our October 2008 FR notice, EPA requested comments on an HRL of 15 μg/L to protect pregnant women and

their fetuses based upon the Agency's RfD, recommended by the NRC, and the following exposure estimates:

$$HRL = RfD \times BW/DWI \times RSC$$

Where:

RfD = Reference dose (0.7 µg/kg/day)
BW = Body weight (70 kg, default value)
DWI = Drinking water intake (2 L/day, default value)
RSC = Relative source contribution (62% for pregnant women)

In calculating the HRL of 15 µg/L, EPA used adult default values for both body weight (the mean body weight for men and women, 70 kg) and drinking water intake (84th percentile, 2 L/day). The RSC is the percentage of the reference dose remaining for drinking water after other sources of exposure to perchlorate have been considered (e.g., food). EPA used the pregnant women's estimated 90th percentile perchlorate intake from food to determine the RSC of 62%. In past regulatory determinations on most other noncarcinogenic contaminants, EPA has used an RSC default value of 20% for screening purposes to estimate the HRL when it has lacked adequate data to develop empirical RSCs for those contaminants (for sulfate and sodium EPA did not use an RSC to determine the HRL). For the October 2008 notice, the Agency believed that sufficient exposure data were available for perchlorate to enable EPA to estimate a better informed RSC and HRL that is more appropriate for fetuses of pregnant women (the most sensitive life stage identified by the NRC). These exposure data include the further analysis by EPA of the Unregulated Contaminant Monitoring Regulation (UCMR) data and the Centers for Disease Control and Prevention's (CDC's) National Health and Nutrition Examination Survey (NHANES) biomonitoring data, as well as the Food and Drug Administration's (FDA's) Total Diet Study (TDS) (73 FR 60269–72, October 10, 2008). The EPA analysis provided a distribution of exposure (not just a mean) specific to almost 100 pregnant women who are not likely to have been exposed to perchlorate from their drinking water, although it did not separate out iodine-deficient pregnant women because of data limitations. EPA estimated that for 90% of the pregnant women, exposure to perchlorate from food is equal to, or less than, 0.263 µg/kg/day (90th percentile). This represents nearly 38% of the RfD, leaving an RSC for water of 62%.

2. What Were the Key Issues Raised by Public Commenters?

The comments EPA received underscore the complexity of the scientific issues and many were critical of EPA's derivation of the HRL. Of those that provided detailed comments, many were concerned about the adequacy of the HRL to address all sensitive life stages (*e.g.*, pre-term and full-term infants). For example, a number of commenters argued that the proposed HRL is too high for infants because an HRL of 15 µg/L would allow daily exposures that are two to five times higher than the RfD.

One commenter cites a March 8, 2006, letter from the Children's Health Protection Advisory Committee to the EPA Administrator. The commenter states, ''* * * [T]he committee emphasized the higher exposure of infants to perchlorate and greater susceptibility to serious negative effects associated with perchlorate exposure. Neither of these issues, however, was given adequate consideration in the Preliminary Determination.''

Another commenter addresses EPA's use of default values in deriving the HRL stating, ''* * * EPA continues to use the obsolete default of 70 kg for body weight and 2 L/day of water consumption when these values certainly do not apply to pregnant women. These defaults are specifically intended for the population in general, and should be superseded by more specific and appropriate values when risk assessment is being conducted for a defined subpopulation (U.S. EPA, 2004, 2005).''

3. Alternative Approaches for Calculating HRLs

EPA agrees that reassessing exposure assumptions and other life stages warrants further consideration. The NRC (2005) identified ''the fetuses of pregnant women who might have hypothyroidism or iodide deficiency'' as ''the most sensitive population,'' but also identified infants and developing children as additional ''sensitive populations.'' Infants and young children have greater exposure to contaminants in food and water because of greater consumption of food and water on a per unit body weight basis. Therefore, these life stages may be the most vulnerable populations when their relative exposure is considered. Therefore, EPA is considering alternative approaches to deriving HRLs by evaluating exposures at different life stages. EPA is considering alternative HRLs that are estimates of the maximum concentration of perchlorate that can be consumed in drinking water without an individual's total perchlorate dose from food and water exceeding the RfD. EPA's Guidance on Selecting Age Groups for Monitoring and Assessing Childhood Exposures to Environmental Contaminants (USEPA, 2005) recommends the following 10 age groups be considered in exposure assessments for children.

- Less than 12 Months old: birth to < 1 month, 1 to < 3 months, 3 to < 6 months and 6 to < 12 months.
- Greater than 12 months old: 1 to < 2 years, 2 to < 3 years, 3 to < 6 years, 6 to < 11 years, 11 to < 16 years, and 16 to < 21 years.

EPA's Guidance for Risk Characterization (USEPA, 1995) recommends that when considering exposure to use both high end (*i.e.*, 90th and 95th percentile) and central tendency (average or median estimates) descriptors to convey the variability in risk levels experienced by different individuals in the population.

Table 2 arrays the alternative HRLs at the average 90th and 95th percentile drinking water ingestion rates for each of the 10 childhood life stages (as well as for pregnant women and women of child-bearing age, 15 to 44). The table uses the life stage specific drinking water intake data that are adjusted to account for the body weight of the individual. EPA's Child-Specific Exposure Factors Handbook (USEPA, 2008f) recommends values for drinking water ingestion rates for each of recommended children's life stage based on a study of drinking water ingestion of the U.S. population by Kahn and Stralka (2008). The study reports ingestion estimates for ''all individuals'' and for ''consumers only.'' Estimates reported for ''all individuals'' include all survey participants regardless of whether they consumed water during the 2-day survey period. Ingestion estimates for ''consumers only'' are generated from only the respondents who reported ingestion of drinking water from a community water system during the survey period. The authors report that this group is often the primary focus in analyses of risk due to ingestion of water that may be contaminated. Consequently, this is the only group presented in Table 2.

In addition to identifying infants and developing children as sensitive life stages, as noted previously, the NAS identified the fetuses of iodide deficient pregnant women as the most sensitive population (or life stage). To address concerns that the default weight and ingestion rates provided in the October 2008 notice do not apply to this group, EPA has included an alternative HRL for

this life stage in Table 2. This value is calculated based on body weight and drinking water ingestion information specifically from pregnant women (USEPA, 2004).

EPA notes that for six life stages in Table 2 (birth to < 1 month, 1 to < 3 months, 3 to < 6 months, 16 to 18 years and 18 to 21 years and for pregnant women), the sample size used to estimate some of the drinking water ingestion rates (denoted in Table 2 by foot note [c]) do not meet the minimum data requirements as described in the ''Third Report on Nutrition Monitoring in the United States'' (LSRO, 1995). However, these are the best available data to characterize drinking water ingestion for these specific life stages. EPA also notes that these data clearly show the trend that drinking water mean ingestion rate on a per body weight basis increases as the life stage age decreases. To address this potential concern regarding sample size for some of these drinking water ingestion rates, EPA also aggregated the three youngest recommended age groups into one category on Table 2 (birth to < 6 months) based on data from EPA (USEPA, 2004). To address women of childbearing age, EPA presents HRLs calculated based upon drinking water ingestion data for women ages 15 to 44.

To estimate dietary exposure to perchlorate and to calculate RSCs, EPA used data available from two studies previously described by EPA, the FDA's Total Diet Study (Murray *et al.*, 2008) and the NHANES–UCMR Analysis (73 FR 60269–73, October 10, 2008). In cases where these studies did not provide a dietary exposure estimate for one of the recommended child-specific life stages/age groups, EPA applied the RSC calculated for the age group closest to the age group of interest. This meant that the RSCs for the age groups between birth and 6 months, 59%, were based on the mean dietary exposure estimate for infants ages 6 through 11 months, 0.29 µg/kg-day, derived from FDA's Total Diet Study. We understand that infant diets vary significantly between birth and age 11 months and that the TDS mean dietary perchlorate exposure estimates for ages 6 through 11 months consider consumption of baby foods that are not consumed by younger infants (see *http://www.fda.gov/Food/FoodSafety/FoodContaminantsAdulteration/ChemicalContaminants/Perchlorate/ucm077615.htm*). Researchers from the CDC (Schier *et al.*, 2009) recently published a study in which they estimated exposures to perchlorate from the consumption of infant formula. For infants age 1 month, the researchers' central tendency estimate of perchlorate daily dose from consumption of bovine milk-based infant formula with lactose (the type of formula with the highest concentrations of perchlorate) was also 0.29 µg/kg-day, corresponding to an RSC of 59%. Thus, EPA's RSC for young infants, 59%, is supported through two different estimates of central tendency infant dietary perchlorate exposure.

TABLE 2—ALTERNATIVE HRLS AT THE AVERAGE, 90TH AND 95TH PERCENTILE DRINKING WATER INGESTION RATES FOR VARIOUS LIFE STAGES

Life stage	RfD (µg/kg-day)	RSC [a] (percent)	Mean ingestion rate [d] (mL/kg-day) [b]	Alt HRL (µg/L)	90th Percentile ingestion rate [d] (mL/kg-day) [b]	Alt HRL (µg/L)	95th Percentile ingestion rate [d] (mL/kg-day) [b]	Alt HRL (µg/L)
Birth to < 1 month	0.7	59	137	3	[c] 235	2	[c] 238	2
1 to < 3 months	0.7	59	119	3	[c] 228	2	[c] 285	1
3 to < 6 months	0.7	59	80	5	148	3	[c] 173	2
Birth to < 6 months	0.7	59	95	4	184	2	221	2
6 to < 12 months	0.7	59	53	8	112	4	129	3
1 to < 2 years	0.7	44	27	11	56	6	75	4
2 to < 3 years	0.7	44	26	12	52	6	62	5
3 to < 6 years	0.7	60	24	18	49	9	65	6
6 to < 11 years	0.7	71	17	29	35	14	45	11
11 to < 16 years	0.7	84	13	45	26	23	34	17
16 to < 18 years	0.7	80	12	47	24	23	[c] 32	18
18 to < 21 years	0.7	80	13	43	29	19	[c] 35	16
Pregnant Women [e]	0.7	[c] 62	[c] 14	31	[c] 33	13	[c] 43	10
Women Ages 15–44	0.7	80	15	37	32	18	39	14

[a] RSC calculated for nearest age range based on the mean dietary intake from TDS (see Table 5 at 73 FR 60275, October 10, 2008), RSC for pregnant women and women ages 15–44 based on the 90th percentile dietary intake from NHANES–UCMR analysis (see Table 6 at 73 FR 60276, October 10, 2008).

[b] Drinking Water Ingestion Rates for consumers only in Community Water Systems taken from EPA's ''Child-Specific Exposure Factors Handbook'' (USEPA, 2008e). Except for values for infants from birth to 6 months, which are taken from Tables 5.2.A2 of EPA's ''Estimated Per Capita Water Ingestion and Body Weight in the United States—An Update'' (USEPA, 2004), and for Pregnant Women and Women Ages 15–44 which are taken from Table 6.2.A2 of EPA's ''Estimated Per Capita Water Ingestion and Body Weight in the United States—An Update'' (USEPA, 2004).

[c] The sample sizes for the estimates of ingestion rates for these life stages do not meet the minimum data requirements as described in the ''Third Report on Nutrition Monitoring in the United States'' (LSRO, 1995).

[d] Ingestion rate is adjusted for the self-reported body weights from the CFSII.

[e] The most sensitive population identified by the NRC are the fetuses of pregnant women who might have hypothyroidism or iodide deficiency.

4. Request for Comments

EPA Seeks Comments on the Following Issues:

a. EPA requests comment on whether the alternative HRLs described in this notice appropriately take into account specific and appropriate exposure values for all potentially sensitive life stages, including infants, children and the fetuses of pregnant women (rather than the 70 kg body weight and 2 liter per day consumption used for past regulatory determinations).

b. EPA requests comment on the alternative HRLs in Table 2 and which of these values would be appropriate levels of health concern against which to compare the levels of perchlorate found in public water systems.

c. EPA requests comment on whether EPA used the best available and most appropriate data to estimate alternative HRLs in Table 2. EPA specifically requests comment on the drinking water ingestion rates in Table 2 (denoted by footnote [c]) where the sample size does not meet the minimum data requirements as described in the ''Third Report on Nutrition Monitoring in the United States'' (LSRO, 1995). Does aggregating life stages (birth to 6 months, and women ages 15–44) address sample size limitation and still provide an accurate representation of the exposure to the most vulnerable life stages?

d. EPA requests comment on the merits of the approach described here of deriving HRLs for sensitive life stages based on the RfD combined with the life stage specific exposure data and whether there are other approaches that may be useful for deriving HRLs.

C. Occurrence Analysis

1. Occurrence Analysis in the October 2008 **Federal Register** Notice

In the October 2008 FR notice, EPA presented information on the drinking water occurrence of perchlorate. The data source was EPA's UCMR 1 and the samples were collected between 2001 and 2005. A total of 34,331 samples were collected from 3,865 public water systems. EPA found that 1.9% of the samples (637 out of 34,331) had perchlorate at, or above, the minimum reporting level (MRL = 4 µg/L) and that 4.1% of the systems (160 out of 3,865 systems) reported perchlorate at, or above, the MRL in at least one sample. The average perchlorate concentration among systems that detected perchlorate was 9.85 µg/L and the median was 6.40 µg/L.

Table 3 presents EPA's estimates of the population served by water systems for which the highest reported perchlorate concentration was greater than various threshold concentrations ranging from 4 µg/L (MRL) to 25 µg/L. The fourth column presents a high end estimate of the population served drinking water above a threshold. This column presents the total population served by those drinking water systems in which at least one sample was found to contain perchlorate above the threshold concentration. EPA considers this a high-end estimate because it is based upon the assumption that the entire system population is served water from the entry point that had the highest reported perchlorate concentration. In fact, many water systems have multiple entry points into which treated water is pumped for distribution to their consumers. For the systems with multiple entry points, it is unlikely that the entire service population receives water from the one entry point with the highest single concentration. Therefore, EPA also is providing a less conservative estimate of the population served water above a threshold in the fifth column in Table 3. EPA developed this estimate by assuming the population was equally distributed among all entry points. For example, if a system with 10 entry points serving 200,000 people had a sample from a single entry point with a concentration at or above a given threshold, EPA assumed that the entry point served one-tenth of the system population, and added 20,000 people to the total when estimating the population in the last column of Table 3. This approach may provide either an overestimate or an underestimate of the population served by the affected entry point. In contrast, in the example above, EPA added the entire system population of 200,000 to the more conservative population served estimate in column 4, which is most likely an overestimate. EPA noted that the population estimates in Table 3 are for people at all life stages and estimated that at any one time, 1.4 percent of the population in Table 3 are pregnant women based upon data from the U.S. Census Bureau.

TABLE 3—UCMR 1 OCCURRENCE AND POPULATION ESTIMATES FOR PERCHLORATE ABOVE VARIOUS THRESHOLDS

Thresholds [a]	PWSs with at least 1 detection > threshold of interest	PWS entry or sample points with at least 1 detection > threshold of interest [b]	Population served by PWSs with at least 1 detection > threshold of interest [c]	Population estimate for entry or sample points having at least 1 detection > threshold of interest [d]
4 µg/L	4.01% (155 of 3,865)	2.48% (371 of 14,987)	16.6 M [e]	5.1 M.
5 µg/L	3.16% (122 of 3,865)	1.88% (281 of 14,987)	14.6 M	4.0 M.
7 µg/L	2.12% (82 of 3,865)	1.14% (171 of 14,987)	7.2 M	2.2 M.
10 µg/L	1.35% (52 of 3,865)	0.65% (97 of 14,987)	5.0 M	1.5 M.
12 µg/L	1.09% (42 of 3,865)	0.42% (63 of 14,984)	3.6 M	1.2 M.
15 µg/L	0.80% (31 of 3,865)	0.29% (44 of 14,987)	2.0 M	0.9 M.
17 µg/L	0.70% (27 of 3,865)	0.24% (36 of 14,987)	1.9 M	0.8 M.
20 µg/L	0.49% (19 of 3,865)	0.16% (24 of 14,987)	1.5 M	0.7 M.
25 µg/L	0.36% (14 of 3,865)	0.12% (18 of 14,987)	1.0 M	0.4 M.

Footnotes:
[a] All occurrence measures in this table were conducted on a basis reflecting values greater than the listed thresholds.

[b] The entry/sample-point-level population served estimate is based on the system entry/sample points that had at least 1 analytical detection for perchlorate greater than the threshold of interest. The UCMR 1 small system survey was designed to be representative of the nation's small systems, not necessarily to be representative of small system entry points.

[c] The system-level population served estimate is based on the systems that had at least 1 analytical detection for perchlorate greater than the threshold of interest.

[d] Because the population served by each entry/sample point is not known, EPA assumed that the total population served by a particular system is equally distributed across all entry/sample points. To derive the entry/sample point-level population estimate, EPA summed the population values for the entry/sample points that had at least 1 analytical detection greater than the threshold of interest.

[e] This value does not include the population associated with 5 systems serving 200,000 people that measured perchlorate at 4 µg/L in at least one sample because the table only shows population estimates greater than each of the thresholds in the first column.

The Agency also evaluated supplemental drinking water monitoring data for perchlorate in California and Massachusetts. EPA believes these States' monitoring results are generally consistent with the results collected by EPA under UCMR 1. Perchlorate occurrence analysis from California and Massachusetts can be found online at: *http://www2.cdph.ca.gov/certlic/drinkingwater/Pages/Perchlorate.aspx* and *http://www.mass.gov/dep/water/drinking/percinfo.htm#* sites respectively.

2. What Were the Key Issues Raised by Commenters?

EPA received comments on the proposed decision not to regulate perchlorate based on the population exposed above the HRL. Some comments objected to the Agency's proposed HRL as being ''inappropriately high'' thereby ''greatly reducing the size of the population predicted to be exposed at a level of public health concern * * * and significantly minimizing the need for regulation of perchlorate from an occurrence standpoint.''

One commenter believes that, ''Approximately 4% of public water supplies serving 17 million Americans would be in exceedance of an HRL between 2 and 6 µg/L. This is 15 million more at risk individuals than currently estimated by the Agency.''

Another commenter believes that at an HRL of 2 µg/L, 16.6 million would be exposed, and another commenter states that if EPA set the HRL at 5 µg/L, then 5–7 times more individuals would be exposed above the HRL than at 15 µg/L.

However, one commenter points out that, ''An MCL of 2 µg/L could impact approximately 4% of public water systems nationally. At this level, regional impacts in California and Texas would be greater due to the higher geographical concentration of detections in those states. Yet it should be noted that water systems in Massachusetts, New Jersey and California have already established regulatory limits of 2 µg/L, 5 µg/L and 6 µg/L respectively, thereby capping the population exposure potential from community drinking water sources in those States.''

3. Numbers of Systems and Populations That Would Be Exposed at Levels Exceeding the Alternative Approaches the Agency Is Considering

EPA plans to use the UCMR 1 perchlorate data to conduct analyses to estimate the number of systems and populations served by systems that would be exposed to the various alternative HRL concentrations of perchlorate. Estimates will be made of the populations served by systems for which the highest reported perchlorate concentration exceeds the various threshold concentrations ranging from 1 µg/L to 25 µg/L. One limitation to the UCMR 1 data is that the perchlorate analytical method MRL is 4 µg/L; only perchlorate sample detections greater than or equal to 4 µg/L can be dependably quantified and reported. Any perchlorate sample concentration with a value between 0 and 4 µg/L is recorded in the UCMR 1 data as a ''non-detection.'' Therefore, to estimate perchlorate occurrence relative to concentrations both above and below the MRL of 4 µg/L, while fully using all perchlorate detection and non-detection data, it is necessary to estimate occurrence using modeling techniques

EPA is considering using a Bayesian hierarchical model (a form of probabilistic model that uses maximum likelihood estimation techniques) to estimate perchlorate occurrence and to estimate the uncertainty and variability of those occurrence estimates. For this modeling effort, EPA could use the basic assumption that the national distribution of perchlorate sample concentrations can be modeled as a lognormal distribution. The lognormal distribution is a fundamental probability distribution that is used commonly and effectively to characterize environmental contaminant occurrence. The basic characteristic of a lognormal distribution is that the logarithms of the values being evaluated (in this case, the perchlorate concentrations of UCMR 1 samples of drinking water) are normally distributed. One property of the lognormal distribution that makes it particularly well-suited to describing phenomena like environmental contaminant occurrence data is that it is bounded by zero on the low end and it reflects a ''right-skewed'' distribution—that is, it has a tail in the upper end—that is consistent with having a small proportion with relatively high values.

The Bayesian model could estimate the number of public water systems, and populations served by systems, with at least one estimated sample detection greater than 1, 2, 3, 4, 5, 7, 10, 12, 15, 17, 20, and 25 µg/L. EPA notes that systems or entry/sample points with at least one detect above the threshold may not expose the population to this level at all times. At any particular time, perchlorate levels may be lower or higher than the highest estimated sample detection. However, EPA believes this approach more closely reflects the short term exposure during life stages of concern (*i.e.,* fetuses, pre-term newborns, infants and young children) than does the estimated mean concentration of perchlorate at a system. EPA underscores the fact that the estimated total population exposed at thresholds that lie below the perchlorate MRL of 4 µg/L would be equal to, if not greater than, the corresponding high end estimate of 16.8 million people. To estimate the portion of the total population that is at a childhood life stage potentially exposed at these thresholds, EPA could use U.S. Census data as it did in the October 2008 FR notice to estimate the number of pregnant women potentially exposed above the HRL and could also estimate the number of infants and children potentially exposed above the HRL

Perchlorate monitoring data from the State of Massachusetts could be used to help characterize the distribution of very low perchlorate concentration occurrence. Massachusetts monitoring uses a modified version of the EPA laboratory analytical method for perchlorate that has a MRL of 1 µg/L. This is the only known, state-wide monitoring program that uses an analytical method with an MRL lower than 4 µg/L. Bayesian hierarchical modeling can use the Massachusetts data to improve the model estimates in the lower concentration ranges.

4. Request for Comment on Alternative Approaches

EPA Seeks Comments on the Following Issues:

a. EPA requests comment on the potential use of a Bayesian model to estimate the number of public water systems, and populations served by such systems, with at least one estimated sample detection greater than 1, 2, 3, 4, 5, 7, 10, 12, 15, 17, 20, and 25 µg/L.

b. EPA requests comment on using U.S. Census data to estimate the portions of the population that are in the sensitive life stage at any one time.

c. EPA requests comment on how the Agency should account for the variation of perchlorate levels over time in public water systems. EPA believes that estimating the number of systems, entry points and populations with at least one detection above the HRL is appropriate for the perchlorate regulatory determination because a single quarterly or semi-annual sample more closely reflects the short term exposure during life stages of concern (i.e., fetuses, pre-term newborns, infants and young children). However, EPA requests comment on whether the Agency should consider other approaches such as estimating the number of systems, entry points and populations with two or more detections above HRL or some other approach.

IV. Consideration of Studies Published Since EPA Adopted the NAS RfD for Perchlorate

EPA's preliminary regulatory determination is based on NRC's (NRC, 2005) recommendation to use data from the Greer *et al.* (2002) study as the basis for the perchlorate RfD/risk assessment.

Since the publication of the NRC report, researchers have investigated perchlorate occurrence in humans by analyzing for perchlorate in urine and breast milk—such biomonitoring data has the potential to better inform EPA's analysis of exposure to perchlorate through food and water and to provide insight into the possible interactions of other physiologic conditions (*e.g.,* iodine deficiency) with perchlorate ingestion. EPA's preliminary regulatory determination described the consideration of these studies, many of which were published after the NRC report (including, but not limited to, Blount *et al.* (2006 and 2007), Steinmaus *et al.* (2007), and Amitai *et al.* (2007)) (73 FR 60267–68, October 10, 2008).

CDC researchers published two biomonitoring papers using CDC's 2001–2002 NHANES data—the first study measured perchlorate in urine (Blount *et al.,* 2006) and the second examined the relationship between urinary perchlorate and thyroid hormone levels (Blount *et al.,* 2007). In the urinary biomonitoring study, the authors found perchlorate in all samples tested (2,820 survey participants ages six and older) and estimated a total daily perchlorate dose for adults (doses for children were not calculated). The median dose was about one tenth (0.066 µg/kg/day) of the RfD, while the 95th percentile dose was about one third of the RfD (0.234 µg/kg/day). In the second study, which examined the relationship between urinary levels of perchlorate and blood serum levels of thyroid hormones, Blount *et al.* (2007) found that for women with low iodine levels (urinary iodide levels less than 100 µg/L) urinary perchlorate is associated with a decrease in (a negative predictor for) T4 levels and an increase in (a positive predictor for) thyroid stimulating hormone levels. The perchlorate exposures at which this association was observed are lower than anticipated based on other studies. The study authors indicated that further research needs to be performed to confirm these findings. The subsequent Steinmaus (2007) analysis of the same NHANES 2001–2002 epidemiological data concluded that thiocyanate in tobacco smoke and perchlorate interact in affecting the thyroid function in low-iodine women. The Amitai *et al.* study assessed thyroid hormone (thyroxine) values in newborns in different perchlorate exposure groups (low, high and very high) and found no significant differences.

In studies analyzing breast milk for perchlorate, Pearce *et al.* (2007) and Kirk *et al.* (2005, 2007) all found perchlorate in study samples. The objective of the Pearce *et al.* (2007) study was ''to determine whether breast milk iodine concentrations in Boston-area women are adequate for infant nutrition, and whether breast milk iodine concentrations may be associated with environmental perchlorate or cigarette smoke exposure.'' Pearce *et al.* (2007) did not find a significant correlation with either breast milk perchlorate or urinary perchlorate levels with breast milk iodine concentrations. The objective of the Kirk *et al.* (2005) study was to determine the amount of perchlorate to which children are exposed by measuring perchlorate and iodide levels in cow and human breast milk and then comparing these numbers to corresponding levels of perchlorate in drinking water in the area. Kirk *et al.* (2005) did not find a correlation between the levels of perchlorate in breast milk and perchlorate in drinking water, but speculated that there was a correlation between higher levels of perchlorate and lower levels of iodine in breast milk. The objective of the Kirk *et al.* (2007) study was to determine the variability of perchlorate, thiocyanate, and iodide in breast milk in serially collected samples (6 samples on each of the 3 study days) involving 10 women. The authors concluded that ''Iodine intake may be inadequate in a significant fraction of this study population. Perchlorate and thiocyanate appear to be common in human milk. The role of these chemicals in reducing breast milk iodide is in need of further investigation.''

Blount *et al.* (2007) suggested breast milk as an excretion pathway and Dasgupta *et al.* (2008) compared a woman's daily intake of iodine and perchlorate with the concentrations of each in her breast milk. The Dasgupta *et al.* study found that a higher proportion of perchlorate enters the breast milk compared with a small proportion of iodine.

Of those commenters that provided detailed comments to the October 2008 FR notice, many commenters believe that EPA's RfD is not adequately protective of human health. One commenter stated that ''[T]he EPA reference dose for perchlorate is based on data from Greer *et al.* (2002) that observed the inhibition of radioiodide uptake. Ginsberg and Rice (2005) identified several problems with the Greer *et al.* study that suggest the need for reevaluation of the value that serves as the foundation for regulatory decision-making,'' and that, ''* * * the results of the Blount study more closely reflect our understanding of the biological and toxicological processes pertaining to thyroid homeostasis, both in terms of thyroid hormone variability and the role of iodine.'' The commenter ''[S]trongly recommends that the CDC data analyzed in the study of Blount *et al.* (2006) and Blount *et al.* (2007) be used as the basis for the derivation of a new reference dose.''

Other commenters agree, stating that the use of the Greer *et al.* (2002) study ''* * * is based on a limited clinical study of short duration and small sample size not representative of the variability in the human population,'' and the ''[U]se of these limited data to calculate a regulatory trigger level has been widely criticized as inadequate * * * and no longer reflects the best available data.''

Another commenter believes that ''[A]dditional important data on pregnant women and their offspring

have become available since the time of development of the EPA RfD in 2005 which would necessitate a reconsideration of the existing value * * * in addition EPA has discussed other data relevant to deriving an updated RfD in this Federal Register notice including Amitai *et al.,* 2007, Blount *et al.,* 2006, and studies discussing PBPK models.''

One commenter concludes by stating, ''* * * [T]hat EPA has based its argument for not regulating perchlorate contamination in public water systems on a literature that is both limited and ill focused. We believe that EPA has not performed a sufficiently 'thorough review' of the literature, that it has omitted important information, and that it has failed to perform its due diligence in the interpretation and analysis of the information that it did present. To correct this, EPA must employ the CDC study (Blount *et al.*, 2006a) as the point of departure for RfD determination, and must focus on the neonate and infant as the most sensitive population.''

One commenter does not believe that additional analysis is warranted and that EPA should issue a final determination as soon as possible, stating that ''EPA has an extraordinary wealth of comprehensive, authoritative scientific information relating to perchlorate's health effects, supplemented by extensive occurrence and exposure data. The Agency is therefore exceptionally well-positioned to issue a well-considered regulatory determination.'' The commenter continues by stating,

> * * * EPA has ample scientific and technical data to make a final determination on or before the planned date of December 2008 * * *. [P]erchlorate is one of the most well-studied chemicals with detailed information on the mechanism of action, dose-response, and health effects. This issue also is not new. EPA released its first draft risk assessment on perchlorate in 1998, followed by a second in 2002. The 2005 NAS report was a comprehensive review of the science. The animal and human studies that have been published since the NAS report reduce the uncertainty and reinforce the NAS panel's finding that there will not be any adverse health effects from perchlorate at environmentally-relevant concentrations.
>
> New studies published since the NAS report increase the weight of evidence that the current RfD protects human health including the most sensitive members of our population. In addition, testimony by Congressional members and witnesses alike have discussed the lengthy amount of time that EPA has spent studying the health effects, urging the agency to issue a determination as soon as practicable. We join them in urging EPA to issue the final determination promptly.

An additional key scientific issue was raised by EPA's OIG in the report released for public comment ''OIG Scientific Analysis of Perchlorate (External Review Draft)'' (EPA, 2008g). The report states,

> The OIG Analysis concludes that a single chemical risk assessment of perchlorate is not sufficient to assess and characterize the combined human health risk from all four NIS stressors, (*i.e.,* thiocyanate, nitrate, perchlorate and lack of iodide) and that * * * Only a cumulative risk assessment can fully characterize the nature and sources of risk affecting this public health issue. Furthermore, a cumulative risk assessment allows an informed environmental decision to be made on how to mitigate the risk effectively.

The report goes on to say,

> Potentially lowering the perchlorate drinking water limit from 24.5 ppb to 6 ppb does not provide a meaningful opportunity to lower the public's risk. By contrast, addressing moderate and mild iodide deficiency occurring in about 29% of the U.S. pregnant and nursing population appears to be the most effective approach of increasing TIU [total iodide uptake] to healthy levels during pregnancy and nursing, thereby reducing the frequency and severity of permanent mental deficits in children.

The draft report, and comments submitted by EPA's Office of Water and Office of Research and Development, can be found in the Docket to this notice.

EPA agrees that additional important data have become available since the RfD was derived in 2005. However, EPA has evaluated the new data and has decided to make the regulatory determination based upon the current RfD. EPA will continue to evaluate any new perchlorate data to determine its relevance to the regulatory determination in accordance with the SDWA.

V. Next Steps

The Agency will consider the information and comments submitted in response to this supplemental notice, as well as comments received on the October 10, 2008, FR notice, and all peer review comments before issuing a final regulatory determination for perchlorate and intends to do so as expeditiously as possible. EPA believes that the alternative analyses presented in this notice could lead the Agency to make a determination to regulate perchlorate.

VI. References

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Dated: August 5, 2009.

Peter S. Silva,

Assistant Administrator, Office of Water.

[FR Doc. E9–19507 Filed 8–18–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2009–0496; FRL–8429–5]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) will be held on September 9–11, 2009, in Research Triangle Park, NC. At this meeting, the NAC/AEGL Committee will address, as time permits, the various aspects of the acute toxicity and the development of Acute Exposure Guideline Levels (AEGLs) for the following chemicals: Cadmium; carbofuran; carbon dioxide; dichlorovos; dicrotophos; dimethyl phosphate; fenamiphos; gasoline; hydrogen selenide; lead; methamidophos; methyl iodide; mevinphos; monocrotophos; nerve agent GB; phosgene; phosphamidon; red phosphorus; ricin; tetrachloroethylene; 1,1,1-trichloroethylene; and trimethylphosphite.

DATES: A meeting of the NAC/AEGL Committee will be held from 10 a.m. to 5 p.m. on September 9, 2009; from 8 a.m. to 5 p.m. on September 10, 2009; and from 8 a.m. to noon on September 11, 2009.

ADDRESSES: The meeting will be held at the EPA Main Campus, 109 T.W. Alexander Dr., Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: Paul S. Tobin, Designated Federal Officer (DFO), Risk Assessment Division (7403M), Office of Pollution Prevention and Toxics, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8557; e-mail address: *tobin.paul@epa.gov*.

To request accommodation of a disability, please contact the DFO, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2009–0496. 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, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet

under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Meeting Procedures

For additional information on the scheduled meeting, the agenda of the NAC/AEGL Committee, or the submission of information on chemicals to be discussed at the meeting, contact the DFO.

The meeting of the NAC/AEGL Committee will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the DFO to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meeting as observers are also encouraged to contact the DFO at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemical-specific information should be directed to the DFO.

III. Future Meetings

Another meeting of the NAC/AEGL Committee is scheduled for Spring 2010.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Health.

Dated: August 7, 2009.

Barbara Cunningham,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. E9–19532 Filed 8–18–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0143; FRL–8430–8]

State FIFRA Issues Research and Evaluation Group; Full Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/State FIFRA Issues Research and Evaluation Group (SFIREG), Pesticide Operations and Management (POM) Working Committee will hold a 2–day meeting, beginning on September 21, 2009 and ending September 22, 2009. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, September 21, 2009 from 8:30 a.m. to 5 p.m. and 8:30 a.m to 12 noon on Tuesday, September 22, 2009. To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The open meeting will be held at the EPA, One Potomac Yard (South Bldg.) 2777 Crystal Dr., Arlington, VA., 1st Floor South Conference Room.

FOR FURTHER INFORMATION CONTACT: Ron Kendall, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5561 fax number: (703) 308–1850; e-mail address: *kendall.ron@epa.gov*, or Grier Stayton, SFIREG Executive Secretary, P.O. Box 466, Milford DE 19963; telephone number (302) 422–8152; fax (302) 422–2435; e-mail address: *grierstayton aapco-sfireg@comcast.net*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are interested in SFIREG information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process. You are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to:

Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetics Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2008–0143. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Background

Topics may include but are not limited to:

1. Updates to the Section 24(c) registration guidance document.

2. Review of soil fumigant label tables.

3. Refining the Product Use Classification Changes issue paper.

4. PRISM structured e-labeling.

5. Comparative safety statements and DfE labeling.

6. POM Working Committee Workgroups Issue papers/Updates.

7. EPA Update Briefing:

• Office of Pesticide Programs Update.

• Office of Enforcement Compliance Assurance Update.

8. Clarifying allowable carrier volume under FIFRA Section 2(ee).

9. Finalizing acetochlor groundwater protection label language.

III. How Can I Request to Participate in this Meeting?

This meeting is open for the public to attend. You may attend the meeting without further notification. If you want to request to attend as a participant you may also submit a request to participate in this meeting to the person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number EPA–HQ–OPP–2008–0143;, must be received on or before September 1, 2009.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: August 7, 2009.

Kevin Keaney

Acting Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. E9–19531 Filed 8–18–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0045; FRL–8429–9]

Notice of Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's receipt of several initial filings of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before September 18, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT: A contact person, with telephone number and e-mail address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

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 at the end of the pesticide petition summary of interest.

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

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerance Exemption

1. *PP 9E7557*. (EPA–HQ–OPP–2009–0479). Rhodia, Inc., 8 Cedar Brook Dr., Cranbury, NJ 08512, proposes to establish an exemption from the requirement of a tolerance for residues of alkyl (C_{12}-C_{16}) dimethyl ammonio acetate (ADAA) when used as a pesticide inert ingredient in pesticide formulations applied to growing crops and when applied to animals, under 40 CFR 180.920 and 180.930, with a limit of up to 20 percent of pesticide formulations. This tolerance expression includes: alkyl (C_{12}) dimethyl ammonio acetate (C_{12}-ADAA), CAS No. 683–10–3; alkyl (C_{14}) dimethyl ammonio acetate (C_{14}-ADAA), CAS No. 2601–33–4; and alkyl (C_{16}) dimethyl ammonio acetate (C_{16}-ADAA), CAS No. 693–33–4. The petitioner believes no analytical method is needed because this petition is a request for an exemption from the requirement of a tolerance. Contact: Elizabeth Fertich, (703) 347–8560; *fertich.elizabeth@epa.gov*.

2. *PP 9E7562*. (EPA–HQ–OPP–2008–0822). Akzo Nobel Surface Chemistry, LLC, 525 West Van Buren St., Chicago, IL 60607-3823, proposes to establish an exemption from the requirement of tolerances in 40 CFR 180.910 for residues of mono-, di-, and trimethylnapthalenesulfonic acids and napthalenesulfonic acids formaldehyde condensates, ammonium and sodium salts when used as a pesticide inert ingredient in pesticide formulations in or on all raw agricultural commodities. The petitioner believes no analytical method is needed because this petition is a request for an exemption from the requirement of a tolerance. Contact: Elizabeth Fertich, (703) 347–8560; *fertich.elizabeth@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 11, 2009.

G. Jeffrey Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E9–19859 Filed 8–18–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2009–0001; FRL–8414–3]

Proposed Acute Exposure Guideline Levels for Hazardous Substances; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) is developing AEGLs on an ongoing basis to provide Federal, State, and local agencies with information on short-term exposures to hazardous substances. This notice provides a list of 19 proposed AEGLs that are available for public review and comment. Comments are welcome on both the proposed AEGLs and their Technical Support Documents placed in the docket.

DATES: Comments must be received on or before September 18, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2009–0001, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2009–0001. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2009–0001. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise

protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Paul S. Tobin, Designated Federal Officer (DFO), Office of Pollution Prevention and Toxics (7406M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8557; e-mail address: *tobin.paul@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the general public to provide an opportunity for review and comment on proposed AEGLs and their Technical Support Documents. This action may be of particular interest to anyone who may be affected if the AEGLs are adopted by government agencies for emergency planning, prevention, or response programs, such as EPAs Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State and local agencies and private organizations, may adopt the AEGLs for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPAs Office of Prevention, Pesticides and Toxic Substances (OPPTS) provided notice on October 31, 1995 (60 FR 55376) (FRL–4987–3) of the establishment of the NAC/AEGL Committee with the stated charter objective as ''the efficient and effective development of AEGLs and the preparation of supplementary qualitative information on the hazardous substances for Federal, State, and Local agencies and organizations in the private sector concerned with [chemical] emergency planning, prevention, and response.'' The NAC/AEGL Committee is a discretionary Federal advisory committee formed with the intent to develop AEGLs for hazardous substances through the combined efforts of stakeholder members from both the public and private sectors in a cost-effective approach that avoids duplication of efforts and provides uniform values, while employing the most scientifically sound methods available.

This action provides notice of availability for public review and comment, of proposed AEGLs and underlying supporting documents for 19 hazardous substances. These AEGLs represent the 12th set of exposure levels proposed and published by the NAC/AEGL Committee. These 12 sets of AEGLs cover 259 hazardous substances. Background information on the AEGL Program may be found in these earlier **Federal Register** notices, in the regulations.gov, or on the AEGL

webpage (*http://www.epa.gov/oppt/aegl*).

Following public review and comment, the NAC/AEGL Committee will reconvene to consider relevant comments, data, and information that may have an impact on the NAC/AEGL Committees position and will again seek consensus for the establishment of Interim AEGLs. Although the Interim AEGLs will be available to Federal, State and local agencies and to organizations in the private sector as biological reference values, it is intended to have them reviewed by a subcommittee of the National Academies (NAS). The NAS subcommittee will serve as a peer review of the Interim AEGLs and as the final arbiter in the resolution of issues regarding the AEGLs, and the data and basic methodology used for setting AEGLs. Following concurrence, Final AEGLs will be published under the auspices of the NAS.

III. List of Hazardous Substances

On behalf of the NAC/AEGL Committee, EPA is providing an opportunity for public comment on the proposed AEGLs for the 19 hazardous substances identified in the table in this unit. Technical Support Documents are available in the docket for this notice. See **ADDRESSES** for docket information.

Chemical Name	CAS Number
1,2-Butylene oxide	106–88–7
Bromoacetone	598–31–2
Cyanogen	460–19–5
Ethylbenzene	100–41–4
Ethylisocyanate	109–90–0
Ethylphosphorodichloridate	1498–51–7
Germane	7782–65–2
Malathion	121–75–5
Methylisothiocyanate	556–61–6
Methylparathion	298–00–0
n-Butyl isocyanate	111–36–4
Nitrogentrifluoride	7783–54–2
Nitrogentetroxide	10544–72–6
Parathion	56–38–2
Phenyl isocyanate	103–71–9
Phorate	298–02–2
t-Octyl mercaptan	141–59–3
Tear gas	2698–41–1
Trimethylacetyl chloride	3282–30–2

List of Subjects

Environmental protection, Acute Exposure Guideline Levels, Hazardous substances, Health.

Dated: August 4, 2009.

Stephen A. Owens,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 09–19860 Filed 8–18–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0045; FRL–8426–7]

Notice of Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's receipt of several initial filings of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before September 18, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

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

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• *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.

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Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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II. What Action is the Agency Taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of these petitions so that the public has an opportunity to comment on these requests for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petitions may be obtained through the petition summaries referenced in this unit.

New Tolerances

1. *PP 9E7544.* (EPA–HQ–OPP–2009–0289). The Interregional Research Project Number 4 (IR-4), IR-4 Project Headquarters, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, proposes to establish a tolerance in 40 CFR part 180 for residues of the insecticide acetamiprid, N1-[(6-chloro-3-pyridyl)methyl]- N2-cyano-N1-methylacetamidine, in or on fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13-07F at 0.35 parts per million (ppm); and tolerances with regional restrictions for clover, forage at 0.10 ppm; clover, hay at 0.01 ppm; and tea at 50 ppm. Based upon the metabolism of acetamiprid in plants and the toxicology of the parent and metabolites, quantification of the parent acetamiprid is sufficient to determine toxic residues. As a result a method has been developed which involves extraction of acetamiprid from crops with methanol and analysis by liquid chromatography/mass spectrometry/mass spectrometry (LC/MS/MS) methods. The limit of quantification (LOQ) and the limit of detection (LOD) for the method are calculated to be 0.0076 ppm and 0.0025 ppm for clover forage, respectively while the LOQ and the LOD for the method for clover hay are calculated to be 0.0082 ppm and 0.0027 ppm, respectively. The LOQ and LOD for grape are calculated to be 0.0064 ppm and 0.0021 ppm, respectively. The LOQ and LOD for greenhouse-grown tomatoes were 0.0075 ppm and 0.0025, respectively. Contact: Laura Nollen, (703) 305–7390; *nollen.laura@epa.gov*.

2. *PP 9E7550.* (EPA–HQ–OPP–2009–0943). Bayer CropScience, LP, P.O. Box 12014, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709-2014, proposes to establish a tolerance in 40 CFR part 180 for residues of the insecticide ethiprole; 1 H-pyrazole-3-carbonitrile, 5-amino-1-[2,6-dichloro-4-(trifluromethyl)phenyl]-4-(ethylsulfinyl), and its sulfones metabolite (RPA 097973), 5-amino-1-(2,6-dichloro-4-trifluoromethylphenyl)-4-ethylsulfonylpyrazole-3-carbonitrile,

expressed as parent equivalent in or on imported tea (dried and instant) at 50 ppm; imported rice (grain and bran) at 3.0 ppm; meat (cattle, goat, hog, horse, sheep) at 0.01 ppm; fat (cattle, goat, hog, horse, sheep) at 0.1 ppm; liver (cattle, goat, hog, horse, sheep) at 0.1 ppm; meat by-products, except liver (cattle, goat, hog, horse, sheep) at 0.02 ppm; milk at 0,01 ppm; milk, fat at 0.1 ppm; poultry, meat at 0.01 ppm; poultry, fat at 0.1 ppm; poultry, meat by-products at 0.05 ppm; and eggs at 0.05 ppm. Practical enforcement analytical methods for detecting and measuring levels of ethiprole and its sulfones metabolite have been developed and validated in/on all appropriate plant and animal matrices. For plants, extraction using acetonitrile/water (9/1, v/v) is followed by LC/MS/MS quantification Multiple Reaction Monitoring (MRM) mode. The LOQ for enforcement purposes is 0.002 mg/kg expressed as parent equivalents in the rice matrices and 0.02 mg/kg in tea. For animals, extraction using 80:20 acetonitrile/deionized water is followed by oxidation with 34 percent peracetic acid that converts ethiprole to RPA97973, with quantification by gas chromatography/electron capture detection (GC/ECD). The LOQ for all animal commodities is 0.01 mg/kg. Contact: Carmen Rodia, (703) 306–0327; *rodia.carmen@epa.gov*.

3. *PP 9E7570*. (EPA–HQ–OPP–2009–0032). IR-4, IR-4 Project Headquarters, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide fluazinam, 3-chloro-*N*-[3-chloro-2,6-dinitro-4-(trifluoromethyl) phenyl]-5-(trifluoromethyl)-2-pyridinamine in or on carrot, root at 0.8 ppm. An analytical method using gas chromatography with electron capture detection (GC-ECD) for the determination of fluazinam residues on carrots has been developed and validated. The method involves solvent extraction followed by liquid-liquid partitioning and concentration prior to a final purification using column chromatography. The method has been successfully validated by an independent laboratory using peanut nutmeat as the matrix. The LOQ of the method is 0.02 ppm in carrot. Contact: Laura Nollen, (703) 305–7390; *nollen.laura@epa.gov*.

4. *PP 8F7420*. (EPA–HQ–OPP–2009–0276). BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709-3528, proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide triticonazole in or on cereal grains (except rice), Crop group 15 at 0.05 ppm; cereal grains (except rice), forage, fodder, and hay, Crop group 16 at 0.10 ppm. The method of analysis included extraction and LC/MS/MS quantitation. Contact: Bryant Crowe, (703) 305–0025; *crowe.bryant@epa.gov*.

5. *PP 8F7449*. (EPA–HQ–OPP–2008–0814). Syngenta Crop Protection, Inc., PO Box 18300, Greensboro, NC 27419, proposes to establish a tolerance in 40 CFR part 180 for residues of the insecticide thiamethoxam, 3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-*N*-nitro-4H-1,3,5-oxadiazin-4-imine (CAS Reg. No. 153719–23–4) and its metabolite *N*-(2-chloro-thiazol-5-ylmethyl)-*N*'-methyl-*N*'-nitro-guanidine in or on rice, grain at 0.02 ppm; rice, straw at 0.02 ppm; rice, bran at 0.02 ppm; rice, polished at 0.02 ppm; and rice, hulls at 0.1 ppm. Syngenta Crop Protection, Inc. has submitted practical analytical methodology for detecting and measuring levels of thiamethoxam in or on raw agricultural commodities. This method is based on crop specific cleanup procedures and determination by liquid chromatography with either ultraviolet (UV) or mass spectrometry (MS) detections. The LOD for each analyte of this method is 1.25 nanograms (ng) injected for samples analyzed by UV and 0.25 ng injected for samples analyzed by MS, and the LOQ is 0.005 ppm for milk and juices, and 0.01 ppm for all other substrates. Contact: Julie Chao, (703) 308–8735; *chao.julie@epa.gov*.

6. *PP 8F7485*. (EPA–HQ–OPP–2009–0279). Bayer CropScience, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide prothioconazole and prothioconazole-desthio in or on grain, cereal, group 15, except sweet corn, sorghum, and rice at 0.35 ppm; forage, cereal, group 16, except sweet corn, sorghum, and rice at 8.0 ppm; stover, cereal, group 16, except sweet corn, sorghum, and rice at 10 ppm; hay, cereal, group 16, except sweet corn, sorghum, and rice at 7.0 ppm; straw, cereal, group 16, except sweet corn, sorghum, and rice at 5.0 ppm; corn, sweet, forage at 7 ppm; corn, sweet, stover at 8 ppm; and corn, sweet, kernel plus cob with husks removed at 0.02 ppm. The analytical method for determining residues of concern in plants extracts residues of prothioconazole and JAU6476-desthio and converts the prothioconazole to JAU6476-desthio and JAU6476-sulfonic acid. Following addition of internal standards the sample extracts are analyzed by LC/MS/MS. Radiovalidation and independent laboratory validation have shown that the method adequately quantifies prothioconazole residues in treated commodities. The analytical method for analysis of large animal tissues includes extraction of the residues of concern, followed by addition of an internal standard to the extract. The extract is then hydrolyzed to release conjugates, partitioned and analyzed by LC/MS/MS as prothioconazole, JAU6476-desthio and JAU6476-4-hydroxy. The method for analysis of milk eliminated the initial extraction step in the tissue method. Contact: Bryant Crowe, (703) 305–0025; *crowe.bryant@epa.gov*.

7. *PP 9F7529*. (EPA–HQ–OPP–2009–0268). BASF Corporation, Research Triangle Park, NC 27709, proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide boscalid (BAS 510F); [3-pyridinecarboxamide, 2-chloro-N-(4'-chloro(1,1'-biphenyl)-2-yl)-] in or on alfalfa, forage at 35 ppm; alfalfa, hay at 85 ppm; and citrus, Crop group 10 at 2 ppm. In plants, the parent residue is extracted using an aqueous organic solvent mixture followed by liquid/liquid partitioning and a column clean up. Quantitation is by gas chromatography using gas chromatography/mass spectrometry (GC/MS). In livestock the residues are extracted with methanol. The extract is treated with enzymes in order to release the conjugated glucuronic acid metabolite. The residues are then isolated by liquid/liquid partition followed by column chromatography. The hydroxylated metabolite is acetylated followed by a column clean-up. The parent and acetylated metabolite are quantitated by GC with electron capture detection (GC/ECD). Contact: Bryant Crowe, (703) 305–0025; *crowe.bryant@epa.gov*.

8. *PP 9F7549*. (EPA–HQ–OPP–2009–0325). Gowan Company, 370 South Main St., Yuma, AZ 85364, proposes to establish tolerances in 40 CFR part 180 for residues of the insecticide hexythiazox, trans-5-(4-chlorophenyl)-N-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety in or on corn, sweet kernel plus cob with husk removed at 0.1 ppm; corn, sweet, forage at 3 ppm; beans, dried at 0.4 ppm; and beans, succulent at 0.4 ppm. These proposed tolerances are geographically limited to Western regions of the United States. A practical analytical method, high pressure liquid chromatography with an ultraviolet detector, which detects and measures residues of hexythiazox and its metabolites as a common moiety, is available for enforcement purposes with a limit of detection that allows

monitoring of food with residues at or above the levels set in these tolerances. Contact: Olga Odiott, (703) 308–9369; *odiott.olga@epa.gov*.

9. *PP 9F7571*. (EPA–HQ–OPP–2009–0032). ISK Biosciences Corporation, 7470 Auburn Rd., Suite A, Concord, OH 44077, proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide fluazinam, 3-chloro-*N*-[3-chloro-2,6-dinitro-4-(trifluoromethyl) phenyl]-5-(trifluoromethyl)-2-pyridinamine, and the metabolite AMGT, 3-[[4-amino-3-[[3-chloro-5-(trifloromethyl)-2-pyridinyl]amino]-2-nitro-6-(trifluoromethyl) phenyl] thio]-2-(beta-D-glucopyranosyloxy) propionic acid, in or on apple at 1.7 ppm and apple, pomace, wet, at 5.0 ppm; and by establishing tolerances for the combined residues of fluazinam and its metabolites, DAPA and AMPA in the following animal tissues and meat byproducts: cattle, fat at 0.03 ppm; cattle, kidney at 0.03 ppm; cattle, liver at 0.03 ppm; cattle, meat at 0.03 ppm; cattle, meat byproducts at 0.03 ppm; goat, fat at 0.03 ppm; goat, kidney at 0.03 ppm; goat, liver at 0.03 ppm; goat, meat at 0.03 ppm; goat, meat byproducts at 0.03 ppm; horse, fat at 0.03 ppm; horse, kidney at 0.03 ppm; horse, liver at 0.03 ppm; horse, meat at 0.03 ppm; horse, meat byproducts at 0.03 ppm; milk at 0.03 ppm; sheep, fat at 0.03 ppm; sheep, kidney at 0.03 ppm; sheep, liver at 0.03 ppm; sheep, meat at 0.03 ppm; and sheep, meat byproducts at 0.03 ppm. An analytical method using gas chromatography with electron capture detection (GC-ECD) for the determination of fluazinam residues on apples has been developed and validated. The method involves solvent extraction followed by liquid-liquid partitioning and concentration prior to a final purification using column chromatography. The method has been successfully validated by an independent laboratory using peanut nutmeat as the matrix. The LOQ of the method is 0.01 ppm in apple. AMGT was analyzed using a separate sample or aliquot of extract with a high performance liquid chromatography-ultraviolet (HPLC-UV) detection system. Contact: John Bazuin, (703) 305–7381; *bazuin.john@epa.gov*.

Amended Tolerance

1. *PP 9E7544*. (EPA–HQ–OPP–2009–0289). IR-4, IR-4 Project Headquarters, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, proposes to delete the existing tolerance for grapes at 0.20 ppm in 40 CFR 180.578 for residues of the insecticide acetamiprid, N1-[(6-chloro-3-pyridyl)methyl]- N2-cyano-N1-methylacetamidine, since it will be superseded by the proposed tolerance on subgroup 13-07F under ''New Tolerance'' item 1, PP 9E7544 of this document. Contact: Laura Nollen, (703) 305–7390; *nollen.laura@epa.gov*.

2. *PP 8F7449*. (EPA–HQ–OPP–2008–0814). Syngenta Crop Protection, Inc., PO Box 18300, Greensboro, NC 27419, proposes to increase existing tolerances in 40 CFR 180.565 for residues of the insecticide thiamethoxam, 3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-*N*-nitro-4H-1,3,5-oxadiazin-4-imine (CAS Reg. No. 153719–23–4) and its metabolite *N*-(2-chloro-thiazol-5-ylmethyl)-*N*'-methyl-*N*'-nitro-guanidine in or on cattle, meat byproducts from 0.02 ppm to 0.04 ppm; goat, meat byproducts from 0.02 ppm to 0.04 ppm; horse, meat byproducts from 0.02 ppm to 0.04 ppm; sheep, meat byproducts from 0.02 ppm to 0.04 ppm; and vegetable, root, except sugarbeet, subgroup 1B from 0.02 ppm to 0.05 ppm. Syngenta Crop Protection, Inc. has submitted practical analytical methodology for detecting and measuring levels of thiamethoxam in or on raw agricultural commodities. This method is based on crop specific cleanup procedures and determination by liquid chromatography with either UV or mass spectrometry (MS) detections. The LOD for each analyte of this method is 1.25 ng injected for samples analyzed by UV and 0.25 ng injected for samples analyzed by MS, and the LOQ is 0.005 ppm for milk and juices, and 0.01 ppm for all other substrates. Contact: Julie Chao, (703) 308–8735; *chao.julie@epa.gov*.

3. *PP 8F7487*. (EPA–HQ–OPP–2009–0278). Bayer CropScience, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709, proposes to increase existing tolerances in 40 CFR 180.555 for residues of the fungicide trifloxystrobin, benzeneacetic acid, (*E,E*)-α-(methoxyimino)-2-[[[[1-[3-(trifluoromethyl) phenyl]ethylidene]amino]oxy]methyl]-methyl ester and the free form of its acid metabolite CGA–321113 ((*E,E*)-methoxyimino-[2-[1-(3-trifluoromethyl-phenyl)-ethylideneaminooxymethyl]-phenyl]acetic acid in or on corn, field, forage from 0.2 ppm to 6.0 ppm; corn, sweet, forage from 0.6 ppm to 7.0 ppm; and corn, sweet, stover from 0.25 ppm to 4.0 ppm. A practical analytical methodology for detecting and measuring levels of trifloxystrobin in or on raw agricultural commodities has been submitted. The LOD for each analyte of this method is 0.08 ng injected, and the LOQ is 0.02 ppm. The method is based on crop specific cleanup procedures and determination by gas chromatography with nitrogen-phosphorus detection. A newer analytical method employing identical solvent mixtures and solvent to matrix ratio (as the first method), deuterated internal standards, and LC/MS-MS with an electrospray interface, operated in the positive ion mode is available. The LOD range from 0.0019 ppm to 0.0034 ppm for corn matrices and the limit of quantitation is 0.01 ppm. Contact: Bryant Crowe, (703) 305–0025; *crowe.bryant@epa.gov*.

4. *PP 9F7529*. (EPA–HQ–OPP–2009–0268). BASF Corporation, Research Triangle Park, NC 27709, proposes to increase existing tolerances in 40 CFR 180.589 for residues of the fungicide boscalid (BAS 510F); 3-pyridinecarboxamide, 2-chloro-*N*-(4'-chloro(1,1'-biphenyl)-2-yl) in or on fruit, stone, Crop group 12 from 1.7 ppm to 5 ppm. In plants, the parent residue is extracted using an aqueous organic solvent mixture followed by liquid/liquid partitioning and a column clean up. Quantitation is by gas chromatography using gas chromatography/mass spectrometry (GC/MS). In livestock the residues are extracted with methanol. The extract is treated with enzymes in order to release the conjugated glucuronic acid metabolite. The residues are then isolated by liquid/liquid partition followed by column chromatography. The hydroxylated metabolite is acetylated followed by a column clean-up. The parent and acetylated metabolite are quantitated by GC with electron capture detection (GC/ECD). Contact: Bryant Crowe, (703) 305–0025; *crowe.bryant@epa.gov*.

5. *PP 9F7556*. (EPA–HQ–OPP–2009–0325). Gowan Company, 370 South Main St., Yuma, AZ 85364, proposes to amend existing tolerances in 40 CFR 180.448 for residues of the insecticide hexythiazox, trans-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety in or on grape from 0.75 ppm to 1.0 ppm; plum from 0.10 ppm to 1.0 ppm; and the processed commodity plum, prune, dried from 0.40 ppm to 1.0 ppm. A practical analytical method, high pressure liquid chromatography with an ultraviolet detector, which detects and measures residues of hexythiazox and its metabolites as a common moiety, is available for enforcement purposes with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. Contact: Olga Odiott, (703) 308–9369; *odiott.olga@epa.gov*.

New Tolerance Exemption

PP 9E7572. (EPA–HQ–OPP–2009–0043). Joint Inerts Task Force, Cluster Support Team 11, EPA Co. No. 84944, c/o CropLife America, 1156 15th St., NW., Suite 400, Washington, DC 20005, proposes to establish an exemption from the requirement of a tolerance under 40 CFR 180.910 for residues of sodium and ammonium naphthalenesulfonate formaldehyde condensates, including: CAS Reg. Nos. 68425-94-5 (residues, petroleum, catalytic reformer fractionator, sulfonated, polymers with formaldehyde, sodium salts), 9069-80-1 (naphthalenesulfonic acid, ammonium salt polymer with formaldehyde), 9084-06-4 (naphthalenesulfonic acid, polymer with formaldehyde, sodium salt), 36290-04-7 (2-naphthalenesulfonic acid, polymer with formaldehyde, sodium salt), 91078-68-1 (naphthalenesulfonic acids, reaction products with formaldehyde, sodium salts), 141959-43-5 (naphthalenesulfonic acid, methyl-sodium salt with formaldehyde), and 9008-63-3 (naphthalenesulfonic acid, sodium salt polymer with formaldehyde) when used as pesticide inert ingredients in pesticide formulations. Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact: Elizabeth Fertich, (703) 347–8560; *fertich.elizabeth@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 5, 2009.

G. Jeffrey Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E9–19518 Filed 8–18–09; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections

AGENCY: Federal Communications Commision.

ACTION: Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (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: Written PRA comments should be submitted on or before October 19, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), (202) 395–5887, or via fax at (202) 395–5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Cathy Williams, Federal Communications Commission (FCC), Room 1–C823. To submit your comments by e–mail send them to: PRA@fcc.gov and/or Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e–mail to PRA@fcc.gov and/or Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1106.

Title: Licensing and Service Rules for Vehicle Mounted Earth Stations (VMES).

Form No.: Not Applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for–profit entities.

Number of Respondents: 10 respondents; 40 responses.

Estimated Time per Response: 1 hour – 1.5 hours.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The Commission has statutory approval for the information collection requirements under Sections 1, 4(i), 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y) and 308 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 308.

Total Annual Burden: 171 hours.

Total Annual Cost: $101,300 annual costs.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality pertaining to the information collection requirements in this collection.

Needs and Uses: On July 31, 2009, the Federal Communications Commission (''Commission'') released a Report and Order titled, ''In the Matter of Amendment of Parts 2 and 25 of the Commission's Rules to Allocate Spectrum and Adopt Service Rules and Procedures to Govern the Use of Vehicle–Mounted Earth Stations in Certain Frequency Bands Allocated to the Fixed–Satellite Service,'' IB Docket No. 07–101, FCC 09–64 (hereinafter referred to as ''VMES Report and Order'').

The VMES Report and Order adopts Part 2 allocation rules and Part 25 technical and licensing rules for a new domestic Ku–band VMES service. VMES service has the potential to deliver advanced mobile applications through satellite technology, including broadband, which will be beneficial for public safety and commercial purposes.

The PRA information collection requirements contained in the VMES Report and Order are as follows:

1. 47 CFR 25.226(b)(1)(i) OR 47 CFR 25.226(b)(1)(ii)

(i) Any VMES applicant filing an application pursuant to paragraph (a)(1) of this section shall file three tables showing the off–axis EIRP level of the proposed earth station antenna in the direction of the plane of the GSO; the co–polarized EIRP in the elevation plane, that is, the plane perpendicular to the plane of the GSO; and cross–polarized EIRP. Each table shall provide the EIRP level at increments of 0.1° for angles between 0° and 10° off–axis, and at increments of 5° for angles between 10° and 180° off–axis.

OR

2. (ii) A VMES applicant shall include a certification, in Schedule B, that the VMES antenna conforms to the gain

pattern criteria of § 25.209(a) and (b), that, combined with the maximum input power density calculated from the EIRP density less the antenna gain, which is entered in Schedule B, demonstrates that the off–axis EIRP spectral density envelope set forth in paragraphs (a)(1)(i)(A) through (a)(1)(i)(C) of this section will be met under the assumption that the antenna is pointed at the target satellite.

3. 47 CFR 25.226(b)(1)(iii)

(iii) A VMES applicant proposing to implement a transmitter under paragraph (a)(1)(ii)(A) of this section shall provide a certification from the equipment manufacturer stating that the antenna tracking system will maintain a pointing error of less than or equal to 0.2° between the orbital location of the target satellite and the axis of the main lobe of the VMES antenna and that the antenna tracking system is capable of ceasing emissions within 100 milliseconds if the angle between the orbital location of the target satellite and the axis of the main lobe of the VMES antenna exceeds 0.5°.

4. 47 CFR 25.226(b)(1)(iv)(A), (B)

A VMES applicant proposing to implement a transmitter under paragraph (a)(1)(ii)(B) of this section shall:

(A) declare, in its application, a maximum antenna pointing error and demonstrate that the maximum antenna pointing error can be achieved without exceeding the off–axis EIRP spectral–density limits in paragraph (a)(1)(i) of this section; and (B) demonstrate that the VMES transmitter can detect if the transmitter exceeds the declared maximum antenna pointing error and can cease transmission within 100 milliseconds if the angle between the orbital location of the target satellite and the axis of the main lobe of the VMES antenna exceeds the declared maximum antenna pointing error, and will not resume transmissions until the angle between the orbital location of the target satellite and the axis of the main lobe of the VMES antenna is less than or equal to the declared maximum antenna pointing error.

5. 47 CFR 25.226(b)(2)(i), (ii), (iii), (iv)

A VMES applicant proposing to implement a transmitter under paragraph (a)(2) of this section and using off–axis EIRP spectral–densities in excess of the levels in paragraph (a)(1)(i) of this section shall provide the following certifications and demonstration as exhibits to its earth station application:

(i) A statement from the target satellite operator certifying that the proposed operation of the VMES has the potential to create harmful interference to satellite networks adjacent to the target satellite(s) that may be unacceptable.

(ii) A statement from the target satellite operator certifying that the power–density levels that the VMES applicant provided to the target satellite operator are consistent with the existing coordination agreements between its satellite(s) and the adjacent satellite systems within 6° of orbital separation from its satellite(s).

(iii) A statement from the target satellite operator certifying that it will include the power–density levels of the VMES applicant in all future coordination agreements.

(iv) A demonstration from the VMES operator that the VMES system is capable of detecting and automatically ceasing emissions within 100 milliseconds when the transmitter exceeds the off–axis EIRP spectral–densities supplied to the target satellite operator.

6. 47 CFR 25.226(b)(3)

A VMES applicant proposing to implement a VMES system under paragraph (a)(3) of this section and using variable power–density control of individual simultaneously transmitting co–frequency VMES earth stations in the same satellite receiving beam shall provide the following certifications and demonstration as exhibits to its earth station application:

(i) The applicant shall make a detailed showing of the measures it intends to employ to maintain the effective aggregate EIRP–density from all simultaneously transmitting co–frequency terminals operating with the same satellite transponder at least 1 dB below the EIRP–density limits defined in paragraphs (a)(1)(i)(A)–(C) of this section. In this context the term ''effective'' means that the resultant co–polarized and cross–polarized EIRP–density experienced by any GSO or non–GSO satellite shall not exceed that produced by a single VMES transmitter operating at 1 dB below the limits defined in paragraphs (a)(1)(i)(A)–(C) of this section. The International Bureau will place this showing on Public Notice along with the application.

(ii) An applicant proposing to implement a VMES under (a)(3)(ii) of this section that uses off–axis EIRP spectral–densities in excess of the levels in paragraph (a)(3)(i) of this section shall provide the following certifications, demonstration and list of satellites as exhibits to its earth station application:

(A) A detailed showing of the measures the applicant intends to employ to maintain the effective aggregate EIRP–density from all simultaneously transmitting co–frequency terminals operating with the same satellite transponder at the EIRP–density limits supplied to the target satellite operator. The International Bureau will place this showing on Public Notice along with the application.

(B) A statement from the target satellite operator certifying that the proposed operation of the VMES has the potential to create harmful interference to satellite networks adjacent to the target satellite(s) that may be unacceptable.

(C) A statement from the target satellite operator certifying that the aggregate power density levels that the VMES applicant provided to the target satellite operator are consistent with the existing coordination agreements between its satellite(s) and the adjacent satellite systems within 6° of orbital separation from its satellite(s).

(D) A statement from the target satellite operator certifying that it will include the aggregate power–density levels of the VMES applicant in all future coordination agreements.

(E) A demonstration from the VMES operator that the VMES system is capable of detecting and automatically ceasing emissions within 100 milliseconds when an individual transmitter exceeds the off–axis EIRP spectral–densities supplied to the target satellite operator and that the overall system is capable of shutting off an individual transmitter or the entire system if the aggregate off–axis EIRP spectral–densities exceed those supplied to the target satellite operator.

(F) An identification of the specific satellite or satellites with which the VMES system will operate.

(iii) The applicant shall acknowledge that it will maintain sufficient statistical and technical information on the individual terminals and overall system operation to file a detailed report, one year after license issuance, describing the effective aggregate EIRP–density levels resulting from the operation of the VMES system.

7. 47 CFR 25.226(a)(5), (b)(6)

Applicant shall include in application point of contact with authority and ability to cease all emissions from VMES terminals.

8. 47 CFR 25.226 (a)(6), (b)(7)

VMES licensee shall provide data (record of vehicle location, transmit frequency, channel bandwidth and satellite used for each relevant VMES transmitter) to Commission, NTIA, FSS operator, FS operator, or frequency coordinator within 24 hours upon request.

The information collection requirements accounted for in this

collection are necessary to prevent regulatory uncertainty with respect to VMES and other satellite services that operate in the Ku–band within the United States. Prior to this rulemaking, the lack of rules for VMES posed an administrative burden on those entities attempting to provide VMES–type services and on Commission staff because such services could be granted only through the use of waivers and Special Temporary Authority (STA) authorizations for a six–month period of time. The approval of fifteen–year licenses for VMES operators significantly reduces the burden imposed upon both licensees and Commission staff who review and approve the waivers and STAs. Furthermore, without such information the Commission would not be able to take the necessary measures to prevent harmful interference to satellite services from VMES. Finally, the Commission would not be able to advance its goals of managing spectrum efficiently and promoting broadband technologies to benefit American consumers throughout the United States.

Federal Communications Commission.

Alethea Lewis,

Information Specialist.

[FR Doc. E9–19861 Filed 8–18–09; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection

AGENCY: Federal Communications Commision.

ACTION: Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (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: Persons wishing to comments on this information collection should submit comments on October 19, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), (202) 395–5887, or via fax at (202) 395–5167, or via the Internet at Nocholas_A._Fraser@omb.eop.gov and to Cathy Williams, Federal Communications Commission (FCC), Room 1–C823 Washington, D.C. 20554. To submit your comments by e–mail send them to: PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e–mail to PRA@fcc.gov and/or Cathy.Williams@fcc.gov or contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0580.

Title: Section 76.1710, Operator Interests in Video Programming.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit entities.

Number of Respondents and Responses: 1,500 respondents; 1,500 responses.

Estimated Time Per Response: 15 hours.

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 22,500 hours.

Total Annual Costs: None.

Privacy Impact Assessment(s): No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: 47 CFR Section 76.1710 requires cable operators to maintain records in their public file for a period of three years regarding the nature and extent of their attributable interests in all video programming services. The records must be made available to members of the public, local franchising authorities and the Commission on reasonable notice and during regular business hours. The records will be reviewed by local franchising authorities and the Commission to monitor compliance with channel occupancy limits in respective local franchise areas.

Federal Communications Commission.

Alethea Lewis,

Information Specialist.

[FR Doc. E9–19863 Filed 8–18–09; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections

AGENCY: Federal Communications Commision.

ACTION: Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (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: Persons wishing to comments on this information collection should submit comments on October 19, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), (202) 395–5887, or via fax at (202) 395–5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Cathy Williams, Federal Communications Commission (FCC), Room 1–C823 Washington, D.C. 20554. To submit your comments by e–mail send them to: PRA@fcc.gov and/or Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0190.

Title: Section 73.3544, Application to Obtain a Modified Station License.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit entities; Not–for–profit institutions.

Number of Respondents and Responses: 325 respondents and 325 responses.

Estimated Time per Response: 0.25 – 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 306 hours.

Total Annual Costs: $45,000.

Privacy Impact Assessment(s): No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: 47 CFR Section 73.3544(b) requires an informal application, see §73.3511(b), may be filed with the FCC in Washington, DC, Attention: Audio Division (radio) or Video Division (television), Media Bureau, to cover the following changes:

(1) A correction of the routing instructions and description of an AM station directional antenna system field monitoring point, when the point itself is not changed.

(2) A change in the type of AM station directional antenna monitor. See §73.69.

(3) A change in the location of the station main studio when prior authority to move the main studio location is not required.

(4) The location of a remote control point of an AM or FM station when prior authority to operate by remote control is not required.

47 CFR Section 73.3544 (c) requires a change in the name of the licensee where no change in ownership or control is involved may be accomplished by written notification by the licensee to the Commission.

OMB Control Number: 3060–0340.

Title: Section 73.51, Determining Operating Power.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit entities.

Number of Respondents and Responses: 750 respondents; 750 responses.

Estimated Time per Response: 0.25 to 3.0 hours.

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 440 hours.

Total Annual Cost: None.

Privacy Impact Assessment(s): No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: When it is not possible to use the direct method of power determination due to technical reasons, the indirect method of determining antenna input power might be used on a temporary basis. 47 CFR Section 73.51(d) requires that a notation be made in the station log indicating the dates of commencement and termination of measurement using the indirect method of power determination. 47 CFR Section 73.51(e) requires that AM stations determining the antenna input power by the indirect method must determine the value F (efficiency factor) applicable to each mode of operation and must maintain a record thereof with a notation of its derivation. FCC staff use this information in field investigations to monitor licensees' compliance with the FCC's technical rules and to ensure that licensee is operating in accordance with its station authorization. Station personnel use the value F (efficiency factor) in the event that measurement by the indirect method of power is necessary.

OMB Control Number: 3060–0346.

Title: Section 78.27, License Conditions.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for–profit entities; and Not–for–profit institutions.

Frequency of Response: Annual reporting requirement; On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 Section 154(i) of the Communications Act of 1934, as amended.

Number of Respondents and Responses: 16 respondents; 16 responses.

Estimated Time per Response: 10 mins. (0.166 hrs.).

Total Annual Burden: 3 hours.

Total Annual Costs: None.

Privacy Impact Assessment(s): No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: 47 CFR 78.27(b)(1) requires the licensee of a Cable Television Relay Service (CARS) station to notify the Commission in writing when the station commences operation. Such notification shall be submitted on or before the last day of the authorized one year construction period; otherwise, the station license shall be automatically forfeited. 47 CFR 78.27(b)(2) requires CARS licensees needing additional time to complete construction of the station and commence operation shall request an extension of time 30 days before the expiration of the one year construction period. Exceptions to the 30–day advance filing requirement may be granted where unanticipated delays occur.

OMB Number: 3060–0414.

Title: Terrain Shielding Policy.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit entities, Not–for–profit institutions, State, Local or Tribal Government.

Number of Respondents and Responses: 50 respondents; 50 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 Sections 154(i) and 303 of the Communications Act of 1934, as amended.

Total Annual Burden: 50.

Total Annual Cost: $67,500.

Privacy Impact Assessment(s): No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: The terrain shielding policy requires respondents to submit either a detailed terrain study, or to submit letters of assent from all potentially affected parties and graphic depiction of the terrain when intervening terrain prevents a low power television applicant from interfering with other low power television or full–power television stations. FCC staff use the data to determine if terrain shielding can provide adequate interference protection and if a waiver of 47 CFR 74.705 and 74.707 of the rules is warranted.

OMB Control Number: 3060–0489.

Title: Section 73.37, Applications for Broadcast Facilities, Showing Required.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit entities.

Number of Respondents and Responses: 365 respondents; 365 responses.

Estimated Hours per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 365 hours.

Total Annual Cost: $798,750.

Privacy Impact Assessment(s): No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: 47 CFR 73.37(d) requires an applicant for a new AM broadcast station, or for a major change in an authorized AM broadcast station, to make a satisfactory showing that objectionable interference will not result to an authorized AM station as a condition for its acceptance if new or modified nighttime operation by a Class B station is proposed. 47 CFR 73.37(f) requires applicants seeking facilities modification that would result in spacing that fail to meet any of the separation requirements to include a showing that an adjustment has been made to the radiated signal which effectively results in a site–to–site radiation that is equivalent to the radiation of a station with standard Model I facilities. FCC staff use the data to ensure that objectionable interference will not be caused to other authorized AM stations.

OMB Control Number: 3060–0727.

Title: Section 73.213, Grandfathered Short–Spaced Stations.

Form Number(s): Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit entities.

Number of Respondents and Responses: 15 respondents; 15 responses.

Estimated time per response: 0.5 hours – 0.83 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 Section 154(i), 55(c)(1), 302 and 303 of the Communications Act of 1934, as amended.

Total annual burden: 20 hours.

Total annual costs: $2,250.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: 47 CFR Section 73.213 requires licensees of grandfathered short–spaced FM stations seeking to modify or relocate their stations to provide a showing demonstrating that there is no increase in either the total predicted interference area or the associated population (caused or received) with respect to all grandfathered stations or increase the interference caused to any individual stations. Applicants must demonstrate that any new area predicted to lose service as a result of interference has adequate service remaining. In addition, licensees are required to serve a copy of any application for co–channel or first–adjacent channel stations proposing predicted interference caused in any area where interference is not currently predicted to be caused upon the licensee(s) of the affected short–spaced station(s). Commission staff use the data to determine if the public interest will be served and that existing levels of interference will not be increased to other licensed stations. Providing copies of application(s) to affected licensee(s) will enable potentially affected parties to examine the proposals and provide them an opportunity to file informal objections against such applications.

OMB Control Number: 3060–0928.

Title: Application for Class A Television Broadcast Station Construction Permit or License, FCC Form 302–CA.

Form Number: FCC 302–CA.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for–profit entities; Not–for–profit institutions.

Number of Respondents and Responses: 50 respondents; 50 responses.

Estimated Hours per Response: 2 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 100 hours.

Total Annual Cost: $13,500.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: Low Power TV (LPTV) stations use FCC Form 302–CA when applying to convert to Class A status and for existing Class A stations to file for a license to cover a construction permit. The Form 302–CA requires a series of certifications by the Class A applicant as prescribed by the Community Broadcasters Protection Act (CBPA). Licensees are required to provide weekly announcements to their listeners informing them that the applicant has applied for a Class A license and announcing the public's ability to comment on the application prior to Commission action. FCC staff use the data to confirm that the station meets the eligibility standards to convert their licenses to Class A status. The Form 302–CA data is also included in any subsequent license to operate the station.

Federal Communications Commission.

Alethea Lewis,

Information Specialist.

[FR Doc. E9–19862 Filed 8–18–09; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Meetings on August 26–27, 2009

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in April, 2004, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) will meet on Wednesday, August 26, from 9 a.m. to 4 p.m. in room 6N30, 441 G St., NW., Washington, DC. On Thursday, August 27, FASAB will host a joint meeting with the Governmental Accounting Standards Board (GASB) from 8:30 a.m. to 12 p.m. at the National Academy of Public Administration (NAPA), 900 7th Street, NW., Suite 600, Washington, DC. After the joint FASAB/GASB meeting, FASAB will reconvene for its afternoon session in room 6N30, 441 G St., NW., Washington, DC. Please note that the meeting room and location is different from the usual meeting room.

The purpose of the meeting is to discuss:

—Federal Entity,

—Measurement Attributes,

—Social Insurance,

—Asbestos Liabilities, and

—AICPA Omnibus.

A more detailed agenda can be obtained from the FASAB Web site *http://www.fasab.gov.*

Any interested person may attend the meeting as an observer. Board discussion and reviews are open to the public. GAO and NAPA Building security requires advance notice of your attendance. Please notify FASAB by August 24, 2009 of your planned attendance by calling 202–512–7350.

FOR FURTHER INFORMATION CONTACT: Wendy Payne, Executive Director, at (202) 512–7350.

Authority: Federal Advisory Committee Act, Public Law 92–463.

Dated: August 13, 2009.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. E9–19803 Filed 8–18–09; 8:45 am]

BILLING CODE 1610–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 3, 2009.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Richard Franklin Combs, Braselton, Georgia; to retain voting shares of Verity Capital Group, Inc., Dahlonega, Georgia, and thereby indirectly retain voting shares of Verity Bank, Winder, Georgia.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Dennis G. Bilski, individually and as part of a group acting in concert along with the Marsha L. Ritt Revocable Living Trust, co–trustees Marsha L. Ritt, Dennis G. Bilski, Londa G. Bilksi, all of Plymouth, Minnesota; Gerald A. Bilksi, Sandra J. Bilski, Michael A. Adducci, Debra J. Adducci, John C. Holper, Linda M. Holper, all of Woodbury, Minnesota; Michael A. Bilski and Jacqueline S. Bilski, both of Fridley, Minnesota; to retain voting shares of N.A. Corporation, and thereby indirectly retain voting shares of North American Banking Company, both of Roseville, Minnesota.

Board of Governors of the Federal Reserve System, August 14, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–19847 Filed 8–18–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 012036–001.

Title: Maersk Line/MSC TP5 Space Charter Agreement.

Parties: A.P. Moeller-Maersk A/S and Mediterranean Shipping Company S.A.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment adds the People's Republic of China to the geographic scope of the agreement and adds the consent of Maersk Line to certain sub-chartering of space by MSC.

Agreement No.: 012075.

Title: MSC/CMA CGM North Europe-U.S. Atlantic and Gulf Vessel Sharing Agreement.

Parties: CMA CGM S.A. and Mediterranean Shipping Company S.A.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes the parties to share vessel space in the trades between U.S. Atlantic Coast and Gulf Coast ports and ports in North Europe, the Bahamas, and on the Caribbean Coast of Mexico.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. E9–19902 Filed 8–18–09; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

ACH Logistics Inc., 141–04 14th Avenue, Whitestone, NY 11357, *Officer:* Hua Guo, President (Qualifying Individual)
American West Worldwide Express, Inc., 2503 W. Rosecrans Avenue, Compton, CA 90059, *Officer:* James G. Taylor, CEO (Qualifying Individual)
New Connect Logistics, Inc., 4332 Cerritos Avenue, Ste. 209, Los Alamitos, CA 90720, *Officers:* Man Youn, President (Qualifying Individual), Andrew Y. Lee, CEO
Global Shipping Solutions, Inc., 15 Blacksmith Lane, East Northport, NY 11731, *Officers:* Ka M. Cho, Treasurer (Qualifying Individual), Frank Mariconda, President

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Champ International Shipping Limited Liability Company, 900 Kaighns Avenue, Camden, NJ 08104, *Officer:* Roy B. Hibbert, President (Qualifying Individual)
WTA USA Inc., 1510 Midway Court, Ste. E203, Elk Grove Village, IL 60007, *Officers:* Michelle Milone, Vice President (Qualifying Individual), Paul J. Sommer, Director
Unistar Logistics, Inc., 2801 NW 74th Avenue, Ste. 203, Miami, FL 33122, *Officers:* Eric W. Liu, Vice President (Qualifying Individual), Jie Zeng, President
TD International Shipping Inc., 81–14 Queens Blvd., Ste. 5C, Elmhurst, NY 11373, *Officers:* Diana G. Petrof, President (Qualifying Individual), Constantin Petrof, Treasurer
E–Z Cargo Inc., 501 New Country Road, Secaucus, NJ 07094, *Officers:* Alevtina Michina, Vice President (Qualifying Individual), Michael Abramov, President
Seacrest Logistics Inc., 1500 S. Dairy Ashford, Ste. 451, Houston, TX 77077, *Officers:* Raphael W. Ludwick, Vice President (Qualifying Individual), Patrick I. Igbokwe, President
Trans Ocean Bulk Logistics, Inc., 3027 Marina Bay Drive, Ste. 301, League City, TX 77573, *Officers:* Keir McCarthey, V. P. Regulatory Affairs (Qualifying Individual), Brendan McKenna, President
Meridian Logistics LLC, 4008 Chancery Place, Ft. Wayne, IN 46804, *Officer:* Melanie B. Brooks, Member (Qualifying Individual)
Ariana Worldwide Maritime Inc., 1480 Charles Willard Street, Carson, CA 90746, *Officer:* Young B. Lee, President (Qualifying Individual)
Caribbean Enterprises, Inc., 1032 River Street, Hyde Park, MA 02136, *Officers:* Michael N. Cummins, President (Qualifying Individual), Stephen O. Harris, Vice President
Intercargo USA Corp., 9500 NW 108 Avenue, Miami, FL 33178, *Officers:* John Crespo, President (Qualifying Individual), Graciela Crespo, Secretary
AGXH Trucking LLC dba UNIX Global Logistics, 4137 Banner Drive, Houston, TX 77013, *Officers:* Seung K. Yang, Member (Qualifying Individual), Sunok Koh, Member
Yusen Air & Sea Service (U.S.A.) Incorporated, 377 Oak Street, Ste. 302, Garden City, NY 11530, *Officer:* Scott E. Corless, Sen. Vice President (Qualifying Individual)

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Diesel Trading Inc., 7504 NW 55 Street, Miami, FL 33166, *Officers:* Juan C. Savinovich, President (Qualifying Individual), Claudia S. Savinovich, Secretary
Relocation Benefits, LLC dba Relief Cargo, Arrowhead Global Logistics, 3390 Hawk Ridge Trail, Green Bay, WI 54313, *Officer:* Andrew L. Drescher, President (Qualifying Individual)

Dated: August 14, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–19903 Filed 8–18–09; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

[File No. 082 3181]

CSE, Inc., et al.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order — embodied in the consent agreement — that would settle these allegations.

DATES: Comments must be received on or before September 10, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''CSE, Inc., File No. 082 3181'' to facilitate the organization of comments. Please note that your comment — including your name and your state — will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-CSE*) and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://secure.commentworks.com/ftc-CSE*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (*http://*

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

www.ftc.gov/) to read the Notice and the news release describing it.

A comment filed in paper form should include the ''CSE, Inc., File No. 082 3181'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act (''FTC Act'') and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Korin Ewing or Melinda Claybaugh, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-2203.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 11, 2009), on the World Wide Web, at (*http://www.ftc.gov/os/actions.shtm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from CSE, Inc., d/b/a Mad Mod, a corporation, and Chris and Cyndi Saetveit, individually and as owners of the corporation (together, ''respondents'').

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves respondents' marketing and sale of textile fiber products purportedly made of bamboo fiber. The FTC complaint alleges that respondents violated Section 5(a) of the FTC Act by making false claims that their textile fiber products are bamboo fiber; retain the anti-microbial properties of the bamboo plant; and are manufactured using an environmentally-friendly process. The complaint alleges that respondents' textile fiber products are made of rayon and do not retain the anti-microbial properties of the bamboo plant, and that their manufacturing process involves the use of toxic chemicals and results in the emission of hazardous air pollutants. The complaint further alleges that the respondents failed to have substantiation for the foregoing claims.

The complaint also alleges that the proposed respondents have violated the Textile Fiber Products Identification Act (''Textile Act'') and the Rules and Regulations promulgated thereunder (''Textile Rules'') by falsely and deceptively labeling and advertising their textile fiber products as bamboo; by advertising their products without including in the description of each product a statement that the product was made in the U.S.A., imported, or both; and by failing to properly label their textile fiber products with the name of the country where each such product was processed or manufactured.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future. Part I.A of the proposed order prohibits respondents from representing that any textile fiber product (1) is made of bamboo or bamboo fiber; (2) is manufactured using an environmentally friendly process; or (3) is anti-microbial or retains the anti-microbial properties of any material from which it is made, unless such representations are true, not misleading, and substantiated by competent and reliable scientific evidence. Part I.B prohibits respondents from making claims about the benefits, performance, or efficacy of any textile fiber product, unless at the time the representation is made, it is truthful and not misleading, and is substantiated by competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence. Part II makes clear that, although Part I prohibits respondents from making false and unsubstantiated representations that their textile fiber products are made of bamboo or bamboo fiber as opposed to rayon, the respondents nonetheless may describe such products using the generic name of any manufactured fiber and identifying bamboo as the cellulose source for such fiber (*e.g.*, rayon made from bamboo), so long as such representation is true and substantiated. Part III of the proposed order prohibits respondents from failing to comply with the Textile Act or the Textile Rules.

Parts IV through VIII require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain of their personnel; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; to notify the Commission of changes in individual respondents' current business or employment; and to file compliance reports with the Commission and respond to other requests from FTC staff. Part IX provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Richard C. Donohue

Acting Secretary.

[FR Doc. 09–19806 Filed 8–18–09: 1:15 pm]

BILLING CODE 6750–01–S

FEDERAL TRADE COMMISSION

[File No. 082 3194]

Sami Designs LLC et al.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order — embodied in the consent agreement — that would settle these allegations.

DATES: Comments must be received on or before September 10, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Sami Designs, File No. 082 3194'' to facilitate the organization of comments. Please note that your comment — including your name and your state — will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-SamiDesigns*) and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://secure.commentworks.com/ftc-SamiDesigns*).

If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (*http://www.ftc.gov/*) to read the Notice and the news release describing it.

A comment filed in paper form should include the ''Sami Designs, File No. 082 3194'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act (''FTC Act'') and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

[1]The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

FOR FURTHER INFORMATION CONTACT: Korin Ewing or Melinda Claybaugh, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-2203.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 11, 2009), on the World Wide Web, at (*http://www.ftc.gov/os/actions.shtm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Sami Designs, LLC, d/b/a Jonäno, a limited liability company, and Bonnie Siefers, individually and as the owner of the limited liability company (together, ''respondents'').

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission again will review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves respondents' marketing and sale of textile fiber products purportedly made of bamboo fiber. The FTC complaint alleges that respondents violated Section 5(a) of the FTC Act by making false claims that their textile fiber products are bamboo fiber; retain the anti-microbial properties of the bamboo plant; and are manufactured using an environmentally-friendly process. The complaint alleges that respondents' textile fiber products are made of rayon and do not retain the anti-microbial properties of the bamboo plant, and that their manufacturing process involves the use of toxic chemicals and results in the emission of hazardous air pollutants. The complaint further alleges that the respondents failed to have substantiation for the foregoing claims.

The complaint also alleges that the proposed respondents have violated the Textile Fiber Products Identification Act (''Textile Act'') and the Rules and Regulations promulgated thereunder (''Textile Rules'') by falsely and deceptively labeling and advertising their textile fiber products as bamboo and by advertising their products without including in the description of each product a statement that the product was made in the U.S.A., imported, or both.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future. Part I.A of the proposed order prohibits respondents from representing that any textile fiber product (1) is made of bamboo or bamboo fiber; (2) is manufactured using an environmentally friendly process; or (3) is anti-microbial or retains the anti-microbial properties of any material from which it is made, unless such representations are true, not misleading, and substantiated by competent and reliable scientific evidence. Part I.B prohibits respondents from making claims about the benefits, performance, or efficacy of any textile fiber product, unless at the time the representation is made, it is truthful and not misleading, and is substantiated by competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence. Part II makes clear that, although Part I prohibits respondents from making false and unsubstantiated representations that their textile fiber products are made of bamboo or bamboo fiber as opposed to rayon, the respondents nonetheless may describe such products using the generic name of any manufactured fiber and identifying bamboo as the cellulose source for such fiber (*e.g.*, rayon made from bamboo), so long as such representation is true and substantiated. Part III of the proposed order prohibits respondents from failing to comply with the Textile Act or the Textile Rules.

Parts IV through VIII require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain of their personnel; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; to notify the Commission of changes in the individual respondent's current business or employment; and to file compliance reports with the Commission and respond to other requests from FTC staff. Part IX provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Richard C. Donohue

Acting Secretary.

[FR Doc. E9–19807 Filed 8–18–09: 1:15 pm]

BILLING CODE 6750–01–S

FEDERAL TRADE COMMISSION

[File No. 082 3193]

Pure Bamboo, LLC et al.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order — embodied in the consent agreement — that would settle these allegations.

DATES: Comments must be received on or before September 10, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Pure Bamboo, File No. 082 3193'' to facilitate the organization of comments. Please note that your comment — including your name and your state — will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-PureBamboo*) and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the webkink: (*https://secure.commentworks.com/ftc-PureBamboo*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (*http://www.ftc.gov/*) to read the Notice and the news release describing it.

A comment filed in paper form should include the ''Pure Bamboo, File No. 082 3193'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135

[1]The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

(Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act (''FTC Act'') and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Korin Ewing or Melinda Claybaugh, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-2203.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 11, 2009), on the World Wide Web, at (*http://www.ftc.gov/os/actions.shtm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Pure Bamboo, LLC, a limited liability company and Bruce Dear, individually and as the managing member of the limited liability company (together, ''respondents'').

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves respondents' marketing and sale of textile fiber products purportedly made of bamboo fiber. The FTC complaint alleges that respondents violated Section 5(a) of the FTC Act by making false claims that their textile fiber products are bamboo fiber; retain the anti-microbial properties of the bamboo plant; are manufactured using an environmentally-friendly process; and will completely break down and return to the elements found in nature within a reasonably short period of time after customary disposal. The complaint alleges that respondents' textile fiber products are made of rayon and do not retain the anti-microbial properties of the bamboo plant; that their manufacturing process involves the use of toxic chemicals and results in the emission of hazardous air pollutants; and that a substantial majority of household waste is disposed of by methods that do not present conditions that would allow for respondents' textile fiber products to decompose into elements found in nature, within a reasonably short period of time. The complaint further alleges that the respondents failed to have substantiation for the foregoing claims.

The complaint also alleges that the proposed respondents have violated the Textile Fiber Products Identification Act (''Textile Act'') and the Rules and Regulations promulgated thereunder (''Textile Rules'') by falsely and deceptively labeling and advertising their textile fiber products as bamboo; by advertising their products without including in the description of each product a statement that the product was made in the U.S.A., imported, or both; and by selling hosiery textile fiber products without affixing to the products or their packaging required labels detailing fiber content and other required information..

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future. Part I.A of the proposed order prohibits respondents from representing that any textile fiber product (1) is made of bamboo or bamboo fiber; (2) is manufactured using an environmentally friendly process; (3) is anti-microbial or retains the anti-microbial properties of any material from which it is made; or (4) is degradable, biodegradable, or photodegradable, unless such representations are true, not misleading, and substantiated by competent and reliable scientific evidence. Part I.B prohibits respondents from making claims about the benefits, performance, or efficacy of any textile fiber product, unless at the time the representation is made, it is truthful and not misleading, and is substantiated by competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence. Part II makes clear that, although Part I prohibits respondents from making false and unsubstantiated representations that their textile fiber products are made of bamboo or bamboo fiber as opposed to rayon, the respondents nonetheless may describe such products using the generic name of any manufactured fiber and identifying bamboo as the cellulose source for such fiber (*e.g.*, rayon made from bamboo), so long as such representation is true and substantiated. Part III of the proposed order prohibits respondents from failing to comply with the Textile Act or the Textile Rules.

Parts IV through VIII require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain of their personnel; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; to notify the Commission of changes in the individual respondent's current business or employment; and to file compliance reports with the Commission and respond to other requests from FTC staff. Part IX provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of

the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Richard C. Donohue

Acting Secretary.

[FR Doc. E9–19810 Filed 8–18–09; 1:13 pm]

BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–09–0008]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam Daneshvar, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Emergency Epidemic Investigations—Extension—(0920–0008), Office of Workforce and Career Development (OWCD), Centers for Disease Control and Prevention (CDC).

Background & Brief Description

The purpose of the Emergency Epidemic Investigation surveillance is to collect data on the conditions surrounding and preceding the onset of a problem. The data must be collected in a timely fashion so that information can be used to develop prevention and control techniques, to interrupt disease transmission, and to help identify the cause of an outbreak. The EPI–AID mechanism is a means for Epidemic Intelligence Service (EIS) officers of the Centers for Disease Control and Prevention (CDC), along with other CDC staff, to provide technical support to State health agencies requesting assistance with epidemiologic field investigations. This mechanism allows CDC to respond rapidly to public health problems in need of urgent attention, thereby providing an important service to State and other public health agencies. Through EPI–AIDS, EIS officers (and, sometimes, other CDC trainees) receive supervised training while actively participating in epidemiologic investigations. EIS is a two-year program of training and service in applied epidemiology through CDC, primarily for persons holding doctoral degrees.

Shortly after completion of the EPI–AID investigation, an Epi Trip Report is delivered to the State health agency official(s) who requested assistance. These officials can comment on both the timeliness and the practical utility of the recommendations from the investigation by completing a brief questionnaire to assess the promptness of the investigation and the usefulness of the recommendations. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents (per year)	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Requestors of EPI–AIDs	100	1	15/60	25

Dated: August 10, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–19836 Filed 8–18–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

AHRQ Intent To Publish Grant and Contract Solicitations for Comparative Effectiveness Research (CER) Projects With Funds From the American Recovery and Reinvestment Act (ARRA)

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Intent.

SUMMARY: AHRQ is announcing the Agency's intention to support new CER projects, with funding from the American Recovery and Reinvestment Act (ARRA). The ARRA appropriated $300 million to AHRQ for support of CER. ARRA funding will focus, initially, on 14 priority conditions established by the Secretary of the Department of Health and Human Services under Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. These priority conditions were identified through a process involving discussion with, and extensive input from, the public as well as Federal agencies. The list of priority conditions is relevant to the Medicare, Medicaid, and State Children's Health Insurance Program (SCHIP) programs, and can be found at: *http://effectivehealthcare.ahrq.gov/aboutUs.cfm?abouttype=program#Conditions.*

DATES: AHRQ anticipates grant and contract solicitations to be published

beginning in the fall, 2009, with funding to commence in spring, 2010. Interested parties may sign up to receive updates about AHRQ's Effective Health Care Program at *http://effectivehealthcare.ahrq.gov/.*

ADDRESSES: The future CER solicitations will be published in the NIH Guide: *http://grants.nih.gov/grants/guide/index.html.*

FOR FURTHER INFORMATION CONTACT: Until the solicitations are published, AHRQ cannot provide information on their contents.

Direct any general comments regarding the Effective Health Care program to: Lia Hotchkiss, MPH, PMP, Center for Outcomes and Evidence, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, MD 20850, Telephone: 301–427–1502, E-mail address: *Effectivehealthcare@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Agency for Healthcare Research and Quality (AHRQ) has been supporting comparative effectiveness research for many years and since 2005 through AHRQ's Effective Health Care Program, which was authorized under Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. The Effective Health Care program provides systematic reviews and develops other translational information and tools designed to inform health care decision making. The Effective Health Care Program advances the methodology of comparative effectiveness research (CER) and provides training grants to enhance the pool of researchers who can perform CER.

Comparative Effectiveness Research Initiative Description

Funding Opportunity Announcements soliciting research grant applications for CER will provide $148 million for evidence generation. This includes $100 million for the Clinical and Health Outcomes Initiative in Comparative Effectiveness (CHOICE), a new, coordinated, national effort to establish a series of prospective pragmatic clinical comparative effectiveness studies that measure the benefits treatments produce in routine clinical practice and will include novel study designs focusing on real-world and under-represented populations (children, elderly, racial and ethnic minorities, and other understudied populations), and $48 million for the establishment or enhancement of national patient registries that can be used for researching the longitudinal effects of different interventions and collecting data on under-represented populations. Additional grant funding is expected to include $29.5 million to support innovative translation and dissemination grants related to CER, as well as $20 million to support training and career development in CER.

Requests for Contracts for CER will provide $9.5 million to establish an infrastructure to identify new and/or emerging issues for comparative effectiveness review investments. Also, $10 million will establish a Citizen's Forum to formally engage all stakeholders, and to expand and standardize public involvement in the entire Effective Health Care enterprise.

Additionally, AHRQ anticipates supporting other grants ($1 million) and enhancing existing contracts for evidence synthesis ($50 million), evidence generation ($24 million), translation and dissemination ($5 million), and salary and benefits for ARRA-related full-time equivalent positions ($3 million).

Dated: August 11, 2009.

Carolyn M. Clancy,

AHRQ, Director.

[FR Doc. E9–19758 Filed 8–18–09; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; P01 Application.

Date: October 28, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: D. G. Patel, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 11, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–19889 Filed 8–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee.

Date: September 9–10, 2009.

Time: September 9, 2009, 1:15 p.m. to 5:45 p.m.

Agenda: The Recombinant DNA Advisory Committee will review and discuss selected human gene transfer protocols as well as related data management activities. Please check the meeting agenda at *http://oba.od.nih.gov/rdna/rdna.html* for more information.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Time: September 10, 2009, 8:30 a.m. to 11 a.m.

Agenda: The Recombinant DNA Advisory Committee will review and discuss selected human gene transfer protocols as well as related data management activities. Please check the meeting agenda at *http://oba.od.nih.gov/rdna/rdna.html* for more information.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Laurie Lewallen, Advisory Committee Coordinator, Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Room 750,

Bethesda, MD 20892–7985. 301–496–9838. *lewallla@od.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://oba.od.nih.gov/rdna/rdna.html,* where an agenda and any additional information for the meeting will be posted when available.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: August 11, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–19906 Filed 8–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review, Special Emphasis Panel. RFA–OD–09–003 Challenge Grants Panel 30.

Date: July 28, 2009.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Cathy Wedeen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892. 301–435–1191. *wedeenc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review, Special Emphasis Panel. RFA–OD–09–003 Challenge Grants Panel 31.

Date: August 3, 2009.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: George W. Chacko, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7849, Bethesda, MD 20892. 301–435–1245. *chackoge@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review, Special Emphasis Panel. RFA–OD–09–003 Challenge Grants Panel 32.

Date: August 7, 2009.

Time: 2:45 p.m. to 3:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Maribeth Champoux, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892. 301–594–3163. *champoum@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review, Special Emphasis Panel. RFA–OD–09–003 Challenge Grant Panel 33.

Date: August 11, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John Firrell, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, MSC 7854, Bethesda, MD 20892. 301–435–2598. *firrellj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review, Special Emphasis Panel. RFA–OD–09–003 Challenge Grants Panel 34.

Date: August 12, 2009.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Bob Weller, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892. (301) 435–0694. *wellerr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review, Special Emphasis Panel. RFA–OD–09–003 Challenge Grants Panel 35.

Date: August 13, 2009.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Noni Byrnes, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130, MSC 7840, Bethesda, MD 20892. (301) 435–1023. *byrnesn@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review, Special Emphasis Panel. RFA OD–09–003 Challenge Grants Panel 36.

Date: August 14, 2009.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carole L. Jelsema, PhD, Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7850, Bethesda, MD 20892. (301) 435–1248. *jelsemac@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine;

93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 12, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–19879 Filed 8–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Clinical Trials and Planning Grants.

Date: September 9, 2009.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Brenda Lange-Gustafson, PhD, Scientific Review Officer, NIAID/NIH/DHHS, Scientific Review Program, Room 3122, 6700–B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–451–3684, *bgustafson@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 12, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–19877 Filed 8–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Methodologies for Post-Approval Studies of Medical Devices; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Methodologies for Post-Approval Studies of Medical Devices.'' The purpose of the workshop is to facilitate discussion among FDA, industry, academia, professional societies, clinical investigators and other interested parties on issues related to methodologies for post-approval studies of medical devices. The target audiences for this workshop are Epidemiologists, Statisticians, Clinicians and Regulatory Affairs Specialists.

Dates and Times: The workshop will be held on September 9, 2009, from 9 a.m. to 5 p.m. and September 10, 2009, from 9 a.m. to 5 p.m. Participants are encouraged to arrive early to ensure time for parking and security screening before the meeting. Security screening will begin at 8 a.m., and registration will begin at 8:30 a.m. Please pre-register for the workshop by following the instructions in this document.

Location: The workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Silver Spring, MD 20993.

Contact Persons: Daniel Caños, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., WO66/Room 4120, Silver Spring, MD 20993, 240–796–6057, *daniel.canos@fda.hhs.gov* ; or Ellen Pinnow, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., WO66/Room 4106, Silver Spring, MD 20993, 301–796–6066, *ellen.pinnow@fda.hhs.gov*

Registration: To register for the conference please visit the following Web site: *https://medsun2.S-3.net/FDAPASWkshpSep09*. There is no fee to attend the workshop, but attendees must register in advance. The registration process will be handled by Social and Scientific Systems, which has extensive experience in planning, executing, and organizing educational meetings. Although the facility is spacious, registration will be on a first-come, first-served basis. In-person attendance is limited to 120 participants. You may also register to attend the meeting via webcast. Non-U.S. citizens are subject to additional security screening, and they should register as soon as possible. If you need special accommodations because of a disability, please contact Daniel Caños (see *Contact Persons*) at least 7 days before the public workshop.

SUPPLEMENTARY INFORMATION:

I. Why Are We Holding This Public Workshop?

The purpose of the public workshop is to facilitate discussion among FDA and other interested parties on methodological issues related to Post-Approval Studies for medical devices.

II. What Are the Topics We Intend To Address at the Public Workshop?

We hope to discuss a large number of issues at the workshop, including, but not limited to:

- Regulatory requirements for conducting Post-Approval Studies for medical devices;
- Using existing infrastructure (e.g., registries) to facilitate Post-Approval Studies;
- Using innovative study design strategies and advanced epidemiologic methods to enhance and facilitate Post-Approval Studies;
- Review important measurement considerations inherent to Post-Approval Studies;
- Clinical research organizations, industry, academia, and other clinical trial consultant's perspectives on all of the previous issues related to Post-Approval Study methodologies for medical devices.

III. Where Can I Find Out More About This Public Workshop?

Background information on the public workshop, registration information, the agenda, information about lodging, and other relevant information will be posted, as it becomes available, on the Internet at *http://www.fda.gov/cdrh/meetings.html*.

Dated: August 12, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. 09–19904 Filed 8–18–09; 8:45 am]

BILLING CODE 4160–01–S

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Program Comment Issued for the U.S. General Services Administration on Select Envelope and Infrastructure Repairs and Upgrades to Historic Public Buildings

AGENCY: Advisory Council on Historic Preservation.

ACTION: Program Comment Issued for the U.S. General Services Administration on Select Envelope and Infrastructure Repairs and Upgrades to Historic Public Buildings.

SUMMARY: The Advisory Council on Historic Preservation (ACHP) issued a Program Comment for the U.S. General Services Administration setting forth the way in which it will comply with Section 106 of the National Historic Preservation Act for select repairs and upgrades to windows, lighting, roofing, and heating, ventilating, and air-conditioning (HVAC) systems within historic public buildings.

DATES: The Program Comment went into effect on August 7, 2009.

ADDRESSES: Address all questions concerning the Program Comment to Kirsten Brinker Kulis, Office of Federal Agency Programs, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 803, Washington, DC 20004. Fax (202) 606–8647. You may submit electronic questions to: *kkulis@achp.gov*.

FOR FURTHER INFORMATION CONTACT: Kirsten Brinker Kulis, (202) 606–8517, *kkulis@achp.gov*.

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act requires federal agencies to consider the effects of their undertakings on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to such undertakings. The ACHP has issued the regulations that set forth the process through which Federal agencies comply with these duties. Those regulations are codified under 36 CFR part 800 (Section 106 regulations).

Under Section 800.14(e) of those regulations, agencies can request the ACHP to provide a ''Program Comment'' on a particular category of undertakings in lieu of conducting individual reviews of each individual undertaking under such category, as set forth in 36 CFR 800.4 through 800.7. An agency can meet its Section 106 responsibilities with regard to the effects of particular aspects of those undertakings by taking into account ACHP's Program Comment and following the steps set forth in that comment.

I. Background

The ACHP has issued a Program Comment to the U.S. General Services Administration (GSA) which streamlines Section 106 compliance for select repairs and upgrades to windows, lighting, roofing, and heating, ventilation, and air-conditioning (HVAC) systems. The ACHP membership voted unanimously to issue the Program Comment via an unassembled vote on August 7, 2009.

While the Program Comment may be applied to the types of projects noted above at all of GSA's historic public buildings, the repairs and upgrades must be undertaken using GSA's Technical Preservation Guidelines (Guidelines), written by the GSA's Center for Historic Buildings, Office of the Chief Architect, Public Buildings Service. The following Guidelines are included as part of the Program Comment as appendices:

—Upgrading Historic Building Windows;
—Upgrading Historic Building Lighting;
—Historic Building Roofing;
—HVAC Upgrades in Historic Buildings.

Due to their volume, the Guidelines will not be copied into this notice. However, they can be accessed in their entirety on the Internet at: *http://www.gsa.gov/technicalpreservationguidelines*. Those without access to the Internet can contact Kirsten Brinker Kulis at (202) 606–8517, or by e-mail at *kkulis@achp.gov*, to arrange an alternate method of access to these appendices.

The GSA has consulted with the National Park Service (NPS) with regard to the cited Guidelines, and the NPS has confirmed their consistency with the Secretary of the Interior's Standards for Rehabilitation when applied under the conditions set out in the Program Comment.

In addition, the repairs and upgrades contemplated by the Program Comment are limited to projects executed by GSA employees and contractors who meet the professional standards developed by the Secretary of the Interior. The Program Comment is further limited to those projects where the proposed repairs and upgrades would not adversely affect the qualities that qualify a subject building for the National Register of Historic Places.

Before using the Program Comment, these findings will be made by GSA's Regional Historic Preservation Officers (RHPO), who will notify the relevant State Historic Preservation Officer (SHPO) by providing them with the GSA's Section 106 Short Form (appended to the Program Comment) for a ten business day review period, during which time they may object to use of this Program Comment for the project. If the SHPO objects within that timeframe, GSA will follow the standard Section 106 review process, rather than this Program Comment, for the proposed work. If GSA already has a Section 106 agreement that covers the proposed work (*e.g.*, a state or regional Programmatic Agreement) GSA will have the option of following that agreement, rather than this Program Comment.

The Program Comment provides for regular reports and meetings on its implementation.

The Program Comment is the result of consultation among the GSA, the ACHP, the NPS, the National Conference of State Historic Preservation Officers (NCSHPO), the National Trust for Historic Preservation (NTHP), the National Alliance of Preservation Commissions (NAPC), and the National Association of Tribal Historic Preservation Officers (NATHPO).

Public comments resulting from a June 26, 2009 public notice in the **Federal Register** (74 FR 30608–30610) were received by the ACHP by July 20, 2009.

Preservation Idaho expressed an interest in GSA's National Register eligibility survey efforts for their public building inventory. The ACHP forwarded materials to Preservation Idaho regarding this topic.

The Georgia Department of Natural Resources provided language clarification suggestions. It noted that references to ''work'' should be made more specific. The Program Comment was edited accordingly. It also proposed that the reports and meeting provisions could be moved to the last section of the Program Comment. The ACHP did not follow that recommendation, deeming such a move unnecessary.

The Pennsylvania Historical and Museum Commission requested a final copy of the GSA Short Form. The text of the form is included herein. The ACHP will send the Commission a copy with the final formatting. The Commission also noted that the 10-day objection period ''seems a bit tight.'' However, the ACHP deemed that the 10-day review period was sufficient for the types of projects contemplated by the Program Comment.

The National Housing and Rehabilitation Association suggested incorporation of their draft ''Guide Specifications for the Evaluation of

Fenestration Products Installed in Historical Buildings'' into the GSA's Technical Guidelines for windows. However, the ACHP deemed that GSA's Technical Guidelines, as reviewed by the NPS, were sufficient for purposes of the Program Comment.

The ACHP also received a letter from the State of Hawaii, Office of Hawaiian Affairs, which stated that OHA had no comments on the Program Comment.

II. Final Text of the Program Comment

The text of the Program Comment is included below. As noted above, due to their volume, the Guideline appendices are not included herein, but can be accessed on the Internet at *http://www.gsa.gov/technicalpreservationguidelines*. The relevant Guidelines are those for:

—Upgrading Historic Building Windows;
—Upgrading Historic Building Lighting;
—Historic Building Roofing;
—HVAC Upgrades in Historic Buildings.

Those without access to the Internet can contact Kirsten Brinker Kulis at (202) 606–8517, or by e-mail at *kkulis@achp.gov* to arrange an alternate method of accessing these appendices.

The following is the text of the Program Comment, without the Guideline appendices:

Program Comment for General Services Administration

Repairs and Upgrades to Windows, Lighting, Roofing, and Heating, Ventilating, and Air-Conditioning (HVAC)

I. *Establishment and Authority:* This Program Comment was issued by the Advisory Council on Historic Preservation (ACHP) on August 7, 2009, pursuant to 36 CFR 800.14(e).

It provides the General Services Administration (GSA) with an alternative way to comply with its responsibilities under Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, and its implementing regulations, 36 CFR part 800 (Section 106), with regard to the effects of repairs and upgrades to windows, lighting, roofing, and heating, ventilating and air-conditioning (HVAC) systems (Repairs/Upgrades) that follow the appended GSA Technical Preservation Guidelines (Guidelines). The appended Guidelines have been reviewed by the National Park Service, which confirms that they are in keeping with the Secretary of the Interior's Standards on Rehabilitation.

II. *Applicability to General Services Administration:* Only GSA may use this Program Comment.

III. *Date of Effect:* This Program Comment will go into effect on August 7, 2009.

IV. *Use of This Program Comment To Comply With Section 106 Regarding the Effects of the Repairs and Upgrades:*

(1) GSA may comply with Section 106 regarding the effects of Repairs/Upgrades on historic properties by:

(i) Making a determination that the proposed Repair/Upgrade may not adversely affect a historic property;

(ii) Notifying the relevant SHPO, through use of the notice form appended to this Program Comment that it intends to carry out a Repair/Upgrade:

(a) If, within 10 business days from receipt of the notification, the SHPO objects to the use of this Program Comment for the proposed Repair/Upgrade, GSA may not use the Program Comment for the proposed Repair/Upgrade. GSA will then comply with Section 106 for the proposed Repair/Upgrade in accordance with 36 CER §§ 800.3 through 800.7 or any applicable alternative per 36 CFR 800.14.

(b) If the SHPO agrees with the proposed Repair/Upgrade, or does not object within 10 business days from receipt of the notification, GSA may proceed with the proposed Repair/Upgrade in accordance with this Program Comment;

(iii) Conducting such Repair/Upgrade as provided by the relevant Guidelines appended to this document;

(iv) Ensuring that all work on the Repair/Upgrade is designed by an architect and supervised and approved by a cultural resources professional, both of whom meet the relevant standards outlined in the Secretary of the Interior's Professional Qualification Standards, pursuant to 36 CFR part 61. In addition, the qualified supervisor will ensure construction phase preservation competency and quality control measures are implemented; and

(v) Keeping a record, at the relevant GSA Region, detailing each use of this Program Comment for no less than five years from the final date of the implementation. Each record must include the following information:

(a) A description of the implementation of the Program Comment (including the specific location of the work);

(b) The date(s) when the Program Comment was implemented;

(c) The name(s) of the qualified personnel that carried out and/or supervised the use of the Program Comment; and

(d) A summary of the implementation, indicating how the Repair/Upgrade was carried out, any problems that arose, and the final outcome.

GSA must provide copies of these records, within a reasonable timeframe, when requested by the ACHP or the relevant SHPO.

V. *Discoveries:* If previously unknown features are discovered while work under this Program Comment is being implemented (*e.g.*, a mural behind plaster), GSA will notify SHPO of the discovery and provide SHPO an opportunity to object to the use of this Program Comment, per Stipulation IV(l)(ii), above.

VI. *Program Comment Does Not Cover Undertakings Involving Activities Beyond the Specific Repairs/Upgrades:* The Repairs/Upgrades within the scope of this Program Comment will be discrete undertakings that do not include activities beyond the Repairs/Upgrades themselves. Among other things, the Repairs/Upgrades themselves will not include earth disturbing activities, new construction, site acquisition, change of occupancy or use, or alteration of exteriors or significant interior spaces.

VII. *Process for Adding or Updating Repairs/Upgrades and Guidelines:* While this Program Comment, as originally adopted, was limited to Repairs/Upgrades relating to four Guidelines, more Repairs/Upgrades (and their relevant Guidelines) may be added to it. Moreover, Guidelines already included in the Program Comment may eventually need updating. Accordingly, Repairs/Upgrades and their Guidelines may be added to this Program Comment, or updated, as follows:

(1) GSA will notify the ACHP, the National Conference of State Historic Preservation Officers (NCSHPO), and the Department of the Interior (DOI) (collectively, parties) that it wants to add an Upgrade/Guideline, or to update a Guideline that is already a part of the Program Comment. Such a notification will include a draft of the proposal.

(2) The parties will consult on the proposal; and

(3) If a final version of the proposal is approved by the ACHP Executive Director, the ACHP will publish a notice of availability of the approved addition or update in the Federal Register. The addition or update will go into effect as part of this Program Comment upon such publication.

VIII. *Process for Removing a Repair/Upgrade and Its Guideline:* After consulting with the parties, the ACHP may remove a Repair/Upgrade and its Guideline from the scope of this Program Comment by publishing a **Federal Register** notice to that effect. The Program Comment will continue to operate with the other Repairs/Upgrades

and their Guidelines that have not been removed.

IX. *GSA Option To Use Applicable Section 106 Agreements:* If an existing Section 106 agreement applies to a proposed Repair/Upgrade, GSA may follow either that existing agreement or this Program Comment.

X. *Latest Version of the Program Comment:* GSA and/or the ACHP will include the most current version of the Program Comment (with the latest amendments and updates) in a publicly accessible Web site. The latest Web address for that site will be included in each of the **Federal Register** notices for amending, removing or updating the Program Comment. This document and its 41 appended form and guidelines will initially be available at *http://www.achp.gov* and *http://www.gsa.gov/historicpreservation*.

XI. *Meetings and Reports:* The parties shall meet in September 2011 and every three years thereafter, to discuss the implementation of the Program Comment. GSA will include in its reports under Section 3 of Executive Order 13287, a summary of its experience implementing this Program Comment, how often and where the Program Comment has been utilized, examples of successful implementation, and examples of failures or problems with implementation.

XII. *Amendment:* The ACHP may amend this Program Comment (other than the appended Guidelines themselves, which are added, updated or removed according to Stipulations VI and VII, above) after consulting with the parties and publishing a **Federal Register** notice to that effect.

XIII. *Termination:* The ACHP may terminate this Program Comment by publication of a notice in the **Federal Register** 30 days before the termination takes effect.

XIV. *Sunset Clause:* This Program Comment will terminate on its own accord on August 1, 2018, unless it is amended before that date to extend that period.

XV. *Historic Properties of Significance to Indian Tribes and Native Hawaiian Organizations:* This Program Comment does not apply in connection with effects to historic properties that are located on tribal lands and/or that are of religious and cultural significance to Indian tribes or Native Hawaiian organizations.

XVI. *Definitions:* The definitions found at 36 CFR part 800 apply to the terms used in this Program Comment.

XVII. *Notification Form and GSA Technical Preservation Guidance Appendices:*

Appendix A

GSA Program Comment Notification Form

I. General
Building Name(s):
Address (city, state):
Project Title:
Qualified Preservation Professional Preparing Report:
Date: (Note: Qualified professionals must meet the relevant standards outlined in the Secretary of the Interior's Professional Qualification Standards, pursuant to 36 CFR part 61.)
Location of Work in the Building:
Project Team: A/E firm, Preservation Consultant, GSA Project Officer, Building Manager, and GSA Regional Historic Preservation Officer or Historic Preservation Program staff reviewer:
II. Scope and Purpose of Project (bullets are acceptable):
III. Locations and Materials Affected (check all that apply) Preservation Zones affected (see Building Preservation Plan; contact RHPO for assistance)

__Restoration __Rehabilitation __Renovation

Where does the project affect the historic property?

__Exterior __Interior __Lobbies/Vestibules __Corridors
__Stairwells __Elevators __Restrooms __Courtrooms __Executive Suites
__General Office Space __Other (specify)

What materials are affected by the project?

__Stone __Brick __Architectural Concrete __Historic Roofing
__Bronze __Architectural Metals (specify) __Woodwork
__Ornamental Plaster __Other (specify)

What assemblies are affected by the project?

__Windows and Skylights __Doors __Lighting __Other (specify)

IV. Preservation Design Issues:
List solutions explored, how resolved and why, such as (not inclusive)

—Locating new work/installation: visibility, protection of ornamental finishes, cost concerns
—Design of new work/installation: compatibility with existing original materials, research on original design (if original materials non-extant), materials/finishes chosen
—Method of supporting new work/installation
—Preservation and protection of historic materials

V. Graphics—include:

—Site or floor plan showing work location(s)
—Captioned photographs of existing site conditions in affected restoration zone locations
—Reduced project drawings, catalogue cut sheets or photographs showing solutions

VI. Confirmation
The undersigned hereby confirms and represents to the best of his or her knowledge and belief, the following as of this date:

(1) The information in this form is correct;
(2) GSA has determined that the proposed work may not adversely affect a historic property;
(3) This project approach is consistent with the relevant GSA Technical Preservation Guidelines;
(4) The design team includes a qualified preservation architect, engineer or conservator;
(5) The design addresses construction phase preservation competency and quality control; and
(6) This form will be submitted to the relevant SHPO for its review and opportunity for objection in a timely manner.
Signature and Date: GSA Regional Historic Preservation Officer

Appendix B

GSA Technical Preservation Guidelines

[Please refer to *http://www.gsa.gov/technicalpreservationguidelines* for a copy of the relevant guidelines. They are linked in that web page under the headings ''Upgrading Historic Building Windows,'' ''Upgrading Historic Building Lighting,'' ''HVAC Upgrades in Historic Buildings,'' and ''Historic Building Roofing.'']

Authority: 36 CFR 800.14(e).

Dated: August 13, 2009.

Ralston Cox,

Acting Executive Director.

[FR Doc. E9–19814 Filed 8–18–09; 8:45 am]

BILLING CODE 4310–K6–M

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2009–0102]

Privacy Act of 1974; U.S. Immigration and Customs Enforcement-003 General Counsel Electronic Management System, System of Records

AGENCY: Privacy Office, DHS.

ACTION: Modification to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, U.S. Immigration and Customs Enforcement is updating an existing system of records titled General Counsel Electronic Management System (March 31, 2006) to reflect changes in the system that provide Immigration and Customs Enforcement attorneys and other Immigration and Customs Enforcement personnel with additional information regarding immigration cases and with additional means of accessing the information. General Counsel Electronic Management System is a case management system used primarily by attorneys in the Immigration and Customs Enforcement

Office of the Principal Legal Advisor to litigate cases before U.S. immigration courts. In conjunction with the next release of General Counsel Electronic Management System, Immigration and Customs Enforcement is modifying the General Counsel Electronic Management System system of records notice to describe the collection of additional information on immigration cases and the aliens involved in them. This General Counsel Electronic Management System system of records notice updates the system of records number; categories of individuals; categories of records; purpose of the system; routine uses; retention and disposal; system manager and address; and record source categories. Several of the routine uses that were in the original GEMS SORN have been updated to reflect new standard language at DHS. The other new routine uses have been proposed in order to permit sharing in circumstances such as for audit purposes; when information in the system may have been compromised; in the course of an immigration, civil, or criminal proceeding, sharing with courts, counsel, parties, and witnesses; with attorneys acting on behalf of an individual covered by the system; with foreign governments in order to remove aliens from the United States; with the Department of State in the processing of petitions or applications for benefits under the Immigration and Nationality Act; and to assist with redress requests. A Privacy Impact Assessment that describes the changes to General Counsel Electronic Management System is being published concurrently with this notice. It can be found on the DHS Web site at *http://www.dhs.gov/privacy*. This system is included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before September 18, 2009. This system will be effective September 18, 2009.

ADDRESSES: You may submit comments, identified by docket number DHS–2009–0102 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Lyn Rahilly (202–732–3300), Privacy Officer, U.S. Immigration and Customs Enforcement. 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

Immigration and Customs Enforcement (ICE) attorneys are responsible for the prosecution and/or management of immigration cases litigated under the Immigration and Nationality Act before U.S. immigration courts and the Board of Immigration Appeals. General Counsel Electronic Management System (GEMS) was developed to help ICE attorneys manage their cases. In addition to having personal information about the aliens involved with the cases, GEMS has information on individuals associated with the case such as witnesses, informants, and judges, documentation related to the cases, and logistical information regarding hearings. The ICE Office of Detention and Removal Operations (DRO) is responsible for identifying illegal aliens, apprehending them and managing them while they are in custody, and removing them from the United States. DRO personnel use GEMS to stay abreast of changes in custody decisions for a particular alien and to help with the execution of final removal orders.

Since the GEMS SORN was last published, several changes have been made to GEMS to enable ICE attorneys and DRO personnel to better manage immigration cases and remove aliens. The changes fall into two categories—new functionality and new or updated system-to-system interfaces. The pieces of new functionality are important because they allow ICE attorneys to better manage their cases and assist DRO with the removal of aliens. Previously, ICE attorneys could only access and update GEMS data while at their desk. The new GEMS Courtroom Mobility component enables ICE attorneys to download GEMS case data to a secure laptop and to use and update it as needed while they are in court. The Web View component is also new and allows GEMS users to access a read-only version of the GEMS data via the ICE intranet thus making access to GEMS more convenient for ICE attorneys and DRO personnel. The last piece of new functionality is the Project Management component which is used to manage ancillary projects such as annual reports and budgets that are unrelated to attorney cases. This component can also be used to manage immigration cases when the alien has not yet been assigned an Alien Registration Number. These projects track the key information for these cases including the individuals involved and events surrounding the cases.

Since the GEMS SORN was last published, GEMS' system-to-system interfaces have been expanded. GEMS now has interfaces with the U.S. Citizenship and Immigration Services' (USCIS) Refugee, Asylum, and Parole System (RAPS), the Customs and Border Protection's (CBP) TECS, and the Department of Justice's (DOJ) Case Access System for EOIR (CASE). RAPS provides GEMS with new personal information regarding individuals involved in asylum cases. TECS provides additional biographical information on individuals with immigration-related issues and CASE provides additional schedule information regarding hearings.

In accordance with the Privacy Act of 1974, DHS is amending the General Counsel Electronic Management System (GEMS) SORN to reflect the changes in the types of personal information maintained in GEMS as a result of these upgrades. The SORN includes revised category of individuals, category of records, routine uses, and retention and disposal sections to reflect changes to the system and ICE's operational protocols. Several of the routine uses that were in the original GEMS SORN have been updated to reflect new standard language at DHS. The other new routine uses have been proposed in order to permit sharing in circumstances such as for audit purposes; when information in the system may have been compromised; in the course of an immigration, civil, or criminal proceeding, sharing with courts, counsel, parties, and witnesses; with attorneys acting on behalf of an individual covered by the system; with foreign governments in order to remove aliens from the United States; with the Department of State in the processing of petitions or applications for benefits under the Immigration and Nationality Act; and to assist with redress requests. This amended SORN also changes the system number from DHS/ICE/OPLA–001 to DHS/ICE–003. This amended system of records supports the ability of ICE attorneys to litigate cases before

U.S. immigration courts and helps with the execution of final removal orders. This amended SORN is being published concurrently with the GEMS Privacy Impact Assessment (PIA) update.

Consistent with DHS's information sharing mission, information stored in GEMS may be shared with other DHS components, as well as appropriate Federal, State, local, tribal, foreign, or international government agencies. This sharing will only take place 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 SORN.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the Federal Register a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to which their records are put, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/ICE–003, General Counsel Electronic Management System (GEMS) system of records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records
DHS/ICE–003

SYSTEM NAME:

General Counsel Electronic Management System (GEMS).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records in GEMS are maintained in electronic form at the U.S. Immigration and Customs Enforcement headquarters in Washington, DC and at field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include: (1) Individuals covered by provisions of the Immigration and Nationality Act; (2) individuals who are under investigation by ICE, who were investigated by ICE in the past, and those who are suspected of violating the criminal or civil provisions of statutes, treaties, Executive Orders, and regulations administered by ICE; (3) witnesses, informants, or other third parties who may have knowledge of such violations; (4) ICE attorneys and other employees who have been assigned to represent the agency in litigation relating to aliens and other individuals whose files are contained in the system; and (5) defense attorneys, asylum officers, and immigration judges involved with immigration cases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- The alien's biographical information such as name, A-number, date and place of birth, date and port of entry, nationality, language, race, gender, height, and weight; identification information including social security number, driver's license number, and passport number; employment information; flags regarding the individual's status including if the person is legally sufficient, if a final order has been issued, or if a stay is in effect; flags regarding the individual including if the person is a convicted felon, a terrorist, an interest of the Federal Bureau of Investigation (FBI), has a gang affiliation, or is a child predator; information on relief; comments about the alien by CBP officers at the border; and events associated with the alien such as court appearances. If the alien has applied for asylum, the system also collects religion, marital status, address, the date of the request for asylum, the asylum officer assigned to the case, the alien's persecution code, the basis of the claim, information on the person's interviews and court appearances, the results of various database checks done on the person as part of the case, and the final decision code and the date of the final decision.
- Personal information on other people associated with the alien including family members, witnesses, and informants. For each person, GEMS contains the person's name, gender, role, contact information, and notes about the person.
- Personal information on attorneys and immigration judges associated with the alien including the person's name, gender, role, contact information, and notes about the person.
- Hearing information including the language the alien speaks, the hearing start time and end time, the hearing location and address, the immigration judge hearing the case, the prosecuting and defending attorneys, and a flag indicating if the alien was battered or not.
- Subsets or complete sets of information also contained in the hard copy A-File that may include the alien's official record material, such as naturalization certificates, various forms and attachments such as photographs, applications and petitions for benefits under the immigration and nationality laws, reports of investigations, statements, arrest reports, correspondence, and enforcement documents.
- Attorney work products consisting of pre-trial, trial, and post-trial notes, memoranda stating positions for litigation, notes to investigators, information related to immigration cases that have been obtained from hardcopy or online research, legal opinions, and policy memos.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Immigration And Nationality Act of 1952, as amended.

PURPOSE(S):

The purposes of the system are (1) to support the litigation of immigration cases before U.S. administrative and Federal courts, including immigration courts and the Board of Immigration Appeals; (2) to support the tracking, processing, and reporting of case information for internal management, reporting, planning, and analysis purposes; and (3) to support the ICE mission by maintaining and sharing information that supports the identification, arrest, apprehension, detention, and removal of aliens who

are subject to removal under the Immigration and Naturalization Act.

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 (including United States Attorney Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. any employee of DHS in his/her official capacity;

3. any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use 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 other Federal, State, tribal, and local government law enforcement and regulatory agencies and foreign governments, individuals and organizations during the course of an investigation or the processing of a matter, or during a proceeding within the purview of the immigration and nationality laws, to elicit information required by ICE to carry out its functions and statutory mandates.

I. To an appropriate Federal, State, local, tribal, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit and when disclosure is appropriate to the proper performance of the official duties of the person making the request.

J. To a former employee of DHS, in accordance with applicable regulations, for purposes of responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

K. To a Federal, State, tribal, local or foreign government agency or organization, or international organization, lawfully engaged in collecting law enforcement intelligence information, whether civil or criminal, or charged with investigating, prosecuting, enforcing or implementing civil or criminal laws, related rules, regulations or orders, to enable these entities to carry out their law enforcement responsibilities, including the collection of law enforcement intelligence.

L. To a court, magistrate, administrative tribunal, opposing counsel, parties, and witnesses, in the course of an immigration, civil, or criminal proceeding before a court or adjudicative body when:

(a) DHS or any component thereof; or

(b) any employee of DHS in his or her official capacity; or

(c) any employee of DHS in his or her individual capacity where the agency has agreed to represent the employee; or

(d) the United States, where DHS determines that litigation is likely to affect DHS or any of its components, is a party to litigation or has an interest in such litigation, and DHS determines that use of such records is relevant and necessary to the litigation, provided however that in each case, DHS determines that disclosure of the information to the recipient is a use of the information that is compatible with the purpose for which it was collected.

M. To clerks and judges of courts exercising naturalization jurisdiction for the purpose of filing petitions for naturalization and to enable such courts to determine eligibility for naturalization or grounds for revocation of naturalization.

N. To an attorney or representative (as defined in 8 CFR 1.1(j)) who is acting on behalf of an individual covered by this system of records in connection with any proceeding before USCIS or the Executive Office for Immigration Review.

O. To the appropriate foreign government agency charged with enforcing or implementing laws where there is an indication of a violation or potential violation of the law of another nation (whether civil or criminal), and to international organizations engaged

in the collection and dissemination of intelligence concerning criminal activity.

P. To any Federal agency, where appropriate, to enable such agency to make determinations regarding the payment of Federal benefits to the record subject in accordance with that agency's statutory responsibilities.

Q. To an actual or potential party or his or her attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, or informal discovery proceedings.

R. To foreign governments for the purpose of coordinating and conducting the removal of aliens from the United States to other nations.

S. To a Federal, State, tribal, local, international, or foreign government agency or entity for the purpose of consulting with that agency or entity: (1) To assist in making a determination regarding redress for an individual in connection with the operations of a DHS component or program; (2) for the purpose of verifying the identity of an individual seeking redress in connection with the operations of a DHS component or program; or (3) for the purpose of verifying the accuracy of information submitted by an individual who has requested such redress on behalf of another individual.

T. To the Department of State in the processing of petitions or applications for benefits under the Immigration and Nationality Act, and all other immigration and nationality laws including treaties and reciprocal agreements.

U. 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.

V. To the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in the Circular.

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 in a central database.

RETRIEVABILITY:

Records in the system are indexed and retrieved by an individual's alien number, name, case information (such as hearing location and type of hearing), and other criteria that can identify an individual in proceedings in a court or adjudicative body before which ICE is authorized to appear.

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.

RETENTION AND DISPOSAL:

The records will be retained for seventy-five (75) years after the last administrative action has been taken on the case. The seventy-five (75) year retention period is consistent with the retention period for the physical A-File. This retention period ensures that sufficient information is available to conduct meaningful analysis if needed. Records are destroyed appropriately after the retention period.

SYSTEM MANAGER AND ADDRESS:

Principal Legal Advisor, ICE Office of the Principal Legal Advisor, 500 12th Street, SW., Washington, DC 20536.

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, ICE will consider requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters or 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., Building 410, STOP–0550, 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) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records in this system are supplied by several sources. ICE attorneys provide information regarding the cases that they are working. Other records are derived from the alien file maintained on individuals and may include investigative material that provides the basis for the legal proceedings. Records are also obtained from other Federal agency information systems including USCIS' Refugee, Asylum, and Parole

System (RAPS), Custom and Border Protection's Treasury Enforcement Communication System (TECS), and the Department of Justice's Case Access System for EOIR (CASE).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(5) and (8), and (g) of the Privacy Act. These exemptions apply only to the extent that records in the system are subject to exemption pursuant to 5 U.S.C. Sections 552a (j)(2) and (k)(1) and (k)(2).

Dated: August 11, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9–19818 Filed 8–18–09; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2009–0008]

National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers, Availability of FY2010 Arrangement

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Each year the Federal Emergency Management Agency (FEMA) is required by the Write-Your-Own (WYO) program Financial Assistance/Subsidy Arrangement (Arrangement) to notify the private insurance companies (Companies) and to make available to the Companies the terms for subscription or re-subscription to the Arrangement. In keeping with that requirement, this notice provides the terms to the Companies to subscribe or re-subscribe to the Arrangement.

FOR FURTHER INFORMATION CONTACT: Edward L. Connor, DHS/FEMA, 1800 South Bell Street, Room 720, Arlington, VA 20598–3020, 202–646–3429 (phone), 202–646–3445 (facsimile), or *Edward.Connor@dhs.gov* (e-mail).

SUPPLEMENTARY INFORMATION: Under the Write-Your-Own (WYO) program Financial Assistance/Subsidy Arrangement (Arrangement), approximately 90 private sector property insurers issue flood insurance policies and adjust flood insurance claims under their own names based on an Arrangement with the Federal Insurance Administration (FIA) published at 44 CFR part 62, appendix A. The WYO insurers receive an expense allowance and remit the remaining premium to the Federal Government. The Federal Government also pays WYO insurers for flood losses and pays loss adjustment expenses based on a fee schedule. In addition, under certain circumstances reimbursement for litigation costs, including court costs, attorney fees, judgments, and settlements, are paid by FIA based on documentation submitted by the WYO insurers. The complete Arrangement is published in 44 CFR part 62, appendix A. Each year FEMA is required to publish in the **Federal Register** and make available to the Companies the terms for subscription or re-subscription to the Arrangement.

Since last year there have been no substantive changes to the Arrangement.

During August 2009, FEMA will send a copy of the offer for the FY2010 Arrangement, together with related materials and submission instructions, to all private insurance companies participating under the current FY2009 Arrangement. Any private insurance company not currently participating in the WYO Program but wishing to consider FEMA's offer for FY2010 may request a copy by writing: DHS/FEMA, Mitigation Directorate, Attn: Edward L. Connor, WYO Program, 1800 South Bell Street, Room 720, Arlington, VA 20598–3020, or contact Edward Connor at 202–646–3445 (facsimile), or *Edward.Connor@dhs.gov* (e-mail).

Dated: August 13, 2009.

Edward L. Connor,

Acting Federal Insurance Administrator, National Flood Insurance Program, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–19835 Filed 8–18–09; 8:45 am]

BILLING CODE 9111–52–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5282–N–05]

Notice of Submission of Proposed Information Collection to OMB; Comment Request; Notice of Tax Credit Assistance Program (TCAP) Allocation and Requirements for the Letter of Intent To Participate in TCAP

AGENCY: Office of the Chief Information Officer.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: October 19, 2009*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB approval number and should be sent to: Lillian L. Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410–5000; telephone (202) 402–8048 (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian.L.Deitzer@hud.gov* for a copy of the proposed forms, or other available information.

FOR FURTHER INFORMATION CONTACT: Peter Huber, Director, Financial & Information Services Division, OAHP, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail: *Peter.H.Huber@hud.gov*; telephone (202) 402–3941. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This Notice will inform the public that the U.S. Department of Housing and Urban Development (HUD) will submit revised information collection to OMB for review for the Tax Credit Assistance Program (TCAP), which is authorized under the American Recovery and Reinvestment Act (ARRA) of 2009, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35 as amended. This new program provides $2.25 billion of grant funding for capital investment in Low Income Housing Tax Credit (LIHTC) projects, which cannot move forward because the current economic crisis has reduced the private capital available to them. HUD will administer these funds as the Tax Credit Assistance Program (TCAP). TCAP grant amounts will be determined by a formula established in ARRA and will be awarded by HUD to the housing credit allocating agencies of each state, the District of Columbia and the Commonwealth of Puerto Rico.

This Notice also lists the following information: Title Of Proposal: Tax Credit Assistance Program (TCAP).

Description Of Information Collection: This is a revision of a previously approved information collection. The Department of Housing and Urban Development is seeking review of the Paperwork Reduction Act requirements associated with the Tax Credit Assistance Program (TCAP).

Each TCAP grantee is required to submit (1) a TCAP submission packet, which explains how it plans on awarding the TCAP funds competitively based on its qualified allocation plan; (2) a grant agreement form (HUD–40092); (3) banking information to be used for the deposit of TCAP funds upon drawdown from the Integrated Disbursement and Information System (IDIS) (SF–1199A); and (4) IDIS Access Request Forms (HUD–40099) required for grantee access to IDIS for drawdown request and approval and for project level reporting described below.

In addition, each TCAP grantee will be required to use IDIS to drawdown funds and to report on project level information including the following information identified in the Office of Management and Budget (OMB) Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009 issued On February 18, 2009. Specifically, the guidance requires quarterly reporting on:

(1) The total amount of recovery funds received from that agency;

(2) The amount of recovery funds received that were obligated and expended to projects or activities. This reporting will also include unobligated Allotment balances to facilitate reconciliations.

(3) A detailed list of all projects or activities for which recovery funds were obligated and expended, including:

(A) The name of the project or activity;

(B) a description of the project or activity;

(C) an evaluation of the completion status of the project or activity;

(D) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and

(E) for infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under this Act, and name of the person to contact at the agency if there are concerns with the infrastructure investment.

(4) Detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency act of 2006 (Pub. L. 109–282), allowing aggregate reporting on awards below $25,000 or to individuals, as prescribed by the Director of OMB.

OMB Control Number: 2506–0181.

Agency Form Numbers: None.

Members of Affected Public: State housing credit agencies.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of responses: An estimation of the total number of recordkeeping and reporting hours per response is 15.5 hours. The number of respondents is 52. The total hours requested is 11,284.

Paperwork requirement	Number of respondents	Number of responses	Total responses	Hours per response	Total hours	Cost per response*	Total cost
Grantee's Written Agreements	52	14	728	5	3,640	$145.00	$105,560
IDIS Activity Set-Up and Completion	52	14	728	10	7,280	290.00	211,120
Grantee Website Reporting	52	14	728	0.50	364	14.50	10,556
Total paperwork burden					11,284		327,236

(*This figure is based on GS–11 salary)

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 12, 2009.

Mercedes Márquez,

Assistant Secretary for Community Planning & Development.

[FR Doc. E9–19914 Filed 8–18–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14950–A; F–14950–A2; AK–965–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface estate of certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Qinarmiut Corporation.

The lands are in the vicinity of Tuntutuliak, Alaska, and are located in:

Seward Meridian, Alaska

T. 1 N., R. 76 W.,
Secs. 5 and 6.
Containing approximately 1,106 acres.
T. 2 N., R. 76 W.,
Sec. 31.
Containing approximately 234 acres.
T. 3 N., R. 76 W.,
Sec. 6.
Containing approximately 556 acres.
T. 4 N., R. 76 W.,
Secs. 7 to 22, inclusive;
Secs. 27 and 29;
Secs. 30 and 31.
Containing approximately 10,822 acres.
T. 5 N., R. 76 W.,
Secs. 18 and 19;
Secs. 30 and 31.
Containing approximately 2,408 acres.
T. 2 N., R. 77 W.,
Secs. 20 and 21;
Secs. 25 to 28, inclusive;
Sec. 36.
Containing approximately 3,528 acres.
T. 5 N., R. 77 W.,
Secs. 13, 24, 35, and 36.
Containing approximately 2,390 acres.
T. 2 N., R. 78 W.,
Secs. 9 and 10;
Secs. 14, 15, and 16;
Sec. 18;
Secs. 23 and 26.
Containing approximately 4,660 acres.
T. 3 N., R. 78 W.,
Secs. 21, 27, and 28.
Containing approximately 1,858 acres.
T. 2 N., R. 79 W.,
Secs. 2 and 3;
Secs. 13, 14, and 15;
Secs. 22 and 23.
Containing approximately 4,182 acres.
Aggregating approximately 31,744 acres.

The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Qinarmiut Corporation. Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until September 18, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Charmain McMillan,

Land Law Examiner, Land Transfer Adjudication II.

[FR Doc. E9–19812 Filed 8–18–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–6705–E, AA–6705–H, AA–6705–L; AK–964 1410–HY–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface estate of certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Togiak Natives Limited. The lands are in the vicinity of Togiak, Alaska, and are located in:

Seward Meridian, Alaska

T. 11 S., R. 66 W.,
Secs. 10 and 15;
Secs. 21 and 29.
T. 12 S., R. 67 W.,
Secs. 18 and 19;
Secs. 30 and 31.
T. 13 S., R. 68 W.,
Secs. 2, 3, and 4;
Sec. 9.
Aggregating approximately 7,638 acres.

The subsurface estate in these lands will be conveyed to Bristol Bay Native Corporation when the surface estate is conveyed to Togiak Natives Limited. Notice of the decision will also be published four times in the Bristol Bay Times.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until September 18, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Judy A. Kelley,

Land Law Examiner, Land Transfer Adjudication I Branch.

[FR Doc. E9–19815 Filed 8–18–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14835–A, F–14835–A2; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface estate of certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Atmautluak Limited. The lands are in the vicinity of Atmautluak, Alaska, and are located in:

Seward Meridian, Alaska

T. 11 N., R. 72 W.,
Secs. 3 to 9, inclusive;
Secs. 15 to 22, inclusive;
Secs. 27 and 28.
Containing approximately 7,350 acres.
T. 11 N., R. 73 W.,
Secs. 1 to 24, inclusive.
Containing approximately 8,946 acres.
T. 11 N., R. 74 W.,
Secs. 13 and 24.
Containing approximately 984 acres.
T. 9 N., R. 78 W.,
Secs. 4 to 9, inclusive;
Secs. 16, 17, and 18.
Containing approximately 2,577 acres.
T. 10 N., R. 78 W.,
Secs. 19, 20, 21, and 28;
Secs. 29, 31, 32, and 33.
Containing approximately 3,183 acres.
T. 9 N., R. 79 W.,
Secs. 1 and 2;
Secs. 11 to 17, inclusive.
Containing approximately 4,875 acres.
T. 10 N., R. 79 W.,
Secs. 24, 25, and 36.
Containing approximately 391 acres.
Total aggregate of approximately 28,306 acres.

The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Atmautluak Limited. Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until September 18, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Robert Childers,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. E9–19813 Filed 8–18–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–9635, AA–9938, AA–9964, AA–11303, AA–11304, AA–11317, AA–11318, AA–10279; LLAK–962000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the conveyance of surface and subsurface estates for certain lands pursuant to the Alaska Native Claims Settlement Act will be issued to Calista Corporation for 58.78 acres located southwesterly of the Native village of Tuntutuliak, Alaska. Notice of the decision will also be published four times in the Anchorage Daily News.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until September 18, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Dina L. Torres,

Land Transfer Resolution Specialist, Resolution Branch.

[FR Doc. E9–19811 Filed 8–18–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2009–N157; 20124–1113–0000–F5]

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications; request for public comment.

SUMMARY: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under the Endangered Species Act of 1973, as amended (Act). The Act requires that we invite public comment on these permit applications.

DATES: To ensure consideration, written comments must be received on or before September 18, 2009.

ADDRESSES: Written comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 6034, Albuquerque, NM 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act. Documents will be available for public inspection, by appointment only, during normal business hours at the U.S. Fish and Wildlife Service, 500 Gold Ave. SW., Room 6034, Albuquerque, NM. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Endangered Species Division, P.O. Box 1306, Albuquerque, NM 87103; (505) 248–6920.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit TE–219536

Applicant: Texas Tech University, Lubbock, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of Pecos assiminea (*Assiminea pecos*) in Pecos County, Texas.

Permit TE–022190

Applicant: Arizona Sonora Desert Museum, Tucson, Arizona.

Applicant requests an amendment to a current permit for animal husbandry of the following species: jaguarundi (*Herpailurus yaguarondi*), jaguar (*Panthera onca*), ocelot (*Leopardus pardalis*), margay *(Leopardus wiedi*), Mexican gray wolf (*Canus lupus baileyi*), brown pelican (*Pelecanus occidentalis*), thick-billed parrot (*Rhynchopsitta pachyrrhyncha*), San Esteban Island chuckwalla (*Sauromalus varius*), desert pupfish (*Cyprinodon macularius*), Colorado pikeminnow (*Ptychocheilus lucius*), razorback sucker (*Xyrauchen texanus*), Gila topminnow (*Poechiliopsis occidentalis*), Kearney bluestar cactus (*Amsonia kearneyana*), Nichol's Turk's head cactus (*Echinocactus horizonthanlonius nicholii*), and the Arizona claret cup (*Echinocereus triglochidiatus*) which will be held in the museum.

Permit TE–222342

Applicant: Ecosystems Research Institute, Logan, Utah.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys and collect tissue samples of Colorado pikeminnow (*Ptychcheilus lucius*) and razorback sucker *(Xyrauchen texanus*) within the San Juan River, San Juan County, New Mexico.

Permit TE–212905

Applicant: New Mexico Department of Transportation, Santa Fe, New Mexico.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of southwestern willow flycatcher (*Empidonax traillii extimus)* within New Mexico.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: August 6, 2009.

Thomas L. Bauer,

Regional Director, Southwest Region, Fish and Wildlife Service.

[FR Doc. E9–19837 Filed 8–18–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Environmental Impact Statement for the Spokane Tribe's 2719(b)(1)(A) Application and for the Proposed West Plains Mixed-Use Development Project, Spokane County, WA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as Lead Agency, in cooperation with the Spokane Tribe of Indians (Tribe), intends to prepare an environmental impact statement (EIS) for a proposed mixed-use development and corresponding master plan for a 145-acre parcel of trust land adjacent to the City of Airway Heights, Spokane County, Washington. The project site may include, but is not limited to, a variety of proposed land uses such as a casino resort and hotel; commercial retail uses; offices; medical facilities; recreational, cultural, and entertainment facilities; and related parking. The purpose of the proposed action is to improve the economy of the Tribe and help their members attain economic self sufficiency. This notice also announces a public scoping meeting to identify potential issues and content for inclusion in the EIS.

DATES: Written comments on the scope of the EIS or implementation of the proposed action should be received by October 10, 2009. The public scoping meeting will be held on Wednesday, August 26, 2009, from 5 p.m. to 7:30 p.m.

ADDRESSES: You may mail, hand carry, or telefax written comments to Dr. B.J. Howerton, Environmental Protection Specialist, Bureau of Indian Affairs, Northwest Regional Office, 911 NE 11th Avenue, Portland, Oregon 97232–4169; telefax number (503) 231–2275. Comments may also be submitted electronically at the project Web site, *http://www.westplainseis.com*. Please see **SUPPLEMENTARY INFORMATION** for directions on submitting comments. The public scoping meeting will be held at the Sunset Elementary School Gymnasium, 12824 West 12th Avenue, Airway Heights, Washington 99001.

FOR FURTHER INFORMATION CONTACT: Dr. B.J. Howerton, Bureau of Indian Affairs, (503) 231–6749.

SUPPLEMENTARY INFORMATION: The EIS will assess the environmental consequences of BIA approval of a proposed master plan for the development of a mixed-use development—which may include a casino resort and hotel; commercial retail uses; offices; medical facilities; recreational, cultural, and entertainment facilities; and related parking—on an approximately 145-acre parcel of trust land adjacent to the western city limits of Airway Heights, Spokane County, Washington. The project site is near the northwest corner of U.S. Highway 2 (US–2) and Craig Road, and approximately 10 miles west of Spokane, Washington. It is located in the southwest quarter of 22–25–41, excluding US–2, and the north half of the southeast quarter, excluding the east 830 feet of the south 491.5 feet of 22–25–41, excluding roads.

The ''Intergovernmental Agreement Between the Spokane Tribe of Indians and the City of Airway Heights'' and the ''Memorandum of Agreement Between the City of Airway Heights and the Spokane Tribe of Indians Regarding Services and Impacts of Tribal Gaming on Indian Lands Located Adjacent to the City of Airway Heights (April 10, 2007)'' provide details concerning shared responsibilities related to law enforcement and security services, public health and safety, road maintenance and repair, and other matters between the Tribe and the City.

The project site would also include internal access roads, parking areas, and associated landscaping. Conceptual traffic analyses suggest possible roadway and intersection improvements along Craig Road and US–2 adjacent to the proposed project site.

Significant issues to be covered during the scoping process may include, but are not limited to, air quality, transportation, surface and groundwater resources, biological resources, cultural resources, socioeconomic conditions, public services, infrastructure, land use, aesthetics, and environmental justice.

Directions for Submitting Public Comments

If you choose to submit your comments to the BIA directly, your comments must be in writing and must be submitted in person or by mail. Please include your name, return address, and the caption, ''DEIS Scoping Comments, Spokane Tribe of Indians West Plains Mixed-Use Development Project,'' on the first page of your comments.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the BIA address shown above, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), and related Department of the Interior requirements in the Department of the Interior Manual (516 DM 2), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: August 13, 2009.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. E9–19882 Filed 8–18–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2008–N0322; 80230–1265–0000–S3]

Desert National Wildlife Refuge Complex, Clark, Lincoln, and Nye Counties, NV

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: Final comprehensive conservation plan/environmental impact statement.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a Final Comprehensive Conservation Plan/Environmental Impact Statement (CCP/EIS) for the Desert National Wildlife Refuge Complex. The Desert National Wildlife Refuge Complex is composed of Ash Meadows National Wildlife Refuge, Desert National Wildlife Refuge, Moapa Valley National Wildlife Refuge and Pahranagat National Wildlife Refuge. The final CCP/EIS, prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997, and in accordance with the National Environmental Policy Act of 1969,

describes how the Service will manage the Refuges for the next 15 years.

DATES: We will sign a record of decision no sooner than 30 days after publication of this notice.

ADDRESSES: Copies of the final CCP/EIS may be obtained by writing to the U.S. Fish and Wildlife Service, Attn: Mark Pelz, CA/NV Refuge Planning Office, 2800 Cottage Way, W–1832, Sacramento, CA 95825–1846. Copies of the final CCP/EIS may be viewed at this address or at the Desert National Wildlife Refuge Complex, 4701 North Torrey Pines, Las Vegas, NV 89130. The final CCP/EIS will also be available for viewing and downloading online at *http://www.fws.gov/desertcomplex/publicreview.htm.*

FOR FURTHER INFORMATION CONTACT: Cynthia Martinez, Project Leader, U.S. Fish and Wildlife Service, 4701 North Torrey Pines, Las Vegas, NV 89130, phone (702) 515–5450 or Mark Pelz, Chief, Refuge Planning, 2800 Cottage Way, W–1832, Sacramento, CA 95825, phone (916) 414–6504.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, environmental education and interpretation.

We initiated the CCP/EIS for the Desert National Wildlife Refuge Complex in August 2002. At that time and throughout the process, we requested, considered, and incorporated public scoping comments in numerous ways. Our public outreach included a **Federal Register** (67 FR 54229, August 21, 2002) notice of intent, agency and Tribal scoping meetings, five public scoping meetings, a **Federal Register** (73 FR 39979, July 11, 2008) notice of availability, six public comment workshops, several planning updates, and a CCP Web page. We received over 230 scoping comments during the 60-day public comment period.

Background

Ash Meadows Refuge was established in 1984 under the authority of the Endangered Species Act of 1973, as amended. It comprises 23,000 acres of spring-fed wetlands, mesquite bosques, and desert uplands that provide habitat for at least 24 plants and animal species found nowhere else in the world. The Refuge is located 90 miles northwest of Las Vegas and 30 miles west of Pahrump.

Desert Refuge was originally established in 1936 by Executive Order No. 7373 and subsequently modified by Public Land Order 4079, for the protection, enhancement and maintenance of wildlife resources including bighorn sheep. Located just north of Las Vegas, Nevada, the 1.6 million acre refuge is the largest National Wildlife Refuge in the lower 48 States.

The Moapa Valley Refuge was established in 1979 under the authority of the Endangered Species Act of 1973, as amended, to secure habitat for the endangered Moapa dace. The Refuge is located on 116 acres in northeastern Clark County. Due to its small size, fragile habitats, on-going habitat restoration work, and unsafe structures, the Refuge is currently closed to the general public.

The Pahranagat Refuge was established in 1963, under the authority of the Migratory Bird Conservation Act, as amended, to protect habitat for migrating birds in the Pahranagat Valley. The 5,382 acre refuge consists of marshes, meadows, lakes, and upland desert habitat. It provides nesting, resting, and feeding areas for waterfowl, shorebirds, wading birds, and song birds including the endangered southwestern willow flycatcher.

Alternatives

The final CCP/EIS identifies and evaluates three alternatives for managing Ash Meadows and Moapa Valley Refuges and four alternatives for managing Desert and Pahranagat Refuges for the next 15 years. The alternative for each Refuge that appears to best meet the refuge purposes is identified as the preferred alternative. The preferred alternatives were identified based on the analysis presented in the draft CCP/EIS, which was modified following the completion of the public comment period based on comments received from other agencies, Tribal governments, non-governmental organizations, or individuals. Appendix M of the final CCP/EIS contains a list of the comments we received and our responses to comments.

Alternatives for Ash Meadows National Wildlife Refuge

Under Alternative A, the no action alternative, we would continue to manage the Refuge as we have in the past. We would implement habitat restoration plans that have already been completed. No major changes in habitat management would occur. The existing wildlife observation, photography, environmental education, and interpretation programs would remain unchanged.

Under Alternative B, we would plan and implement springhead, channel, and landscape restoration on about two-thirds of the Refuge. Surveys and monitoring for special status species would be expanded as would efforts to control invasive plants and animals. Environmental education, interpretation and wildlife observation opportunities would be improved and expanded and a new visitor contact station and headquarters facility would be constructed.

Under the preferred alternative, Alternative C, we would seek to restore springheads, channels and floodplains throughout the Refuge. Surveys and monitoring, habitat protection, pest management, and research would also be substantially expanded. Environmental education, interpretation, and wildlife observation programs would be similar to but slightly less than Alternative B.

Alternatives for the Desert National Wildlife Refuge

Under Alternative A, the no action alternative, we would continue current management for bighorn sheep and other species. We would also continue to offer limited opportunities for wildlife observation and photography, environmental education, and interpretation at Corn Creek. Existing backcountry recreation opportunities would continue to be offered including bighorn sheep hunting, hiking, camping, horseback riding, and backpacking. In addition, under this and all other alternatives, we would design and construct a visitor center and administrative offices at Corn Creek and continue to protect the wilderness character of the 1.4 million acre proposed Desert Wilderness.

Under Alternative B, wildlife management programs would be similar to Alternative A, with minor improvements, including expanded surveys for bighorn sheep and installation of post and cable fencing along the southern boundary. This

alternative would also include a substantial expansion in visitor services over Alternative A, including a new environmental education program, improved roads, a new auto tour route, and new wildlife viewing trails.

Under the preferred alternative, Alternative C, we would expand inventory and monitoring for bighorn sheep, special status species, and vegetation and wildlife communities throughout the Refuge. Under this alternative, we would also use prescribed fire and naturally ignited fires in Refuge plant communities where appropriate to restore vegetation characteristics representative of a natural fire regime. Alternative C would also include fencing along the eastern boundary where appropriate as well as the permanent closure of illegal roads and rehabilitation of damaged habitat along the southern and eastern boundaries. Visitor services under this alternative would be the same as under Alternative B except no auto tour route or wildlife viewing trails would be developed.

Under Alternative D, the wildlife management and inventory and monitoring programs would be similar to Alternative C. However, under this alternative, visitor services would be scaled back from the other alternatives. For example, the visitor center would only be staffed on weekends during the off-peak seasons and there would be no road improvements on the Refuge.

Alternatives for Moapa Valley National Wildlife Refuge

Under Alternative A, the no action alternative, we would continue to manage the Refuge as we have in the recent past. Springhead and channel restoration work and visitor facilities on the Plummer Unit would be completed. The limited inventory and monitoring program would also continue. However, the Refuge would remain closed to the public, except by special arrangement.

Under Alternative B, wildlife management programs would be similar to Alternative A, with minor improvements, including expanded surveys for sensitive species and their habitats, and strategies for removing nonnative aquatic species. We would also restore native vegetation along the springheads and channels on the Pederson Unit. This alternative would also include a substantial expansion in visitor services over Alternative A, including opening the Refuge on weekends and improved visitor facilities.

Under the preferred alternative, Alternative C, wildlife management would be similar to Alternative B, but would include increased monitoring and the development of a long term inventory and monitoring plan for sensitive species. In addition, we would restore the springheads and channels and associated native vegetation on the Apcar unit. Under Alternative C, we would expand the Refuge acquisition boundary by 1,765 acres and pursue acquisition of the lands within the boundary to protect habitat for Moapa dace and other sensitive species. Under this alternative, the Refuge would be open to visitors every day, the environmental education program would be expanded, and additional trails would be constructed.

Alternatives for Pahranagat National Wildlife Refuge

Under Alternative A, the no action alternative, we would continue to manage Pahranagat Refuge as we have in the recent past. The in-progress hydrology studies would be completed and a wetland habitat management plan would be developed and implemented. Riparian habitat would be maintained for the southwestern willow flycatcher and other migratory birds. Under this alternative, we would maintain the fishing, hunting, wildlife observation, and environmental education and interpretation opportunities on the Refuge. The campground would be maintained in its current state.

Under Alternative B, we would expand wildlife management and visitor services on the Refuge. Wildlife surveys and efforts to control invasive plants would be expanded and a new refugium for the Pahranagat roundtail chub would be developed. The visitor contact station would be expanded and new interpretive kiosk would be developed. The campground would also be maintained but fees would be charged and the maximum length of stay would be reduced from 14 to 7 days.

Under Alternative C, management would be similar to Alternative B, with the following exceptions. Under this alternative, we would develop and implement restoration plans for degraded springs on the Refuge. In addition, a new visitor contact station, interpretive walking trail, and photo blind would also be developed. Under this alternative, we would convert the campground to a day-use area.

Under the preferred alternative, Alternative D, management would be similar to Alternative C, except we would seek to acquire additional water rights for the Refuge to provide more flexibility in wetland management. Also, we would restore native upland habitat adjacent to Lower Pahranagat Lake and expand the surveying and monitoring programs under this alternative. Visitor services would be similar to Alternative C except we would close existing boat ramps and offer alternative car-top boat launches.

Decision Process

The final CCP/EIS contains our responses to all comments received on the draft document. We will make a decision no sooner than 30 days after the publication of the final CCP/EIS. We anticipate that a Record of Decision will be issued by the Service in early 2009.

We provide this notice under regulations implementing NEPA (40 CFR 1506.6).

Dated: August 13, 2009.

Ren Lohoefener,

Regional Director, California and Nevada Region, Sacramento, California.

[FR Doc. E9–19843 Filed 8–18–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal—State Compact Amendment.

SUMMARY: This notice publishes approval of the 2009 Amendments to the Stockbridge-Munsee Community (''Tribe'') and the State of Wisconsin Gaming Compact of 1992, as Amended in 1998 and 2003.

DATES: *Effective Date:* August 19, 2009.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Acting Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This Amendment allows the Tribe to expand the pool of prospective lenders for construction or improvements to a Tribal gaming facility from State or federally chartered banks to include other federally recognized tribes.

Dated: July 31, 2009.

George T. Skibine,

Acting Principal Deputy, Assistant Secretary—Indian Affairs.

[FR Doc. E9–19887 Filed 8–18–09; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal—State Class III Gaming Compact.

SUMMARY: This notice publishes an approval of the Gaming Compact between the Standing Rock Sioux Tribe and the State of South Dakota (including 2001 and 2009 Amendments).

DATES: *Effective Date:* August 19, 2009.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Acting Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This Compact extends the provisions of the 1992 Compact with the term of the Compact being extended from 3 years to 10 years.

Dated: August 12, 2009.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. E9–19886 Filed 8–18–09; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

National Park Service

Boston Harbor Islands National Recreation Area Advisory Council; Notice of Public Meeting

AGENCY: Department of the Interior, National Park Service, Boston Harbor Islands National Recreation Area.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the Boston Harbor Islands National Recreation Area Advisory Council will be held on Wednesday, September 16, 2009, at 6 p.m. to 8 p.m. at the New England Aquarium, Harborside Learning Lab, Central Wharf, Boston, MA.

This will be the quarterly meeting of the Council. The agenda will include an update on the messaging project, discussion of how to stimulate public participation in park planning and other management efforts, a park update and public comment.

The meeting will be open to the public. Any person may file with the Superintendent a written statement concerning the matters to be discussed. Persons who wish to file a written statement at the meeting or who want further information concerning the meeting may contact Superintendent Bruce Jacobson at (617) 223–8667.

DATES: September 16, 2009 at 6 p.m.

ADDRESSES: New England Aquarium, Harborside Learning Lab, Central Wharf Boston, MA.

FOR FURTHER INFORMATION CONTACT: Superintendent Bruce Jacobson, (617) 223–8667.

SUPPLEMENTARY INFORMATION: The Advisory Council was appointed by the Director of National Park Service pursuant to Public Law 104–333. The 28 members represent business, educational/cultural, community and environmental entities; municipalities surrounding Boston Harbor; Boston Harbor advocates; and Native American interests. The purpose of the Council is to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the development and implementation of a management plan and the operations of the Boston Harbor Islands NRA.

Dated: July 29, 2009.

Bruce Jacobson,

Superintendent, Boston Harbor Islands NRA.

[FR Doc. E9–19841 Filed 8–18–09; 8:45 am]

BILLING CODE 4310–86–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of June 29 through July 10, 2009.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely

affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially

separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–70,300; Exide Technologies, Recycling Plant, Leased Workers From Lofton Staffing Services, Baton Rouge, LA: May 19, 2008.

TA–W–70,542; Leroy Somer North America, Lexington, TN: May 20, 2008.

TA–W–70,717; Warvel Products, Inc., Linwood, NC: May 28, 2008.

TA–W–70,825; Vitec Group Communication, Clearcom Division, Alameda, CA: May 29, 2008.

TA–W–70,275; Bauhaus USA, Inc., Saltillo, MS Facility, Saltillo, MS: May 19, 2008.

TA–W–70,619; Delphi Thermal Systems, Leased Workers From Bartech Staffing Agency, Auburn Hills, MI: May 18, 2008.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W–70,062; Mulholland Brothers, Leased Workers of Nelson Staffing and Cypress IT, San Francisco, CA: May 18, 2008.

TA–W–70,103; Vesuvius USA, A Subsidiary of Cookson Group, Leased Workers From Westaff, Charleston, IL: May 18, 2008.

TA–W–70,136; Hyosung USA, Inc, Utica Plant, Leased Workers From Kelly Services, Utica, NY: May 18, 2008.

TA–W–70,186; Engel Machinery, Inc., Leased Workers From JFC Staffing Associates and Manpower, York, PA: May 18, 2008.

TA–W–70,188; Century Mold Co., Inc., Leased Workers From Randstad Staffing and Holland Group Staffing, Shelbyville, TN: May 18, 2008.

TA–W–70,192; Franklin Pump Systems, Inc, A Unit of Franklin Electric Sales, Inc., Little Rock, AR. May 18, 2008.

TA–W–70,199; WestPoint Home, Inc., Bed Products Division, Chipley, FL: June 13, 2009.

TA–W–70,206; Doral Manufacturing, Inc., TEVA Pharmaceuticals, Leased Workers Albion, Misource and Adecco, Miami, FL: May 18, 2008.

TA–W–70,252; Ogden Manufacturing, Inc., Edinboro Plant, Chromalox, Inc, Edinboro, PA. May 18, 2008.

TA–W–70,274; Avantech Manufacturing, LLC, Magna International, Leased Workers From Express Services And Randstad, Mt. Pleasant, TN: May 19, 2008.

TA–W–70,276; EcoQuest Holding Corporation, Greeneville, TN: May 18, 2008.

TA–W–70,291; Maxim Integrated Products, Dallas, TX: May 19, 2008.

TA–W–70,293; ZMI Portec, Inc., Leased Workers From Transfer Bluk Systems, Sibley, IA: May 5, 2008.

TA–W–70,301; May and Scofield, LLC, Leased Workers From Qualified Staffing and SC Staffing, Fowlerville, MI. May 18, 2008.

TA–W–70,304; Biovail Laboratories International, SRL, Leased Workers From Manpower, CTS, Dorado, PR: May 18, 2008.

TA–W–70,307; Morton Metalcraft of Pennsylvania, Leased Workers of Bedford County Tech Center, Bedford, PA: May 19, 2008.

TA–W–70,308; Milso Industries—Matthews Casket Division, Matthews International Corporation, Richmond, IN: May 19, 2008.

TA–W–70,360; Federal-Mogul Ignition Products, Powertrain Energy Division, Dumas, AR. May 19, 2008.
TA–W–70,401; IM Flash Technologies, LLC, Information Systems Division, Lehi, UT: May 18, 2008.
TA–W–70,434; Flextronics America, LLC, Leased Workers of Aerotek, Charlotte, NC. May 18, 2008.
TA–W–70,676; Everett Charles Technologies, Longmont, CO: May 26, 2008.
TA–W–70,707; Sperian Protection Gloves, USA, Buffalo, NY: May 19, 2008.
TA–W–70,740; Intermatic, Inc., Working World Staffing, American Staffing, Prologistix, Spring Grove, IL: May 28, 2008.
TA–W–70,744; Callaway Golf Ball Operations, Inc., Leased Workers From Johnson & Hill Staffing, Chicopee, MA: May 28, 2008.
TA–W–70,753; Hitachi Cable Indiana Inc., Leased Workers of Quality Personnel, Russell Springs, KY. May 20, 2008.
TA–W–70,775; Birks and Mayors, Inc., Workers Mania and Staff U Smart, Woonsocket, RI: May 19, 2008.
TA–W–70,880; Roadrunner Transportation Services, Billing Department, Cudahes, WI: June 2, 2008.
TA–W–70,933; California Newspaper Partnership, dba Maria Independent Journal, Novato, CA: June 1, 2008.
TA–W–70,971; Sumitomo Electric Wiring Systems Inc., Electronics Div., Express Employment Professionals, Lebanon, OH: May 18, 2008.
TA–W–71,077; Wal-Mart Stores East, LP, Health and Wellness Division, Wal-Mart Optical Lab 9779, CBS Personnel, Lockbourne, OH: June 5, 2008.
TA–W–71,321; Auburn Hosiery Mills, Inc., Quality Personnel, Auburn, KY: June 18, 2008.
TA–W–70,345; Avery Dennison, Information and Brand Management Division, Formerly know as Paxar Americas, Sayre, PA: May 18, 2008.
TA–W–70,005; The Mazer Corporation, Creative Services Division, Dayton, OH: May 18, 2008.
TA–W–70,163; Electronic Data Systems (EDS), An HP Company, Leased Workers Dedicated to Mainframe Security/Password, Charlotte, NC: May 18, 2008.
TA–W–70,200; VWR International, LLC, Finance Department, Bridgeport, NJ: May 18, 2008.
TA–W–70,213; Levi Strauss and Company, Global Sourcing Organization, San Francisco, CA: May 18, 2008.
TA–W–70,427; Hewlett-Packard Company, America's Volume Direct Operations (AVDO), Carmel, IN: May 19, 2008.
TA–W–71,354; Rodale, Inc., Customer SerVice Department, Uniforce Staffing Services and Allied, Emmaus, PA: June 9, 2008.

The following certifications have been issued. The requirements of Section 222(b) (adversely affected workers in public agencies) of the Trade Act have been met: None.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W–70,013; Russell Brands, LLC, Coosa River Yarn Division, Wetumpka, AL: May 18, 2008.
TA–W–70,015A; Jim C. Hamer Company, Prestonsburg Mill, Prestonsburg, KY: May 18, 2008.
TA–W–70,015B; Jim C. Hamer Company, Curtin Mill, Webster Springs, WV: May 18, 2008.
TA–W–70,015C; Jim C. Hamer Company, Morgantown Mill, Morgantown Mill, WV: May 18, 2008.
TA–W–70,015D; Jim C. Hamer Company, Elkins Dry Kiln, Elkins, WV: May 18, 2008.
TA–W–70,015E; Jim C. Hamer Company, Mt. Hope Mill, Mt. Hope, WV: May 18, 2008.
TA–W–70,015F; Jim C. Hamer Company, Mt. Hope Mill, Mt. Hope, WV: May 18, 2008.
TA–W–70,015; Jim C. Hamer Company, Kenova, WV: May 18, 2008.
TA–W–70,106; TG Missouri Corporation, A Division of TG North American, Perryville, MO: May 18, 2008.
TA–W–70,239; Southern Steel and Wire Company, Inc., SSW Molding Company, Inc., Fort Smith, AR: May 18, 2008.
TA–W–70,260A; Ring Screw LLC—Warren Operations, dba Acument Global Technologies—Warren Operations, Warren, MI: May 18, 2008.
TA–W–70,260B; Ring Screw LLC—Detroit Distribution Center, dba Acument Global Technologies—Detroit Distribution Center, Detroit, MI: May 18, 2008.
TA–W–70,260C; Ring Screw LLC—Titan Fasteners, dba Acument Global Technologies—North Holly Road Operations, Manpower, Holly, MI: May 18, 2008.
TA–W–70,260D; Burkland LLC—Goodrich Operations, dba Acument Global Technologies—Entech Personnel Services, Goodrich, MI: May 18, 2008.
TA–W–70,260E; Ring Screw LLC—Gainey Operations, dba Acument Global Technologies, Holly, MI: May 18, 2008.
TA–W–70,260F; Ring Screw LLC—Shamrock Fasteners, dba Acument Global Technologies—Sterling Heights Operations, Sterling Heights, MI: May 18, 2008.
TA–W–70,260G; Acument Global Technologies—Headquarters, Leased Workers of CES, Inc., Venator Staffing and Diversified Services, Troy, MI: May 18, 2008.
TA–W–70,260H; Ring Screw LLC—Semco Fasteners, dba Acument Global Technologies—Balwin Road Operations, Holly, MI: May 18, 2008.
TA–W–70,260I; Ring Screw LLC—Holly Distribution Center, dba Acument Global Technologies—Holly Distribution Center, Holly, MI: May 18, 2008.
TA–W–70,260J; Camcar LLC—Belvidere Operations, dba Acument Global Technologies—Belvidere Operations, Belvidere, MI: May 18, 2008.
TA–W–70,260K; Camcar LLC—Spencer Operations, dba Acument Global Technologies—Spencer Operations, Spencer, TN: May 18, 2008.
TA–W–70,260L; Camcar LLC—Rochester Operations, dba Acument Global Technologies—Rochester Operations, Rochester, IN: May 18, 2008.
TA–W–70,260; Ring Screw LLC—Fenton Operations, dba Acument Global Technologies—Fenton Operations, Fenton, MI: May 18, 2008.
TA–W–70,766; Meridian Automotive Systems, Grand Rapids, MI: May 21, 2008.
TA–W–70,812; Performances Fibers Operations, Inc., Salisbury Plant, Mundy Maintenance, UTi Integrated, Salisbury, NC. May 29, 2008.

The following certifications have been issued. The requirements of Section 222(c) (downstream producer for a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met: None.

The following certifications have been issued. The requirements of Section 222(f) (firms identified by the International Trade Commission) of the Trade Act have been met: None.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility

criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1)(employment decline or threat of separation) of section 222 has not been met: None.

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met: None.

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met: None.

The investigation revealed that the criteria under paragraphs (b)(2) and (b)(3) (public agency acquisition of services from a foreign country) of section 222 have not been met: None.

The investigation revealed that criteria of Section 222(c)(2) has not been met. The workers' firm (or subdivision) is not a Supplier to or a Downstream Producer for a firm whose workers were certified as eligible to apply for TAA: None.

I hereby certify that the aforementioned determinations were issued during the period of June 29 through July 10, 2009. Copies of these determinations are available for inspection in Room N–5428, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 5, 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–19831 Filed 8–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *June 15 through June 26, 2009.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) the shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) a significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) the acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) a significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the Federal Register under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the

TA–W–70,001; Syracuse China Company, Syracuse, NY: May 18, 2008.

TA–W–70,067; Alcoa, Inc., Tennessee Operations, TN, May 18, 2008.

TA–W–70,449; Sumco Phoenix Corporation, Sumco Southwest Corporation Division, Sumco Corporation, AZ, May 20, 2008.

TA–W–70,788; Alabama River Newsprint Company, A Subsidiary of Abitibibowater, Inc., AL, May 26, 2008.

TA–W–70,011; C&W Industries, Inc., MA, May 18, 2008.

TA–W–70,598; Mount Vernon Mills, Brentex Division, Columbus Plant, MS, May 22, 2008.

TA–W–70,090; Tama Manufacturing Company Inc., PA, May 18, 2008.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W–70,960; GE Consumer and Industrial Lighting, Willoughby Lucalox Plant, OH, May 21, 2008.

TA–W–70,016; Multi-Plex, A Division of Magna Powertrain, IN, May 18, 2008.

TA–W–70,017; Century Aluminum of West Virginia, Inc., Reduction Aluminum Smelter Division, Ravenswood, WV, May 18, 2008.

TA–W–70,023; Triumph Apparel Corporation, York Manufacturing, Leased Workers of Advanced Personnel and Adecco, York, PA, May 18, 2008.

TA–W–70,026; Hewlett Packard, Leased Workers of Adecco Technical Personal Laser Solution Division, Boise, ID, May 18, 2008.

TA–W–70,035; Schaeffler Group USA, Inc., Cheraw, SC, May 18, 2008.

TA–W–70,039; Umicore Autocat USA, Inc., Catoosa, OK, May 8, 2009.

TA–W–70,040; Eaton Corporation—Truck Components, Truck Group, Light/Medium Transmission Division, Leased Workers From Adecco, Greenfield, IN, May 18, 2008.

TA–W–70,041; Ami Entertainment Network, Grand Rapids, MI, May 18, 2008.

TA–W–70,051A; Aavid Thermalloy, LLC, Concord, NH, May 18, 2008.

TA–W–70,051; Aavid Thermalloy, LLC, Laconia, NH, May 17, 2009.

TA–W–70,059; Temic Automotive of North America, Sensor Element Mfg., Division, Leased Workers from Manpower & Linc, Northbrook, IL, May 18, 2008.

TA–W–70,065; Silver King Refrigeration, Inc., A Division of Prince Castle, Leased Workers of Aerotek, First Choice etc., Plymouth, MN, May 18, 2008.

TA–W–70,068; CoAdna Photonics, Inc., Workers Off-Site in Stow, Ohio, and Leased Workers of OE Lab, Sunnyvale, CA, May 18, 2008.

TA–W–70,074; Eagle Compressor, Hickman, KY, May 18, 2008.

TA–W–70,087; Entegris, Inc., Microenvironment Business Unit, Chaska, MN, May 18, 2008.

TA–W–70,088; Kelsey-Hayes Company, Subsidiary of TRW Automotive, Ettrick, WI, May 18, 2008.

TA–W–70,095; Biotage, LLC, On-Site Leased Workers from Aerotek, Charlottesville, VA, May 18, 2008.

TA–W–70,112; Sumitomo Electric Wiring Systems, Inc., A Subsidiary of Sumitomo Wiring Systems, Leased Workers From Holland Employment, Scottsville, KY, May 18, 2008.

TA–W–70,123; Electrolux Home Products, INC., Electrolux Major Appliances Division, Webster City, IA, May 18, 2008.

TA–W–70,126; Pass and Seymour Legrand, A Division of Legrand North America, Whitsett, NC, May 18, 2008.

TA–W–70,135; Advanced Micro Devices, Inc., Assembly Process Division, Sunnyvale, CA, May 18, 2008.

TA–W–70,184; Dana Commercial Vehicles Products, LLC, A Subsidiary of Dana Limited, Dana Holding Corporation, Humboldt, TN, May 18, 2008.

TA–W–70,191; B. Braum Medical, Inc., Cherry Hill, NJ, May 18, 2008.

TA–W–70,194; Maida Development Company, Leased Workers From Integrity Staffing Services, Hampton, VA, May 18, 2008.

TA–W–70,257; Eaton Corporation, Fluid Power Group, Hydraulics Division, Mentor, OH, May 18, 2008.

TA–W–70,266; Musashi South Carolina, Inc., Leased Workers From Multi-Systems Electrical, Bennettsville, SC, May 18, 2008.

TA–W–70,341; DENSO Manufacturing Athens, Tennessee, A Subsidiary of Denso International America and Denso Corp., Athens, TN, May 19, 2008.

TA–W–70,384; National Mills, Inc., Leased Workers from Manpower Temp Services, Pittsburg, KS, May 19, 2008.

TA–W–70,393; Rawlings Sporting Goods Washington Distribution Center, Sample Sewing Department, Washington, MO, May 20, 2008.

TA–W–70,426; Timminco Corporation, On-Site Leased Workers From Prime Source Staffing and Ready Temporary Services, Aurora, CO, May 20, 2008.

TA–W–70,451; CME, LLC, Leased Workers of Kelly Service, Mt. Pleasant, MI, May 20, 2008.

TA–W–70,465; Ferraz Shawmut, LLC, Newburyport, MA, May 19, 2008.

TA–W–70,478; Numonyx, California Technology Center, Santa Clara, CA, May 21, 2008.

TA–W–70,500; Methode Electronics, Inc., AECD Division, Leased Workers of Adecco and Taske Force, Carthage, IL, May 21, 2008.

TA–W–70,558; Weiler Corporation, Cresco, PA, May 22, 2008.

TA–W–70,574; Kennametal Inc., Corporate Headquarters, Latrobe, PA, May 21, 2008.

TA–W–70,582; Ceco Building Systems, A Subsidiary of NCI Building Systems, Leased Workers from Team Staffing Solution, Mt. Pleasant, IA, May 22, 2008.

TA–W–70,587; Bourns, Inc, Automotive Division, Leased Workers from

Manpower and Spherion, Janesville, WI, May 22, 2008.

TA–W–70,714; Johnson Controls Interior Manufacturing, LLC (McAllen-USA), Automotive Experience, McAllen, TX, May 27, 2008.

TA–W–70,873; Group Dekko, Inc., Murray Plant, Leased Workers of Grapevine Staffing and Advance Services, Murray, IA, May 20, 2008.

TA–W–70,887; Berryville Graphics, Arvato Division, Leased Workers From Axion Staffing, Berryville, VA, June 2, 2008.

TA–W–70,914; Gilmour Manufacturing Company, Division of Robert Bosch Tool, Rugierri Enterprises, etc, Somerset, PA, June 1, 2008.

TA–W–70,970, General Dynamics Itonix Corporation, C4 Systems, Spokane Valley, WA, May 18, 2008.

TA–W–71,076; ITT Corporation, FMC–Interconnect Solutions, First Choice Staffing, Santa Ana, CA, June 8, 2008.

TA–W–71,180; Bracalente Manufacturing Company, Trumbaursville, PA, June 1, 2008.

TA–W–71,181; Philips Electronics, Philips Oral Healthcare, Leased Workers from Adecco NA, Snoqualmie, WA, June 10, 2008.

TA–W–70,410; Avnet Grapevine Assembly Facility, Leased Workers From Kelly Services, Grapevine, TX, May 19, 2008.

TA–W–70,086; EBI Holding, LLC, Health Insurance Verification and Billing Department, dba Biomet Spine, Parsippany, NJ, May 18, 2008.

TA–W–70,321; Leggett and Platt, Inc., Leggett Wood Division Office, Wilkes-Barre, PA, May 18, 2008.

TA–W–70,496; Tektronix, Inc., Information Technology Division, Data Center Operations Group, Beaverton, OR, May 21, 2008.

TA–W–70,662; Berry Floor USA, Inc., Racine, WI, May 27, 2008.

TA–W–70,506; Ecolab, Inc., Accounts Receivable Department, Eagan, MN, May 18, 2008.

The following certifications have been issued. The requirements of Section 222(b) (adversely affected workers in public agencies) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W–70,029; Chick Machine Co., Inc., Butler, PA May 18, 2008.

TA–W–70,077; Carrick Turning Works, Inc., High Point, NC, May 18, 2008.

TA–W–70,209; AGC Flat Glass North America, Inc., Jerry Run Facility, Bridgeport, WV, May 18, 2008.

TA–W–70,411; Tarkio Corporation, dba Proco Manufacturing, Beaverton, OR, May 19, 2008.

TA–W–70,528; Allegheny Ludlum Corporation, A Division of Allegheny Technologies, Midland, PA, May 22, 2008.

TA–W–70,568; Mount Vernon Mills, Brentex Division, Williamston Plant, Williamston, SC, May 22, 2008.

TA–W–70,649; Mount Vernon Mills, Curo Plant, Brentex Division, Cuero Plant, Cuero, TX, May 22, 2008.

TA–W–70,902; Tech Molded Plastics, LP, Kelly Services, Career Concepts, Select Staffing, Meadville, PA, May 27, 2008.

TA–W–70,977; Top Notch, Inc., Fort Payne, AL, June 2, 2008.

The following certifications have been issued. The requirements of Section 222(c) (downstream producer for a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W–70,670; PIHT, LLC,: A Subsidiary of Bluewater Thermal Processing, Saint Marys, PA, May 20, 2008.

TA–W–70,742; Hanes Dye and Finishing Co., A Subsidiary of Leggett and Platt, Winston Salem, NC, May 27, 2008.

The following certifications have been issued. The requirements of Section 222(f) (firms identified by the International Trade Commission) of the Trade Act have been met.

TA–W–70,702; Wheatland Tube Company, Sharon, PA, March 13, 2009.

TA–W–71,199; Appleton Papers, Inc., Appleton, WI, November 20, 2007.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1) (employment decline or threat of separation) of section 222 has not been met.

None.

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

None.

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

None.

The investigation revealed that the criteria under paragraphs (b)(2) and (b)(3) (public agency acquisition of services from a foreign country) of section 222 have not been met.

None.

The investigation revealed that criteria of Section 222(c)(2) has not been met. The workers' firm (or subdivision) is not a Supplier to or a Downstream Producer for a firm whose workers were certified as eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of *June 15 through June 26, 2009.* Copies of these determinations are available for inspection in Room N–5428, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 3, 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–19832 Filed 8–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *July 20 through July 24, 2009.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have

become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.,* conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–65,867; Vanguard Supreme, Division of Monarch Knitting Machinery Corp., Monroe, NC: April 28, 2008

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

None.

The Department has determined that criterion (2) of section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None.

The Department has determined that criterion (3) of section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–65,758; Paul Mueller Company, Osceola, IA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

None.

The investigation revealed that criteria of section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of *July 20 through July 24, 2009.* Copies of these determinations are available for inspection in Room N–5428, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 3, 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–19833 Filed 8–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0018]

Federal Advisory Council on Occupational Safety and Health (FACOSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Announcement of special meeting.

SUMMARY: The Federal Advisory Council on Occupational Safety and Health (FACOSH) will hold a special meeting on September 15, 2009, in Washington, DC, to review a draft report from the FACOSH Emerging Issues Workgroup on activities related to Federal agency pandemic-H1N1 influenza preparedness planning for the Federal workforce.

DATES: *FACOSH meeting:* FACOSH will meet from 1 p.m. to 4:30 p.m., Tuesday, September 15, 2009.

Submission of comments, requests to speak, and requests for special accommodations: Comments, requests to speak at the FACOSH meeting, and requests for special accommodations must be submitted (postmarked, sent, transmitted) by September 8, 2009.

ADDRESSES: *FACOSH meeting:* FACOSH will meet in Rooms N–4437 B/C/D, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Submission of comments and requests to speak: Comments and requests to speak at the FACOSH meeting, identified by Docket No. OSHA–2009–0018, may be submitted by any of the following methods:

Electronically: You may submit materials, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for making submissions.

Facsimile: If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Mail, express delivery, hand delivery, messenger or courier service: You must submit three copies of your submissions to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (TTY (877) 889–5627). Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and OSHA Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Requests for special accommodations for FACOSH meeting: Submit requests for special accommodations by telephone, e-mail or hard copy to Ms. Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999; e-mail *chatmon.veneta@dol.gov.*

Instructions: All comments, requests to speak, and requests for special accommodations must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2009–0018). Because of security-related procedures, submissions by regular mail may result in a significant delay in their receipt. Please contact the OSHA Docket Office, at the address above, for information about security procedures for making submissions by hand delivery, express delivery, and messenger or courier service. For additional information on submitting comments and requests to speak, see the **SUPPLEMENTARY INFORMATION** section below.

Comments and requests to speak, including any personal information provided, will be posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting certain personal information such as social security numbers and birth dates.

Docket: To read or download submissions in response to this **Federal Register** notice, go to Docket No. OSHA–2009–0018 at *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some documents (e.g., copyrighted material) are not publicly available to read or download through *http://www.regulations.gov.* All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Ms. Jennifer Ashley, OSHA, Office of Communications, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999.

For general information: Mr. Francis Yebesi, OSHA, Office of Federal Agency Programs, U.S. Department of Labor, Room N–3622, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2122; e-mail *ofap@dol.gov.*

SUPPLEMENTARY INFORMATION: FACOSH will hold a special meeting on Tuesday, September 15, 2009, in Washington, DC. FACOSH meetings are open to the public.

FACOSH is authorized by 5 U.S.C. 7902, section 19 of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 668), and Executive Order 12196 to advise the Secretary of Labor on all matters relating to the occupational safety and health of Federal employees. This includes providing advice on how to reduce and keep to a minimum the number of injuries and illnesses in the Federal workforce and how to encourage each Federal Executive Branch Department and Agency to establish and maintain effective occupational safety and health programs.

The tentative agenda for this special FACOSH meeting is consideration of and deliberation on a draft report from the FACOSH Emerging Issues Workgroup on activities related to Federal agency pandemic-H1N1

influenza preparedness planning for the Federal workforce.

FACOSH meetings are transcribed and detailed minutes of the meetings are prepared. Meeting transcripts, minutes and other materials presented at the meeting are included in the FACOSH meeting record.

Public Participation

FACOSH meetings are open to the public. Interested parties may submit a request to make an oral presentation to FACOSH by one of the methods listed in the **ADDRESSES** section. The request must state the amount of time requested to speak, the interest represented (e.g., organization name), if any, and a brief outline of the presentation. Requests to address FACOSH may be granted as time permits and at the discretion of the FACOSH chair.

Interested parties also may submit comments, including data and other information, using any of the methods listed in the **ADDRESSES** section. OSHA will provide all submissions to FACOSH members prior to the meeting.

Individuals who need special accommodations and wish to attend the FACOSH meeting must contact Ms. Chatmon (see **ADDRESSES** section).

Submissions and Access to Meeting Record

You may submit comments and requests to speak (1) Electronically, (2) by facsimile, or (3) by hard copy. You may submit requests for special accommodations by (1) telephone, (2) e-mail, or (3) hard copy. All submissions, including attachments and other materials, must identify the Agency name and the OSHA docket number for this notice (Docket No. OSHA–2009–0018). You may supplement electronic submissions by uploading documents electronically. If, instead, you wish to submit hard copies of supplementary documents, you must submit three copies to the OSHA Docket Office using the instructions in the **ADDRESSES** section. The additional materials must clearly identify your electronic submission by name, date and docket number.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of submissions. For information about security procedures concerning the delivery of submissions by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Meeting transcripts and minutes as well as comments and requests to speak are included in the public record of this FACOSH meeting (Docket No. OSHA–2009–0018). Written comments and requests to speak are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting certain personal information such as social security numbers and birth dates. Although submissions are listed in the *http://www.regulations.gov* index, some documents (e.g., copyrighted material) are not publicly available to read or download through *http://www.regulations.gov.* Submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Contact the OSHA Docket Office for information about materials not available through the Web site and for assistance in using the Internet to locate submissions and other documents in the docket.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, is also available at OSHA's Web page at *http://www.osha.gov.*

Authority and Signature

Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 19 of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 668), 5 U.S.C. 7902, section 1–5 of Executive Order 12196, the Federal Advisory Committee Act (5 U.S.C. App. 2) and regulations issued under FACA (41 CFR Part 102–3), and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, this 14th day of August 2009.

Jordan Barab,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9–19897 Filed 8–18–09; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0354; Docket Nos. 50–280 AND 50–281]

Virginia Electric and Power Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of an amendment to Facility Operating License Nos. DPR–32 and DPR–37 issued to Virginia Electric and Power Company (the licensee) for operation of the Surry Power Station, Unit Nos. 1 and 2 (Surry Units 1 and 2), located in Surry, Virginia.

The proposed amendments would revise Technical Specification (TS) 6.4.Q, ''Steam Generator (SG) Program,'' to exclude portions of the tubes within the tubesheet from periodic SG inspections. Application of the structural analysis and leak rate evaluation results, to exclude portions of the tubes from inspection and repair is interpreted to constitute a redefinition of the primary to secondary pressure boundary. This request also proposes to revise TS 6.4.Q and TS 6.6.A.3, ''Steam Generator Tube Inspection Report,'' to remove reference to previous Surry Units 1 and 2 interim alternate repair criteria (IARC), as well as the modified IARC for the Surry Unit 1 B SG and provide reporting requirements specific to the permanent alternate repair criteria. In addition, changes to TSs 3.1.C and TS 4.13 are proposed to delete the primary to secondary leakage limitation of 20 gallons per day for the Surry Unit 1 B SG, as well as to delete the 4.7 leakage factor commitment, for Surry Unit 1 Operating Cycle 23. The leakage limitation and the leakage factor commitment were included as part of the modified IARC for the Surry Unit 1 B SG.

The amendment application dated July 28, 2009, contains sensitive unclassified non-safeguards information (SUNSI).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the

amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The proposed change that alters the steam generator inspection criteria and the steam generator inspection reporting criteria does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The proposed change will not alter the operation of or increase the failure probability of any plant equipment that initiates an analyzed accident.

Of the applicable accidents previously evaluated, the limiting transients with consideration to the proposed change to the steam generator tube inspection and repair criteria are the steam generator tube rupture (SGTR) event and the steam line break (SLB) postulated accidents.

During the SGTR event, the required structural integrity margins of the steam generator tubes and the tube-to-tubesheet joint over the H* distance will be maintained. Tube rupture in tubes with cracks within the tubesheet is precluded by the presence of the tubesheet and the constraint provided by the tube-to-tubesheet joint. Tube burst cannot occur within in thickness of the tubesheet. The tube-to-tubesheet joint constraint results from the hydraulic expansion process, thermal expansion mismatch between the tube and tubesheet, the differential pressure between the primary and secondary side, and the tubesheet deflection. Based on this design, the structural margins against burst, as discussed in Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR Steam Generator Tubes,'' are maintained for both normal and postulated accident conditions.

The proposed change has no impact on the structural or leakage integrity of the portion of the tube outside of the tubesheet. The proposed change maintains structural and leakage integrity of the steam generator tubes consistent with the performance criteria in TS 6.4.Q.2. Therefore, the proposed change results in no significant increase in the probability of the occurrence of a SGTR accident.

At normal operating pressures, leakage from degradation below the proposed limited inspection depth is limited by the tubesheet joint. Consequently, negligible normal operating leakage is expected from degradation below the inspected depth within the tubesheet region. The consequences of an SGTR event are affected by the primary to secondary leakage flow during the event as primary to secondary leakage flow through a postulated tube that has been pulled out of the tubesheet is essentially equivalent to a severed tube. Therefore, the proposed changes do not result in a significant increase in the consequences of a SGTR.

The probability of a SLB is unaffected by the potential failure of a steam generator tube as the failure of the tube is not an initiator for a SLB event.

The leakage factor of 2.03 is a bounding value for all SGs, both hot and cold legs, in Table 9–7 of WCAP–17092–P. Also as shown in Table 9–7 of WCAP–17092–P, for Surry for a postulated SLB, a leakage factor of 1.80 has been calculated. However, for Surry, a more conservative leakage factor of 2.03 will be applied to the normal operating leakage associated with the tubesheet expansion region in the condition monitoring (CM) assessment and the operational assessment (OA). Through the application of the limited tubesheet inspection scope, the existing operating leakage limit provides assurance that excessive leakage (*i.e.,* greater than accident analysis assumptions) will not occur. The limiting accident induced primary to secondary leak rate is 470 gallons per day per steam generator during a postulated steam line break. Using the limiting leakage factor of 2.03, this corresponds to an acceptable level of operational leakage of 231.5 gallons per day. The TS operational primary to secondary leak rate limit is 150 gallons per day through any one steam generator. Consequently, there is sufficient margin between accident induced leakage and TS allowable operational leakage. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change that alters the steam generator inspection and repair criteria, as well as the reporting requirements, does not introduce any new equipment, create new failure modes for existing equipment, or create any new limiting single failures. Plant operation will not be altered, and all safety functions will continue to perform as previously assumed in accident analyses.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the change involve a significant reduction in a margin of safety?

Response: No.

The proposed change that alters the steam generator inspection and repair criteria, as well as the reporting requirements, maintains the required structural margins of the steam generator tubes for both normal and accident conditions. NEI 97–06, Revision 2, and RG 1.121, are used as the bases in the development of the limited tubesheet inspection depth methodology for determining that steam generator tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC for meeting GDC 14, ''Reactor Coolant Pressure Boundary,'' GDC 15, ''Reactor Coolant System Design,'' GDC 31, ''Fracture Prevention of Reactor Coolant Pressure Boundary,'' and GDC 32, ''Inspection of Reactor Coolant Pressure Boundary,'' by reducing the probability and consequences of a SGTR. RG 1.121 concludes that by determining the limiting safe conditions for tube wall degradation the probability and consequences of a SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the American Society of Mechanical Engineers (ASME) Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially oriented cracking, WCAP–17092–P defines a length of degradation-free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces, with applicable safety factors applied. Application of the limited hot and cold leg tubesheet inspection criteria will preclude unacceptable primary to secondary leakage during all plant conditions. The methodology for determining leakage provides for sufficient margins between calculated and actual leakage values in the proposed limited tubesheet inspection depth criteria.

Therefore, the proposed change does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day

comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking and Directives Branch (RDB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RDB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland or at *http://www.nrc.gov/reading-rm/doc-collections/cfr/part002/part002_0309.html.* Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory e-filing system may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC electronic filing Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The toll-free help line number is (866) 672–7640. A person filing electronically may also seek assistance by sending an e-mail to the NRC electronic filing Help Desk at *MSHD.Resource@nrc.gov.*

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission the presiding officer or the Atomic Safety and Licensing Board that the request and/or petition should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/ehd_proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their submissions.

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation

1. This order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information.

2. Within ten (10) days after publication of this notice of opportunity for hearing any potential party as defined in 10 CFR 2.4 who believes access to SUNSI is necessary for a response to the notice may request access to such information. A ''potential party'' is any person who intends or may intend to participate as a party by demonstrating standing and the filing of an admissible contention under 10 CFR 2.309. Requests submitted later than ten (10) days will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

3. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCMailCenter.Resource@nrc.gov*, respectively.[1] The request must include the following information:

a. A description of the licensing action with a citation to this **Federal Register** notice of opportunity for hearing;

b. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in (a);

c. The identity of the individual requesting access to SUNSI and the requester's need for the information in order to meaningfully participate in this adjudicatory proceeding, particularly why publicly available versions of the application would not be sufficient to

[1] See footnote 4. While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

provide the basis and specificity for a proffered contention.

4. Based on an evaluation of the information submitted under items 2 and 3.a through 3.c, above, the NRC staff will determine within ten days of receipt of the written access request whether (1) there is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding, and (2) there is a legitimate need for access to SUNSI.

5. A request for access to SUNSI will be granted if:

a. The request has demonstrated that there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in this proceeding;

b. The proposed recipient of the information has demonstrated a need for SUNSI;

c. The proposed recipient of the information has executed a Non-Disclosure Agreement or Affidavit and agrees to be bound by the terms of a Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI; and

d. The presiding officer has issued a protective order concerning the information or documents requested.[2] Any protective order issued shall provide that the petitioner must file SUNSI contentions 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

6. If the request for access to SUNSI is granted, the terms and conditions for access to such information will be set forth in a draft protective order and affidavit of non-disclosure appended to a joint motion by the NRC staff, any other affected parties to this proceeding,[3] and the petitioner(s). If the diligent efforts by the relevant parties or petitioner(s) fail to result in an agreement on the terms and conditions for a draft protective order or non-disclosure affidavit, the relevant parties to the proceeding or the petitioner(s) should notify the presiding officer within five (5) days, describing the obstacles to the agreement.

7. If the request for access to SUNSI is denied by the NRC staff, the NRC staff shall briefly state the reasons for the denial. Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to comment or explain information. The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing by filing a challenge within ten (10) days of receipt of that determination with (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to § 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

In the same manner, a party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within ten (10) days of the notification by the NRC staff of its grant of such a request. If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[4]

8. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

Dated at Rockville, Maryland, this 14th day of August 2009.

For the Nuclear Regulatory Commission.

J. Samuel Walker,

Acting Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION (SUNSI) IN THIS PROCEEDING

Day	Event
0	Publication of Federal Register notice, including order with instructions for access requests.
10	Deadline for submitting requests for access to SUNSI with information: supporting the standing of a potential party identified by name and address; and describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	NRC staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information. If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).

[2] If a presiding officer has not yet been designated, the Chief Administrative Judge will issue such orders, or will appoint a presiding officer to do so.

[3] Parties/persons other than the requester and the NRC staff will be notified by the NRC staff of a favorable access determination (and may participate in the development of such a motion and protective order) if it concerns SUNSI and if the party/person's interest independent of the proceeding would be harmed by the release of the information (*e.g.,* as with proprietary information).

[4] As of October 15, 2007, the NRC's final ''E-Filing Rule'' became effective. See Use of Electronic Submissions in Agency Hearings (72 FR 49139; Aug. 28, 2007). Requesters should note that the filing requirements of that rule apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI requests submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION (SUNSI) IN THIS PROCEEDING—Continued

Day	Event
25	If NRC staff finds no ''need'' for SUNSI or likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A+3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A+28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A+53 (Contention receipt +25)	Answers to contentions whose development depends upon access to SUNSI.
A+60 (Answer receipt +7)	Petitioner/Intervenor reply to answers.
B	Decision on contention admission.

[FR Doc. E9–19845 Filed 8–18–09; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0213; Docket No. 040–06394]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Source Materials License No. SMB–141, for Unrestricted Release of a Portion of the Department of the Army, U.S. Army Research, Development and Engineering Command, Army Research Laboratory Facility at the Aberdeen Proving Ground in Maryland

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Betsy Ullrich, Senior Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406; telephone (610) 337–5040; fax number (610) 337–5269; or by e-mail: *Elizabeth.Ullrich@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Source Materials License No. SMB–141. This license is held by the Department of the Army, U.S. Army Research, Development And Engineering Command (ARDEC), Army Research Laboratory (ARL) (the Licensee), for its U.S. Army Research Laboratory (the Facility), located at the Aberdeen Proving Ground, Maryland. Issuance of the amendment would authorize release of the R–14 Range for unrestricted use. The Licensee requested this action in a letter dated May 11, 2009. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR); Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's May 11, 2009, license amendment request, resulting in release of the R–14 Range for unrestricted use. License No. SMB–141 was issued on April 12, 1961, pursuant to 10 CFR Part 40, and has been amended periodically since that time. This license authorized the Licensee to use uranium and thorium for purposes of conducting research and development activities; fabrication, modification, and testing of components, parts, and/or devices; and munitions testing.

The R–14 Range is situated on Spesutie Island within the Aberdeen Proving Ground and consists of structures used for munitions testing, support buildings for administrative activities, storage, and other support services. The R–14 Range is located in an area which is primarily undeveloped forest and wetlands. The R–14 Range occupies an area of about 5.28 acres, of which 0.2 acres is occupied by three remaining buildings. Within the R–14 Range, use of licensed materials was confined to R–14 Blast Chamber, Firing Tube, Air Handling System, Hot Line Building and Water Treatment Shed and areas of the Laydown Yard, Firing Line and the Grassy Field south of the Blast Chamber.

On November 6, 2007, the Licensee ceased licensed activities at the R–14 Range and initiated a survey and decontamination of the R–14 Range. Based on the Licensee's historical knowledge of the site and the conditions of the R–14 Range, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved, operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of the R–14 Range and provided information to the NRC to demonstrate

that it meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities at the R–14 Range and seeks the unrestricted use of the R–14 Range.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at the R–14 Range shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: uranium-234, uranium-235, and uranium-238. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the R–14 Range affected by these radionuclides.

The Licensee conducted a final status survey during the period of May 7 through September 25, 2008. This survey covered all of the R–14 Range affected land areas (Laydown Yard, Firing Line, and the Grassy Field) and structures (R–14 Blast Chamber, Firing Tube, Air Handling System, Hot Line Building, and Water Treatment Shed). The final status survey report was attached to the Licensee's amendment request dated May 11, 2009. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release of buildings as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The Licensee's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the Licensee's final status survey results of buildings are acceptable.

The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release of soils as specified in 10 CFR 20.1402 by developing derived concentration guideline levels (DCGLs) for its R–14 Range. The Licensee conducted site-specific dose modeling using input parameters specific to the R–14 Range soils. The licensee used the relative fractions of uranium progeny fractions and the thickness of the contaminated zone at the R–14 Range, along with RESRAD default parameters and conservative input parameters from NRC and Environmental Protection Agency (EPA) guidance documents. The Licensee thus determined the maximum amount of residual radioactivity in soils that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The NRC previously reviewed the Licensee's methodology and proposed DCGLs and concluded that the proposed DCGLs are acceptable for use as release criteria at the R–14 Range. The NRC's approval of the Licensee's proposed DCGLs was published in the **Federal Register** on April 9, 2008 (73 FR 19263). The Licensee's final status survey results of soils were below these DCGLs, and are thus acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC–Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material at the R–14 Range. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the R–14 Range. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the R–14 Range described above for unrestricted use is in compliance with 10 CFR 20.1402. Although the Licensee will continue to perform licensed activities at other parts of the Facility, the Licensee must ensure that this decommissioned area does not become recontaminated. In connection with the eventual termination of License No. SMB–151, the Licensee will be required to show that all licensed areas and previously-released areas comply with the radiological criteria in 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the R–14 Range and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 40.42(d), requiring that decommissioning of separate buildings or outdoor areas at source material facilities be completed and approved by the NRC after licensed activities there cease. The NRC's analysis of the Licensee's final status survey data confirmed that the R–14 Range meets the requirements of 10 CFR 20.1402 for unrestricted release. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the Maryland Department of the Environment, Air and Radiation Management Administration and Hazardous Waste Administration (MDE) for review on June 15, 2009. On June 23, 2009, MDE responded by e-mail. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. Letter dated May 11, 2009 [ML091340490] and the enclosure ''Draft Final, Final Status Survey Report, R–14 Range'' April 2009 [ML091340611, ML091340637, ML092100380, ML091340648, ML091350126, ML091350204, ML091350218, ML091350225, ML091350237, ML091350250, ML091350255, ML091350234];

2. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance'';

3. Title 10 Code of Federal Regulations; Part 20, Subpart E, ''Radiological Criteria for License Termination'';

4. Title 10, Code of Federal Regulations; Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions''; and

5. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC–Licensed Nuclear Facilities.''

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Region I this 10th day of August 2009.

For the Nuclear Regulatory Commission.

James Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E9–19849 Filed 8–18–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0339]

NUREG–1520, ''Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility, Draft for Public Comment—Revision 1,'' Extension of Comment Period

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Extension of comment period.

SUMMARY: On August 5, 2009 (74 FR 39117), the NRC published a notice of availability and request for public comment on NUREG–1520. The comment period originally closed on September 21, 2009. This document extends the comment period to October 24, 2009. Also, the revision number (NUREG–1520 Revision 2) in the original notice was incorrect, therefore the revision number was changed to read, ''NUREG–1520 Revision 1.''

DATES: The comments period has been extended to October 24, 2009. Comments received after that date will be considered to the extent practicable. To ensure efficient and complete comment resolution, comments should include references to the section, page, and line numbers of the document to which the comment applies, if possible.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2009–0339 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site *Regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0339. 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 O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The Standard Review Plan (NUREG–1520) is available electronically under ADAMS Accession Number ML091470567.

NRC Public Web site: The full manuscript of NUREG–1520, Revision 1—Draft Report, can be found at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1520/r1/index.html.*

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2009–0339.

FOR FURTHER INFORMATION CONTACT: Cinthya Román Cuevas, Chemical Engineer, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 by telephone at 301–492–3224 or e-mail at *cinthya.roman@nrc.gov.*

SUPPLEMENTARY INFORMATION: The standard review plan (SRP) for the review of a license application for a fuel cycle facility (NUREG–1520) provides

NRC staff guidance for reviewing and evaluating the safety, health, and environmental protection aspects of applications for licenses to possess and use SNM to produce nuclear reactor fuel. The licensing guidance revision is also intended to provide information needed to better risk-inform the preoperational readiness reviews. Specifically, items or features or aspects of the design identified during the licensing review as important, will be highlighted to verify compliance with specific commitments during the preoperational readiness reviews.

The SRP has been updated to improve and enhance the guidance by providing increased clarity and definition in specific areas of the licensing program and adding additional guidance in areas where information was lacking or not suitably addressed. This effort was focused on improving both the clarity, and also consistency, of the SRP, with the Agency positions that support compliance with current regulations. In addition, this revision has been reformatted and reorganized to improve the consistency within the document.

Dated at Rockville, Maryland this 12th day of August, 2009.

For the Nuclear Regulatory Commission.

Michael Tschiltz,

Deputy Director, Fuel Facility Licensing Directorate, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E9–19848 Filed 8–18–09; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. R2009–5; Order No. 276]

Postal Service Price Changes

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document discusses the Commission's establishment of a docket to a Postal Service request to adjust prices for a temporary First-Class Mail Incentive Program.

DATES: Comments are due August 31, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

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

SUPPLEMENTARY INFORMATION:

I. Overview

On August 11, 2009, the Postal Service filed with the Commission a notice announcing its intention, pursuant to 39 U.S.C. 3622 and 39 CFR part 3010, to adjust prices for certain First-Class Mail presorted letters, flats and cards sent by qualifying mailers.[1] The Postal Service characterizes the planned adjustment as a temporary First-Class Mail Incentive Program (Program) to spur volume growth during the current recession. Key elements of the Program include a 20 percent rebate on qualifying incremental volume; certain volume thresholds; and a 3-month duration, extending from October 1, 2009 through December 31, 2009. *Id.* at 2–3.

The Notice addresses plans for public notice; program description and administration; price cap compliance; statutory objectives and factors; workshare discounts; and impact on preferred rates. A schedule of the new temporary prices and conforming revisions to Mail Classification Schedule language appear in Appendix A to the Notice in compliance with Commission rules 3010.14(a)(1) and 3010.14(b)(9).

II. Postal Service Filing

Program description. The Postal Service asserts that the proposed Program will give eligible companies a 20 percent postage rebate on qualifying presort letter, flat and card volumes mailed between October 1, 2009 and December 31, 2009. *Id.* Qualifying volume is defined as a single company's First-Class Mail volume over and above a predetermined threshold. *Id.* at 3.

Eligibility; rebate threshold. To be eligible to participate in the Program, a company must have mailed 500,000 or more non-parcel First-Class Mail pieces between October 1 and December 31 in both 2007 and 2008 through company-owned permit accounts or through permits set up on the company's behalf by a Mail Service Provider. *Id.* Participants must then exceed a company-specific threshold during October 1, 2009 through December 31, 2009 to qualify for the incentive rebate.[2] Incremental volume mailed by an eligible, participating company above the calculated threshold will earn a 20 percent rebate.

Rebate calculation; credit. The rebate will be calculated as the average revenue per piece for all eligible mail volume during the program period multiplied by the incremental volume above the threshold during the program period. It will be credited to the company's permit trust account. *Id.*

Program intent. The stated intent of the Program is to provide an incentive for customers to increase non-parcel First-Class Mail presorted volume above the volume they otherwise would have sent. To protect this core element of the Program, the Postal Service includes provisions to address the possibility of strategic shifting or withholding of volume. *Id.* at 4.

Program administration. The Notice addresses several aspects of program administration, including methods for contacting eligible mailers; procedures for establishing company thresholds and crediting rebates to permit trust accounts; data collection and reporting (including filing some data under seal); financial impact; and risk. *See generally id.* at 4–8.

Under the data collection plan, the Postal Service will submit Program-related data to the Commission 90 days after the payment of incentive rebates. The Notice describes specific components of the plan, notes that some participant data will be filed under seal, and states that actual administrative costs will be identified. *Id.* at 6.

With respect to the financial aspects of the Program, the Postal Service expects, based on the 20 percent rebate and the expressed interest of customers, a contribution increase of around $24 million and a revenue increase, net of the 20 percent rebate, of $43 million. It anticipates new volume of about 103 million pieces, which it says will generate about $31 million in additional revenue and $16 million in contribution. It also expects about 103 million pieces to ''buy up'' from Standard Mail, providing an additional $12 million in revenue and $8 million in contribution. *Id.* at 7. Administrative costs are expected to total $809,000, and to be easily covered by the contribution generated from additional volume. *Id.*

The Postal Service's primary measure of success will be incremental revenue and volume growth over the threshold for participating customers, but qualitative aspects, such as the Postal

[1] United States Postal Service Notice of Market-Dominant Price Adjustment, August 11, 2009 (Notice). The Postal Service also refers to the qualifying presorted pieces as non-parcel First-Class Mail. *See, for example, Id.* at 4.

[2] This threshold is determined by computing the ratio of the October 1–December 31, 2008 non-parcel First-Class Mail presorted volume to the October 1–December 31, 2007 non-parcel First-Class Mail presorted volume. The result is then multiplied by the company's October 1–December 31, 2008 non-parcel First-Class Mail presorted volume. *Id.*

Service's ability to efficiently and effectively administer the program and customer feedback, also will be monitored. *Id.* at 5–6.

Conformance with public notice and other requirements. In conformance with rule 3010.14(a), the Postal Service certifies that it will inform customers of the planned price adjustments in numerous ways. *Id.* at 1. In addition to the formal Notice filed with the Commission, these include notice via *USPS.com,* the Postal Explorer website, the *DMM Advisory,* the *P&C Weekly,* a press release, PCC Insider, *MailPro,* the *Postal Bulletin,* and the *Federal Register. Id.* at 1–2. The Postal Service identifies Greg Dawson as the official contact for Commission queries. *Id.* at 2.

Impact on the price cap. The Postal Service proposes to treat the Program, for purposes of price cap compliance, in a manner it characterizes as ''mathematically analogous to the procedure described in Rule 3010.24.'' *Id.* at 8. It explains that this means it intends to ignore the effect of the price decrease resulting from the program on the price cap for both future and current prices, and therefore has made no calculation of cap or price changes described in rule 3010.14(b)(1) through (4). *Id.*

Statutory objectives and factors. The Notice further provides, in compliance with rules 3010.14(b)(5) through 3010.14(b)(8), the Postal Service's assessment of how the planned Program helps achieve the objectives of 39 U.S.C. 3622(b) and properly takes into account the factors of 39 U.S.C. 3622(c). *See generally id.* at 8–13. With respect to statutory objectives, this includes the Postal Service's conclusion that to a large extent, the establishment of the Program either does not substantially alter the degree to which the First-Class Mail prices already address the statutory objectives, or its belief that those objectives are addressed by the design of the system itself. *Id.* at 10. The Postal Service also observes that establishment of this Program, which is designed to encourage First-Class Mail presort letters, flats and cards volume growth during a recession, is an example of the increased flexibility provided to the Postal Service under the Postal Accountability and Enhancement Act (PAEA) of 2006. *Id.* It further states that the fact that the program will provide an incentive for profitable new mail and provide a boost to a key customer segment will enhance the financial position of the Postal Service.

In terms of statutory factors, the Postal Service asserts that, as with the objectives, the establishment of the Program does not substantially alter the degree to which First-Class Mail prices address many of them. *Id.* at 12. It adds that the Program is ''a prime example of how the Postal Service can utilize the pricing flexibility provided under the PAEA in order to encourage increased mail volume.'' *Id.* It maintains that the Program will help to counteract the effect of the current recession on business mailers, and provide a boost to a key customer segment. It also says that although the rebates are material, the Program will not affect the ability of First-Class Mail to cover its attributable costs, and that as a result of the Program, First-Class Mail as a whole will make an increased contribution toward overhead costs. *Id.* at 12–13.

Workshare discounts. The Postal Service states that to the extent the Program affects discounts between presort categories, it will shrink them, but asserts that the Program itself is not worksharing, nor should its effects be considered a modification of, or change to, First-Class Mail worksharing discounts. *Id.* at 13. It asserts that the Program is a temporary incentive intended to drive additional First-Class Mail presort volume and, as such, is not tied to any specific mail preparation or induction practice. *Id.* It suggests that the discounts, in this sense, are similar to the incremental discounts the Commission has approved in a number of negotiated service agreements or the IMb discount that will take effect in the fall. *Id.*

Preferred rates. The Postal Service asserts that the Program will have no impact on any preferred rates.

III. Commission Action

Establishment of docket; comments. Pursuant to its rules implementing the PAEA, the Commission establishes Docket No. R2009–5 to consider all matters related to the Notice. 39 CFR 3010.13(a). It also issues the instant Order to provide notice of the Postal Service's filing. Therein, consistent with provision of a 20-day comment period, starting from the date the Postal Service filed its Notice, the Commission directs that comments are due no later than August 31, 2009. 39 CFR 3010.13(a)(5). Interested persons may express views and offer comments on whether the planned price adjustment is consistent with the policies of 39 U.S.C. 3622 and with applicable requirements of 39 CFR part 3010.

Public representative. Commission rule 3010.13(a)(4), which implements 39 U.S.C. 505, requires the Commission to identify, in its notice addressing the Postal Service's filing, an officer of the Commission to represent the interests of the general public in this docket. In satisfaction of this requirement, the Commission appoints Richard A. Oliver.

Other matters. Pursuant to rule 3010.13(c), the Commission will issue its determination in this proceeding by September 14, 2009.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. R2009–5 to consider matters raised in the Postal Service's August 11, 2009 filing.

2. Interested persons may submit comments on the planned price adjustments. Comments are due August 31, 2009.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Richard A. Oliver to represent the interests of the general public in this proceeding.

4. The Commission directs the Secretary of the Commission to arrange for prompt publication of this document in the **Federal Register**.

By the Commission.

Ann C. Fisher,

Acting Secretary.

[FR Doc. E9–19854 Filed 8–18–09; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Extension of Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 17f–2(a), OMB Control No. 3235–0034, SEC File No. 270–34.

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 provided for in Rule 17f–2(a) (17 CFR 240.17f–2(a) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17f–2(a) requires that securities professionals be fingerprinted. This requirement serves to identify security risk personnel, to allow an employer to make fully informed employment decisions, and to deter possible wrongdoers from seeking employment in the securities industry. Partners, directors, officers, and employees of

exchanges, brokers, dealers, transfer agents, and clearing agencies are included.

It is estimated that 10,000 respondents will submit fingerprint cards. It is also estimated that each respondent will submit 55 fingerprint cards. The staff of the Commission estimates that the average number of hours necessary to comply with the Rule 17f–2(a) is one-half hour. The total burden is 275,000 hours for respondents. The average cost per hour is approximately $50. Therefore, the total cost of compliance for respondents is $13,750,000.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: August 10, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–19891 Filed 8–18–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 17a–11, OMB Control No. 3235–0085, SEC File No. 270–94.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for approval of extension of the existing collection of information provided for in the following rule: Rule 17a–11 (17 CFR 240.17a–11) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

In response to an operational crisis in the securities industry between 1967 and 1970, the Commission adopted Rule 17a–11 under the Exchange Act on July 11, 1971. Rule 17a–11 requires broker-dealers that are experiencing financial or operational difficulties to provide notice to the Commission, the broker-dealer's designated examining authority (''DEA''), and the Commodity Futures Trading Commission (''CFTC'') if the broker-dealer is registered with the CFTC as a futures commission merchant. Rule 17a–11 is an integral part of the Commission's financial responsibility program which enables the Commission, a broker-dealer's DEA, and the CFTC to increase surveillance of a broker-dealer experiencing difficulties and to obtain any additional information necessary to gauge the broker-dealer's financial or operational condition.

Rule 17a–11 also requires over-the-counter (''OTC'') derivatives dealers and broker-dealers that are permitted to compute net capital pursuant to Appendix E to Exchange Act Rule 15c3–1 to notify the Commission when their tentative net capital drops below certain levels. OTC derivatives dealers must also provide notice to the Commission of backtesting exceptions identified pursuant to Appendix F of Rule 15c3–1 (17 CFR 240.15c3–1f).

Compliance with the Rule is mandatory. The Commission will generally not publish or make available to any person notice or reports received pursuant to Rule 17a–11. The Commission believes that information obtained under Rule 17a–11 relates to a condition report prepared for the use of the Commission, other federal governmental authorities, and securities industry self-regulatory organizations responsible for the regulation or supervision of financial institutions.

Only broker-dealers whose capital declines below certain specified levels or who are otherwise experiencing financial or operational problems have a reporting burden under Rule 17a–11. In 2008, the Commission received 400 notices under this Rule. The Commission did not receive any Rule 17a–11 notices from OTC derivatives dealers or broker-dealers that are permitted to compute net capital pursuant to Appendix E to Exchange Act Rule 15c3–1.

Each broker-dealer reporting pursuant to Rule 17a–11 will spend approximately one hour preparing and transmitting the notice required by the Rule. Accordingly, the total estimated annualized burden under Rule 17a–11 is 400 hours.

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.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *shagufta_ahmed@omb.eop.gov*; and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to *PRA_Mailbox@sec.gov*. Comments must be submitted within 30 days of this notice.

Dated: August 10, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–19896 Filed 8–18–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Tasty Fries, Inc.; Order of Suspension of Trading

August 17, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Tasty Fries, Inc. (''Tasty Fries'') because it has not filed any periodic reports since the period ended October 31, 2004.

The Commission is of the opinion that the public interest and the protection of investors require a suspension in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended from 9:30 a.m. EDT, on August 17, 2009 through 11:59 p.m. EDT on August 28, 2009.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–19981 Filed 8–17–09; 4:15 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60497; File No. PCAOB–2008–04]

Public Company Accounting Oversight Board; Order Approving Proposed Rules on Annual and Special Reporting by Registered Public Accounting Firms

August 13, 2009.

I. Introduction

On June 10, 2008, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission'' or ''SEC'') proposed rules (File No. PCAOB–2008–04) on annual and special reporting by registered public accounting firms, pursuant to Section 107 of the Sarbanes-Oxley Act of 2002 (the ''Act''). Notice of the proposed rules was published in the **Federal Register** on June 18, 2009.[1] The Commission received four comment letters relating to this rule proposal. For the reasons discussed below, the Commission is granting approval of the proposed rules.

II. Description

On June 10, 2008, the Board adopted rules and submitted to the Commission a rule proposal consisting of eight new rules (PCAOB Rules 2200–2207) concerning annual and special reporting by registered public accounting firms, instructions to two forms to be used for such reporting (Form 2 and Form 3), and related amendments to existing Board rules. The proposed rules would establish the foundation of a reporting and disclosure system for registered public accounting firms pursuant to Section 102(d) of the Act, specify the details of certain reporting obligations, and provide forms for such reporting. To the extent that the Board identifies additional reporting requirements that are necessary or appropriate in the public interest or for the protection of investors, the Board may propose and adopt them in the future.

According to the Board, the proposed reporting requirements serve three fundamental purposes. First, firms will report information to keep the Board's records current about such basic matters as the firm's name, location, contact information, and licenses. Second, firms will report information reflecting the extent and nature of the firm's audit practice related to issuers in order to facilitate analysis and planning related to the Board's inspection responsibilities and to inform other Board functions, as well as for the value the information may have to the public. Third, firms will report circumstances or events that could merit follow-up through the Board's inspection process or its enforcement process, and that also may otherwise warrant being brought to the public's attention (such as a firm's withdrawal of an audit report in circumstances where the information is not otherwise publicly available).

The reporting framework includes two types of reporting obligations. First, it requires each registered firm to provide basic information once a year about the firm and the firm's issuer-related practice over the most recent 12-month period. The firm must do so by filing an annual report on Form 2. Second, upon the occurrence of specified events, a firm must report certain information by filing a special report on Form 3.

Proposed Rule 2201 sets June 30 as the deadline for the annual filing of Form 2. The reporting period covered by the report would be April 1 to March 31, leaving each firm with three months to prepare and file a Form 2 reflecting information from that 12-month period. Any firm that was registered as of March 31 of a particular year would be required to file Form 2 by June 30 of that year, but any firm that became registered in the period between and including April 1 and June 30 would not be required to file a Form 2 until June 30 of the following year.

Under the proposed rules, the occurrence of specified events triggers an obligation to file a special report on Form 3. The proposed rules provide that special reports must be filed within 30 days of the triggering event or a firm's awareness of a triggering event.

The Board expects annual and special reports to be complete and accurate, and inaccuracies or omissions could form the basis for disciplinary sanctions for failing to comply with the reporting requirements reflected in Rules 2200 and 2203 and the instructions to Forms 2 and 3. Proposed Rule 2205 provides for the filing of amendments to previously filed annual or special reports if the originally filed report included information that was incorrect at the time of the filing, or if the originally filed form omitted any information or affirmation that was, at the time of such filing, required to be included in that report.

Annual and special reports will be made public on the Board's Web site promptly upon being filed by a firm, subject to exceptions for information for which a firm requests confidential treatment. The Board intends that as much reported information as possible be publicly available as soon as possible after filing.

The proposed forms identify certain categories of information for which a firm may request confidential treatment. The proposed rules include new requirements effected through amendments to PCAOB Rule 2300 concerning the support that a firm must supply to support a confidential treatment request. The proposed amendments require that a firm support a request with both a representation that the information has not otherwise been publicly disclosed and either (1) a detailed explanation of the grounds on which the information is considered proprietary, or (2) a detailed explanation of the basis for asserting that the information is protected by law from public disclosure and a copy of the specific provision of law. The proposed amendments also provide that the firm's failure to supply the required support constitutes sufficient grounds for denial of the request.

Under proposed Rule 2207, a non-U.S. firm may withhold required information from Form 2 or Form 3 if the firm cannot provide the information without violating non-U.S. law. If the firm withholds information on that ground, it must have certain supporting materials, including (1) a copy of the relevant provisions of non-U.S. law, (2) a legal opinion concluding that the firm would violate non-U.S. law by submitting the information to the Board, and (3) a written explanation of the firm's efforts to seek consents or waivers that would be sufficient to overcome the conflict with respect to the information. The firm must certify on the form that it has the supporting materials in its possession. The rule reserves to the Board, and to the Director of the Division of Registration and Inspections, the discretion to require that a firm submit any of those supporting materials in a particular case. The rule also reserves to the Board the discretion to require that the firm provide any of the withheld information in a particular case.

The proposed rules include an amendment to the Board's inspection rules that makes clear that the Board may require a firm to provide additional information. Specifically, existing Rule 4000 provides that registered firms shall be subject to such regular and special inspections as the Board chooses to conduct. The proposed amendment adds a paragraph providing that the Board, in the exercise of its inspection authority, may at any time request that a registered firm provide additional

[1] See Release No. 34–60107 (June 12, 2009); 74 FR 29091 (June 18, 2009).

information or documents relating to information provided on Form 2 or Form 3, or relating to information that has otherwise come to the Board's attention. The amendment provides that the request and response are considered to be in connection with the firm's next regular or special inspection. Accordingly, the cooperation requirements of Rule 4006 apply, and the request and response are subject to the confidentiality restrictions of Section 105(b)(5) of the Act.

The proposed amendments to Rule 2300(b)–(c), concerning the required support, would also apply prospectively to confidential treatment requests on applications for registration on Form 1.

Existing Rule 2107 governs the process by which a firm may seek to withdraw from registration with the Board. Under Rule 2107, a firm cannot withdraw at will, but must request the Board's permission to withdraw, and the Board may withhold that permission under certain conditions. The proposed rules include an amendment to Rule 2107 to change the way it addresses the reporting obligations of a firm that has filed Form 1–WD seeking leave to withdraw. Existing Rule 2107(c)(2)(i) provides that, beginning on the fifth day after the Board receives a completed Form 1–WD, the firm can satisfy any annual reporting requirement by submitting a report stating that a completed Form 1–WD has been filed and is pending. Under the proposed amendment, the firm's reporting obligation, including both annual and special reporting, would simply be suspended while Form 1–WD was pending. If a firm withdraws its Form 1–WD and continues as a registered firm, however, Rule 2107 would require the filing of any annual or special reports, and the payment of any annual fee, that otherwise would have been required while the Form 1–WD was pending. The Board is also eliminating from Rule 2107 the five-day delay between receipt of a completed Form 1–WD and the effect of that filing on a firm's reporting obligation. Suspension of that obligation would occur immediately upon the Board's receipt of the completed Form 1–WD.

The Board also proposed to delete from definitions in PCAOB Rule 1001 certain provisions that ceased to apply after December 15, 2003. Specifically, the Board proposes to amend Rules 1001(a)(vii) (definition of ''audit services''), 1001(o)(i) (definition of ''other accounting services''), and 1001(n)(ii) (definition of ''tax services'') by deleting the paragraph denominated ''(1)'' from each rule.

The proposed rules would take effect 60 days after Securities and Exchange Commission approval.

III. Discussion

A. Comments Received

The Commission received four comment letters relating to the rule proposal. All four of the comment letters came from registered public accounting firms.[2]

Each of the commenters expressed support for the overall purpose of the Board's rules. However, similar to the comments made to the PCAOB during its comment period, the commenters raised several main concerns related to: (1) Provisions of proposed PCAOB Rule 2107 that relate to assertions of conflicts with non-U.S. laws; (2) Form 3 triggering events that depend on the firm's awareness; (3) the requirement that registered public accounting firms file with the PCAOB a Form 3 for withdrawn audit reports; (4) the reporting on Form 3 of the dates of registered public accounting firms' consents to the use of previously issued audit reports; and (5) the Board's differing approach in Forms 2 and 3 for reporting the engagement of consultants or professionals subject to PCAOB/SEC discipline.

1. *Assertions of Conflicts With Non-U.S. Laws*

Some commenters expressed concerns about the proposed requirement for non-U.S. firms to gather and maintain certain information. Proposed Rule 2207(c)(1) would require non-U.S. firms to gather and maintain, for a period of seven years, the information required by Forms 2 and 3 that the non-U.S. firm asserts is unable to submit because of a conflicting local law. Some commenters observed that this requirement may cause problems for non-U.S. firms because in some jurisdictions there may be privacy or other laws that would preclude registered firms from gathering the information necessary to complete Form 3.[3]

All of the commenters expressed concerns about the discretion afforded the Board in proposed Rule 2207(e) that would allow the Board to request a non-U.S. firm to file information withheld under proposed Rule 2207(c)(1) based on an asserted conflict with non-U.S. law. Each commenter recognized that although the Board stated in its adopting release that it does not foresee invoking proposed Rule 2207(e) with any regularity, the commenters believe that where applied, it could be of significant concern to non-U.S. firms. According to the commenters, the concern rests on the fact that if the Board invoked Rule 2207(e), a non-U.S. firm could be put in an untenable situation where it would have to choose between breaching its reporting obligations under the PCAOB's rules and violating its home jurisdiction's laws.

The Board addressed these concerns in its adopting release. In that release, the Board asserted that the requirement for a firm to have in its possession a version of Form 2 or Form 3 that includes the information that the firm would be required to report in absence of a legal conflict imposes no greater burden on a non-U.S. firm than on a U.S. firm that actually reports the information. The Board further stated that the opportunity to assert a legal conflict is an accommodation in light of the possibility that a firm may believe it is caught stuck between competing legal requirements.

The Board also stated that a firm should not assume that its mere assertion of a conflict resolves the matter, and that there is no reason for the Board to provide that a firm need not even have assembled the information, in the form in which any other firm would have to assemble it, before asserting that non-U.S. law precludes it from disclosing the particular information it is withholding. Lastly, and as one of the commenters pointed out, the Board specifically addressed this issue by adding a note to Rule 2207(c)(1) to provide that the materials maintained by the firm do not need to include any information (1) that the firm does not possess, and (2) as to which the firm asserts that the firm would violate non-U.S. law by requiring another person to provide the information to the firm.

As the commenters noted, the Board explained at length its purpose and intended administration of Rule 2207(e). The Board noted that its position is not dissimilar from the same situation it faces in the registration context. The Commission is not aware of any instances or concerns in the registration context in which the PCAOB has acted unreasonably with regard to conflicts with non-U.S. laws that were raised by non-U.S. firms.

The Commission believes the Board's responses to these comments are not unreasonable. The Commission presumes that the Board will continue to exercise reasonable judgment and discretion in considering conflicts with

[2] See comments of Deloitte and Touche LLP (''Deloitte''), Ernst & Young LLP (''E&Y''), KPMG International (''KPMG''), and PricewaterhouseCoopers LLP (''PwC'').

[3] See comments of Deloitte, E&Y, and KPMG.

non-U.S. laws that are raised in connection with the completion of a Form 2 or Form 3 as it has for the past six years with respect to similar issues in the registration context.[4]

2. Firm Awareness of Form 3 Triggering Events

Certain items reported in Form 3 describe events that a firm must report to the Board within 30 days after the firm has become aware of certain facts. The Form provides that the firm is deemed to have become aware of the relevant facts on the date that any partner, shareholder, principal, owner, or member of the firm first becomes aware of the facts.

All commenters expressed concern that triggering the reporting requirement based on the awareness of any one of the large number of people who fall into the definition provided by the Board, especially if they are not part of senior management, would be burdensome. Several of these commenters observed that, in response to the proposed rules, firms would put in place policies and procedures requiring reportable information be reported to the persons in the organization responsible for compliance with the rules. Because of their view that firms would put the necessary policies and procedures in place, these commenters recommended that the Commission encourage the PCAOB to consider issuing guidance providing that a registered firm will not be considered out of compliance with a reporting obligation if there is an inadvertent failure to follow internal procedures that are designed in good faith to effectuate reporting.

Similar comments were originally raised to the Board in connection with the Board's original proposal of the annual and special reporting rules. After consideration of the comments received, the Board narrowed the Form 3 reporting requirements as to the reportable events and clarified the ''deemed aware'' standard as to which persons are covered. In addition, the Board stated it believes it is reasonable to expect a firm to have controls designed to ensure that any such person who becomes aware of relevant facts understands the firm's reporting obligation and brings the matter to the attention of persons responsible for compliance with the obligation.

We agree. This matter is not dissimilar to the need for issuers to maintain appropriate disclosure and controls and procedures to meet their reporting obligations, including for current reporting on Form 8–K that is on a much shorter timeframe than Form 3 reporting. Those procedures include those to ensure that information is accumulated and communicated to the appropriate personnel to allow timely disclosure. This matter also is not dissimilar to a registered public accounting firm's existing obligations under the Commission's and the PCAOB's auditor independence requirements, which in many instances reaches down to obligations involving members of an engagement team below a partner level. Lastly, as to when it would be appropriate for the Board to take disciplinary action for reporting violations, the Commission assumes the Board will continue to exercise its discretion as to whether disciplinary action is warranted under the particular facts and circumstances.

3. Disclosure of the Dates of Consents of Audit Reports

Under the proposed rules, firms would be required to report on Form 2 the dates of any consent to an issuer's use of an audit report the firm previously issued to that issuer, if such consent constitutes the only instance of the firm issuing an audit report for that issuer during the reporting period. Three commenters expressed opposition to this proposed requirement on the basis that it would not be sufficiently meaningful to warrant the potential burden of gathering and reporting it,[5] with one noting that this information would in most, if not all, cases have already been listed in the previous year's public report on Form 2.[6]

We are not persuaded by the arguments raised by commenters that this requirement would be an undue burden, and we believe that it is not unreasonable for the Board to request firms to provide the dates of consents when such consent constitutes the only instance of the firm issuing an audit report for that issuer during the reporting period. We acknowledge that for the larger firms, they will likely need to institute additional controls to compile the information, but we do not believe the burden to be unreasonable.

4. Reporting of Withdrawn Audit Reports

The rules proposed by the Board include a requirement that a firm file a Form 3 when it withdraws an audit report and the related issuer has failed to comply with its requirement to file a Form 8–K regarding the event. Some commenters opposed this proposal and expressed the view that this matter fundamentally is about issuer conduct and, therefore, is more appropriately left to the Commission in the context of its disclosure framework and that such monitoring and reporting would create an unnecessary and duplicative burden on registered firms.[7]

Commenters expressed these same concerns during the Board's comment period and the Board responded to these comments by noting the following: (1) The point of this item is not have the firm draw the Board's attention to potential problems with an issuer's financial statements, but that a withdrawn audit report is a risk indicator concerning the auditor's conduct preceding the withdrawal, not merely a risk indicator concerning the issuer's financial statements; and (2) the Board has a regulatory interest in being aware of this information and possibly following up on that information for reasons directly related to its oversight of auditors.

The Commission agrees with the responses made by the PCAOB and believes that a requirement for registered firms to report this information is not unreasonable. In addition, we note the response of one commenter who indicated that registered firms already routinely track such instances.

5. Differing Approach in Forms 2 and 3 to the Reporting of the Engagement of Consultants or Professionals Subject to PCAOB/SEC Discipline

Form 2 requires registered firms to report information about certain types of relationships with individuals and entities who have specified disciplinary and other histories. One such reporting requirement under Part VII of Form 2 requires firms to report arrangements for services related to the firm's audit practice or related to services the firm provides to issuer audit clients. Section II of Form 3 includes a similar reporting trigger, however that trigger is not limited to individuals who provide audit services. Two commenters raised concerns about these requirements.[8]

Both commenters acknowledged a statement made by the Board in its adopting release where the Board expressed its view that limiting the scope of the Form 3 reporting requirement would negate the purpose of the reporting requirement, ''which is generally intended to gather information about new relationships with persons or

[4] The Commission also notes that the Board has been willing to provide further implementation guidance where necessary to explain its administration of similar requirements. See *http://www.pcaob.org/Registration/2004-03-11_FAQ.pdf.*

[5] See comments of E&Y, KPMG, and PwC.

[6] See comments of PwC.

[7] See comments of Deloitte and PwC.

[8] See comments of KPMG and Deloitte.

entities that are effectively restricted from providing auditing services.'' [9] Both commenters disagreed with the Board's response.

The Commission believes the Board appropriately explained its rationale for the difference in the Form 2 and Form 3 reporting requirements and believes that it is not unreasonable for the Board to request this information in the current manner in which it is requested.

6. Requests for Additional Implementation Guidance

As noted in the above discussion, the Commission has considered the concerns and issues raised by commenters and appreciates the feedback. While the Commission believes the aforementioned matters are not unreasonable requirements, the Commission does encourage the Board to monitor implementation of its annual and special reporting rules and to be open to issuing timely implementation guidance as necessary as to these and the other comments raised, as was done with the Board's implementation of its registration rules.[10]

B. Recommendation as to the Annual Fee

Section 102(f) of the Act requires the Board to ''assess and collect a registration fee and an annual fee from each registered firm in amounts that are sufficient to recover the Board's costs of processing and reviewing applications and annual reports.'' [11] The PCAOB has collected registration fees from every firm that has registered with the Board since 2003. However, the Board has not assessed or collected annual fees from any registered firms.

In our order approving the PCAOB's budget and accounting support fee for 2008, the Commission directed the PCAOB to, among other things, analyze historical and planned expenditures related to the review and processing of registrations and annual reports of public accounting firms.[12] We understand from this analysis that there are unrecovered historical costs that need to be collected from registered firms. In addition, the Board needs to determine the amount of current and future costs of reviewing and processing registrations and annual reports and how and over what period to recover those costs. These matters also are impacted due to changes to the Board's registration profile that may occur as a result of the requirement for auditors of non-public broker dealers to be registered with the Board for fiscal periods ending on or after January 1, 2009.

The Commission recommends that, in setting its annual fee under PCAOB Rule 2202, *Annual Fee,* the Board recover all of the unrecovered historical costs associated with the Board's review and processing of registration applications in the first annual fee billed to registered public accounting firms and that these costs be recovered only from registered public accounting firms that were registered prior to January 1, 2009, and that such bill be separately itemized. In addition, for consistency and to aid transparency, the Commission recommends that future costs associated with reviewing and processing registration applications, processing annual and special reporting, and related system maintenance and development costs be recovered over a time period that is consistent with the time period the PCAOB uses for its financial statement purposes to depreciate long-lived assets similar to that used by the PCAOB in processing registration applications and annual and special reports.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed PCAOB rules on annual and special reporting by registered public accounting firms are consistent with the requirements of the Act and the securities laws and are necessary or appropriate in the public interest or for the protection of investors.

It is therefore ordered, pursuant to Section 107 of the Act and Section 19(b)(2) of the Exchange Act, that proposed PCAOB Rules on Annual and Special Reporting by Registered Public Accounting Firms (File No. PCAOB–2008–04) be and hereby are approved.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–19838 Filed 8–18–09; 8:45 am]

BILLING CODE 8010–01–P

[9] See PCAOB Release No. 2008–004, June 10, 2008 [page 22].

[10] See, e.g., *http://www.pcaob.org/Registration/Registration_FAQ.pdf;* and *http://www.pcaob.org/Registration/2004-03-11_FAQ.pdf.*

[11] 15 U.S.C. 7212(f).

[12] See Release No. 34–56986 (December 18, 2007).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60491; File No. SR–CBOE–2009–057]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Related to Market-Maker Orders

August 12, 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 August 10, 2009, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The 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 is proposing to eliminate an order identification rule for Market-Maker and Specialist orders. The text of the proposed rule change is available on the Exchange's Web site *(http://www.cboe.org/Legal),* at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 6.73(d) currently provides that a Floor Broker holding an order for the account of a Market-Maker or Specialist shall verbally identify the order as such

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

in open outcry prior to requesting a quote. The rule was originally adopted in 2002 to ensure that Market-Maker and Specialist orders are not inadvertently represented as public customer orders, which receive preferential treatment in certain instances under CBOE Rules.[3]

When the rule was adopted, CBOE noted that orders submitted electronically are required to contain an account origin code. An origin code identifies the type of order such that CBOE can route it to the proper location. For example, ''C'' orders represent public customer orders. At that time, ''C'' orders were eligible for routing to the Retail Automatic Execution System (''RAES''), which CBOE no longer utilizes. In addition, only ''C'' orders were eligible for entry into the limit order book when RAES was utilized, and public customer orders resting in the limit order book had priority over other bids and offers represented in the trading crowd at the same price. ''M'' orders, on the other hand, indicate the order emanates from a CBOE Market-Maker. ''M'' orders were not eligible for routing to RAES or for entry into the limit order book when RAES was in use and instead were routed to a crowd printer.[4] Origin codes also assisted, and continue to assist, CBOE and The Options Clearing Corporation in the clearing of trades.

The 2002 rule change simply extended the origin code requirement to the open outcry environment by requiring Market-Maker and Specialist orders to be verbally identified as such. The premise was that requiring the identification of the orders as Market-Maker or Specialist orders would reduce the likelihood that such orders would be inadvertently treated as public customer orders.

The Exchange is proposing to eliminate this requirement as it is superfluous and unnecessary. First, as indicated above, the requirement to verbally identify Market-Maker and Specialist orders was introduced as an added requirement beyond the order marking requirement so that such orders would not be inadvertently represented as public customer orders on the RAES trading platform. However, the preferential treatment afforded to public customer orders was system enforced through the order marking requirement and, therefore, the requirement to verbally identify such orders was superfluous and unnecessary. Second, as indicated above, the Exchange no longer utilizes the RAES trading platform for which the order identification procedure was introduced. Instead CBOE utilizes the Hybrid Trading System, which permits public customer, Market-Maker, Specialist and other types of broker-dealer orders to be routed for automatic execution and to rest in a consolidated electronic book. Public customer orders resting in the consolidated electronic book do generally continue to have priority over other bids and offers at the same price when utilizing the Hybrid Trading System, however, this priority is system enforced for electronic transactions. For open outcry transactions, members are able to distinguish public customer orders in the consolidated electronic book because they are separately displayed through a public customer limit order book. Thus, the Market-Maker and Specialist verbal order identification requirement continues to be superfluous and unnecessary for the Hybrid Trading System. Third, the Exchange also notes that the CBOE Rules do not require the verbal identification of other order types, such as clearing firm and broker-dealer orders, in open outcry and the Exchange no longer believes it is necessary to single out and verbally identify Market-Maker and Specialist orders in open outcry either.

The Exchange notes that this rule change simply eliminates the requirement to verbally identify Market-Maker and Specialist orders in open outcry. Orders will continue to be required to contain an account origin code that identifies the type of order (*e.g.,* an origin code of ''M'' is still used for Market-Maker orders).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act[5] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, by proposing to eliminate Rule 6.73(d) and its requirement to verbally identify Market-Maker and Specialist orders, which the Exchange as [sic] determined to be superfluous and unnecessary, the Exchange believes the proposed rule change should serve to remove an unnecessary burden and simplify the administration of its rules, while also maintaining other existing procedures that would reduce the likelihood that such orders would be inadvertently treated as public customer orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

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

[3] *See* Securities Exchange Act Release No. 46102 (June 21, 2002), 67 FR 43692 (June 28, 2002) (SR–CBOE–2002–33) (immediately effective rule change relating to the identification of Market-Maker and Specialist orders).

[4] When RAES was utilized, the Exchange had also determined that clearing firm and broker-dealer orders utilizing origin codes ''F'' and ''B'' (but not Market-Makers or Specialist orders) were allowed to access RAES for automatic executions, but such broker-dealer orders could not be placed in the limit order book.

[5] 15 U.S.C. 78s(b)(1).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

Number SR–CBOE–2009–057 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–057. 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 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–CBOE–2009–057 and should be submitted on or before September 9, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–19893 Filed 8–18–09; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60496; File No. PCAOB–2008–05]

Public Company Accounting Oversight Board; Order Approving Proposed Rules on Succeeding to the Status of a Predecessor Firm

August 13, 2009.

I. Introduction

On August 4, 2008, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission'') proposed rules (File No. PCAOB–2008–05) on succeeding to the status of a predecessor firm, pursuant to Section 107 of the Sarbanes-Oxley Act of 2002 (the ''Act''). Notice of the proposed rules was published in the **Federal Register** on June 18, 2009.[1] The Commission did not receive any comment letters relating to this rule proposal. For the reasons discussed below, the Commission is granting approval of the proposed rules.

II. Description

On July 28, 2008, the Board adopted rules and submitted to the Commission a rule proposal consisting of two new rules (PCAOB Rules 2108–2109) and a new form, Form 4, related to succeeding to the registration status of a predecessor firm. The proposed rules allow, in certain circumstances, a registered public accounting firm's registration status to continue with a firm that survives a merger or other change in the registered firm's legal form. If approved by the Commission, the rules on succession reporting would take effect 60 days after Commission approval. For firms that had a change in legal form, or that resulted from an acquisition or combination, in the period between the firm's registration and the effective date of the rules, those firms will be required to report the change on Form 4 within 14 days after the Commission's approval date.

The proposed rules provide the opportunity for continuity of a firm's registration in two categories: (1) changes related to a firm's legal form of organization or jurisdiction; and (2) transactions in which a registered firm is acquired by an unregistered entity or combines with other entities to form a new legal entity. The events to which the rules apply are events for which a firm plans, not unanticipated events to which a firm reacts. The proposed rules are designed to facilitate a firm's ability to factor into its planning, and to predict with certainty, whether and how continuity of registration can be maintained.

The proposed rules set a deadline of 14 days for a firm to file a report on Form 4, and require certain information and representations in the form. If the firm files the form within the required timeframe, provides the required representations, and certifies that all required information is included, then continuity of registration is automatic, without the need for separate Board action. The rules and Form 4 also build in safeguards to ensure that the Form 1 registration process is not circumvented in circumstances where that process is more appropriate than Form 4 succession.

III. Discussion

The Commission did not receive any comment letters relating to the rule proposal.

IV. Conclusion

The Commission finds that the proposed PCAOB rules on succeeding to the registration status of a predecessor firm are consistent with the requirements of the Act and the securities laws and are necessary or appropriate in the public interest or for the protection of investors.

It is therefore ordered, pursuant to Section 107 of the Act and Section 19(b)(2) of the Exchange Act, that proposed PCAOB Rules on Succeeding to the Registration Status of a Predecessor Firm (File No. PCAOB–2008–05) be and hereby are approved.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–19839 Filed 8–18–09; 8:45 am]

BILLING CODE 8010–01–P

[1] See Release No. 34–60108 (June 12, 2009); 74 FR 29005 (June 18, 2009).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60492; File No. SR–NASDAQ–2009–074]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center

August 12, 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 31, 2009, The NASDAQ Stock Market LLC (''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. Pursuant to Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing.

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement this rule change on August 3, 2009. The text of the proposed rule change is available at *http://nasdaqomx.cchwallstreet.com/*, at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing several changes to the fees associated with the use of the NASDAQ Market Center. First, NASDAQ is modifying the fees applicable to routing orders to NASDAQ OMX BX. Currently, NASDAQ passes through all fees charged and rebates provided by NASDAQ OMX BX with respect to orders routed to it. Pursuant to the change, NASDAQ will provide this pass-through only with respect to orders that either (i) check the NASDAQ book prior to routing and are then directed to route first to NASDAQ OMX BX and then to NYSE or NYSE Amex; or (ii) route to destinations other than NASDAQ prior to checking the NASDAQ book but that are designated to return to NASDAQ after being routed. For directed orders that route to NASDAQ OMX BX, NASDAQ will charge $0.0002 per share executed in the case of orders for securities listed on NASDAQ or NYSE, and $0.0022 per share executed in the case of orders for securities listed on other exchanges. For other orders routed to NASDAQ OMX BX, NASDAQ will charge $0.0026 per share executed.

Second, for securities listed on NASDAQ or NYSE, NASDAQ is reducing the volume level required for a member to qualify for NASDAQ's most favorable ''take rate'' for the months of August and September 2009. Currently, a member pays a fee of $0.0027 per share executed if it has an average daily volume in all securities during the month of (i) more than 150 million shares of liquidity routed, removed, and/or provided, and (ii) more than 35 million shares of liquidity provided. During August and September 2009, the required volume of shares of liquidity routed, removed, and/or provided will be reduced to 140 million shares, with the required volume of liquidity provided remaining unchanged. The change reflects expectations of overall lower trading volumes during these months.

Third, NASDAQ is eliminating special fees for orders that execute at NYSE Arca as odd-lot transactions. The change reflects an announcement by NYSE Arca that it will itself eliminate special fees applicable to odd-lot transactions.[5] Similarly, NASDAQ is modifying special fees applicable to routed orders that execute at NYSE as odd-lot transactions. Specifically, a special fee of $0.0005 per share executed for orders that execute at NYSE as odd-lots after checking the NASDAQ book will be eliminated; thus, such orders would pay the normal routing fees applicable to orders that are not odd lots. Fees applicable to orders that execute at NYSE as odd-lots without checking the NASDAQ book remain unchanged.

Fourth, NASDAQ is modifying its fees for orders routed to NYSE that execute in its opening or closing process to reflect announced changes to NYSE's pricing for such orders.[6] The fee for ''market at the close'' and ''limit at the close'' orders will be $0.0007 per share executed, and the fee for ''at the opening'' or ''at the opening only'' orders will be $0.0005, subject to a monthly cap of $10,000 per member.

Fifth, NASDAQ is adding language to paragraph (a) of Rule 7018 to clarify that for purposes of determining a member's shares of liquidity routed, orders that do not attempt to execute in the NASDAQ Market Center for the full size of the order prior to routing are not counted. NASDAQ is also deleting obsolete language pertaining to calculating a member's volume during the month of July 2009. Finally, NASDAQ is making several changes to the text of Rule 7018 to make the punctuation and phraseology of the rule consistent throughout.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. NASDAQ is reducing the level of liquidity required to receive a favorable take rate for orders in stocks listed on NASDAQ or NYSE, resulting in potential price reductions for members with large volumes of liquidity routed, accessed, and/or provided. NASDAQ is also reducing the circumstances under which it will pass through charges and rebates for orders routed to NASDAQ OMX BX, and increasing fees for routing certain orders that execute at NYSE as odd-lots. Finally, NASDAQ is making modifications in its routing charges to reflect announced changes in the fees that it will pay to route orders to NYSE and NYSE Arca.

The impact of the changes upon the net fees paid by a particular market participant will depend upon a number of variables, including its monthly volume, the order types it uses, and the prices of its quotes and orders (*i.e.,* its propensity to add or remove liquidity and to set the best bid and offer). NASDAQ notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See http://www.nyse.com/pdfs/Arca_Fee_Schedule_Update.pdf.*

[6] *See http://www.nyse.com/pdfs/NYSE_Pricing_Change_20090801.pdf.*

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

deem fee levels at a particular venue to be excessive. NASDAQ believes that its fees remain competitive with other venues and are reasonable and equitably allocated to those members on the basis of whether they opt to direct orders to NASDAQ.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [9] and subparagraph (f)(2) of Rule 19b-4 thereunder.[10] At any time within 60 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–2009–074 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–2009–074. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–074 and should be submitted on or before September 9, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–19894 Filed 8–18–09; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(a)(ii).

[10] 17 CFR 240.19b-4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60495; File No. SR–NYSEArca–2009–72]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing the Schedule of Fees and Charges for Exchange Services

August 13, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 3, 2009, NYSE Arca, Inc. (''NYSE Arca'' 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 self-regulatory organization. NYSE Arca filed the proposal pursuant to Section 19(b)(3)(A) [4] of the Act and Rule 19b–4(f)(2) [5] thereunder. 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 the section of its Schedule of Fees and Charges for Exchange Services (the ''Schedule''). While changes to the Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on August 3, 2009. The text of the proposed rule change is attached as Ex.5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make multiple changes to its Schedule that will take effect on August 3, 2009. A more detailed description of the proposed changes follows.

Closing Auctions:

The Exchange proposes to change the fee charged for Market-On-Close and Limit-On-Close Orders executed in the closing auction from $0.0005 to $0.0007 per share. This change applies universally throughout the Schedule to

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

each instance that a fee for Market-On-Close and Limit-On-Close Orders is explicitly stated. The Exchange also proposes to add to the Schedule a $0.0007 fee for PO+ Market-On-Close and Limit-On-Close Orders routed to NYSE Amex. The proposed fees are part of the Exchange's continued effort to attract and enhance participation in the Closing Auctions by offering attractive rates.

IOI Credit:

The Exchange proposes to add a $0.0015 per share credit for each IOI that results in an execution in excess of 15 million shares based on average daily volume (''ADV'') per month. This new $0.0015 per share credit is an incremental credit that only applies to those shares executed in excess of 15 million shares ADV. ETP Holders qualifying for the Tier 1 IOI credit will now receive a $.0012 per share credit for each share up to and including 15 million, and a $0.0015 per share credit for each share in excess of 15 million. For example, an ETP Holder that sends IOI's to the Exchange resulting in execution with an average daily share volume per month equal to 16 million shares will receive a $0.0012 credit for the first 15 million shares and a $0.0015 credit for one million shares (15,000,001 to 16,000,000). The proposed rates are part of the Exchange's continued effort to attract and enhance participation in the IOI program, by offering attractive rebates and volume based incentives.

Odd-Lot Pricing:

The Exchange also proposes to eliminate its odd-lot pricing structure. Previously the Exchange charged $0.03 per share for odd-lot orders executed against orders residing in the book in Tape A and Tape B securities, and $0.0035 per share for Tape C securities. The Exchange paid a $0.02 per share credit to market makers that executed against an odd-lot order. The Exchange also had odd-lot pricing associated with odd-lots routed to different market centers. Under this proposal the Exchange will eliminate all distinct odd-lot pricing. ETP Holders executing odd-lots will now be charged and credited in the same way that round-lots are charged and credited. This change will simplify the Schedule and treat odd-lots in the same manner as round-lots.

The Exchange believes the proposed fees are reasonable and equitable in that they apply uniformly to all ETP Holders. The proposed changes will become operative on August 3, 2009.

The Exchange notes that it is making technical changes to correct the footnote numbering.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the ''Act''),[6] in general, and Section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The proposed rates are part of the Exchange's continued effort to attract and enhance participation on the Exchange, by offering attractive rebates for liquidity providers and volume-based incentives. The Exchange believes that the proposed changes to the Schedule are equitable in that they apply uniformly to our Users.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[8] of the Act and subparagraph (f)(2) of Rule 19b–4[9] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca on its members.

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.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

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–NYSEArca–2009–72 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–NYSEArca–2009–72. 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 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–NYSEArca–2009–72 and should be submitted on or before September 9, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–19895 Filed 8–18–09; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

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*.

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 19, 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. *State Supplementation Provisions: Agreement; Payments—20 CFR 416.2095–416.2098, 416.2099—0960–0240.* Section 1618 of the Social Security Act contains pass-along provisions of the Social Security amendments. These provisions require states that supplement the Federal Supplemental Security Income (SSI) payments to pass along Federal cost-of-living increases to individuals who are eligible for State supplemental payments. If a state fails to keep payments at the required level, it becomes ineligible for Medicaid reimbursement under Title XIX of the Social Security Act. SSA uses the information to determine a state's eligibility for Medicaid reimbursement. Respondents are state agencies administering supplemental programs.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 23.

Frequency of Response: 1.

Average Burden per Response: 60 minutes

Estimated Annual Burden: 23 hours.

2. *Vocational Rehabilitation Provider Claim—20 CFR 404.2108(b), 404.2117(c)(1)&(2), 404.2101(b)&(c), 404.2121(a), 416.2208(b), 416.2217(c)(1)&(2), 416.2201(b)&(c), 416.2221(a)—0960–0310.* SSA refers certain disability beneficiaries to state Vocational Rehabilitation (VR) agencies. The state VR agencies use the SSA–199 to make claims for reimbursement of the costs they incur when providing VR services for the beneficiaries. SSA uses the information on the SSA–199 to determine whether or not, and how much, to pay the state VR agencies under SSA's VR program. Respondents are state VR agencies who offer vocational and employment services for Social Security and SSI recipients.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 80.

Type of response (as explained below)	Number of respondents	Frequency of response	Total responses	Average burden per response (minutes)	Estimated annual burden hours
a. SSA–199 (404.2108 & 416.2208)	80	160 each/year	12,800	23	4,907
b. (404.2117 & 416.2217)	80	1 per year	80	60	80
c. (404.2121 & 416.2221)	80	2–3 per year	200	100	333
Total			13,080		5,320

Estimated Annual Burden: 5,320 hours.

3. *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Learning, Hospitals and Other Non-Profit Organizations—20 CFR 435—0960–0616.* SSA's regulations at 20 CFR 435 of the Code of Federal Regulations provide SSA's standards for administering grants and agreements it awards to institutions of higher learning, hospitals, and other non-profit and/or commercial organizations. The regulations discuss administrative guidelines and reporting, recordkeeping, and disclosure requirements for recipients of grants and agreements. SSA uses the information to monitor the progress and successful completion of funded projects. Respondents are recipients of grants and agreements with SSA.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 127.

Section No.	Number of respondents	Frequency of response	Average burden per response (hours)	Estimated annual burden (hours)
435.23 Rec-kp	107	Monthly (12)	1	1,284
435.25 Rpt	127	Biannually (2)	4	1,016
435.51 Rpt	127	Quarterly (4)	12	6,096
435.53 Rec-kp	127	Annually (1)	8	1,016
Total				9,412

4. *Ticket to Work Program Evaluation Survey (National Beneficiary Survey)—0960–0666.* The 1999 Ticket to Work and Work (TTW) Incentives Improvement Act, Public Law 106–170, established the TTW program to create additional access to services for SSA beneficiaries through a new system of public and private Employment Network (EN) providers. The legislation also mandated an evaluation of the program. In February 2003, SSA began a multi-phase evaluation of this program. Although we originally planned to complete the final data collection wave by 2009, we decided to postpone the final evaluation until 2010 because of significant changes in the TTW program in 2008 (such as changes to the way state VR agencies can provide services). In this request, we are seeking clearance for round four of the National Beneficiary Survey and two associated experiments (all three activities will use the same data). The respondents are Social Security beneficiaries and TTW enrollees. As with the previous three phases of this project, a contractor will conduct this study for SSA.

Type of Collection: New information collection (reinstatement with revisions).

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Estimated annual burden hours
National Beneficiary Sample	2,400	1	.750	1,800
Ticket Participant Sample	3,000	1	.917	2,751
Grand Total—Burden for NBS				
Grand Total for All	5,400	1		4,551

5. *Special Benefits for Certain World War II Veterans—20 CFR 408, Subparts G, H, I, J & L—0960–0683.* Title VIII of the Social Security Act, Special Benefits for Certain World War II Veterans (SVB), allows, under certain circumstances, the payment of SVB to qualified veterans who reside outside the United States. The accompanying regulations set out the requirements an individual must meet to establish continuing eligibility to, and insure correct payment amount of, SVB and/or state recognition payments. Additionally, they provide requirements that a state must meet to elect, modify, or terminate a Federal agreement. For those information collection requests (ICR) cleared through SSA forms, the public reporting burden is accounted for in the ICRs for the various forms. A 1-hour placeholder * burden is assigned to those specific reporting requirements contained in the rule. The respondents are individuals who receive Title VIII SVB, and/or states that elect Federal administration of their recognition payments.

Type of Request: Extension of an OMB-approved information collection.

Section No.	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
§ 408.704–.714	1			*1
§ 408.802(b)	5	1	15	1
§ 408.814	5	1	15	1
§ 408.820(c)	5	1	15	1
§ 408.923(b)	1			*1
§ 408.931(b) & § 408.932(d)	1			*1
§ 408.932(c)	2	1	15	1
§ 408.932(e)	2	1	15	1
§ 408.941(b) & § 408.942	2	1	15	1
§ 408.944(a)	2	1	30	1
§ 408.1000(a)	1			*1
Total	27			11

6. *Certificate of Incapacity—5 CFR 890.302(d)—0960–0739.* Rules governing the Federal Employee Health Benefits (FEHB) plan require that the physician verify disability of Federal employees' children ages 22 and over to retain health benefits under the employees' plans. The physician must verify that the adult child has a disability that meets the following criteria: (1) Pre-dates the child's 22nd birthday; (2) is very serious; and (3) can be expected to last at least one year. Physicians use Form SSA–604, the Certificate of Incapacity, to document and certify the disability of children ages 22 and over whose parents are SSA employees. SSA uses the information to determine adult children's (age 22 and above) eligibility for coverage under a parent's FEHB plan. The respondents are physicians of SSA employees' children ages 22 or over who are seeking to retain health benefits under their parent's FEHB coverage.

Type of Request: New information collection.

Number of Respondents: 50.

Frequency of Response: 1.

Average Burden per Response: 45 minutes.

Estimated Annual Burden: 38 hours.

7. *Representative Payment Policies and Administrative Procedures for Imposing Penalties for False or Misleading Statements or Withholding of Information—0960–0740.* This information collection request comprises several regulation sections that provide additional safeguards for Social Security beneficiaries whose representative payees receive their payments. Representative payees are required to notify SSA of any event or change in circumstances that would affect receipt of benefits or performance of payee duties. SSA uses the information to determine continued eligibility for benefits, the amount of benefits due and if the payee is suitable to continue serving as payee. The

respondents are representative payees who receive and use benefits on behalf of Social Security beneficiaries.

Type of Collection: Extension of an OMB-approved information collection.

Regulation section	Number of respondents	Completion time (hours)	Burden (hours)
404.2035(d)	550,000	.083	45,650
404.2035(f)	5,500	.083	457
416.635(d)	300,000	.083	24,900
416.635(f)	3,000	.083	249
Total	858,500		71,256

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 18, 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. *Medicare Part B Income-Related Premium—Life-Changing Event Form 0960–0735.* Per the Medicare Modernization Act of 2003, selected recipients of Medicare Part B insurance pay an income-related monthly adjustment amount (IRMAA). The Internal Revenue Service uses income tax return data to determine the amount of the IRMAA. SSA uses Form SSA–44 to determine if a recipient qualifies for a reduction in IRMMA. If affected Medicare Part B recipients believe more recent tax data should be used because a life-changing event has occurred that significantly reduces his/her income, they can report these changes to SSA and ask for a new initial determination of his/her IRMAA. The respondents are Medicare Part B recipients who have a modified adjusted gross income over a high-income ''threshold.''

Note: This is a correction notice. SSA published this information collection as an extension on June 25, 2009, at 74 FR 30353. Since we are revising the Privacy Act Statement, this is now a revision of an OMB-approved information collection.

Type of Request: Revision of an OMB-approved information collection.

Method of information collection	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Personal Interview	128,000	1	30	64,000
Form	32,000	1	45	24,000
Totals	160,000			88,000

Dated: August 14, 2009.

Elizabeth A. Davidson,

Director, Center for Reports Clearance, Social Security Administration.

[FR Doc. E9–19905 Filed 8–18–09; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2009–0018]

Privacy Act of 1974, as Amended; Computer Matching Program (Social Security Administration/Department of the Treasury, Internal Revenue Service (SSA/IRS))—Match Number 1310

AGENCY: Social Security Administration (SSA).

ACTION: Notice of renewal of an existing computer matching program scheduled to expire on October 3, 2009.

SUMMARY: In accordance with the Privacy Act, as amended, this notice announces renewal of an existing computer matching program that we are currently conducting with IRS.

DATES: We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). Renewal of the matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 965–0201 or writing to the Deputy Commissioner for Budget, Finance and Management, 800 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Deputy Commissioner for Budget, Finance and Management as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving federal agencies could be performed and adding certain protections for persons applying for, and receiving, federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by federal agencies when records in a system of records are matched with other federal, state, or local government records. It requires federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with other agencies participating in the matching programs;

(2) Obtain approval of the matching agreement by the Data Integrity Boards of the participating federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all our computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: May 22, 2009.

Mary Glenn-Croft,

Deputy Commissioner for Budget, Finance and Management.

Notice of Computer Matching Program, SSA With IRS

A. Participating Agencies

SSA and IRS

B. Purpose of the Matching Program

This agreement sets forth the terms under which IRS agrees to disclose to us certain tax return information for the purpose of establishing the correct amount of Medicare Part B premium subsidy adjustment under Section 1839(i) of the Social Security Act (Act), which was enacted by Section 811 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

C. Authority for Conducting the Matching Program

Section 6103(1)(20) of the Internal Revenue Code (IRC 6103(1)(20)) authorizes IRS to disclose specified tax return information to us with respect to taxpayers whose Part B insurance premium may (according to IRS records) be subject to adjustment pursuant to Section 1839(i) of the Act, for the purpose of establishing the amount of any such adjustment.

Section 1839(i) of the Act requires us to determine the amount of a beneficiary's Part B premium subsidy adjustment if the Modified Adjusted Gross Income (MAGI) is above the applicable threshold as established in Section 1839(i) of the Act. Pursuant to Section 1839(i) of the Act (42 U.S.C. 1395r), we determine whether a Medicare Part B beneficiary pays a larger percentage of the Part B premium than a beneficiary with income below the applicable threshold.

D. Categories of Records and Persons Covered by the Matching Program

We will disclose to IRS the names and Social Security numbers (SSNs) of all appropriate beneficiaries who either are enrolled or have become entitled to Medicare Part B. On a weekly basis, we will provide IRS with this information with respect to SSA Part B beneficiaries who:

a. Are enrolled in Medicare under the rules in Section 1837 of the Act (42 U.S.C. 1395p) and have not dis-enrolled from Medicare Part B; or

b. Have filed applications specifically for Medicare Part B; or

c. Have been determined to have retroactive Medicare Part B entitlement.

As part of the weekly transmission, we will include the name, SSN, premium year, and income threshold amounts for new Part B enrollees. Once each year, we will provide the name, SSN, premium year, and income threshold amounts for all appropriate enrollees in Part B. We will use information obtained in this annual request to determine Part B premium subsidy adjustments for the coming premium year. At the time of the annual exchange, we include the name, SSN, premium year, income threshold amounts, and requested tax year with respect to all enrollees who asked us to use a more recent tax year or for beneficiaries where IRS provided 3-year-old tax data on the initial request. We will use the information obtained to correct Part B premium subsidy adjustments for the requested premium year.

On a weekly basis, IRS will extract MAGI data pertaining to the Part B enrollees from the Return Transaction File. IRS will extract MAGI data pertaining to the tax year beginning in the second calendar year preceding the year for which the premium subsidy adjustment is being calculated (the premium year). When MAGI data for the second tax year preceding the premium year is not available as of October 16 of the year immediately preceding the premium year, MAGI data pertaining to the third tax year preceding the premium year will be provided to us.

For the annual request, IRS will extract MAGI data as described above and provide the responsive records to us. For requests seeking more recent tax year data, IRS will extract MAGI data of the requested year, and provide the information to us.

E. Inclusive Dates of the Matching Program

The matching program will become effective no sooner than 40 days after notice of the matching program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. E9–19920 Filed 8–18–09; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; New System of Records

AGENCY: Social Security Administration (SSA).

ACTION: Proposed system of records and routine uses.

SUMMARY: We are issuing public notice of our intent to establish a new system of records and routine uses applicable to this system of records in accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)). The proposed system of records is entitled the *Race and Ethnicity Collection System* (60–0104), hereinafter referred to as the *RECS* system of records. We discuss the system of records in the **SUPPLEMENTARY INFORMATION** section below. We invite public comments on this proposal.

DATES: We filed a report of the proposed *RECS* system of records and routine use disclosures with the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, the Chairman of the House Committee on Oversight and Government Reform, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on August 13, 2009. The proposed *RECS* system of records and routine uses will become effective on October 9, 2009, unless we receive comments before that date that would result in a contrary determination.

ADDRESSES: Interested persons may comment on this publication by writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments we receive will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Alicia Matthews, Social Insurance Specialist (Senior Analyst), Disclosure Policy Development and Services Division 1, Office of Privacy and Disclosure, Office of the General

Counsel, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 965–1723, e-mail: *alicia.matthews@ssa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed RECS System of Records

A. General Background

In October 1997, the Office of Management and Budget (OMB) announced revised government-wide standards for Federal agencies collecting race and ethnicity (RE) data (62 FR 58782, Oct. 30, 1997, ''*Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity*'').

We need RE data for program evaluation, research, and statistical reporting purposes. We do not use RE data to make decisions about a person's application for benefits or any other programmatic determination. Prior to 1987, we collected RE data from persons on a voluntary basis when they applied for either original or replacement Social Security number (SSN) cards. Since 1987, however, we have issued most original SSN cards through an enumeration-at-birth program (EAB), which is administered by the States. As the States do not collect RE information, we do not maintain RE information for EAB applicants. Since 2002, the Department of Homeland Security (DHS) has taken applications for SSN cards from aliens entering the United States through the enumeration-at-entry (EAE) program. DHS does not provide us with RE information on EAE applicants.

We currently maintain the RE data that we collect in an existing Privacy Act system of records, the *Master Files of SSN Number Holders and SSN Applications.* The RE data we currently collect is limited to these categories: Asian, Asian-American or Pacific Islander; Hispanic; Black (Not Hispanic); North American Indian or Alaskan Native; and White (Not Hispanic). Under the current standards, persons who provide us race information can designate only one of the categories, and they do not have the option of designating both their race and ethnicity.

We will no longer collect RE information using our limited categories. Pursuant to the OMB mandated standards, we will use the following categories to collect RE information:

Race

- Alaska Native,
- American Indian,
- Asian,
- Black/African American,
- Native Hawaiian,
- Other Pacific Islander, and
- White.

Ethnicity

- Hispanic/Latino.

Under the OMB standards, persons may voluntarily designate one or more categories under ''Race'' and designate ''yes'' or ''no'' under the ''Ethnicity'' category.

We will collect RE information that conforms to the OMB standards for the continuing purposes of program evaluation, research, and statistical reporting. Using the OMB standards, we will maintain all future collections of RE data in a separate electronic system covered by the proposed *RECS* system of records. The proposed *RECS* system of records will cover RE data about persons issued original or replacement SSN cards who do not apply through the EAB or EAE programs.

B. Collection and Maintenance of the Data for the Proposed RECS System of Records

We will collect, maintain, and retrieve personally identifiable information (*i.e.,* SSNs) of persons who voluntarily provide their RE data when they request an original or replacement SSN card from us in an electronic system covered by the proposed *RECS* system of records. Therefore, the RECS information collection is a system of records as defined by the Privacy Act.

II. Proposed Routine Use Disclosures of Data Covered by the Proposed *RECS* System of Records

A. Proposed Routine Use Disclosures

We are proposing to establish the following routine uses of the information covered by the proposed *RECS* system of records.

1. To the Office of the President in response to an inquiry from that office made at the request of the subject of the record or a third party on that person's behalf.

We will disclose RE information under this routine use only when the Office of the President makes an inquiry relating to information contained in this system of records and indicates that it is acting on behalf of the person whose record is requested.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf.

We will disclose RE information under this routine use only when a member of Congress, or member of his or her staff, makes an inquiry relating to information contained in this system of records and indicates that he or she is acting on behalf of the person whose record is requested.

3. To the Department of Justice (DOJ), a court, other tribunal, or another party before such court or tribunal when:

(a) SSA or any of our components;

(b) Any SSA employee in his or her official capacity;

(c) Any SSA employee in his or her individual capacity when DOJ (or SSA when we are authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof when we determine that the litigation is likely to affect the operations of SSA or any of our components, is party to litigation or has an interest in such litigation, and we determine that the use of such records by DOJ, a court, other tribunal, or another party before such court or tribunal is relevant and necessary to the litigation. In each case, however, we must determine that such disclosure is compatible with the purpose for which we collected the records.

We will disclose RE information under this routine use as necessary to enable DOJ to effectively defend us, our components, or our employees in litigation when the use of information from the proposed system of records is relevant and necessary to the litigation and compatible with the purpose of the information collection. We will also disclose information to ensure that courts, other tribunals, and parties before such courts or tribunals, have appropriate information when relevant and necessary.

4. To a Federal, State, or congressional support agency (*e.g.,* Congressional Budget Office and the Congressional Research Staff in the Library of Congress) for research, evaluation, or statistical studies. Such disclosures include, but are not limited to:

(a) Releasing information to assess the extent to which one can predict eligibility for Supplemental Security Income (SSI) payments or Social Security disability insurance benefits or other programs under the Social Security Act;

(b) Examining the distribution of benefits under programs of the Social Security Act by economic and demographic groups and how these differences might be affected by possible changes in policy;

(c) Analyzing the interaction of economic and non-economic variables affecting entry and exit events and duration in the Title II Old Age,

Survivors, and Disability Insurance and the Title XVI SSI disability programs; and,

(d) Analyzing retirement decisions focusing on the role of Social Security benefit amounts, automatic benefit recomputation, the delayed retirement credit, and the retirement test.

We may make these disclosures if we:

(1) Determine that the routine use does not violate legal limitations under which the record was provided, collected, or obtained;

(2) Determine that the purpose for which the proposed use is to be made:

(i) Cannot reasonably be accomplished unless the record is provided in a form that identifies a person;

(ii) Is of sufficient importance to warrant the effect on, or risk to, the privacy of the person which such limited additional exposure of the record might bring;

(iii) Has a reasonable probability of being accomplished;

(iv) Is of importance to the programs under the Social Security Act and beneficiaries of such programs or is for an epidemiological research project that relates to programs under the Social Security Act or beneficiaries of such programs;

(3) Require the recipient of information to:

(i) Establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record and agree to on-site inspection by our employees, our agents, or by independent agents of the recipient agency of those safeguards;

(ii) Remove or destroy the information that enables the person to be identified at the earliest time that the recipient can do so consistent with the purpose of the project, unless the recipient receives written authorization from us that it is justified, based on research objectives, in retaining such information;

(iii) Make no further use of the records except:

(a) Under emergency circumstances affecting the health and safety of a person following written authorization from us;

(b) For disclosure to an identified person approved by us for the purpose of auditing the research project;

(iv) Keep the data as a system of statistical records. A statistical record is one which is maintained only for statistical and research purposes and which is not used to make any determination about a person;

(4) Secure a written statement by the recipient of the information attesting to the recipient's understanding of, and willingness to abide by, these provisions.

The use of the revised OMB standards, which include more categories, will permit us to develop richer and more comprehensive information that can be used in actuarial, epidemiological, economic, and other social science projects that will ultimately benefit us, the public, and other Federal, State, or congressional support agencies' programs. The use of the information will allow new studies to occur regarding the administration of the Social Security program and other related purposes that we and other agencies might not otherwise undertake due to the lack of data. Other related purposes include studies conducted by the Centers for Medicare and Medicaid Services to address health care disparities on the basis of race, ethnicity, and gender for Medicare and Medicaid beneficiaries under Titles XVIII and XIX of the Social Security Act.

5. To our contractors and grantees performing program evaluation, research, and statistical activities directly relating to this system of records, and to contractors or grantees for another Federal or State agency performing such activities.

We occasionally contract out certain agency functions when doing so contributes to effective and efficient operations. Other Federal and State agencies also occasionally use contractors or grantees to perform program evaluation and analysis. We must be able to give the contractor or grantee the information needed to fulfill the contract requirements. In these situations, we require safeguards in the contract that prohibit the contractor from using or disclosing the information for any purpose other than that described in the contract. We also assure that contractors for other Federal and State agencies adhere to these safeguards.

6. To student volunteers, persons working under a personal services contract, and others who are not technically Federal employees, when they are performing work for us as authorized by law, and they need access to information in our records in order to perform their assigned agency duties.

We will disclose RE information under this routine use only when we use the services of student volunteers and participants in certain educational, training, employment, and community service programs when they need access to RE information in this system to perform their assigned agency duties.

7. To the General Services Administration (GSA) and the National Archives Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by the NARA Act, information that is not restricted from disclosure by Federal law for their use in conducting records management studies.

We will disclose RE information under this routine use only when it is necessary for GSA and NARA to have access to the information covered by this proposed system of records. The Administrator of GSA and the Archivist of NARA are authorized by Title 44 U.S.C. 2904, as amended, to promulgate standards, procedures, and guidelines regarding records management and conducting records management studies. Title 44 U.S.C. 2906, as amended, provides that GSA and NARA are authorized to inspect Federal agencies' records for records management purposes and that agencies are to cooperate with GSA and NARA.

8. To the appropriate Federal, State, and local agencies, entities, and persons when (1) we suspect or confirm that the security or confidentiality of information in this system of records has been compromised; (2) we determine 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 our other systems or programs that rely upon the compromised information; and (3) we determine that disclosing the information to such agencies, entities, and persons is necessary to assist in our efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. We will use this routine use to respond only to those incidents involving an unintentional release of our records.

We will disclose RE information under this routine use specifically in connection with response and remediation efforts in the event of an unintentional release of agency information, otherwise known as a ''data security breach.'' This routine use will protect the interests of the people whose information is at risk by allowing us to take appropriate steps to facilitate a timely and effective response to a data breach. The routine use will also help us improve our ability to prevent, minimize, or remedy any harm that may result from a compromise of data covered by this system of records.

9. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary:

(a) To enable them to assure the safety of our employees and the public, the

security of our workplace, and the operation of our facilities; or

(b) To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of our facilities.

We will disclose RE information under this routine use to law enforcement agencies and private security contractors when information is needed to respond to, investigate, or prevent activities that jeopardize the security and safety of the public, employees, or workplaces, or that otherwise disrupt the operation of our facilities. We will disclose information to assist in prosecuting persons charged with violating a Federal, State, or local law in connection with such activities.

B. Compatibility of Proposed Routine Uses

The Privacy Act (5 U.S.C. 552a(b)(3)) and our disclosure regulations (20 CFR Part 401) permit us to disclose information under a published routine use for a purpose that is compatible with the purpose for which we collected the information. The proposed routine uses will ensure that we efficiently perform our functions relating to the purpose and administration of the proposed *RECS* system of records. Our regulations provide that we will disclose information when a law specifically requires disclosure (Section 401.120). Federal law requires the disclosures that we make under routine use number seven. We will disclose information under routine use number seven to the extent another Federal law does not prohibit the disclosure; *e.g.,* the Internal Revenue Code generally prohibits the disclosure of tax return information which we receive to maintain individual earnings records. Therefore, all routine uses are appropriate and meet the relevant statutory and regulatory criteria.

III. Record Storage Medium and Safeguards for the Information Covered by the Proposed *RECS* System of Records

We will maintain RE information covered by the proposed *RECS* system of records in electronic and paper form. We will keep paper records in locked cabinets or in otherwise secure areas. We will safeguard the security of the electronic information covered by the proposed *RECS* system of records by requiring the use of access codes to enter the computer system that will house the data. We will permit only our authorized employees and contractors who require the information to perform their official duties to access the information covered by the proposed *RECS* system of records.

We provide appropriate security awareness and training annually to all our employees and contractors that include reminders about the need to protect personally identifiable information and the criminal penalties that apply to unauthorized access to, or disclosure of, personally identifiable information. *See* 5 U.S.C. 552a(i)(1). Furthermore, employees and contractors with access to databases maintaining personally identifiable information must sign a sanction document annually, acknowledging their accountability for making unauthorized access to, or disclosure of, such information.

IV. Effects of the Proposed *RECS* System of Records on the Rights of Individuals

We will maintain RE information that is relevant to our agency's program evaluation, research, and statistical reporting functions in the electronic system covered by the proposed *RECS* system of records. We will not use RE information to make a determination about entitlement to insurance coverage or benefits under the Social Security Act. We employ safeguards to protect the confidentiality of all personally identifiable information in our possession. We will adhere to the provisions of the Privacy Act and other applicable Federal statutes that govern our use and disclosure of the RE information that is covered by the proposed *RECS* system of records. We will disclose information under the routine uses discussed in this publication only as necessary to accomplish the stated purposes. Therefore, we do not anticipate that the proposed *RECS* system of records or routine use disclosures will have any unwarranted adverse effect on the privacy or other rights of persons who request an original or replacement SSN card from us.

Dated: August 12, 2009.

Michael J. Astrue,

Commissioner.

System Number:

60–0104.

SYSTEM NAME:

Race and Ethnicity Collection System (RECS), Social Security Administration (SSA)

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

SSA, Office of Telecommunications and Systems Operations, 6401 Security Boulevard, Baltimore, Maryland 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Successfully enumerated applicants for Social Security number (SSN) cards, other than those who receive cards through the enumeration-at-birth (EAB) or enumeration-at-entry programs (EAE), when such persons voluntarily provide race and ethnicity (RE) data.

CATEGORIES OF RECORDS IN THE SYSTEM:

SSN and RE data collected during contacts with the successfully enumerated applicants for SSN cards described above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 702, 704 and 1106 of the Social Security Act (42 U.S.C. 902, 904, and 1306), and SSA regulations at 20 CFR 401.165.

PURPOSE(S):

This system of records will cover RE data collected during contacts with persons who conduct enumeration business with us, other than those who receive cards through the EAB or EAE programs.

ROUTINE USES OF RECORDS COVERED BY THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine use disclosures are as indicated below:

1. To the Office of the President in response to an inquiry from that office made at the request of the subject of the record or a third party on that person's behalf.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf.

3. To the Department of Justice (DOJ), a court, other tribunal, or another party before such court or tribunal when:

(a) SSA or any of our components;

(b) Any SSA employee in his or her official capacity;

(c) Any SSA employee in his or her individual capacity when DOJ (or SSA when we are authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof when we determine that the litigation is likely to affect the operations of SSA or any of our components,

is party to litigation or has an interest in such litigation, and we determine that the use of such records by DOJ, a court, other tribunal, or another party before such court or tribunal is relevant

and necessary to the litigation. In each case, however, we must determine that such disclosure is compatible with the purpose for which we collected the records.

4. To a Federal, State, or congressional support agency (*e.g.,* Congressional Budget Office and the Congressional Research Staff in the Library of Congress) for research, evaluation, or statistical studies. Such disclosures include, but are not limited to:

(a) Releasing information to assess the extent to which one can predict eligibility for Supplemental Security Income (SSI) payments or Social Security disability insurance benefits or other programs under the Social Security Act;

(b) Examining the distribution of benefits under programs of the Social Security Act by economic and demographic groups and how these differences might be affected by possible changes in policy;

(c) Analyzing the interaction of economic and non-economic variables affecting entry and exit events and duration in the Title II Old Age, Survivors, and Disability Insurance and the Title XVI SSI disability programs; and,

(d) Analyzing retirement decisions focusing on the role of Social Security benefit amounts, automatic benefit recomputation, the delayed retirement credit, and the retirement test.

We may make these disclosures if we:

(1) Determine that the routine use does not violate legal limitations under which the record was provided, collected, or obtained;

(2) Determine that the purpose for which the proposed use is to be made:

(i) Cannot reasonably be accomplished unless the record is provided in a form that identifies a person;

(ii) Is of sufficient importance to warrant the effect on, or risk to, the privacy of the person which such limited additional exposure of the record might bring;

(iii) Has a reasonable probability of being accomplished;

(iv) Is of importance to the programs under the Social Security Act and beneficiaries of such programs or is for an epidemiological research project that relates to programs under the Social Security Act or beneficiaries of such programs;

(3) Require the recipient of information to:

(i) Establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record and agree to on-site inspection by our employees, our agents, or by independent agents of the recipient agency of those safeguards;

(ii) Remove or destroy the information that enables the person to be identified at the earliest time that the recipient can do so consistent with the purpose of the project, unless the recipient receives written authorization from us that it is justified, based on research objectives, in retaining such information;

(iii) Make no further use of the records except:

(a) Under emergency circumstances affecting the health and safety of a person following written authorization from us;

(b) For disclosure to an identified person approved by us for the purpose of auditing the research project;

(iv) Keep the data as a system of statistical records. A statistical record is one which is maintained only for statistical and research purposes and which is not used to make any determination about a person;

(4) Secure a written statement by the recipient of the information attesting to the recipient's understanding of, and willingness to abide by, these provisions.

5. To our contractors and grantees performing program evaluation, research, and statistical activities directly relating to this system of records, and to contractors or grantees for another Federal or State agency performing such activities.

6. To student volunteers, persons working under a personal services contract, and others who are not technically Federal employees, when they are performing work for us as authorized by law, and they need access to information in our records in order to perform their assigned agency duties.

7. To the General Services Administration and the National Archives Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by the NARA Act, information that is not restricted from disclosure by Federal law for their use in conducting records management studies.

8. To the appropriate Federal, State, and local agencies, entities, and persons when (1) we suspect or confirm that the security or confidentiality of information in this system of records has been compromised; (2) we determine 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 our other systems or programs that rely upon the compromised information; and (3) we determine that disclosing the information to such agencies, entities, and persons is necessary to assist in our efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. We will use this routine use to respond only to those incidents involving an unintentional release of our records.

9. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary:

(a) To enable them to assure the safety of our employees and the public, the security of our workplace, and the operation of our facilities; or

(b) To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of our facilities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We will store records in this system in electronic and paper form.

RETRIEVABILITY:

We will retrieve records by SSN.

ACCESSIBILITY:

Our researchers and statisticians prepare micro-data files about persons who are current, recently terminated, or potential recipients of benefits from Social Security and related programs for program evaluation, research, and statistical studies. When the product is in the form of micro-data, we make it available without personal identifiers to our other components and certain other agencies for data processing and data manipulation.

SAFEGUARDS:

We retain electronic and paper files with personal identifiers in secure storage areas accessible only to our authorized employees and contractors. We limit access to data with personal identifiers from this system to persons or organizations authorized by our Office of Research, Evaluation, and Statistics. We furnish specially edited micro-files on request to public and private organizations for purposes of research and analysis. We include further confidentiality protections in our data agreements.

We provide appropriate security awareness and training annually to all our employees and contractors that include reminders about the need to protect personally identifiable information and the criminal penalties that apply to unauthorized access to, or

disclosure of, personally identifiable information. *See* 5 U.S.C. 552a(i)(1). Furthermore, employees and contractors with access to databases maintaining personally identifiable information must sign a sanction document annually, acknowledging their accountability for making unauthorized access to, or disclosure of, such information.

RETENTION AND DISPOSAL:

For purposes of records management disposition authority, we will follow the NARA and Department of Defense (DOD) 5015.2 regulations (DOD Design Criteria Standard for Electronic Records Management Software Applications). We will permanently maintain RE data covered by the RECS system of records. We will retain the research and statistical micro-data extract (stored on the mainframe) for a maximum of 100 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Enumeration and Death Alerts, Office of Earnings, Enumeration, and Administrative Systems, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURES:

Persons can determine if this system contains a record about them by writing to the system manager at the above address and providing their name, SSN, or other information that may be in this system of records that will identify them. Persons requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license or some other means of identification, such as voter registration card, etc. Persons lacking identification documents sufficient to establish their identity must certify in writing that they are the person they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another person under false pretenses is a criminal offense.

Persons requesting notification by telephone must verify their identity by providing identifying information that parallels the information in the record to which notification is being requested. If we determine that the identifying information the person provides by telephone is insufficient, the person will be required to submit a request in writing or in person. If a person requests information by telephone on behalf of another individual, the subject person must be on the telephone with the requesting person and with us in the same phone call. We will establish the subject person's identity (his or her name, SSN, address, date of birth, and place of birth, along with one other piece of information such as mother's maiden name), and ask for his or her consent to provide information to the requesting person. Persons requesting notification submitted by mail must include a notarized statement to us to verify their identity or must certify in the request that they are the person they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another person under false pretenses is a criminal offense. These procedures are in accordance with SSA Regulations (20 CFR 401.40).

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. These procedures are in accordance with SSA Regulations (20 CFR 401.40(c)).

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65(a)).

RECORD SOURCE CATEGORIES:

We obtain information covered by this system of records from successfully enumerated applicants for original or replacement SSN cards (or from third parties acting on their behalf) who are not enumerated through the EAB or EAE programs.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–19935 Filed 8–14–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 6731]

Waiver of Restriction on Assistance to the Central Government of Turkmenistan

Pursuant to section 7088(c)(2) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009 (Division H, Pub. L. 111–8) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of section 7088(c)(1) of the Act with respect to the Government of Turkmenistan, and I hereby waive such restriction.

This determination shall be reported to the Congress, and published in the **Federal Register**.

Dated: Jul 14 2009.

Jacob L. Lew,

Deputy Secretary of State for Management and Resources, Department of State.

[FR Doc. E9–19912 Filed 8–18–09; 8:45 am]

BILLING CODE 4710–46–P

DEPARTMENT OF STATE

[Public Notice 6732]

Waiver of Restriction on Assistance to the Central Government of Maldives

Pursuant to section 7088(c)(2) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009 (Division H, Pub. L. 111–8) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of section 7088(c)(1) of the Act with respect to the Government of the Republic of Maldives, and I hereby waive such restriction.

This determination shall be reported to the Congress, and published in the **Federal Register**.

Dated: *July 29, 2009.*

Jacob J. Lew,

Deputy Secretary of State for Management and Resources, Department of State.

[FR Doc. E9–19915 Filed 8–18–09; 8:45 am]

BILLING CODE 4710–26–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket Number: DOT–OST–2009–0185]

Request for OMB Clearance of a New Emergency Information Collection; New Information Collection: ARRA Bonding Assistance Program Reimbursable Fee Program

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice; Letter of public notification of the American Recovery and Reinvestment Act (ARRA) of 2009, (Pub. L. 111–5) DBE Bonding Assistance Program. This request is being

submitted to OMB via an Emergency Information Collection Request.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 *et seq.*) this notice announces the Information Collection Request on DOT Form F4504—Application for Reimbursement of Bond Fees for this new ARRA DOT program. The notice is being forwarded to the Office of Management and Budget for Emergency Action and approval.

In an effort to assist the Disadvantaged Business Enterprises (DBEs) obtain transportation and infrastructure contracts at the local, state and federal levels, the Department of Transportation's (DOT) Office of the Secretary, Office of Small and Disadvantaged Business Utilization (OSDBU) has established under the American Recovery and Reinvestment Act (ARRA) of 2009, the DBE ARRA Bonding Assistance Program (BAP) Reimbursement Fee Program This program will assist DBEs become more competitive and perform on more transportation infrastructure projects receiving ARRA funding assistance from any DOT mode of transportation, such as Federal Highway Administration, (FHWA), Federal Transit Administration (FTA), Federal Aviation Administration (FAA), Federal Railroad Administration (FRA), and the Maritime Administration (MARAD). The DBE ARRA BAP is financial assistance in the form of a bonding fee cost reimbursement. DOT will directly reimburse DBEs the premiums paid to the surety company, usually between 2–3% of the total bond amount, for performance, payment or bid/proposal bonds. In the event the DBE also obtains a bond guarantee from Small Business Administration's (SBA) Surety Bond Guarantee Program (SBGP), the DOT will also reimburse the DBE for the small business concern (principal) fee of .729% of the contract price.

FOR FURTHER INFORMATION CONTACT: Nancy Strine, Manager, 202–366–1930, Financial Assistance Division, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W56–493, Washington, DC 20590. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION:

OMB Control Number: OMB Control Number 2105–XXXX.

Title: ARRA Bonding Assistance Program Reimbursement Fee Program.

Form Number: DOT F 4504.

Affected Public: Disadvantaged Business Enterprises—certified by Title 49 CFR, Part 26.

Frequency: One-time.

Estimated Average Burden per Response: 2 hours.

Estimated Annual Burden Hours: 3,540 hours.

Abstract: ARRA Bonding Assistance Program Reimbursable Fee Program.

The information collected will be from the DBE working on transportation or infrastructure ARRA funded project. The information collected will be used by DOT OSDBU to verify eligibility, process the application, and disburse the reimbursement. The information being collected relates the name of the company; full street address; the Dun and Bradstreet Number (DUNS); Central Contractor Registration along with Bank information to process their payment; DOT transportation related contract information; supporting documentation that shows the federal project number, bond information along with a copy of their bond; and proof of payment of the fee. The applicant's eligibility is determined by submitting a copy of a DBE certification and/or annual affidavit, if applicable, for bonding fee reimbursement for specific bonds. This will be verified by OSDBU staff as part of the application process. Instructions are attached along with a copy of sample letter to show how to obtain the federal project number. This information is necessary to be able to reimburse the DBE the financial assistance for the bond fees.

Issued in Washington, DC, on August 10, 2009.

Tracey M. Jackson,

Office of the Chief Information Officer.

[FR Doc. E9–19917 Filed 8–18–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket Number DOT–OST–2008–0196]

Notice of Request for Reinstatement of an Information Collection

AGENCY: Office of the Secretary.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request, abstracted below, is being forwarded to the Office of Management and Budget for renewal and comment. The ICR describes the nature of the information collection and its expected cost burden. The **Federal Register** Notice with a sixty day comment period soliciting comments on the following collection of information was published on August 26, 2008 [FR Vol. 73, page 50396]. No comments were received.

DATES: Written comments on this notice should be received on or before September 18, 2009.

FOR FURTHER INFORMATION CONTACT: Robert Ashby, Acting Assistant General Counsel for Regulation and Enforcement, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Suite W94–302, Washington, DC 20590, (202) 366–9310.

Comments: Comments should be submitted to OMB: Attention DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, with the associated OMB Approval Number 2100–0019 and Docket DOT–OST–2008–0196 or *oira_submission@omb.eop.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Title: Transportation for Individuals with Disabilities ; Accessibility of Over-the-Road Buses (OTRBs).

OMB Control Number: 2100–0019.

Type of Review: Reinstatement of an Information Collection.

Respondents: Charter/tour service operators, fixed route companies, small mixed service operators.

Number of Respondents: 316,226.

Number of Responses: Variable.

Total Annual Burden: 182,873 hours.

Abstract: The Department of Transportation (DOT), in conjunction with the U.S. Architectural and Transportation Barriers Compliance Board, issued final access regulations for privately operated over-the-road buses (OTRBs) as required by the Americans with Disability Act (ADA) of 1990. The Final Rule on Accessibility of Over-the-Road Buses has the following recordkeeping/reporting requirements: The first has to do with 48 hour advance notice and compensation. The second has to do with equivalent service and compensation. The third has to do with reporting information on ridership on accessible fixed route buses. The fourth has to do with recordkeeping for 5 years. The fifth has to do with report submission to DOT annually. The sixth has to do with reporting information on the purchase and lease of accessible and inaccessible new and used buses. When initiating the information collection as part of the rulemaking that established the requirements in question, the Department provided the estimate of

burdens set forth below. We have no reason to believe that the time necessary to comply with the information collection requirements has changed in the meantime. We would note that this estimate assumes compliance by bus operators with the information collection requirements. Reporting rates, however, have been low.

The purpose of the information collection requirements is to provide data that the Department can use in reviewing the provisions of its rule and to assist the Department in its oversight of compliance by bus companies. In particular, the data will be used to assist the Department in conducting the reevaluation of the requirements of the over-the-road bus rule mentioned in the regulation itself.

Burden Statement: The amount of data sought is held to the minimum amount necessary to ensure compliance with the regulation. As suggested in comments from both the bus industry and disability community commenters during the rulemaking leading to this rule, recordkeeping and reporting of this kind would be useful for the purpose of ensuring compliance. The cumulative total burden for the information collection is between 167,889 hours (low estimate) and 182,873 hours (high estimate).

Comments are invited on: (a) Whether this collection of information (third party notification) is necessary for the proper performance of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including through the use of automated techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC on August 13, 2009.

Tracey M. Jackson,

Office of the Chief Information Officer.

[FR Doc. E9–19922 Filed 8–18–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–1035]

Lake County, Oregon—Adverse Discontinuance of Rail Service—Modoc Railway and Land Company, LLC and Modoc Northern Railroad Company

On July 30, 2009, Lake County, OR (County) filed an application under 49 U.S.C. 10903 asking the Board to authorize the third-party, or ''adverse,'' discontinuance of operating authority of Modoc Railway and Land Company, LLC (MR&L) and Modoc Northern Railroad Company (MNRR) over a 55.41-mile rail line between milepost 456.89 at or near Alturas, CA, and milepost 512.30 at or near Lakeview, OR.

The line includes no stations and traverses United States Postal Service ZIP codes 96101, 96108, 97635, and 97630.

According to the County, the line was constructed and operated for many years by Southern Pacific Transportation Company (SP). In 1985, the Board's predecessor, the Interstate Commerce Commission, authorized SP to abandon the line.[1]

The County acquired the line from SP after its abandonment. Through its Railroad Commission, the County contracted with The Great Western Railway Company (GWR) to operate the line pursuant to a modified certificate of public convenience and necessity. The County terminated rail operations by GWR, effective November 1, 1997. Thereafter, the County obtained its own modified certificate and commenced operation of the line through its Lake County Railroad division.[2]

In 2007, the County leased the line to MR&L and MNRR.[3] In 2009, according to the County, MR&L and MNRR materially breached their lease agreement with the County. The County further claims that, after the breach was not cured within the notice period required by that lease, it terminated the lease, effective May 7, 2009. The County states that it has resumed operation of the line pursuant to its residual common carrier authority, with Lake Railway acting as the County's agent for the provision of rail service on the line.

The County now seeks Board permission through an adverse discontinuance proceeding to terminate the regulatory authority of MR&L–MNRR to lease and operate the line so that it can proceed to remove them from the line.

In a decision served in this proceeding on June 15, 2009, the Board granted a petition filed by the County for exemptions from several statutory provisions and for waivers of certain Board regulations governing rail line discontinuances.[4]

The County states that the line does not contain federally granted rights-of-way. Any documentation in the County's possession will be made available promptly to those requesting it. The County's entire case in chief for adverse discontinuance was filed with the application.

The interests of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

Any interested person may file written comments concerning the proposed adverse discontinuance or protests (including protestant's entire opposition case) by September 14, 2009. The County shall file a reply, if any, by September 28, 2009. Because the County is providing for continued service on the line, all interested persons should be aware that this application is for adverse discontinuance and will not result in the abandonment of existing operations. Therefore, as discussed in the Board's June 15 decision, the Board has exempted this proceeding from the offer of financial assistance (OFA) requirements at 49 U.S.C. 10904 and waived its OFA regulations at 49 CFR 1152.27, and the Board will not entertain requests for a public use condition under 49 U.S.C. 10905 (49 CFR 1152.28) or a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29).

Persons opposing the proposed adverse discontinuance who wish to participate actively and fully in the process should file a protest. Persons who may oppose the adverse discontinuance but who do not wish to participate fully in the process by

[1] *See Southern Pac. Transp. Co.—Aband.—in Modoc County, CA and Lake County, OR,* Docket No. AB–12 (Sub-No. 84) (ICC served Oct. 20, 1985).

[2] *See Lake County Railroad—Modified Rail Certificate,* STB Finance Docket No. 33581 (STB served Apr. 24, 1998).

[3] *See Modoc Railway and Land Company, LLC—Acq. & Oper. Exempt.—in Lake County, OR,* STB Finance Docket No. 34995 (STB served Feb. 28, 2007); and *Modoc Northern Railroad Co.—Acq. & Oper. Exempt.—in Lake County, OR,* STB Finance Docket No. 34996 (STB served Feb. 28, 2007).

[4] In response to a Board query in that decision regarding a slight discrepancy between the milepost numbers for the line in STB Finance Docket No. 33581 and in this proceeding, Lake County explains that it is using the milepost numbers set forth in STB Finance Docket Nos. 34995 and 34996 in which MR&L–MNRR obtained Board authority to lease and operate the line.

submitting verified statements of witnesses containing detailed evidence should file comments. Parties seeking information concerning the filing of protests should refer to 49 CFR 1152.25.

All filings in response to this notice must refer to STB Docket No. AB–1035 and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112. Filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any persons using e-filing should attach a document and otherwise comply with the instructions found on the Board's *http://www.stb.dot.gov* Web site, at the ''E–FILING'' link. Any person submitting a filing in the traditional paper format should send the original and 10 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in 49 CFR 1152, every document filed with the Board must be served on all parties to this adverse discontinuance proceeding. *See* 49 CFR 1104.12(a).

Persons seeking further information concerning abandonment/discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245–0230 or refer to the full abandonment/discontinuance regulations at 49 CFR 1152. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

The Board's June 15 decision waived compliance with its environmental and historic review regulations because the Board found that it was unlikely that the discontinuance would result in any environmental impacts or salvage. Accordingly, no environmental or historic assessment will be prepared in this proceeding.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 13, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–19827 Filed 8–18–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2009–0106]

Petition for Declaratory Order by Fullington Trailways, LLC

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of Petition for Declaratory Order; extension of comment period.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) extends the reply comment period for a Petition for Declaratory Order that was published on June 4, 2009, until September 14, 2009.

DATES: Reply comments are due on or before September 14, 2009. The Agency will only consider reply comments responding directly to issues raised in the initial round of comments. Commenters may not use reply comments to raise new issues.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket Number in the heading of this document by any of the following methods. Do not submit the same comments by more than one method. However, to allow effective public participation before the comment period deadline, the Agency encourages use of the Web site that is listed first. It will provide the most efficient and timely method of receiving and processing your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this regulatory action. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Refer to the Privacy Act heading on *http://www.regulations.gov* for further information.

Docket: Comments and material received from the public, as well as background information and documents mentioned in this preamble, are part of docket FMCSA–2009–0191, and are available for inspection and copying on the Internet at *http://www.regulations.gov*. You may also view and copy documents at the U.S. Department of Transportation's Docket Operations Unit, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

Public Participation: The regulations.gov system is generally available 24 hours each day, 365 days each year. You can find electronic submission and retrieval help and guidelines under the ''help'' section of the Web site. For notification that FMCSA received the comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments on line. Copies or abstracts of all documents referenced in this notice are in the docket: FMCSA–2009–0106. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Initial comments received after the initial comment closing date will not be considered.

FOR FURTHER INFORMATION CONTACT: Genevieve D. Sapir, Office of the Chief Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–7056.

SUPPLEMENTARY INFORMATION: On June 4, 2009 (74 FR 26917), FMCSA published a petition submitted by Fullington Trailways, LLC (Fullington) for a declaratory order requesting that FMCSA find that certain regularly scheduled passenger bus service provided by Fullington is in interstate commerce and not subject to the jurisdiction of the Pennsylvania Public Utilities Commission. We provided the public with a 60-day period for initial comments that expired on August 3, 2009, and a 30-day period for reply comments that expires on September 2, 2009. At least one timely filed submission during the initial comment period was not immediately available in the docket. To provide the public adequate time to respond to all timely filed initial comments, FMCSA extends

the reply comment period until September 14, 2009.

Issued on: August 12, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–19888 Filed 8–18–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1998–4334; FMCSA–2000–7165; FMCSA–2002–13411; FMCSA–2005–20560; FMCSA–2006–25246; FMCSA–2007–27897]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 44 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective September 13, 2009. Comments must be received on or before September 18, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–1998–4334; FMCSA–2000–7165; FMCSA–2002–13411; FMCSA–2005–20560; FMCSA–2006–25246; FMCSA–2007–27897, using any of the following methods.

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Fax: 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted 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 19476). This information is also available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 44 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 44 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Eddie Alejandro, John W. Black, III, John A. Bridges, Eddie M. Brown, Edward G. Brown, Edwin L. Bupp, Charles E. Castle, Joel C. Conrad, Duane C. Conway, Brian W. Curtis, Roger D. Davidson, Sr., Richard A. Davis, Sr., Robin C. Duckett, Marco A. Esquivel, Tomie L. Estes, Raymond L. Herman, Jesse R. Hillhouse, Jr., Billy R. Holdman, Ray C. Johnson, Terry R. Jones, Randall H. Keil, James A. Kneece, Paul G. Mathes, John T. McWilliams, Robert A. Miller, Stuart T. Miller, James T. Mitchell, Andrew M. Nurnbrg, Kenneth R. Pedersen, Joshua R. Perkins, Ronald F. Prezzia, Eligio M. Ramirez, Victor C. Richert, Garry L. Rogers, Craig R. Saari, Jerry L. Schroder, Gerald J. Shamla, Timothy L. Shorey, William C. Smith, Larry D. Steiner, Robert S. Swaen, Anthony T. Truiolo, Gregory A. VanLue, Kevin W. Wunderlin.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 44 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226; 64 FR 16517; 66 FR 41656; 68 FR 44837; 70 FR 41811; 72 FR 52421; 65 FR 33406; 65 FR 57234; 67 FR 67234; 70 FR 7545; 72 FR 27624; 67 FR 76439; 68 FR 10298; 70 FR 28348; 70 FR 30997; 72 FR 180; 72 FR 9397; 72 FR 39879; 72 FR 52419) Each of these 44 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by September 18, 2009.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 44 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: August 12, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–19890 Filed 8–18–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35285]

CSX Transportation, Inc.—Trackage Rights Exemption—Birmingham Southern Railroad Company

Pursuant to a written trackage rights agreement (the agreement) dated July 31, 2009, Birmingham Southern Railroad Company (BSRR) has agreed to grant trackage rights described as ''generally overhead'' to CSX Transportation Incorporated (CSXT) over the BSRR rail line between the crossover of CSXT and BSRR in Woodward, AL, approximately milepost 6, Station 307+00, and Bessemer, AL at the turnout to BSRR's Private Intermodal Container Facility (the ICTF), milepost 9, Station 10+00,[1] a distance of approximately three miles.[2]

The transaction is scheduled to be consummated on or shortly after September 2, 2009, the effective date of the exemption (30 days after the exemption was filed). The purpose of the trackage rights is to enable CSXT to improve direct intermodal container access to and from the Mercedes Benz USA facility in Bessemer, AL, through use of the ICTF. Under the agreement, in addition to overhead intermodal service, CSXT will be permitted, as required, to occupy the line for purposes of doubling trains in and out of the ICTF and for setting out any bad ordered cars within the premises of the ICTF.

As a condition to this exemption, any employee affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(8). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by August 26, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35285, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 14, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–19928 Filed 8–18–09; 8:45 am]

BILLING CODE 4915–01–P

[1] Article 3 of the agreement provides that CSXT ''* * * shall not perform any local freight service whatsoever at any point located on the Subject Trackage.'' CSXT is, however, permitted to also use the trackage rights to set out bad ordered cars and to ''double'' trains in and out of the ICTF.

[2] A redacted version of the trackage rights agreement between BSRR and CSXT was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal to extend, with revision, the Consolidated Reports of Condition and Income (Call Report), which are currently approved collections of information. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC and the agencies should modify the proposed revisions prior to giving final approval. The agencies will then submit the revisions to OMB for review and approval.

DATES: Comments must be submitted on or before October 19, 2009.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 2–3, Attention: 1557–0081, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income, 7100–0036,'' by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov*. Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov*. Include the OMB control number in the subject line of the message.
- *Fax:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income, 3064–0052,'' by any of the following methods:

- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html*. Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: comments@FDIC.gov*. Include ''Consolidated Reports of Condition and Income, 3064–0052'' in the subject line of the message.
- *Mail:* Herbert J. Messite (202–898–6834), Counsel, Attn: Comments, Room F–1052, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of the Call Report forms can be obtained at the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Mary Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Michelle Shore, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Herbert J. Messite, Counsel, (202) 898–6834, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The agencies are proposing to revise and extend for three years the Call Report, which is currently an approved collection of information for each agency.

Report Title: Consolidated Reports of Condition and Income (Call Report).

Form Number: Call Report: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC

OMB Number: 1557–0081.

Estimated Number of Respondents: 1,569 national banks.

Estimated Time per Response: 49.33 burden hours.

Estimated Total Annual Burden: 309,595 burden hours.

Board

OMB Number: 7100–0036.

Estimated Number of Respondents: 861 state member banks.

Estimated Time per Response: 55.08 burden hours.

Estimated Total Annual Burden: 189,696 burden hours.

FDIC

OMB Number: 3064–0052.

Estimated Number of Respondents: 5,032 insured state nonmember banks.

Estimated Time per Response: 39.15 burden hours.

Estimated Total Annual Burden: 788,011 burden hours.

The estimated time per response for the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (*e.g.,* size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices). The average reporting burden for the Call Report is estimated to range from 16 to 655 hours per quarter, depending on an individual institution's circumstances.

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), and 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks). At present, except for selected data items, these information collections are not given confidential treatment.

Abstract

Institutions submit Call Report data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report data provide the most current statistical data available for evaluating institutions' corporate applications, for identifying areas of focus for both on-site and off-site examinations, and for monetary and other public policy purposes. The agencies use Call Report data in evaluating interstate merger and acquisition applications to determine, as required by law, whether the resulting institution would control more than ten percent of the total amount of deposits of insured depository institutions in the United States. Call Report data are also used to calculate institutions' deposit insurance and Financing Corporation assessments and national banks' semiannual assessment fees.

Current Actions

I. Overview

The agencies are proposing to implement certain changes to the Call Report requirements in 2010 that are intended to provide data needed for reasons of safety and soundness or other public purposes. These proposed revisions respond, for example, to a change in accounting standards, a temporary increase in the deposit insurance limit, and credit availability concerns.

The proposed Call Report changes that are the subject of this proposal would take effect as of March 31, 2010, unless otherwise indicated. These revisions, which are discussed in detail in Sections II.A. through J. of this notice, include:

- New items identifying total other-than-temporary impairment losses on debt securities, the portion of the total recognized in other comprehensive income, and the net losses recognized in earnings, consistent with the presentation requirements of a recent accounting standard;
- Clarification of the instructions for reporting unused commitments;
- Breakdowns of the existing items for unused credit card lines and other unused commitments, with the former breakdown required only for certain institutions, and a related breakdown of the existing item for other loans;
- New items pertaining to reverse mortgages that would be collected annually as of December 31;
- A breakdown of the existing item for time deposits of $100,000 or more (in domestic offices);
- Revisions of existing items for brokered deposits;
- New items for the interest expense and quarterly averages for fully insured brokered time deposits and other brokered time deposits;
- A change in the reporting frequency for small business and small farm lending data from annually to quarterly;
- A change in the reporting frequency for the number of certain deposit accounts from annually to quarterly; and
- The elimination of the item for internal allocations of income and expense from the schedule for income from foreign offices.

The agencies seek to establish reporting thresholds for the collection of Call Report information where practicable to limit the reporting burden imposed on banking institutions. In establishing such thresholds, the agencies weigh the characteristics of the institutions involved in the activity that would be subject to the reporting requirements, the number of institutions affected by the reporting requirements, the type of information being collected, how that information will be used by the agencies, and banks' costs associated with gathering and reporting the requested information. The agencies solicit comments from banking institutions related to the proposals described in this notice. Are there appropriate reporting thresholds for specific proposed changes that will enable the agencies to collect meaningful information without creating undue burden for institutions? Please provide specific feedback regarding the amount of burden created by the proposed amendments as well as suggestions for thresholds that would reduce this burden without compromising the usefulness of the data.

For the March 31 and December 31, 2010 report dates, banks may provide reasonable estimates for any new or revised Call Report item initially required to be reported as of that date for which the requested information is not readily available. The specific wording of the captions for the new or revised Call Report data items discussed in this proposal and the numbering of these data items should be regarded as preliminary.

Type of Review: Revision and extension of currently approved collections.

II. Discussion of Proposed Call Report Revisions

A. Other-Than-Temporary Impairment Losses on Debt Securities

On April 9, 2009, the Financial Accounting Standards Board (FASB) issued FASB Staff Position (FSP) No. 115–2 and 124–2, *Recognition and Presentation of Other-Than-Temporary Impairments* (FSP FAS 115–2).[1] This FSP amended the other-than-temporary impairment guidance in other accounting standards that applies to investments in debt securities. Under FSP FAS 115–2, if a bank intends to sell a debt security or it is more likely than not that it will be required to sell the debt security before recovery of its amortized cost basis, an other-than-temporary impairment has occurred and the entire difference between the security's amortized cost basis and its fair value at the balance sheet date must be recognized in earnings. FSP FAS

[1] Under the FASB Accounting Standards Codification ™, see Topic 320, Investments—Debt and Equity Securities.

115–2 also provides that if the present value of cash flows expected to be collected on a debt security is less than its amortized cost basis, a credit loss exists. In this situation, if a bank does not intend to sell the security and it is not more likely than not that the bank will be required to sell the debt security before recovery of its amortized cost basis less any current-period credit loss, an other-than-temporary impairment has occurred. The amount of the total other-than-temporary impairment related to the credit loss must be recognized in earnings, but the amount of the total impairment related to other factors must be recognized in other comprehensive income, net of applicable taxes.

For other-than-temporary impairment losses on held-to-maturity and available-for-sale debt securities, banks report the amount of the other-than-temporary impairment losses that must be recognized in earnings in items 6.a and 6.b of the Call Report income statement (Schedule RI), respectively. Other-than-temporary impairment losses that are to be recognized in other comprehensive income, net of applicable taxes, are reported in Schedule RI–A, Changes in Bank Equity Capital, item 10, ''Other comprehensive income.'' However, because items 6.a and 6.b of Schedule RI also include other amounts such as gains (losses) on sales of held-to-maturity and available-for-sale securities, the agencies currently are not able to determine the effect on the net income of banks, individually and in the aggregate, of other-than-temporary impairment losses that must be recognized in earnings. Similarly, because item 10 of Schedule RI–A includes all of the other components of a bank's other comprehensive income, the agencies cannot identify the portion of other comprehensive income attributable to other-than-temporary impairment losses for banks individually and in the aggregate.

According to FSP FAS 115–2, in a period in which a bank determines that a debt security's decline in fair value below its amortized cost basis is other than temporary, the bank must present the total other-than-temporary impairment loss in the income statement with an offset for the amount of the total loss that is recognized in other comprehensive income. This new presentation provides additional information about the amounts that a bank does not expect to collect related to its investments in debt securities held for purposes other than trading. Therefore, to enhance the agencies' ability to evaluate the factors affecting bank earnings, the agencies propose to add three Memorandum items to the Call Report income statement that would mirror the presentation requirements of FSP FAS 115–2. In these new Memorandum items, banks would report total other-than-temporary impairment losses on debt securities for the calendar year-to-date reporting period, the portion of these losses recognized in other comprehensive income, and the net losses recognized in earnings

B. Clarification of the Instructions for Reporting Unused Commitments

Banks report unused commitments in item 1 of Schedule RC–L, Derivatives and Off-Balance Sheet Items. The instructions for this item identify various arrangements that should be reported as unused commitments, including but not limited to commitments for which the bank has charged a commitment fee or other consideration, commitments that are legally binding, loan proceeds that the bank is obligated to advance, commitments to issue a commitment, and revolving underwriting facilities. However, the agencies have found that some banks have not reported commitments that they have entered into until they have signed the loan agreement for the financing that they have committed to provide. Although the agencies consider these arrangements to be commitments to issue a commitment and, therefore, within the scope of the existing instructions for reporting commitments in Schedule RC–L, they believe that these instructions may not be sufficiently clear. Therefore, the agencies originally proposed to revise the instructions for Schedule RC–L, item 1, ''Unused commitments,'' as one of the proposed Call Report changes for implementation as of March 31, 2009.[2] More specifically, with respect to commitments to issue a commitment at some point in the future, the agencies proposed to add language to the instructions for this item explicitly stating that such commitments include those that have been entered into even though the related loan agreement has not yet been signed.

In response to the agencies' request for comment on Call Report revisions for 2009, three commenters specifically addressed the proposed instructional clarification pertaining to unused commitments. One commenter agreed that clarification is needed, but recommended that commitments to issue a commitment in the future, including those entered into even though the related loan agreement has not yet been signed, should be removed from the list of types of arrangements that the instructions would direct banks to report as unused commitments. A second commenter expressed concern about reporting ''commitments that contain a relatively high level of uncertainty until a loan agreement has been signed or the loan has been funded with a first advance'' and the reliability of data on such commitments. The third commenter stated that because some banks do not have systems for tracking such arrangements, the instructions should in effect permit banks to exclude commitment letters with an expiration date of 90 days or less. Finally, the first commenter also recommended that the instructions for reporting unused commitments should state that amounts conveyed or participated to others that the conveying or participating bank is not obligated to fund should not be reported as unused commitments by the conveying or participating bank.

After evaluating these comments, the agencies have refined their approach to identifying commitments to issue a commitment in a manner that is intended to address the commenters' concerns by focusing on a point in the commitment process when the agencies believe that banks' systems should be tracking their commitments. Thus, the instructions would state that commitments to issue a commitment at some point in the future are those where the bank has extended terms and the borrower has accepted the offered terms, even though the related loan agreement has not yet been signed. In addition, the agencies agree with the commenter's recommendation concerning commitments that have been conveyed or participated to others and are proposing to modify the instructions accordingly.

The proposed revised instructions for Schedule RC–L, item 1, would read as follows:

Report in the appropriate subitem the unused portions of commitments. Unused commitments are to be reported gross, *i.e.,* include in the appropriate subitem the unused amount of commitments acquired from and conveyed or participated to others. However, exclude commitments conveyed or participated to others that the bank is not legally obligated to fund even if the party to whom the commitment has been conveyed or participated fails to perform in accordance with the terms of the commitment.

For purposes of this item, commitments include:

[2] 73 FR 54811, September 23, 2008.

(1) Commitments to make or purchase extensions of credit in the form of loans or participations in loans, lease financing receivables, or similar transactions.

(2) Commitments for which the bank has charged a commitment fee or other consideration.

(3) Commitments that are legally binding.

(4) Loan proceeds that the bank is obligated to advance, such as:

(a) Loan draws;

(b) Construction progress payments; and

(c) Seasonal or living advances to farmers under prearranged lines of credit.

(5) Rotating, revolving, and open-end credit arrangements, including, but not limited to, retail credit card lines and home equity lines of credit.

(6) Commitments to issue a commitment at some point in the future, where the bank has extended terms and the borrower has accepted the offered terms, even though the related loan agreement has not yet been signed.

(7) Overdraft protection on depositors' accounts offered under a program where the bank advises account holders of the available amount of overdraft protection, for example, when accounts are opened or on depositors' account statements or ATM receipts.

(8) The bank's own takedown in securities underwriting transactions.

(9) Revolving underwriting facilities (RUFs), note issuance facilities (NIFs), and other similar arrangements, which are facilities under which a borrower can issue on a revolving basis short-term paper in its own name, but for which the underwriting banks have a legally binding commitment either to purchase any notes the borrower is unable to sell by the rollover date or to advance funds to the borrower.

Exclude forward contracts and other commitments that meet the definition of a derivative and must be accounted for in accordance with FASB Statement No. 133, which should be reported in Schedule RC–L, item 12. Include the amount (not the fair value) of the unused portions of loan commitments that do not meet the definition of a derivative that the bank has elected to report at fair value under a fair value option. Also include forward contracts that do not meet the definition of a derivative. The unused portions of commitments are to be reported in the appropriate subitem regardless of whether they contain ''material adverse change'' clauses or other provisions that are intended to relieve the issuer of its funding obligations under certain conditions and regardless of whether they are unconditionally cancelable at any time.

In the case of commitments for syndicated loans, report only the bank's proportional share of the commitment.

For purposes of reporting the unused portions of revolving asset-based lending commitments, the commitment is defined as the amount a bank is obligated to fund—as of the report date—based on the contractually agreed upon terms. In the case of revolving asset-based lending, the unused portions of such commitments should be measured as the difference between (a) the lesser of the contractual borrowing base (*i.e.,* eligible collateral times the advance rate) or the note commitment limit, and (b) the sum of outstanding loans and letters of credit under the commitment. The note commitment limit is the overall maximum loan amount beyond which the bank will not advance funds regardless of the amount of collateral posted. This definition of ''commitment'' is applicable only to revolving asset-based lending, which is a specialized form of secured lending in which a borrower uses current assets (*e.g.,* accounts receivable and inventory) as collateral for a loan. The loan is structured so that the amount of credit is limited by the value of the collateral.

C. Additional Categories of Unused Commitments and Loans

The extent to which banks are reducing the supply of credit during the current financial crisis has been of great interest to the agencies and to Congress. Also, bank lending plays a central role in any economic recovery and the agencies need data to better determine when credit conditions have eased. One way to measure the supply of credit is to analyze the change in total lending commitments by banks, considering both the amount of loans outstanding and the volume of unused credit lines. These data are also needed for safety and soundness purposes because draws on commitments during periods when banks face significant funding pressures, such as during the fall of 2008, can place significant and unexpected demands on the liquidity and capital positions of banks. Therefore, the agencies propose breaking out in further detail two categories of unused commitments on Schedule RC–L, Derivatives and Off-Balance Sheet Items. The agencies also propose to break out in further detail one new loan category on Schedule RC–C, part I, Loans and Leases. These new data items would improve the agencies' ability to obtain timely and accurate readings on the supply of credit available to households and businesses. These data would also be useful in determining the effectiveness of the government's economic stabilization programs.

Unused commitments associated with credit card lines are reported in Schedule RC–L, item 1.b. This data item is not sufficiently meaningful for monitoring the supply of credit because it mixes consumer credit card lines with credit card lines for businesses and other entities. As a result of this aggregation, it is not possible to fully monitor credit available specifically to households. Furthermore, bank supervisors would benefit from the split, because the usage patterns, profitability, and evolution of credit quality through the business cycle are likely to differ for consumer credit cards and business credit cards. Therefore, the agencies propose to split Schedule RC–L, item 1.b, into unused consumer credit card lines and other unused credit card lines. This breakout would be reported by institutions with either $300 million or more in total assets or $300 million or more in unused credit card commitments. Draws from these credit lines that have not been sold are already reported on Schedule RC–C, part I. For example, banks must report draws on credit cards issued to nonfarm nonfinancial businesses as commercial and industrial (C&I) loans in Schedule RC–C, part I, item 4, and draws on personal credit cards as consumer loans in Schedule RC–C, part I, item 6.a.

Schedule RC–L, item 1.e, aggregates all other unused commitments, and includes unused commitments to fund C&I loans (other than credit card lines to commercial and industrial enterprises, which are reported in item 1.b, and commitments to fund commercial real estate, construction, and land development loans not secured by real estate, which are reported in item 1.c.(2)). Separating these C&I lending commitments from the other commitments included in other unused commitments would considerably improve the agencies' ability to analyze business credit conditions. A very large percentage of banks responding to the Federal Reserve's Senior Loan Officer Opinion Survey on Bank Lending Practices (FR 2018; OMB No. 7100–0058) reported having tightened lending policies for C&I loans and credit lines during 2008; however, C&I loans on banks' balance sheets expanded through the end of October 2008, reportedly as a result of substantial draws on existing credit lines. In contrast, other unused commitments reported on the Call Report contracted, but without the proposed breakouts of such commitments, it was not possible to

know how total business borrowing capacity had changed. The FR 2018 data are qualitative rather than quantitative and are collected only from a sample of institutions up to six times per year. Having the additional unused commitment data reported separately on the Call Report, along with the proposed changes to Schedule RC–C described below, would have indicated more clearly whether there was a widespread restriction in new credit available to businesses.

Therefore, the agencies propose to split Schedule RC–L, item 1.e, into three categories: Unused commitments to fund commercial and industrial loans (which would include only commitments not reported in Schedule RC–L, items 1.b and 1.c.(2), for loans that, when funded, would be reported in Schedule RC–C, item 4), unused commitments to fund loans to financial institutions (defined to include depository institutions and nondepository financial institutions, *i.e.*, real estate investment trusts, mortgage companies, holding companies of other depository institutions, insurance companies, finance companies, mortgage finance companies, factors and other financial intermediaries, short-term business credit institutions, personal finance companies, investment banks, the bank's own trust department, other domestic and foreign financial intermediaries, and Small Business Investment Companies), and all other unused commitments. With respect to Schedule RC–C, part I, the agencies also propose to revise item 9, ''Other loans,'' by breaking out a new category for loans to nondepository financial institutions (as defined above). Banks already report data on loans to depository institutions in Schedule RC–C, part I, item 2.

Lending by nondepository financial institutions was a key characteristic of the recent credit cycle and many such institutions failed; however, little information existed on the exposure of the banking system to those firms as this information was obscured by the current structure of the Call Report's loan schedule. The proposed addition of separate items for unused commitments to financial institutions and loans to nondepository financial institutions, together with the existing data on loans to depository institutions, will allow supervisors and other interested parties to more closely monitor the exposure of individual banks to financial institutions and to assess the impact that changes in the credit availability to this sector have on the economy.

D. Reverse Mortgage Data

Reverse mortgages are complex loan products that leverage equity in homes to provide lump sum cash payments or lines of credit to borrowers. These products are typically marketed to senior citizens who own homes. The agencies are currently unable to effectively identify and monitor institutions that offer these products due to a lack of reverse mortgage data.

The reverse mortgage market currently consists of two basic types of products: Proprietary products designed and originated by financial institutions and a federally-insured product known as a Home Equity Conversion Mortgage (HECM). Some reverse mortgages provide for a lump sum payment to the borrower at closing, with no ability for the borrower to receive additional funds under the mortgage at a later date. Other reverse mortgages are structured like home equity lines of credit in that they provide the borrower with additional funds after closing, either as fixed monthly payments, under a line of credit, or both. There are also reverse mortgages that provide a combination of a lump sum payment to the borrower at closing and additional payments to the borrower after the closing of the loan.

The volume of reverse mortgage activity is expected to dramatically increase in the coming years as the U.S. population ages. A number of consumer protection related risks and safety and soundness related risks are associated with these products and the agencies need to collect information from banks involved in the reverse mortgage activities to monitor and mitigate those risks. For example, proprietary reverse mortgages structured as lines of credit, which are not insured by the federal government, expose borrowers to the risk that the lender will be unwilling or unable to meet its obligation to make payments due to the borrower. Additionally, in those circumstances in which housing prices are declining, there is the risk that the reverse mortgage loan balance may exceed the value of the underlying collateral value of the home.

As stated above, access to data regarding loan volumes, dollar amounts outstanding, and the institutions offering reverse mortgages or participating in reverse mortgage activity is severely limited. The U.S. Department of Housing and Urban Development provides a monthly report for reverse mortgages endorsed for federal insurance, by fiscal year, for those loans that are part of the federally-sponsored HECM program. While this monthly report provides information such as average expected interest rates, average property values, average age of the borrower, and the number of active insured accounts, there is no aggregate monthly data nor is there institution-specific information that identifies the institutions participating in the program. For proprietary reverse mortgage loans, there is no known data on the volume of reverse mortgages, dollar amounts outstanding, or the institutions offering these products.

The agencies propose that new items be added to the Call Report to collect reverse mortgage data on an annual basis beginning on December 31, 2010. Collecting this information will provide the agencies the necessary information for policy development and the management of risk exposures posed by institutions' involvement with reverse mortgages. First, a new Memorandum item would be added to Schedule RC–C, part I, Loans and Leases, for ''Reverse mortgages outstanding that are held for investment.'' In this Memorandum item, banks would separately report the amount of HECM reverse mortgages and the amount of proprietary reverse mortgages that are held for investment and included in Schedule RC–C, part I, item 1.c, Loans ''Secured by 1–4 family residential properties.'' Additionally, new items would be added to Schedule RC–L, Derivatives and Off-Balance Sheet Items, to collect the amounts of ''Unused commitments for HECM reverse mortgages outstanding that are held for investment'' and ''Unused commitments for proprietary reverse mortgages outstanding that are held for investment.'' Because these reverse mortgages have been structured in whole or in part like home equity lines of credit, the unused commitments associated with these mortgages are also reportable in existing item 1.a, ''Revolving, open-end lines secured by 1–4 family residential properties,'' of Schedule RC–L. The proposed new unused commitment items would be subsets of item 1.a.

In many instances, institutions do not underwrite and fund reverse mortgages, but refer borrowers to other reverse mortgage lenders. These institutions receive a fee for referring customers to the reverse mortgage lender and they may be involved in (although their involvement may not be limited to) the following activities: Marketing the reverse mortgage loan product, providing information on or answering questions about the reverse mortgage loan, selling products in conjunction with reverse mortgages, and/or accepting an application for a reverse mortgage from the potential borrower. This model enables consumers to deal

first with their local institutions without the institutions having to build an entirely new lending function. It also provides an economy of scale for a specialized lender because they will not necessarily need a large physical branch network when they can partner with existing lenders. The banking agencies propose adding a new Memorandum item to Schedule RC–C, part I, to annually collect the estimated number of fee-paid referrals during the year from each bank making referrals beginning on December 31, 2010. Banks would report separately the estimated number of fee-paid referrals for HECM reverse mortgages and proprietary reverse mortgages.

The agencies request specific feedback from reporting institutions on their ability to provide fee-paid referral information for reverse mortgages. Do banks maintain the data necessary to provide an estimate of the number of fee paid referrals they have made during the year? Would it be less burdensome for banks to report an estimated number of fee-paid referrals for reverse mortgages that falls within specified ranges of numbers? Is there alternative information that the agencies could collect in order to better understand the extent of banks' reverse mortgage referral activities?

Finally, many banks that originate reverse mortgages routinely sell their funded mortgages in the secondary market. As a result, these loans will not remain on the originating banks' balance sheets for long periods of time and, therefore, the proposed items for reverse mortgages outstanding that are held for investment will not capture the extent of banks' reverse mortgage activity when it involves the origination and sale of these loans. Thus, the agencies propose to add Memorandum items to Schedule RC–C, part I, in which banks would report the principal amount of reverse mortgages originated for sale that have been sold during the year. HECM and proprietary reverse mortgages sold would be reported separately. These items are distinct and separate from the items for the estimated number of referrals because the referring bank is not funding the loan, but is merely taking an application or conducting another service in order to refer the borrower to another institution that ultimately funds the reverse mortgage. The information on loans sold during the year also would be collected annually beginning on December 31, 2010.

E. Time Deposits of $100,000 or More

On October 3, 2008, the Emergency Economic Stabilization Act of 2008 temporarily raised the standard maximum deposit insurance amount (SMDIA) from $100,000 to $250,000 per depositor. Under this legislation, the SMDIA was to return to $100,000 after December 31, 2009. However, on May 20, 2009, the Helping Families Save Their Homes Act extended this temporary increase in the SMDIA to $250,000 per depositor through December 31, 2013, after which the SMDIA is scheduled to return to $100,000.

At present, banks report a two-way breakdown of their time deposits (in domestic offices) in Schedule RC–E, Deposit Liabilities, distinguishing between time deposits of less than $100,000 and time deposits of $100,000 or more. In response to the extension of the temporary increase in the limit on deposit insurance coverage, the agencies understand that time deposits with balances in excess of $100,000, but less than or equal to $250,000, have been growing and can be expected to increase further. However, given the existing Schedule RC–E reporting requirements, the agencies are unable to monitor growth in banks' time deposits with balances within the temporarily increased limit on deposit insurance coverage.

Therefore, the agencies are proposing to replace Schedule RC–E, Memorandum item 2.c, ''Total time deposits of $100,000 or more,'' with a revised Memorandum item 2.c, ''Total time deposits of $100,000 through $250,000,'' and a new Memorandum item 2.d, ''Total time deposits of more than $250,000.'' Existing Memorandum item 2.c.(1), ''Individual Retirement Accounts (IRAs) and Keogh Plan accounts included in Memorandum item 2.c, 'Total time deposits of $100,000 or more,' above,'' would be renumbered and recaptioned as Memorandum item 2.e, ''Individual Retirement Accounts (IRAs) and Keogh Plan accounts of $100,000 or more included in Memorandum items 2.c and 2.d above,'' but the scope of this Memorandum item would not change.

F. Revisions of Brokered Deposit Items

As mentioned in Section *II.E.* above, the SMDIA has been increased temporarily from $100,000 to $250,000 through year-end 2013. However, the data that banks currently report in the Call Report on fully insured brokered deposits in Schedule RC–E, Memorandum items 1.c.(1) and 1.c.(2), is based on the $100,000 insurance limit (except for brokered retirement deposit accounts for which the deposit insurance limit was already $250,000). Therefore, in response to the temporary increase in the SMDIA, the agencies are proposing to revise the reporting of fully insured brokered deposits in Schedule RC–E. Furthermore, given the linkage between the deposit insurance limits and the Memorandum items on fully insured brokered deposits in Schedule RC–E, the scope of these items needs to be changed whenever deposit insurance limits change. To ensure that the scope of these Memorandum items, including the dollar amounts cited in the captions for these items, changes automatically as a function of the deposit insurance limit in effect on the report date, Memorandum item 1.c, ''Fully insured brokered deposits,'' would be footnoted to state that the specific dollar amounts used as the basis for reporting fully insured brokered deposits in Memorandum items 1.c.(1) and 1.c.(2) reflect the deposit insurance limits in effect on the report date. The instructions for Memorandum item 1.c would be similarly clarified.[3]

In addition, consistent with the reporting of time deposits in other items of Schedule RC–E, brokered deposits would be reported based on their balances rather than the denominations in which they were issued.

Accordingly, Memorandum items 1.c.(1) and 1.c.(2) of Schedule RC–E and their instructions would be revised as follows:

- Memorandum item 1.c.(1), ''Brokered deposits of less than $100,000'': Report in this item brokered deposits with balances of less than $100,000. Also report in this item time deposits issued to deposit brokers in the form of large ($100,000 or more) certificates of deposit that have been participated out by the broker in shares with balances of less than $100,000. For brokered deposits that represent retirement deposit accounts (as defined in Schedule RC–O, Memorandum item 1) eligible for $250,000 in deposit insurance coverage, report such brokered deposits in this item only if their balances are less than $100,000.
- Memorandum item 1.c.(2), ''Brokered deposits of $100,000 through $250,000 and certain brokered retirement deposit accounts'': Report in this item brokered deposits (including brokered retirement deposit accounts) with balances of $100,000 through

[3] The proposed linkage of the scope of the Memorandum items on fully insured brokered deposits in Schedule RC–E to the deposit insurance limits in effect on the report date is consistent with an existing linkage between the deposit insurance limits in effect on the report date and the Memorandum items in Schedule RC–O, Other Data for Deposit Insurance and FICO Assessments, on the amount and number of deposit accounts within the insurance limit and in excess of the insurance limit.

$250,000. Also report in this item brokered deposits that represent retirement deposit accounts (as defined in Schedule RC–O, Memorandum item 1) eligible for $250,000 in deposit insurance coverage that have been issued by the bank in denominations of more than $250,000 that have been participated out by the broker in shares of $100,000 through exactly $250,000.

The proposed revisions to Schedule RC–E, Memorandum items 1.c.(1) and 1.c.(2), that relate to the temporary increase in the SMDIA would remain in effect during this increase, after which the dollar amounts used as the basis for reporting fully insured brokered deposits in these items would revert to the amounts in effect prior to the temporary increase.

The agencies are not proposing to revise the existing requirements for the reporting of maturity data on brokered deposits in Memorandum items 1.d.(1) and 1.d.(2) of Schedule RC–E.

G. Interest Expense on and Quarterly Averages for Brokered Deposits

Under Section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f), an insured depository institution that is less than well capitalized generally may not pay a rate of interest that significantly exceeds the prevailing rate in the institution's ''normal market area'' and/or the prevailing rate in the ''market area'' from which the deposit is accepted. In the case of an adequately capitalized institution with a waiver to accept brokered deposits, the institution may not pay a rate of interest on brokered deposits accepted from outside the bank's ''normal market area'' that significantly exceeds the ''national rate'' as defined by the FDIC. On May 29, 2009, the FDIC's Board of Directors adopted a final rule making certain revisions to the interest rate restrictions under Section 337.6 of the FDIC's regulations. Under the final rule, the ''national rate'' is a simple average of rates paid by U.S. depository institutions as calculated by the FDIC.[4] When evaluating compliance with the interest rate restrictions in Section 337.6 by an institution that is less than well capitalized, the FDIC generally will deem the national rate to be the prevailing rate in all market areas. The final rule is effective January 1, 2010.

At present, the agencies are unable to evaluate the level and trend of the cost of brokered time deposits to institutions that have acquired such funds, nor can the agencies compare the cost of such deposits across institutions with brokered time deposits. Data on the cost of brokered deposits would also assist the agencies in evaluating the overall cost of institutions' time deposits, for which data have long been collected in the Call Report. Furthermore, many of the banks that have failed since the beginning of 2008 have relied extensively on brokered deposits to support their asset growth. Therefore, to enhance the agencies' ability to evaluate funding costs and the impact of brokered time deposits on these costs, the agencies are proposing to add two Memorandum items to both Schedule RC–K, Quarterly Averages, and Schedule RI, Income Statement. In these Memorandum items, banks would report the interest expense and quarterly averages for ''fully insured brokered time deposits'' and ''other brokered time deposits.'' The definition of ''fully insured brokered time deposits'' would be based on the definitions of ''fully insured brokered deposits'' and ''time deposits'' in Schedule RC–E, Deposit Liabilities. ''Other brokered time deposits'' would consist of all brokered time deposits that are not ''fully insured brokered deposits.''

H. Change in Reporting Frequency for Loans to Small Businesses and Small Farms

Section 122 of the Federal Deposit Insurance Corporation Improvement Act requires the banking agencies to collect from insured institutions annually the information the agencies ''may need to assess the availability of credit to small businesses and small farms.'' To implement these requirements, the banking agencies added Schedule RC–C, Part II—Loans to Small Businesses and Small Farms to the Call Report effective June 30, 1993. This schedule requests information on the number and amount currently outstanding of ''loans to small businesses'' and ''loans to small farms,'' as defined in the Call Report instructions, which all banks must report annually as of June 30.

With the United States now more than a year into a recession, the current administration ''firmly believes that economic recovery will be driven in large part by America's small businesses,'' but ''small business owners are finding it harder to get the credit necessary to stay in business.''[5] Because ''[c]redit is essential to economic recovery,'' Treasury Secretary Geithner stated on March 16, 2009, that ''we need our nation's banks to go the extra mile in keeping credit lines in place on reasonable terms for viable businesses.''[6] Accordingly, Secretary Geithner asked the banking agencies ''to call for quarterly, as opposed to annual reporting of small business loans, so that we can carefully monitor the degree that credit is flowing to our nation's entrepreneurs and small business owners.''[7] In response to Secretary Geithner's request and to improve the agencies' own ability to assess the availability of credit to small businesses and small farms, the agencies propose to change the frequency with which banks must submit Call Report Schedule RC–C, Part II, from annually to quarterly beginning March 31, 2010. The agencies are not proposing to make any revisions to the information that banks are required to report on this schedule.

I. Change in Reporting Frequency for the Number of Certain Deposit Accounts

In Call Report Schedule RC–O—Other Data for Deposit Insurance and FICO Assessments, banks report the number of deposit accounts based on whether the amount of the account is within the deposit insurance limit or is in excess of this limit. Information is reported separately for retirement deposit accounts and all other deposit accounts. At present, for deposit accounts for which the amount of the account exceeds the deposit insurance limit, the number of accounts is reported quarterly (Schedule RC–O, Memorandum items 1.b.(2) and 1.d.(2)). However, for deposit accounts for which the amount of the account is within this limit, the number of accounts is reported annually as of June 30 (Schedule RC–O, Memorandum items 1.a.(2) and 1.c.(2)).

Data on the number of deposit accounts are used to estimate average deposit account balances and changes therein as well as insured and uninsured deposits. These data also assist the FDIC in its planning efforts as it seeks to resolve potential failures of insured institutions. As a consequence, the difference in reporting frequency for deposit accounts with balances within and in excess of the deposit insurance limit hinders the effectiveness of these analyses. Therefore, the agencies are proposing to require all of the existing Call Report items on the number of deposit accounts to be reported quarterly beginning March 31, 2010. The agencies note that savings associations already report the number of all deposit accounts quarterly in the

[4] The FDIC publishes a weekly schedule of national rates and national interest-rate caps by maturity, which can be accessed at *http://www.fdic.gov/regulations/resources/rates/*.

[5] *http://www.financialstability.gov/roadtostability/smallbusinesscommunity.html*.

[6] *http://www.financialstability.gov/latest/tg58-remarks.html*.

[7] Ibid.

Thrift Financial Report (OMB No. 1550–0023). Thus, this proposed change in reporting frequency in the Call Report would conform the reporting requirements in this area for banks and savings associations.

J. Internal Income and Expense Allocations Applicable to Foreign Offices

In Schedule RI–D, Income from Foreign Offices, banks are to report in item 11 their best estimate of all appropriate internal allocations of income and expense applicable to foreign offices, whether or not ''booked'' that way in the bank's formal accounting records. This estimate includes, for example, allocations of income and expense in domestic offices applicable to foreign offices and allocations of income and expense in foreign offices applicable to domestic offices. A review of Schedule RI–D data indicates that few banks report any amount for these internal allocations and the usefulness of the amounts that are reported appears to be limited. Accordingly, the agencies propose to eliminate item 11, ''Internal allocations of income and expense applicable to foreign offices,'' from Schedule RI–D.

III. Other Matters

A. Effect of New Accounting Standards on Schedule RC–S, Servicing, Securitization, and Asset Sale Activities

On June 12, 2009, the Financial Accounting Standards Board (FASB) issued Statements of Financial Accounting Standards Nos. 166 and 167, which revise the existing standards governing the accounting for financial asset transfers and the consolidation of variable interest entities.[8] Statement No. 166 eliminates the concept of a ''qualifying special-purpose entity,'' changes the requirements for derecognizing financial assets, and requires additional disclosures. Statement No. 167 changes how a company determines when an entity that is insufficiently capitalized or is not controlled through voting (or similar rights) should be consolidated. This consolidation determination is based on, among other things, an entity's purpose and design and a company's ability to direct the activities of the entity that most significantly impact the entity's economic performance.[9] In general, the revised standards take effect January 1, 2010. The standards are expected to cause a substantial volume of assets in bank-sponsored entities associated with securitization and structured finance activities to be brought onto bank balance sheets.

The agencies currently collect data on banks' securitization and structured finance activities in Schedule RC–S, Servicing, Securitization, and Asset Sale Activities. The agencies will continue to collect Schedule RC–S after the effective date of Statements Nos. 166 and 167 and banks should continue to complete this schedule in accordance with its existing instructions, taking into account the changes in accounting brought about by these two FASB statements. In this regard, items 1 through 8 of Schedule RC–S involve the reporting of information for securitizations that the reporting bank has accounted for as sales. Therefore, after the effective date of Statements Nos. 166 and 167, a bank should report information in items 1 through 8 only for those securitizations for which the transferred assets qualify for sale accounting or are otherwise not carried as assets on the bank's consolidated balance sheet. Thus, if a securitization transaction that qualified for sale accounting prior to the effective date of Statements Nos. 166 and 167 must be brought back onto the reporting bank's consolidated balance sheet upon adoption of these statements, the bank would no longer report information about the securitization in items 1 through 8 of Schedule RC–S.

Items 11 and 12 of Schedule RC–S are applicable to assets that the reporting bank has sold with recourse or other seller-provided credit enhancements, but has not securitized. In Memorandum item 1 of Schedule RC–S, a bank reports certain transfers of small business obligations with recourse that qualify for sale accounting. The scope of these items will continue to be limited to such sold financial assets after the effective date of Statements Nos. 166 and 167. In Memorandum item 2 of Schedule RC–S, a bank currently reports the outstanding principal balance of loans and other financial assets that it services for others when the servicing has been purchased or when the assets have been originated or purchased and subsequently sold with servicing retained. Thus, after the effective date of Statements Nos. 166 and 167, a bank should report retained servicing for those assets or portions of assets reported as sold as well as purchased servicing in Memorandum item 2. Finally, Memorandum item 3 of Schedule RC–S collects data on asset-backed commercial paper conduits regardless of whether the reporting bank must consolidate the conduit in accordance with FASB Interpretation No. 46(R). This will continue to be the case after the effective date of Statement No. 167, which amended this FASB interpretation.

The agencies plan to evaluate the disclosure requirements in Statements Nos. 166 and 167 and the disclosure practices that develop in response to these requirements. This evaluation will assist the agencies in determining the need for revisions to Schedule RC–S that will improve their ability to assess the nature and scope of banks' involvement with securitization and structured finance activities, including those accounted for as sales and those accounted for as secured borrowings. Such revisions, which would not be implemented before March 2011, would be incorporated into a formal proposal that the agencies would publish with a request for comment in accordance with the requirements of the Paperwork Reduction Act of 1995.

In addition, should new Call Report data items pertaining to securitization and structured finance transactions be necessary for regulatory capital calculation purposes after the effective date of Statements No. 166 and 167, a proposal to collect these data items would be incorporated into any notice of proposed rulemaking to amend the agencies regulatory capital standards that the agencies would publish for comment in the **Federal Register**.

B. Trading Assets That Are Past Due or in Nonaccrual Status

In the proposed Call Report revisions for 2009, which were issued for comment on September 23, 2008,[10] the agencies proposed to replace Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets, item 9, for ''Debt securities and other assets'' that are past due 30 days or more or in nonaccrual status with two separate items: item 9.a, ''Trading assets,'' and item 9.b, ''All other assets (including available-for-sale and held-to-maturity securities).'' The agencies also proposed to expand the scope of Schedule RC–D, Trading Assets and Liabilities, Memorandum item 3, ''Loans measured at fair value that are past due 90 days

[8] Statement of Financial Accounting Standards No. 166, *Accounting for Transfers of Financial Assets*, amends Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*. Statement of Financial Accounting Standards No. 167, *Amendments to FASB Interpretation No. 46(R)*, amends FASB Interpretation No. 46(R), *Consolidation of Variable Interest Entities*. In general, under the FASB Accounting Standards Codification™, see Topics 860, Transfers and Servicing, and 810, Consolidation.

[9] FASB News Release, June 12, 2009, *http://www.fasb.org/cs/ContentServer?c=FASBContent_C&pagename=FASB/FASBContent_C/NewsPage&cid=1176156240834&pf=true*.

[10] 73 FR 54807.

or more,'' to include loans held for trading and measured at fair value that are in nonaccrual status. The agencies proposed to collect this information to improve their ability to assess the quality of assets held for trading purposes and generally enhance surveillance and examination planning efforts. One commenter on these proposed reporting changes questioned the meaningfulness of delinquency and nonaccrual data for trading assets because they are accounted for at fair value through earnings. After fully considering this commenter's views, the agencies have decided not to implement the proposed revisions to Schedule RC–N, item 9, and Schedule RC–D, Memorandum item 3. These items will remain in their current form.

C. Unpaid Premiums on Certain Credit Derivatives

The agencies' proposed Call Report revisions for 2009 also included the addition of new Memorandum items 3.a and 3.b to Schedule RC–R, Regulatory Capital, to collect the present value of unpaid premiums on credit derivatives for which the bank is the protection seller that are defined as covered positions under the agencies' market risk capital guidelines. This present value information was to be reported by remaining maturity and with a breakdown between investment grade and subinvestment grade for the rating of the underlying reference asset. One commenter on this proposed credit derivative data requested clarification of the impact of the reporting requirement on a bank's risk-based capital calculations. The agencies have reconsidered this proposed reporting change and have decided not to add these new Memorandum items to Schedule RC–R.

IV. Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited specifically on:

(a) Whether the proposed revisions to the Call Report collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections 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.

Comments submitted in response to this joint notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record.

Dated: August 12, 2009.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, August 13, 2009.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 11th day of August 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–19911 Filed 8–18–09; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Thrift Financial Report: Schedules SC, RM, CC, DI, and SB

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

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 comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on proposed changes to the Thrift Financial Report (TFR), Schedule SC—Consolidated Statement of Condition, Schedule CC—Consolidated Commitments and Contingencies, Schedule DI—Consolidated Deposit Information, Schedule SB—Consolidated Small Business Loans, and on a proposed new schedule, Schedule RM—Annual Supplemental Consolidated Data on Reverse Mortgages. The changes are proposed to become effective in March 2010 except for the proposed new schedule RM which would become effective in December 2010.

At the end of the comment period, OTS will analyze the comments and recommendations received to determine if it should modify the proposed revisions prior to giving its final approval. OTS will then submit the revisions to the Office of Management and Budget (OMB) for review and approval.

DATES: Submit written comments on or before October 19, 2009.

ADDRESSES: Send comments to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send facsimile transmissions to FAX number (202) 906–6518; send e-mails to *infocollection.comments@ots.treas.gov;* or hand deliver comments to the Guard's Desk, east lobby entrance, 1700 G Street, NW., on business days between 9 a.m. and 4 p.m. All comments should refer to ''TFR Revisions—2010, OMB No. 1550–0023.'' OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can access sample copies of the proposed 2010 TFR forms on OTS's Web site at *http://www.ots.treas.gov* or you may request them by electronic mail from *tfr.instructions@ots.treas.gov.* You can request additional information about this proposed information collection from James Caton, Director, Financial Monitoring and Analysis Division, (202) 906–5680, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Title: Thrift Financial Report.

OMB Number: 1550–0023.

Form Number: OTS 1313.

Abstract: OTS is proposing to revise and extend for three years the TFR, which is currently an approved collection of information.

All OTS-regulated savings associations must comply with the information collections described in this notice. OTS collects this information each calendar quarter or less frequently if so stated. OTS uses this information to monitor the condition, performance, and risk profile of individual

institutions and systemic risk among groups of institutions and the industry as a whole. Except for selected items, these information collections are not given confidential treatment.

Current Action: OTS last revised the form and content of the TFR in a manner that significantly affected a substantial percentage of institutions in June 2009, and has additional revisions scheduled to become effective in December 2009. Since the beginning of 2009 OTS has evaluated its ongoing information needs. OTS recognizes that the TFR imposes reporting requirements, which are a component of the regulatory burden facing institutions. Another contributor to this regulatory burden is the examination process, particularly on-site examinations during which institution staff spend time and effort responding to inquiries and requests for information designed to assist examiners in evaluating the condition and risk profile of the institution. The amount of attention that examiners direct to risk areas of the institution under examination is, in large part, determined from TFR data. These data, and analytical reports, including the Uniform Thrift Performance Report, assist examiners in scoping and making their preliminary assessments of risks during the planning phase of the examination.

A risk-focused review of the information from an institution's TFR allows examiners to make preliminary risk assessments prior to onsite work. The degree of perceived risk determines the extent of the examination procedures that examiners initially plan for each risk area. If the outcome of these procedures reveals a different level of risk in a particular area, the examiner adjusts the examination scope and procedures accordingly.

TFR data are also a vital source of information for the monitoring and regulatory activities of OTS. Among their benefits, these activities aid in determining whether the frequency of an institution's examination cycle should remain at maximum allowed time intervals, thereby lessening overall regulatory burden. More risk-focused TFR data enhance the ability of OTS to assess whether an institution is experiencing changes in its risk profile that warrant immediate follow-up, which may include accelerating the timing of an on-site examination.

In developing this proposal, OTS considered a range of potential information needs, particularly in the areas of credit risk, liquidity, and liabilities, and identified those additions to the TFR that are most critical and relevant to OTS in fulfilling its supervisory responsibilities. OTS recognizes that increased reporting burden will result from the addition to the TFR of the new items discussed in this proposal. Nevertheless, when viewing these proposed revisions to the TFR within a larger context, they help to enhance the on- and off-site supervision capabilities of OTS, which assist with controlling the overall regulatory burden on institutions.

Thus, OTS is requesting comment on the following proposed revisions to the TFR that would take effect as of March 31, 2010, unless otherwise noted. These revisions would change the reporting frequency for small business and small farm data reported in Schedule SB from annually to quarterly, revise three lines, and add 24 new lines to the TFR, including the 16 lines proposed for a new Schedule RM.

For each of the proposed revisions or new items, OTS is particularly interested in comments from institutions on whether the information that is proposed to be collected is readily available from existing institution records. OTS also invites comment on whether there are particular proposed revisions for which the new data would be of limited relevance for purposes of assessing risks in a specific segment of the savings association industry. In such cases, OTS requests comments on what criteria, *e.g.,* an asset size threshold or some other measure, we should establish for identifying the specific segment of the savings association industry that we should require to report the proposed information. Finally, OTS seeks comment on whether, for a particular proposed revision, there is an alternative information set that could satisfy OTS data needs and be less burdensome for institutions to report than the new or revised items that OTS has proposed. OTS will consider all of the comments it receives as it formulates a final set of revisions to the TFR for implementation in 2010.

A. Revisions of Existing Items

1. Revising line CC423 from ''Lines and Letters of Credit: Open-End Consumer Lines: Credit Cards'' to ''Lines and Letters of Credit: Open-End Lines: Credit Cards—Consumer'';

2. Revising line DI100 from ''Total Broker-Originated Deposits: Fully Insured'' to ''Total Broker-Originated Deposits: Fully Insured: With Balances Less than $100,000'';

3. Revising line DI350 from ''Time Deposits of $100,000 or Greater (Excluding Brokered Time Deposits Participated Out by the Broker in Shares of Less Than $100,000 and Brokered Certificates of Deposit Issued in $1,000 Amounts Under a Master Certificate of Deposit)'' to ''Time Deposits of $100,000 through $250,000 (Excluding Brokered Time Deposits Participated Out by the Broker in Shares of Less Than $100,000 and Brokered Certificates of Deposit Issued in $1,000 Amounts Under a Master Certificate of Deposit)''; and

4. Revising the reporting frequency for Schedule SB—Consolidated Small Business Loans from annually to quarterly.

B. New Items

1. Adding a line, SC304, Credit Card Loans Outstanding—Business;

2. Adding a line, CC424, Lines and Letters of Credit: Open-End Lines: Credit Cards—Other;

3. Adding a line, DI102, Total Broker-Originated Deposits: Fully Insured: With Balances of $100,000 through $250,000;

4. Adding a line, DI114, Total Broker-Originated Deposits: Interest Expense for Fully Insured Brokered Deposits;

5. Adding a line, DI116, Total Broker-Originated Deposits: Interest Expense for Other Brokered Deposits;

6. Adding a line, DI352, Time Deposits Greater than $250,000;

7. Adding a line, DI544, Average Daily Deposit Totals: Fully Insured Brokered Time Deposits;

8. Adding a line, DI545, Average Daily Deposit Totals: Other Brokered Time Deposits;

9. Adding a line, RM110, Amount of Home Equity Conversion Mortgage Loans Outstanding;

10. Adding a line, RM112, Amount of Proprietary (Non-HECM) Reverse Mortgage Loans Outstanding;

11. Adding a line, RM310, Annual Interest Income from Home Equity Conversion Mortgage Loans;

12. Adding a line, RM312, Annual Interest Income from Proprietary (Non-HECM) Reverse Mortgage Loans;

13. Adding a line, RM330, Annual Referral Fee Income from Home Equity Conversion Mortgage Loans;

14. Adding a line, RM332, Annual Referral Fee Income from Proprietary (Non-HECM) Reverse Mortgage Loans;

15. Adding a line, RM420, Annual Origination Fee Income from Home Equity Conversion Mortgage Loans;

16. Adding a line, RM422, Annual Origination Fee Income from Proprietary (Non-HECM) Reverse Mortgage Loans;

17. Adding a line, RM510, Commitments Outstanding to Originate Mortgages Secured by Home Equity Conversion Mortgage Loans;

18. Adding a line, RM512, Commitments Outstanding to Originate

Mortgages Secured by Proprietary (Non-HECM) Reverse Mortgage Loans;

19. Adding a line, RM610, Annual Mortgage Loans Disbursed for Permanent Loans on Home Equity Conversion Mortgage Loans;

20. Adding a line, RM612, Annual Mortgage Loans Disbursed for Permanent Loans on Proprietary (Non-HECM) Reverse Mortgage Loans;

21. Adding a line, RM620, Annual Loans and Participations Purchased Secured By Home Equity Conversion Mortgage Loans;

22. Adding a line, RM622, Annual Loans and Participations Purchased Secured By Proprietary (Non-HECM) Reverse Mortgage Loans;

23. Adding a line, RM630 Annual Loans and Participations Sold Secured By Home Equity Conversion Mortgage Loans; and

24. Adding a line, RM632, Annual Loans and Participations Sold Secured By Proprietary (Non-HECM) Reverse Mortgage Loans.

I. Discussion of Revisions Proposed for March 2010

A. Additional Detail on Credit Card Loans and Commitments

The extent to which the supply of credit has declined during the current financial crisis has been of great interest to the federal banking agencies and to Congress. Credit provided by financial institutions plays a central role in any economic recovery. The federal banking agencies need data to better determine when credit conditions have eased. One way to measure the supply of credit is to analyze the change in total lending commitments by financial institutions, considering both the amount of loans outstanding and the volume of unused credit lines. These data are also needed for safety and soundness purposes because draws on commitments during periods when financial institutions face significant funding pressures, such as during the fall of 2008, can place significant and unexpected demands on the liquidity and capital positions of these institutions. Therefore, OTS proposes to collect further detail on credit card lending in TFR Schedules SC and CC. These new data items would improve the OTS's ability to timely and accurately evaluate trends in thrift institutions' supply of credit available to households and businesses. These data would also be useful in determining thrift institutions' impact on the effectiveness of the government's economic stabilization programs.

Unused commitments associated with open-end credit card lines are currently reported in line CC423. This data item is not sufficiently detailed for monitoring the supply of credit because it mixes consumer credit card lines with credit card lines for businesses and other entities. As a result of this aggregation, it is not possible to fully monitor credit available specifically to households. Furthermore, bank supervisors would benefit from the split, because the usage patterns, profitability, and evolution of credit quality through the business cycle are likely to differ for consumer credit cards and business credit cards. Therefore, the OTS proposes to revise line CC423 to collect data on unused credit card lines to consumers, and to add a line, CC424, to collect data on unused credit card lines to other entities. Outstanding balances from draws on these credit lines that have not been sold are already reported on Schedule SC. Thrifts report draws on credit cards issued to consumers on line SC328. Draws on credit cards issued to businesses are included with unsecured commercial loans on line SC303. OTS proposes to add a line, SC304, to collect data on the amount of business-related credit card loans outstanding that are included in line SC303.

B. Time Deposits of $100,000 or Greater

On October 3, 2008, the Emergency Economic Stabilization Act of 2008 temporarily raised the standard maximum deposit insurance amount (SMDIA) from $100,000 to $250,000 per depositor. Under this legislation, the SMDIA was to return to $100,000 after December 31, 2009. However, on May 20, 2009, the Helping Families Save Their Homes Act extended this temporary increase in the SMDIA to $250,000 per depositor through December 31, 2013, after which the SMDIA is scheduled to return to $100,000.

At present, thrifts report time deposits in TFR Schedule DI, Consolidated Deposit Information, including total time deposits in line DI340, time deposits of $100,000 or greater in line DI350, and time deposits in IRA or Keogh accounts of $100,000 or greater. In response to the extension of the temporary increase in the limit on deposit insurance coverage, the federal banking agencies understand that time deposits with balances in excess of $100,000, but less than or equal to $250,000, have been growing and can be expected to increase further. However, given the existing Schedule DI reporting requirements, OTS is unable to monitor growth in thrifts' time deposits with balances within the temporarily increased limit on deposit insurance coverage.

Therefore, OTS is proposing to revise line DI350 from ''Time Deposits of $100,000 or Greater (Excluding Brokered Time Deposits Participated Out by the Broker in Shares of Less Than $100,000 and Brokered Certificates of Deposit Issued in $1,000 Amounts Under a Master Certificate of Deposit)'' to ''Time Deposits of $100,000 through $250,000 (Excluding Brokered Time Deposits Participated Out by the Broker in Shares of Less Than $100,000 and Brokered Certificates of Deposit Issued in $1,000 Amounts Under a Master Certificate of Deposit)'', and to add a line DI352 for ''Time Deposits Greater than $250,000''. Existing line DI340, Total Time Deposits, and DI360, IRA/Keogh Accounts of $100,000 or Greater Included in Time Deposits, would not change.

C. Revisions of Brokered Deposit Items

As described above in Section II.B., the SMDIA has been increased temporarily from $100,000 to $250,000 through year-end 2013. However, the data that thrifts currently report in the TFR on fully insured brokered deposits in TFR line DI100 is based on the $100,000 insurance limit (except for brokered retirement deposit accounts for which the deposit insurance limit was already $250,000). Therefore, in response to the temporary increase in the SMDIA, OTS is proposing to revise line DI100 from ''Total Broker-Originated Deposits: Fully Insured'' to ''Total Broker-Originated Deposits: Fully Insured: With Balances Less than $100,000'', and to add a line DI102 for ''Total Broker-Originated Deposits: Fully Insured: With Balances of $100,000 through $250,000''.

Furthermore, given the linkage between the deposit insurance limits and the reporting on fully insured brokered deposits in Schedule DI, the scope of these items needs to be changed whenever deposit insurance limits change. To ensure that the scope of these lines, including the dollar amounts cited in the captions for these items, changes automatically as a function of the deposit insurance limit in effect on the report date, the TFR instructions would be revised to state that the specific dollar amounts used as the basis for reporting fully insured brokered deposits in lines DI100 and DI102 reflect the deposit insurance limits in effect on the report date.

In addition, consistent with the reporting of time deposits in other items of Schedule DI, brokered deposits would be reported based on their balances rather than the denominations in which they were issued. Line DI100 would include time deposits issued to

deposit brokers in the form of large ($100,000 or more) certificates of deposit that have been participated out by the broker in shares with balances of less than $100,000. For brokered deposits that represent retirement deposit accounts eligible for $250,000 in deposit insurance coverage, report such brokered deposits in this item only if their balances are less than $100,000.

Line DI102 would include brokered deposits (including brokered retirement deposit accounts) with balances of $100,000 through $250,000. Also report in this item brokered deposits that represent retirement deposit accounts eligible for $250,000 in deposit insurance coverage that have been issued in denominations of more than $250,000 that have been participated out by the broker in shares of $100,000 through exactly $250,000.

D. Interest Expense and Quarterly Averages for Brokered Deposits

Under Section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f), an insured depository institution that is less than well capitalized generally may not pay a rate of interest that significantly exceeds the prevailing rate in the institution's ''normal market area'' and/or the prevailing rate in the ''market area'' from which the deposit is accepted. In the case of an adequately capitalized institution with a waiver to accept brokered deposits, the institution may not pay a rate of interest on brokered deposits accepted from outside the bank's ''normal market area'' that significantly exceeds the ''national rate'' as defined by the FDIC. On May 29, 2009, the FDIC's Board of Directors adopted a final rule making certain revisions to the interest rate restrictions under Section 337.6 of the FDIC's regulations. Under the final rule, the ''national rate'' is a simple average of rates paid by U.S. depository institutions as calculated by the FDIC.[1] When evaluating compliance with the interest rate restrictions in Section 337.6 by an institution that is less than well capitalized, the FDIC generally will deem the national rate to be the prevailing rate in all market areas. The final rule is effective January 1, 2010.

At present, the federal banking agencies are unable to evaluate the level and trend of the cost of brokered time deposits to institutions that have acquired such funds, nor can the agencies compare the cost of such deposits across institutions with brokered time deposits. Data on the cost of brokered deposits would also assist the agencies in evaluating the overall cost of institutions' time deposits, for which data have long been collected in the Call Report for banks and TFR for thrifts. Furthermore, many of the financial institutions that have failed since the beginning of 2008 have relied extensively on brokered deposits to support their asset growth. Therefore, to enhance OTS's ability to evaluate funding costs and the impact of brokered time deposits on these costs, OTS is proposing to add four new line items to TFR Schedule DI. The other federal banking agencies are proposing to add similar line items to the Call Report with two Memorandum items to Schedule RC–K, Quarterly Averages, and two items Schedule RI, Income Statement.

In these new line items to TFR Schedule DI, thrifts would report lines DI114 for ''Total Broker-Originated Deposits: Interest Expense for Fully Insured Brokered Deposits'', DI116 for ''Total Broker-Originated Deposits: Interest Expense for Other Brokered Deposits'', DI544 for ''Average Daily Deposit Totals: Fully Insured Brokered Time Deposits'', and DI545 for ''Average Daily Deposit Totals: Other Brokered Time Deposits''.

E. Change in Reporting Frequency for Schedule SB—Consolidated Small Business Loans

Section 122 of the Federal Deposit Insurance Corporation Improvement Act requires the federal banking agencies to collect from insured institutions annually the information the agencies ''may need to assess the availability of credit to small businesses and small farms.'' The OTS meets this requirement through Schedule SB which requests information on the number and amount currently outstanding of ''loans to small businesses'' and ''loans to small farms,'' as defined in the TFR instructions, which all thrift institutions must report annually as of June 30.

With the United States now more than a year into a recession, the current administration ''firmly believes that economic recovery will be driven in large part by America's small businesses,'' but ''small business owners are finding it harder to get the credit necessary to stay in business.'' [2] Because ''[c]redit is essential to economic recovery,'' Treasury Secretary Geithner stated on March 16, 2009, that ''we need our nation's banks to go the extra mile in keeping credit lines in place on reasonable terms for viable businesses.'' [3] Accordingly, Secretary Geithner asked the federal banking agencies ''to call for quarterly, as opposed to annual reporting of small business loans, so that we can carefully monitor the degree that credit is flowing to our nation's entrepreneurs and small business owners.'' [4] In response to Secretary Geithner's request and to improve the agencies' own ability to assess the availability of credit to small businesses and small farms, the OTS proposes to change the frequency with which thrifts must submit TFR Schedule SB from annually to quarterly beginning March 31, 2010. OTS is not proposing to make any revisions to the information that thrifts are required to report on this schedule. The other federal banking agencies are proposing a similar change in reporting frequency with which banks must submit Call Report Schedule RC–C, Part II.

II. Discussion of Revisions Proposed for December 2010

A. Reverse Mortgage Data

Reverse mortgages are complex loan products that leverage equity in homes to provide lump sum cash payments or lines of credit to borrowers. These products are typically marketed to senior citizens who own homes. The federal banking agencies are currently unable to effectively identify and monitor institutions that offer these products due to a lack of reverse mortgage data.

The reverse mortgage market currently consists of two basic types of products: proprietary products designed and originated by financial institutions and a federally-insured product known as a Home Equity Conversion Mortgage (HECM). Some reverse mortgages provide for a lump sum payment to the borrower at closing, with no ability for the borrower to receive additional funds under the mortgage at a later date. Other reverse mortgages are structured like home equity lines of credit in that they provide the borrower with additional funds after closing, either as fixed monthly payments, under a line of credit, or both. There are also reverse mortgages that provide a combination of a lump sum payment to the borrower at closing and additional payments to the borrower after the closing of the loan.

The volume of reverse mortgage activity is expected to dramatically increase in the coming years as the U.S. population ages. A number of consumer protection related risks and safety and

[1] The FDIC publishes a weekly schedule of national rates and national interest-rate caps by maturity, which can be accessed at *http://www.fdic.gov/regulations/resources/rates/.*

[2] *http://www.financialstability.gov/roadtostability/smallbusinesscommunity.html.*

[3] *http://www.financialstability.gov/latest/tg58-remarks.html.*

[4] Ibid.

soundness related risks are associated with these products and the agencies need to collect information from financial institutions involved in the reverse mortgage activities to monitor and mitigate those risks. For example, proprietary reverse mortgages structured as lines of credit, which are not insured by the federal government, expose borrowers to the risk that the lender will be unwilling or unable to meet its obligation to make payments due to the borrower. Additionally, in those circumstances in which housing prices are declining, there is the risk that the reverse mortgage loan balance may exceed the value of the underlying collateral value of the home.

As stated above, access to data regarding loan volumes, dollar amounts outstanding, and the institutions offering reverse mortgages or participating in reverse mortgage activity is severely limited. The U.S. Department of Housing and Urban Development provides a monthly report for reverse mortgages endorsed for federal insurance, by fiscal year, for those loans that are part of the federally sponsored HECM program. While this monthly report provides information such as average expected interest rates, average property values, average age of the borrower, and the number of active insured accounts, there is no aggregate monthly data nor is there institution-specific information that identifies the institutions participating in the program. For proprietary reverse mortgage loans, there is no known data on the volume of reverse mortgages, dollar amounts outstanding, or the institutions offering these products.

Therefore, OTS is proposing that a new Schedule RM—Annual Supplemental Consolidated Data on Reverse Mortgages be added to the TFR to collect reverse mortgage data on an annual basis beginning on December 31, 2010. The other federal banking agencies are similarly proposing new items for the Call Report to collect reverse mortgage data on an annual basis beginning on December 31, 2010. Collecting this information will provide the agencies the necessary information for policy development and the management of risk exposures posed by institutions' involvement with reverse mortgages.

OTS is proposing the following 16 new line items for Schedule RM:

1. RM110, Amount of Home Equity Conversion Mortgage Loans Outstanding;

2. RM112, Amount of Proprietary (Non-HECM) Reverse Mortgage Loans Outstanding;

3. RM310, Annual Interest Income from Home Equity Conversion Mortgage Loans;

4. RM312, Annual Interest Income from Proprietary (Non-HECM) Reverse Mortgage Loans;

5. RM330, Annual Referral Fee Income from Home Equity Conversion Mortgage Loans;

6. RM332, Annual Referral Fee Income from Proprietary (Non-HECM) Reverse Mortgage Loans;

7. RM420, Annual Origination Fee Income from Home Equity Conversion Mortgage Loans;

8. RM422, Annual Origination Fee Income from Proprietary (Non-HECM) Reverse Mortgage Loans;

9. RM510, Commitments Outstanding to Originate Mortgages Secured by Home Equity Conversion Mortgage Loans;

10. RM512, Commitments Outstanding to Originate Mortgages Secured by Proprietary (Non-HECM) Reverse Mortgage Loans;

11. RM610, Annual Mortgage Loans Disbursed for Permanent Loans on Home Equity Conversion Mortgage Loans;

12. RM612, Annual Mortgage Loans Disbursed for Permanent Loans on Proprietary (Non-HECM) Reverse Mortgage Loans;

13. RM620, Annual Loans and Participations Purchased Secured By Home Equity Conversion Mortgage Loans;

14. RM622, Annual Loans and Participations Purchased Secured By Proprietary (Non-HECM) Reverse Mortgage Loans;

15. RM630 Annual Loans and Participations Sold Secured By Home Equity Conversion Mortgage Loans; and

16. RM632, Annual Loans and Participations Sold Secured By Proprietary (Non-HECM) Reverse Mortgage Loans.

Request for Comments

OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number.

In this notice, OTS is soliciting comments concerning the following information collection.

Statutory Requirement: 12 U.S.C. 1464(v) imposes reporting requirements for savings associations.

Type of Review: Revision of currently approved collections.

Affected Public: Business or for profit.

Estimated Number of Respondents and Recordkeepers: 794.

Estimated Burden Hours per Respondent: 57.4 hours average for quarterly schedules and 2.0 hours average for schedules required only annually plus recordkeeping of an average of one hour per quarter.

Estimated Frequency of Response: Quarterly.

Estimated Total Annual Burden: 190,828 hours.

OTS is proposing to revise the TFR, which is currently an approved collection of information, in March and December 2010. The effect on reporting burden of the proposed revisions to the TFR requirements will vary from institution to institution depending on the institution's asset size and its involvement with the types of activities or transactions to which the proposed changes apply.

The proposed TFR changes that would take effect as of March 31, 2010, would revise the captions for three existing items, add eight new items, and change the reporting frequency of data in Schedule SB from annual to quarterly.

The proposed TFR revisions that would take effect December 31, 2010, would add a new Schedule RM—Annual Supplemental Consolidated Data on Reverse Mortgages which would add 16 new line items in an annual collection of data on reverse mortgages.

OTS estimates that the implementation of these reporting revisions will result in an increase in the current reporting burden imposed by the TFR on all savings associations.

As part of the approval process, we invite comments addressing one or more of the following points:

a. Whether the proposed revisions to the TFR collections of information are necessary for the proper performance of the agency's functions, including whether the information has practical utility;

b. The accuracy of the agency's estimate of the burden of the collection of information;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques, the Internet, 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.

OTS will summarize the comments received and include them in the request for OMB approval. All comments will become a matter of public record.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Desk Officer for OTS, FAX: (202) 395–6974, U.S. Office of Management and Budget, 725—17th Street, NW., Room 10235, Washington, DC 20503.

Dated: August 14, 2009.

Deborah Dakin,

Acting Chief Counsel, Office of Thrift Supervision.

[FR Doc. E9–19908 Filed 8–18–09; 8:45 am]

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Federal Register

Wednesday,
August 19, 2009

Part II

Federal Trade Commission

16 CFR Part 310
Telemarketing Sales Rule; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 310

Telemarketing Sales Rule

AGENCY: Federal Trade Commission (''Commission'' or ''FTC'').

ACTION: Notice of Proposed Rulemaking; Announcement of Public Forum.

SUMMARY: In this document, the FTC issues a Notice of Proposed Rulemaking (''NPRM'' or ''Notice'') to amend the FTC's Telemarketing Sales Rule (''TSR'' or ''Rule'') to address the sale of debt relief services. The Commission seeks public comment on the proposed amendments, which would: define the term ''debt relief service''; ensure that, regardless of the medium through which such services are initially advertised, telemarketing transactions involving debt relief services would be subject to the TSR; mandate certain disclosures and prohibit misrepresentations in the telemarketing of debt relief services; and prohibit any entity from requesting or receiving payment for debt relief services until such services have been fully performed and documented to the consumer.

This NPRM invites written comments on all issues raised by the proposed amendments and seeks answers to the specific questions set forth in Section VIII of this Notice. This document also contains an invitation to participate in a public forum, to be held following the close of the comment period, which will afford Commission staff and interested parties an opportunity to discuss the proposed amendments as well as any issues raised in comments in response thereto.

DATES: Written comments must be received by October 9, 2009. For information on the public forum, please see the **SUPPLEMENTARY INFORMATION** section below.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. For important information concerning the comments you file, please review the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be filed at the following electronic address: (*https://secure.commentworks.com/ftc-TSRDebtRelief*) (following the instructions on the web-based form). Comments in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex T), 600 Pennsylvania Avenue, NW, Washington, DC 20580, in the manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Evan Zullow, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-3224.

SUPPLEMENTARY INFORMATION: The public forum will be held at the Federal Trade Commission. The Commission will post the date, time, and location of the public forum on its website no later than 30 days after the publication of this NPRM. The Commission will publish an agenda for the public forum on its website prior to the forum. Requests to participate as a panelist at the public forum must comply with all applicable requirements set forth in this document and must be received by October 9, 2009. To be considered as a panelist at the public forum, interested parties must submit both a request to participate and a comment in response to this NPRM. Further details regarding the public forum are included in Section IV of this Notice.

Requests to participate in the public forum, which must be filed separately from a party's public comment, may be filed in paper form or sent via e-mail to: (*tsrdebtrelief@ftc.gov*) and should refer to ''Telemarketing Sales Rule - Debt Relief Rulemaking Forum – Request to Participate, R411001'' to facilitate organization of such requests.[1] Requests must comply with all other applicable requirements set forth in this section and elsewhere in this document. A request to participate filed in paper form should include this reference, both in the text and on the envelope, and should be mailed or delivered to: Federal Trade Commission/Office of the Secretary, Room H-135 (Annex T), 600 Pennsylvania Avenue, NW, Washington, DC 20580. Because paper mail in the Washington area, and specifically to the FTC, is subject to delay due to heightened security screening, please consider submitting your request to participate via e-mail to: (*tsrdebtrelief@ftc.gov*.)

Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Telemarketing Sales Rule - Debt Relief Amendments, R411001'' to facilitate the organization of comments. Please note that your comment – including your name and your state – will be placed on the public record of this proceeding, including on the publicly accessible FTC Website at (*www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as any individual's: Social Security Number; date of birth; driver's license number, other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged orconfidential,'' as provided in Section 6(f) of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[2]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://*

[1] Please note that your request constitutes a public filing before the Commission and will be placed on the public record of the proceeding, including on the publicly accessible FTC website, at (*www.ftc.gov/os/publiccomments.shtm*). Therefore, your request should not include any sensitive or confidential information. In particular, it should not include any sensitive personal information – such as any individual's Social Security Number; date of birth; driver's license number, other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2).

The Federal Trade Commission Act and other laws the Commission administers permit the collection of requests to participate in the above forum to consider and use in this proceeding as appropriate. As a matter of discretion, the Commission makes every effort to remove home contact information for individuals before placing requests to participate on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*www.ftc.gov/ftc/privacy.shtm*).

[2] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

secure.commentworks.com/ftc-TSRDebtRelief) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (*https://secure.commentworks.com/ftc-TSRDebtRelief*). If this Notice appears at (*www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Website at (*www.ftc.gov*) to read the Notice and the news release describing it.

A comment filed in paper form should include the ''Telemarketing Sales Rule - Debt Relief Amendments - R411001'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex T), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC requests that any comment filed in paper form be sent by courier or overnight service, if possible, to avoid security related delays.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget (''OMB''), Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-5167 because U.S. postal mail at the OMB is subject to delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*www.ftc.gov/ftc/privacy.shtm*).

I. Background

A. Telemarketing and Consumer Fraud and Abuse Prevention Act

On August 16, 1994, the Telemarketing and Consumer Fraud and Abuse Prevention Act (''Telemarketing Act'' or ''Act'') was signed into law.[3] The purpose of the Act was to curb telemarketing deception and abuse and provide key anti-fraud and privacy protections for consumers receiving telephone solicitations to purchase goods or services. The Telemarketing Act directed the Commission to issue a rule defining and prohibiting deceptive and abusive telemarketing acts or practices, and specified that the FTC's rule must address certain acts or practices. The Act directed the Commission to include provisions relating to three specific ''abusive telemarketing acts or practices'': (1) a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of his or her right to privacy; (2) restrictions on the time of day telemarketers may make unsolicited calls to consumers; and (3) a requirement that telemarketers promptly and clearly disclose in all sales calls to consumers ''that the purpose of the call is to sell goods or services and make such other disclosures as the Commission deems appropriate, including the nature and price of the goods and services.''[4] The Act also directed the Commission to consider including recordkeeping requirements in the Rule.[5] Finally, the Act authorized state Attorneys General, other appropriate state officials, and private persons to bring civil actions in federal district court to enforce compliance with the FTC's Rule.[6]

B. Telemarketing Sales Rule

Pursuant to its authority under the Telemarketing Act, the FTC promulgated the TSR on August 16, 1995.[7] The Rule was subsequently amended on two occasions, first in 2003[8] and again in 2008.[9] As to the Rule's scope, the TSR applies to virtually all ''telemarketing'' – defined to mean ''a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call . . . .''[10] However, the Telemarketing Act makes clear that the jurisdiction of the Commission in enforcing the Rule is coextensive with its jurisdiction under Section 5 of the FTC Act.[11] As a result, some entities and products fall outside the jurisdiction of the TSR.[12] Further, the Rule wholly or partially exempts from its coverage several types of calls.[13]

The TSR sets forth rules governing communications between telemarketers and consumers, requiring certain disclosures[14] and prohibiting certain material misrepresentations.[15] Further, the TSR requires telemarketers to obtain consumers' ''express informed consent'' to be charged on a particular account

[3] 15 U.S.C. 6101-6108.

[4] 15 U.S.C. 6102(a)(3).

[5] 15 U.S.C. 6102(a).

[6] 15 U.S.C. 6103, 6104.

[7] The effective date of the original Rule was December 31, 1995.

[8] *See TSR; Final Amended Rule,* 68 FR 4580 (Jan. 29, 2003).

[9] *See TSR; Final Rule Amendments,* 73 FR 51164 (Aug. 29, 2008).

[10] 16 CFR 310.2(cc) (using the same definition as the Telemarketing Act, 15 U.S.C. 6106).

[11] 15 U.S.C. 6105(b).

[12] 15 U.S.C. 45(a)(2) (setting forth certain limitations to the Commission's jurisdiction with regard to its authority to prohibit unfair or deceptive acts or practices). These entities include banks, savings and loan institutions, and certain federal credit unions. It should be noted, however, that although the Commission's jurisdiction is limited with respect to the entities exempted by the FTC Act, the Commission has made clear that the Rule does apply to any third-party telemarketers those entities might use to conduct telemarketing activities on their behalf. *See TSR; Proposed Rule*, 67 FR 4492, 4497 (Jan. 30, 2002) (*citing TSR; Statement of Basis and Purpose and Final Rule*, 60 FR, 43842, 43843 (Aug. 23, 1995)) (''As the Commission stated when it promulgated the Rule, '[t]he Final Rule does not include special provisions regarding exemptions of parties acting on behalf of exempt organizations; where such a company would be subject to the FTC Act, it would be subject to the Final Rule as well.' '')

[13] For example, Section 310.6(a) exempts telemarketing calls to induce charitable contributions from the Do Not Call Registry provisions of the Rule, but not from the Rule's other requirements. In addition, there are exceptions to some exemptions that limit their reach. *See, e.g.,* 16 CFR 310.6(b)(5)-(6).

[14] The TSR requires that telemarketers soliciting sales of goods or services promptly disclose several key pieces of information: (1) the identity of the seller; (2) the fact that the purpose of the call is to sell goods or services; (3) the nature of the goods or services being offered; and (4) in the case of prize promotions, that no purchase or payment is necessary to win. 16 CFR 310.4(d). Telemarketers must also, in any telephone sales call, disclose cost and certain other material information before consumers pay. 16 CFR 310.3(a)(1). In telemarketing calls soliciting charitable contributions, the Rule requires prompt disclosure of the identity of the charitable organization on behalf of which the request is being made and that the purpose of the call is to solicit a charitable contribution. 16 CFR 310.4(e).

[15] The TSR prohibits misrepresentations about, among other things, the cost and quantity of the offered goods or services. 16 CFR 310.3(a)(2). It also prohibits making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution. 16 CFR 310.3(a)(4).

before billing or collecting payment[16] and, through a specified process, to obtain consumers' ''express verifiable authorization'' to be billed through any payment system other than a credit or debit card.[17] In addition, the Rule prohibits requesting or receiving payment of any fee or consideration in advance of obtaining any of three purported services that the Commission determined to be ''fundamentally bogus''[18]: credit repair services,[19] recovery services,[20] and offers of a loan or other extension of credit, the granting of which is represented as ''guaranteed'' or having a high likelihood of success.[21] The Rule also prohibits credit card laundering[22] and other forms of assisting and facilitating fraudulent telemarketers.[23]

The Rule restricts telemarketers from calling before 8:00 a.m. or after 9:00 p.m. (in the time zone where the consumer is located),[24] and from calling consumers whose numbers are on the National Do Not Call Registry (except when the seller has an established business relationship with the person called or has obtained the person's express agreement, in writing, to receive telemarketing calls).[25] It also prohibits calling consumers who have specifically requested not to receive calls from a particular entity.[26] The TSR also requires that telemarketers transmit accurate Caller ID information[27] and places restrictions on calls made by predictive dialers[28] and calls delivering pre-recorded messages.[29]

II. Overview of Debt Relief Services

Debt relief services – including credit counseling, debt management plans, debt settlement, and debt negotiation – are offered by a range of nonprofit and for-profit entities, often through telemarketing. As consumer debt has grown in recent years, so have the number and type of entities that provide, or purport to provide, services to consumers struggling with debt. Over the past several years, consumer protection concerns have arisen regarding the sale of debt relief services. The Commission has addressed these concerns in a variety of ways, including through law enforcement actions, consumer education, and outreach to industry. In September 2008, the Commission held a public workshop entitled ''Consumer Protection and the Debt Settlement Industry'' (''Workshop''),[30] which brought together stakeholders to discuss the current state of debt settlement services, one facet of the debt relief services industry. Based upon information provided in conjunction with the Workshop, as well as through its independent research and law enforcement efforts, the Commission provides the following description of the evolution and marketing practices of the debt relief services industry, with a particular focus on two primary types of service providers: credit counseling agencies and for-profit debt settlement service providers.

A. Credit Counseling Agencies

1) Background

For decades, debt relief services were almost exclusively the province of nonprofit credit counseling agencies (''CCAs'').[31] Beginning in the mid-1960s, creditor banks initiated this model, providing funding for CCAs with the intent of reducing personal bankruptcy filings.[32] CCA credit counselors work as a liaison between consumers and creditors to negotiate a ''debt management plan'' (''DMP'') – usually for the repayment of credit card and other unsecured debt. Typically, credit counselors also have provided educational counseling on financial literacy to assist consumers in developing a manageable budget and avoiding debt problems in the future.[33]

The hallmark of a traditional DMP is that it enables a consumer to repay the full amount owed to creditors, albeit under renegotiated terms that make repayment less onerous.[34] Thus, DMPs can be beneficial both to consumers, who receive more manageable terms, and to creditors, who are paid the outstanding balance. A credit counselor makes an initial determination about whether a DMP is a viable option for a consumer after obtaining the consumer's full financial profile. Traditionally, to be eligible for a DMP, a consumer must have sufficient income to repay the full amount of his or her debts, provided that the terms are adjusted to make such repayment possible.[35]

Crafting a DMP begins when a credit counselor contacts each of a consumer's unsecured creditors. Each creditor determines what, if any, repayment options to offer the consumer based on the consumer's income and total debt load. Repayment options, known as ''concessions,'' include reduced interest rates, elimination of late or over limit fees, and extensions of the term for repayment. After negotiations with all of a consumer's creditors are complete, the credit counselor finalizes the DMP and calculates the new repayment schedule. The traditional DMP typically calls for a consumer to repay the full balance of

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[16] 16 CFR 310.4(a)(6).

[17] 16 CFR 310.3(a)(3).

[18] *See TSR; Final Amended Rule,* 68 FR at 4614.

[19] 16 CFR 310.4(a)(2).

[20] 16 CFR 310.4(a)(3). As the Commission has previously explained, in ''recovery room scams . . . a deceptive telemarketer calls a consumer who has lost money, or who has failed to win a promised prize, in a previous scam. The recovery room telemarketer falsely promises to recover the lost money, or obtain the promised prize, in exchange for a fee paid in advance. After the fee is paid, the promised services are never provided. In fact, the consumer may never hear from the telemarketer again.'' *TSR; Statement of Basis and Purpose and Final Rule*, 60 FR 43842, 43854 (Aug. 23, 1995).

[21] 16 CFR 310.4(a)(4).

[22] 16 CFR 310.3(c).

[23] 16 CFR 310.3(b).

[24] 16 CFR 310.4(c).

[25] 16 CFR 310.4(b)(1)(iii)(B) (a safe harbor regarding Do Not Call violations can be found at 16 CFR 310.4(b)(3)).

[26] 16 CFR 310.4(b)(1)(iii)(A) (a safe harbor regarding Do Not Call violations can be found at 16 CFR 310.4(b)(3)).

[27] 16 CFR 310.4(a)(7).

[28] 16 CFR 310.4(b)(1)(iv) (a call abandonment safe harbor is found at 16 CFR 310.4(b)(4)).

[29] 16 CFR 310.4(b)(1)(v).

[30] Materials from the Workshop, including an agenda and transcript, and link to public comments, are available at (*www.ftc.gov/bcp/workshops/debtsettlement/index.shtm*). Public comments associated with the Workshop are available at (*www.ftc.gov/os/comments/debtsettlementworkshop/index.shtm*). Attachment A to this Notice contains a list of commenters who submitted comments for the Workshop, together with the abbreviations used to identify each commenter referenced in this NPRM. Where a commenter has submitted multiple comments, the abbreviation used indicates – by reference to either its date or subject matter – which specific comment is being referenced in this NPRM. Attachment B to this Notice contains a list of Workshop participants, together with the abbreviations used to identify each participant referenced in this NPRM.

[31] *But see* Credit Advisors at 1 (stating that the credit counseling industry ''was founded as a for-profit industry, and was much more consumer oriented than under the subsequent nonprofit model'').

[32] *See* National Consumer Law Center, Inc. (''NCLC'') and Consumer Federation of America (''CFA''), *Credit Counseling in Crisis: The Impact on Consumers of Funding Cuts, Higher Fees and Aggressive New Market Entrants*, April 2003, at 6.

[33] *See* IRS (Grodnitzky) Tr. at 19 (noting that the IRS ''issued two rulings, one in 1965 and one in 1969, and really kind of set up a framework for what a compliant credit counseling organization needs to look like. I think the overarching theme of these rulings were the organization, at least with respect to 501(c)(3), needs to educate, educate consumers, educate the public.'').

[34] *See Credit Counseling in Crisis* at 6. The study goes on to note that ''a DMP is very similar to a chapter 13 bankruptcy 'reorganization,' through which a consumer submits a plan to repay creditors over time. The critical difference is that Chapter 13 plans allow consumers with sufficient income to pay back secured as well as unsecured creditors. For consumers trying to hold onto their homes or cars, this is a critical distinction.'' *Id.* at 25-26.

[35] *See* Press Release, National Foundation for Credit Counseling, *Top Credit Card Issuers Support the NFCC's ''Call to Action'' For Consumer Repayment Relief,* (Apr. 15, 2009) (also noting that ''in these tough economic times, fewer consumers have sufficient income to be eligible for, or the ability to maintain, a traditional DMP, often leaving bankruptcy as the only option''), *available at* (*www.nfcc.org/NewsRoom/newsreleases/files09/NFCC_Call_Action.pdf*); CCFS (Manning) Tr. at 6.

unsecured debt to creditors by making reduced, consolidated monthly payments over a period of three to five years. The CCA receives these monthly payments over the term of the DMP and distributes the appropriate share to each of the consumer's creditors.

In response to the recent economic downturn and increase in consumer debt, the National Foundation for Credit Counseling (''NFCC'') – the umbrella organization for more than one hundred nonprofit credit counseling organizations – announced on April 15, 2009, that the top ten credit card issuers in the U.S. had agreed to provide additional concessions to ensure that even consumers in significant financial straits may be able to use a DMP as a means to extricate themselves from indebtedness.[36] According to the NFCC, this initiative came in response to its October 2008 ''Call to Action,'' which urged creditors to ''make DMPs more affordable for people in troubled financial circumstances.''[37]

For their efforts, CCAs, which operate as nonprofit entities, receive funding from two sources.[38] First, consumers now typically pay for services,[39] although this was not always the case.[40] According to the NFCC, as of 2001, consumers paid on average about $20 to enroll in a DMP, and then paid a monthly service fee of about $12.[41] These fees have increased over the last decade, and now average approximately $25 to enroll, plus $25 per month.[42] The second source of funding is creditors themselves. Traditionally, after a consumer enrolls in a DMP, the consumer's creditors pay the CCA a percentage of the monthly payments the CCA receives.[43] This funding mechanism, known as a ''fair share'' contribution, historically has provided the bulk of a CCA's operating revenue.[44] For many years, creditors' fair share payments ranged from 12 to 15% of the amount received as a result of the DMP, but that amount has decreased over time to between 0% and 10%.[45]

2) Abuse and Crackdown in the Credit Counseling Industry

Responding to the rise in consumer debt and the concomitant increase in defaults, many new entities entered the credit counseling field during the last decade.[46] The advent of these new credit counseling entities – many of which, unlike traditional CCAs, operated on a for-profit basis – appeared to increase the options for indebted consumers.[47] At the same time consumer protection concerns emerged with regard to these new credit counselors. Research by consumer advocates and congressional scrutiny highlighted troubling trends in the credit counseling industry, including: deceptive and unfair practices; excessive fees; and the abuse of nonprofit status.[48] These abuses prompted an array of responses over the past decade, including law enforcement, regulatory, legislative, educational,[49] and self-regulatory[50] actions.

The FTC and state Attorneys General have targeted unscrupulous practices by some CCAs in a number of law enforcement actions.[51] Since 2003, the

[36] *Id.* The participating creditors include: American Express, Bank of America, Capital One, Chase Card Services, Citi, Discover Financial Services, GE Money, HSBC Card Services, U.S. Bank, and Wells Fargo Card Services.

[37] *Id.* These credit card issuers endorsed two new plans: a ''more affordable 'Standard' DMP'' and a '''Hardship' DMP,'' specifically designed to enable consumers who have lost their jobs or experienced other serious financial problems to qualify. Like traditional DMPs, these so-called ''Call to Action DMPs'' provide for a five-year repayment term, but they allow a consumer to make more affordable, fixed monthly payments and establish an emergency savings fund rather than using all disposable income to repay existing debt. *Id.*

[38] *See Consumer Protection Issues in the Credit Counseling Industry: Hearing Before the Permanent Subcommittee on Investigations Senate Committee on Governmental Affairs*, 108 th Cong. 2d Sess. (2004) (Testimony of the FTC), *available at* (*www.ftc.gov/os/2004/03/040324testimony.shtm*). Binzell Tr. at 37 (''If we had to do it all over again, we could go back 50 years, that fair share would have never existed. We think it's important. We think creditors have a very important role and should be responsible for helping to fund credit counseling and financial literacy. I mean, they have a vested interest and they should be supporting it. The fact that it's tied to DMPs, again, it started long before I got involved and it probably ought to be something different.'').

[39] These fees are often limited by state law. *See, e.g.*, Me. Rev. Stat. Ann. Tit. 17 § 701, *et seq.*, tit. 32 § 6171, *et seq.* (limiting fees to $75 for set-up, $40 monthly charge, and 15% of reduction for any settlement of debt); Md. Code Ann. § 12-901 *et seq.* (limiting to $50 consultation fee and the lesser of $40 per month or $8 per creditor per month); Ill. Com. Stat. Ann., § 205 ILCS 665/1 *et seq.* (capping initial and monthly credit counseling fees).

[40] *See Credit Counseling in Crisis* at 13-14 (''charging consumers was virtually unheard of even a decade ago'' but, in 2001, ''about 88% of [NFCC] agencies were charging monthly fees, a little more than half charged enrollment fees, and almost 25% were charging for counseling.'').

[41] *See id.*

[42] *See* Cards & Payments, Vol. 22, Issue 2, *Credit Concessions: Assistance for Borrowers on the Brink* (Feb. 1, 2009) (noting that ''nonprofit agencies' counseling fees average about $25 per month''); Miami Herald, *Credit Counselors See Foreclosures on the Rise* (July 13, 2008) (noting that CCAs charge an initial fee of $25, and a $25 monthly fee).

[43] *See* Letter from NFCC to Lucy Morris, Attorney, Federal Trade Commission (Feb. 27, 1997) (proposing CCA disclosure that creditor contributions are usually calculated as a percentage of ''each payment received''), *available at* (*www.ftc.gov/os/1997/03/nfcc2.pdf*).

[44] *See* NFCC, *FAQs* (''The majority of agency funding comes from voluntary contributions from creditors who participate in Debt Management Plans.''), *available at* (*www.nfcc.org/aboutus/aboutus_04.html#7*); NFCC (Binzel) Tr. at 37. Some have since questioned the appropriateness of the ''fair share'' model. *See, e.g.,* NFCC (Binzel) Tr. at 37 (''If we had to do it all over again . . . fair share would have never existed . . . . We think creditors have a very important role and should be responsible for helping to fund credit counseling and financial literacy. I mean, they have a vested interest and they should be supporting it. The fact that it's tied to DMPs, again, it started long before I got involved and it probably ought to be something different.'').

[45] *See Credit Counseling in Crisis* at 10-12.

[46] *See* IRS (Grodnitzky) Tr. at 19-21 (noting that in the past 10 years, the IRS observed that new entities, which looked more like commercial entities than nonprofits, entered the CCA marketplace); AADMO (Guimond) Tr. at 40 (''Everybody saw the AmeriDebt nightmare, all the horror stories that were on the news.''); *see also Credit Counseling in Crisis* at 7 (''Ten years ago, there were about 200 credit counseling organizations in the country, with 90% affiliated with NFCC. By 2002, there were more than 1,000 credit and debt management organizations in the country.'').

[47] *See Credit Counseling in Crisis* at 8 (''These [new] agencies have pioneered more business-like methods of making debt management plans convenient for consumers, including flexible hours, phone and Internet counseling, and electronic payments. These improvements, in turn, have forced the 'old guard' to be more responsive to their clients. Some of these newer agencies are responsible, effective and sensitive to their client's needs. However, as the newer agencies have gained market share, a number of serious problems have surfaced as well.'').

[48] *See generally id*; *see also* IRS (Grodnitzsky) Tr. at 20; NFCC (Binzel) Tr. at 28-29 (noting that ''when profit motive is injected into a non-profit industry, it should come as no surprise that harm to consumers will follow.''). In March of 2004, the Senate Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs conducted an investigation and held hearings on the industry. The Subcommittee's report, issued in April 2005, concluded that ''[c]learly, something is wrong with the credit counseling industry.'' S. Rep. No. 109-55, at 1 (2005).

[49] The FTC and IRS, as well as other entities, have created and disseminated education materials to help consumers understand the fundamentals of credit counseling and learn how to select a reputable CCA. *See, e.g.,* FTC, *Fiscal Fitness: Choosing a Credit Counselor, available at* (*www.ftc.gov/bcp/edu/pubs/consumer/credit/cre26.shtm*); FTC, *Knee Deep in Debt*, *available at* (*www.ftc.gov/bcp/edu/pubs/consumer/credit/cre19.shtm*); IRS, *Credit Counseling Organizations - Questions and Answers about New Requirements*, *available at* (*www.irs.gov/charities/article/0,,id=163180,00.html*).

[50] Some industry associations have created or enhanced self-regulatory codes. *See, e.g.,* NFCC, Member Application (Attachments A-C), *available at* (*www.nfcc.org/NFCC_MemberApplicationFINAL_REV071006.pdf*); AICCA Certification of Compliance, *available at* (*www.aiccca.org/images/CertificateofCompliance.pdf*); AADMO (Guimond) Tr. at 43 (AADMO ''created the first nationwide accreditation program for for-profit credit counselors'').

[51] State enforcers have sued CCAs for violations of state consumer protection laws. *See, e.g.,* Colorado Office of the Attorney General Press Release, *Eleven Companies Settle With The State Under New Debt-Management And Credit Counseling Regulations* (Mar. 12, 2009), *available at* (*www.ago.state.co.us/press_detail.cfmpressID=957.html*); Press Release of

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Commission has brought six cases against credit counseling entities for deceptive and abusive practices, including a seminal action against AmeriDebt, Inc., which was, at the time, one of the largest CCAs.[52] The defendants in these cases allegedly engaged in several common patterns of deceptive conduct in violation of Section 5 of the FTC Act.[53] First, most made deceptive statements regarding their nonprofit status.[54] Second, they allegedly frequently misrepresented the scope, benefits, and likelihood of success consumers could expect from their services. Misrepresentations included false promises to provide counseling and education services[55] and overstatements of the amount or percentage of interest charges a consumer might save using the services.[56] Third, these entities allegedly commonly misrepresented material information regarding their fees, including making false claims that they did not charge up-front fees[57] or that fees were tax deductible.[58] In addition to allegedly violating the FTC Act, some of these entities also allegedly engaged in violations of the TSR, particularly the Rule's disclosure and misrepresentation provisions and the abusive practices section, including the National Do Not Call Registry provision.[59]

The IRS has played a key role in regulating CCAs based on its authority to regulate nonprofit entities under Section 501(c)(3) of the Internal Revenue Code (''IRC''). In 2003, in response to the abuses arising from for-profit entities masquerading as nonprofits, the IRS announced its intention to re-examine CCAs with 501(c)(3) status to determine whether they were complying with the laws and regulations governing tax-exempt status.[60] Ultimately, this initiative expanded into a full-scale program to examine all tax-exempt CCAs, resulting in ''widespread revocation, proposed revocation or other termination of tax-exempt status,'' of many organizations,[61] as well as increased scrutiny of new applications for tax-exempt status by credit counseling agencies.[62]

To enhance the IRS's ability to oversee CCAs, in 2006 Congress amended the IRC, adding Section 501(q) to provide specific eligibility criteria for CCAs seeking tax-exempt status as well as criteria for retaining that status.[63] Among other things, Section 501(q) of the IRC prohibits tax-exempt CCAs from: making or negotiating loans to or on behalf of a client; engaging in credit repair activities, if those activities are not incidental to the provision of credit counseling, or charging a separate fee for credit repair activities; or refusing to provide credit counseling services due to a consumer's inability to pay or a consumer's ineligibility or unwillingness to agree to enroll in a DMP.[64] In addition, Section 501(q) provides that tax-exempt credit counselors may only charge reasonable fees for services; must allow fee waivers if a consumer is unable to pay; and may not, unless allowed by state law, base fees on a percentage of a client's debt, DMP payments, or savings from enrolling in a DMP.[65] Section 501(q) also limits the aggregate revenues that a tax-exempt CCA may receive from creditors for DMPs.[66] Under Section 501(q), tax-exempt CCAs also are prohibited from making or receiving referral fees and from soliciting voluntary contributions from a client.[67]

In addition to receiving regulatory scrutiny from the IRS, as a result of changes in the federal bankruptcy code, certain nonprofit CCAs have been subjected to rigorous screening by the Department of Justice's Executive Office of the U.S. Trustee (''EOUST''). Pursuant to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, consumers must obtain credit counseling before filing for bankruptcy and must take a financial literacy class before obtaining a

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the N.J. Department of Public Affairs, *State Files Suit Against United Credit Adjusters and Related Companies* (Oct. 15, 2008), *available at* (*www.nj.gov/lps/ca/press/creditadjusters.htm*); North Carolina Office of Attorney General Press Release, *AG Cooper Seeks to Stop Sham Credit Counselor* (Oct. 10, 2006), *available at* (*www.ncdoj.gov/DocumentStreamerClient?directory=PressReleases/&file=Commercial Credit Counseling final.pdf*); *State Accuses Columbus Man of Credit-Counseling Scam,* Columbus Dispatch (July 12, 2006), *available at* (*www.columbusdispatch.com/live/contentbe/dispatch/2006/07/12/20060712-D1-01.html*); New York Office the Attorney General, *State Wins Order to Shut Down Bogus Debt Counseling Agencies in Queens* (Oct. 17, 2000), *available at* (*www.oag.state.ny.us/media_center/2000/oct/oct17a_00.html*).

[52] *See FTC v. Express Consolidation*, No. 06-cv-61851-WJZ (S.D. Fla. 2006); *United States v. Credit Found. of Am.,* No. CV 06-3654 ABC(VBKx) (C.D. Cal. 2006); *FTC v. Integrated Credit Solutions*, No. 06-806-SCB-TGW (M.D. Fla. 2006); *FTC v. Nat'l Consumer Council,* No. SACV04-0474 CJC(JWJX) (C.D. Ca. 2004); *FTC v. Debt Mgmt. Found. Svcs.*, No. 04-1674-T-17-MSS (M.D. Fla. 2004); *FTC v. AmeriDebt, Inc.*, No. PJM 03-3317 (D. Md. 2003). AmeriDebt was also the subject of law enforcement actions by several states. *See, e.g., State of Missouri ex rel. Nixon v. AmeriDebt, Inc.*, No. 03-402378 (St. Louis City Circuit Court, Sept. 11, 2003); *State of Texas v. AmeriDebt, Inc.*, No. GV-304638 (Dist. Ct. Travis County, Texas, Nov. 19, 2003); *State of Minnesota v. AmeriDebt, Inc.*, Case No. MC 03-018388 (Hennepin County Dist. Ct., Nov. 19, 2003).

[53] *See, e.g., FTC v. Debt Solutions, Inc.,* No. 06-0298 JLR (W.D. Wash. 2006); *United States v. Credit Found. of Am.,* No. CV 06-3654 ABC(VBKx) (C.D. Cal. 2006); *FTC v. Nat'l Consumer Council*, No. SACV04-0474 CJC(JWJX) (C.D. Cal. 2004).

[54] *See FTC v. Integrated Credit Solutions, Inc.,* No. 06-806-SCB-TGW (M.D. Fla. 2006); *FTC v. Express Consolidation*, No. 06-cv-61851-WJZ (S.D. Fla. 2006); *FTC v. Debt Mgmt. Found. Svcs., Inc.*, No. 04-1674-T-17-MSS (M.D. Fla. 2004); *FTC v. AmeriDebt, Inc.,* No. PJM 03-3317 (D. Md. 2003). Other defendants allegedly claimed to have ''special relationships'' with the consumers' creditors. *See FTC v. Debt Solutions, Inc.,* No. 06-0298 JLR (W.D. Wash. 2006).

[55] *See, e.g., FTC v. Integrated Credit Solutions*, No. 06-806-SCB-TGW (M.D. Fla. 2006); *United States v. Credit Found. of Am.*, No. CV 06-3654 ABC(VBKx) (C.D. Cal. 2006); *FTC v. Nat'l Consumer Council*, No. SACV04-0474 CJC(JWJX) (C.D. Cal. 2004).

[56] *See United States v. Credit Found. of Am.,* No. CV 06-3654 ABC(VBKx) (C.D. Cal. 2006); *FTC v. Integrated Credit Solutions, Inc.*, No. 06-806-SCB-TGW (M.D. Fla. 2006); *FTC v. Debt Mgmt. Found. Svcs., Inc.*, No. 04-1674-T-17-MSS (M.D. Fla. 2004).

[57] *See FTC v. Express Consolidation*, No. 06-cv-61851-WJZ (S.D. Fla. 2006); *FTC v. AmeriDebt, Inc.*, No. PJM 03-3317 (D. Md. 2003).

[58] *See FTC v. Integrated Credit Solutions*, No. 06-806-SCB-TGW (M.D. Fla. 2006); *United States v. Credit Found. of Am.,* No. CV 06-3654 ABC(VBKx) (C.D. Cal. 2006).

[59] *See FTC v. Express Consolidation*, No. 06-cv-61851-WJZ (S.D. Fla. 2006); *United States v. Credit Found. of Am.,* No. CV 06-3654 ABC(VBKx) (C.D. Cal. 2006).

[60] *See* IRS (Grodnitzky) Tr. at 19-23; *see also* IRS, Press Release, *IRS Takes Steps to Ensure Credit Counseling Organizations Comply with Requirements for Tax-Exempt Status* (Oct. 17, 2003), *available at* (*www.irs.gov/newsroom/article/0,,id=114575,00.html*).

[61] A list of entities whose tax exempt status has been revoked can be found at (*www.irs.gov/charities/charitable/article/0,,id=164392,00.html*).*See also* IRS (Grodnitzky) Tr. at 20-23 (noting that of the initial 63 CCAs reviewed, the vast majority of them had their 501(c)(3) status revoked, or were issued notices of revocation).

[62] IRS, Press Release, *IRS Takes New Steps on Credit Counseling Groups Following Widespread Abuse* (May 15, 2006), *available at* (*www.irs.ustreas.gov/newsroom/article/0,,id=156996,00.html*).

[63] Pension Protection Act of 2006, P.L. 109-280, Section 1220 (Aug. 2006), *codified as* 26 U.S.C. 501(q).

[64] *See* 26 U.S.C. 501(q).

[65] *See id.*

[66] 26 U.S.C. 501(q)(2) (requiring that ''[t]he aggregate revenues of the organization which are from payments of creditors of consumers of the organization and which are attributable to debt management plan services do not exceed the applicable percentage [that is being phased in and that will go down to 50%] of the total revenues of the organization.'').

[67] *See* 26 U.S.C. 501(q)(1)(C). In addition to government efforts to regulate CCAs, some industry trade associations have imposed registration and/or certification requirements on their members requiring, among other things, that members maintain nonprofit status, provide counseling and education services, and provide counseling services to consumers regardless of ability to pay. *See* NFCC Member Application (Attachments A-C), *available at* (*www.nfcc.org/NFCC_MemberApplicationFINAL_REV071006.pdf*); AICCA Certification of Compliance, *available at* (*www.aiccca.org/images/CertificateofCompliance.pdf.*)

discharge from bankruptcy.[68] Under the established processes, CCAs seeking certification as approved providers of the required credit counseling must submit to an in-depth initial examination and to subsequent re-examination by the EOUST.[69]

B. For-profit Debt Settlement Services

1) Background

As detailed above, the last decade has seen tremendous change in the debt relief industry. Historic levels of consumer debt[70] have dramatically increased the demand for debt relief services, but traditional DMPs have become less available to consumers who increasingly have insufficient income to repay their debts under such plans.[71] At the same time, CCAs have been under significant pressure due to decreases in fair share funding and new regulatory constraints.[72] These developments have created an opportunity for a new debt relief business model offered by for-profit debt settlement companies.[73] These companies commonly use radio, television, and Internet advertising to entice consumers with the prospect of lump sum settlements for less than the full outstanding balance of their unsecured debts.[74] In many cases, they purport to offer consumers a way to pay off their unsecured debt obligations for pennies on the dollar. Unlike a DMP, the goal of a debt settlement plan is for the consumer to repay only a portion of the total owed. Thus, debt settlement may appeal to a wide range of indebted consumers, including: those who are ineligible for a DMP because their income is insufficient to enable them to repay their total debt in three to five years; those who would be able to repay their debts in full, but are unaware of the existence of or uninterested in the DMP option; and even those who might be better off declaring bankruptcy due to the extent of their indebtedness or other specifics of their particular situation.[75]

Many consumers seeking information about debt settlement are already behind on their debt payments and subject to the attendant stresses of their financial situations, including fielding multiple debt collection calls, struggling to make even minimum payments on their credit cards, and, in many instances, struggling to pay their mortgages. Thus, the prospect of alleviating these stresses has undeniable appeal. Advertisements for debt settlement services typically direct consumers to call for more information, and the resulting telemarketing transactions often occur when consumers are extremely vulnerable.[76]

The debt settlement business model appears to depend on the ability of the debt settlement provider to time a consumer's delinquency and rate of savings to coincide with a creditor's or debt collector's incentive to settle.[77] According to debt settlement industry representatives, settling a debt for less than the full principal value becomes more attractive to creditors as their internal charge-off deadlines approach.[78] The delinquency, charge-off, and collection process varies from creditor to creditor, but some commonalities exist. Generally, after a credit card account is delinquent for some period of time (most often between six months and a year) the issuer will ''charge off the account.''[79] Once the creditor charges off the account, it is no longer listed as an account receivable, and its value is charged against the creditor's reserves for losses.[80] At the time of charge-off, the issuer may assign or sell the debt to a debt collector – whether a contingency collection agency, collection law firm, or debt buyer –who will then attempt to collect the debt directly from the consumer.[81] Debt settlement companies often negotiate with debt collectors regarding accounts that are, due to their delinquency status, no longer in the creditor's portfolio.[82]

Debt settlement industry representatives assert that they assess the information about a particular consumer's financial condition and, based on that individualized assessment, calculate a monthly payment.[83] Depending on the debt

[68] *See* Pub L. No. 109-8, 119 Stat. 23 (codified as amended at 11 U.S.C. 101 et seq.).

[69] *See Application Procedures and Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies by United States Trustees*; *Notice of Proposed Rulemaking*, 73 FR 6062 (Feb. 1, 2008) (seeking comment on proposed rule setting forth additional procedures and criteria for approval of entities seeking to become, or to remain, approved nonprofit budget and credit counseling agencies). The proposed rule and public comments are available at (*www.regulations.gov*). A list of EOUST-approved credit counselors is available to consumers at (*www.usdoj.gov/ust/eo/bapcpa/ccde/cc_approved.htm*).

[70] *See* CCFS (Manning) Tr. at 54-57 (noting ''unprecedented levels of debt'' and explaining that at least $350 billion in credit card debt was refinanced into home equity loans and mortgages between 2001 and 2007).

[71] *See* CCFS (Manning) Tr. at 65; FTC (Parnes) Tr. at 6-7; Care One at 2, 5 (estimating that six million consumers a year are unable to qualify for a traditional DMP because ''[t]he traditional [DMP] supported by creditors is not sufficient to help consumers impacted by the downturn in the economy and the increased availability and use of unsecured debt.''); *see also supra* notes 35-38 and accompanying text.

[72] This pressure may be responsible for a reduction in entities seeking to engage in credit counseling on a nonprofit basis. *See, e.g.,* IRS (Grodnitzky) Tr. at 25 (noting that ''since 2006, [the IRS has] received very few new applications from organizations wishing to engage in credit counseling'').

[73] *See* NFCC (Binzel) Tr. at 29 (''what we've seen as a result of companies being pushed out of 501(c), many have reemerged or are morphing into for profit entities and, in some cases, debt settlement companies.''); IRS (Grodnitzky) Tr. at 66; EFA Data Processing (Ansbach) Tr. at 81 (''There are more and more debt settlement companies that join us every day. Some are certainly well organized. Others are not. Some certainly join us with a tremendous amount of expertise. Others do not.''); Debt Settlement USA (Craven) Tr. at 88 (''In the past year alone, we have experienced a more than 50% increase in the number of consumers who have turned to us and turned to debt settlement as an alternative to bankruptcy.'').

[74] *See* NFCC (Binzel) Tr. at 31.

[75] *See* CCFS (Manning) Tr. at 61-62 (''If people are in financial distress, we should be able to essentially underwrite them through a means test provision and say which program they should go into, and most importantly, what the debt concessions should look like. . . . We need to have a means test that says people are going to pay what they can afford to pay.'').

[76] *See* CFA (Plunkett) Tr. at 103; EFA Data Processing (Ansbach) Tr. at 83 (''These are consumers that are distraught, these are consumers that are crying, and I am sad to report to you that more often than not my representatives shared with me that these are people that are actually suicidal.'').

[77] *See* USOBA at 7; *see also generally* US Debt Resolve (Johnson) Tr. at 71-75 (discussing the debt settlement business model).

[78] *See* USOBA at 7 (asserting that debt settlement offers are more likely to be accepted on accounts that are at least 120 days delinquent).

[79] *See* FTC, *Collecting Consumer Debts, The Challenges of Change: A Workshop Report* (Feb. 2009), at 2-3; Kaulkin Ginsberg, *The Kaulkin Report: The Future of Receivables Management* 37 (7th ed. 2007).

[80] *See* NCLC, *Fair Debt Collection* 14-15 (6th ed. 2008).

[81] *See id.* Of course, many creditors use contingency collection agencies to collect debts that are delinquent but not charged-off. Once the debt is charged-off, ''[c]ollection efforts continue on many charged-off debts for a substantial period of time . . . . Any payment on the charged-off debt is then treated as income – a recovery on a bad debt – on the debt collector's books.'' *Id.* (citing Uniform Retail Credit Classification and Account Management Policy, 65 FR 36,903 (June 12, 2000)). The use of the term ''debt collector'' to include contingency collection agencies, collection law firms, and debt buyers is consistent with the Commission's interpretations of the Fair Debt Collection Practices Act (''FDCPA''). *See* FTC, *Collecting Consumer Debts, The Challenges of Change: A Workshop Report* (Feb. 2009), at 2-3.

[82] *See* ACA (Feb. 20, 2009) at 2 (reporting the results of a survey ACA conducted to determine its members' experiences with debt settlement companies).

[83] *See, e.g.,* USOBA at 7 (''Once a consumer has preliminarily qualified for and decided upon a debt settlement company, the consumer receives an agreement for services, a creditor information form, a budget form, limited power of attorney, a permission to communicate form, and instructions on how to complete the package. Once the consumer has completed the package . . . [the company] is responsible for reviewing the package to ensure that the consumer meets the criteria to qualify for the program. The qualification process is a timely process, which includes a complete review of the client's monthly budget form, the list of creditors on the creditor worksheet, the client's

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settlement company, the consumer may make the payment to the debt settlement company or to a third-party escrow company.[84] Consumers are typically told that the monthly payments – often in the range of hundreds of dollars – will accumulate until there are sufficient funds to make the creditor or debt collector an offer equivalent to an appreciable percentage of the amount originally owed to the creditor. During this time, the debt settlement provider often instructs the consumer not to talk to his or her creditors or debt collectors.[85] To effectuate what appears to be a ''communication blackout,'' debt settlement companies often instruct consumers to assign them power of attorney[86] and to send creditors (directly or through the debt settlement provider) a cease communication notice.[87] In some cases, the debt settlement provider may even execute a change of address form substituting its address for the consumer's, redirecting billing statements and collections notices so that the consumer does not receive them.[88] A company may assure the consumer that it is in contact with the creditors or debt collectors directly and represent that collection calls and lawsuits will cease upon enrollment in the debt settlement program.

The Workshop record indicates that there are three common fee models in the debt settlement industry. The first is the ''front-end fee model.'' Although this model has some variations, debt settlement companies that charge front-end fees generally require consumers to pay as much as 40% or more of the fee within the first three or four months of enrollment, and collect the remaining fee over an ensuing period of 12 months or less,[89] whether or not any settlements have been attempted or achieved.[90] This model is apparently becoming the most prevalent.[91] Additionally, depending on the debt settlement company, consumers may be required to pay a substantial percentage or even the full fee before any portion of their funds are paid to creditors – and perhaps before the debt settlement company makes any contact with creditors.[92] As a result, consumers may pay hundreds of dollars in up-front fees before any of their funds are escrowed for the settlement fund.

The second common fee structure is the ''flat fee model,'' in which the entire fee is collected over approximately the first half of the total enrollment period.[93] Finally, the ''back-end model'' contemplates the consumer paying a small monthly fee for the duration of the plan, and then, upon program completion, paying a fee equal to a percentage of total savings.[94]

Debt settlement broadcast advertising typically omits any representation

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history with those creditors (current, delinquent, how long the account has been open, cash advances, balance transfers), and the client's ability to make the recommended monthly payment.'').

[84] In many instances, consumers are requested or required to send funds to the debt settlement company to be escrowed. One debt settlement provider at the Workshop noted, however, that no ''legitimate debt settlement company [should] pay creditors on behalf of the consumer.'' Debt Settlement USA (Craven) Tr. at 91. The Commission's law enforcement shows the dangers of the escrow model. *See, e.g., FTC v. Jubilee Fin. Servs., Inc.*, No. 02-6468 ABC (Ex) (C.D. Cal. 2002) (alleging that defendants regularly withdrew money from consumers' trust accounts to pay their operating expenses); *FTC v. Edge Solutions*, No. CV-07-4087 (E.D.N.Y.), First Interim Report of Temporary Receiver (Oct. 23, 2007), at 3 (noting that ''customer funds in the amount of $601,520 were missing from the receivership defendants' accounts and unaccounted for by the receivership defendants'').

[85] *See, e.g., FTC v. Connelly*, No. SA CV 06-701 DOC(RNBx) (C.D. Cal. 2006); *FTC v. Jubilee Fin. Servs., Inc.*, No. 02-6468 ABC(Ex) (C.D. Cal. 2002).

[86] *See* ACA (Dec. 1, 2008) at 5 (''ACA members routinely receive letters from debt settlement companies or law firms claiming to represent consumers. Commonly the letters include [power of attorney documents] that purport to be signed by the consumer authorizing the attorney to act on behalf of the consumer. The attorney then directs the credit-grantor or collection agency to work with a debt settlement company to resolve the debt.''); *see also, e.g., FTC v. Debt-Set, Inc.,* No. 1:07-cv-00558-RPM (D. Colo. 2007)(alleging defendants send power of attorney documents to consumers); *FTC v. Better Budget Fin. Servs., Inc.,* No. 04-12326(WG4) (D. Mass. 2004) (alleging that consumers were instructed to sign power of attorney forms); *FTC v. National Credit Council*, Case. No. SACV04-0474 CJC(JWJx) (C.D. Cal. 2004) (alleging that defendants used power of attorney documents).

In a comment submitted to the Commission in connection with the Workshop, ACA International (a trade organization representing third-party debt collectors) claimed that the power of attorney documents prepared by debt settlement companies are frequently legally deficient under state law. *See* ACA (Dec. 1, 2008) at 5-8. Moreover, unless presented by an attorney, a power of attorney may permit, but does not require, a creditor to contact the debt settlement company. Accordingly, it appears that this strategy often does not stop contacts between creditors and consumers, collection calls, or lawsuits/garnishment proceedings, but instead has the propensity to escalate the collection process.

[87] *See* ACA (Dec. 1, 2008) at 7 (''The increase in for-profit debt settlement companies has resulted in more of these companies seeking to interpose themselves between consumers and credit-grantors or collectors.''). Workshop comments from the Community Bankers Association (CBA), the American Financial Services Association (AFSA) and ACA International, as well as statements by banking representatives at the workshop, indicate debt settlement companies often use power of attorney and cease and desist letters to stop contacts between creditor and consumer. *See* ACA (Dec. 1, 2008) at 4-7; CBA at 2-3; AFSA at 3. Creditors express displeasure, however, that once debt settlement companies intercede on behalf of consumers, the debt settlement companies are non-responsive to creditor contacts. *See, e.g.,* AFSA at 3. One workshop panelist representing the American Bankers Association (''ABA'') noted that, even when successful, attempts to inhibit direct communication with consumers prevent creditors from informing consumers about available options for dealing with the debt and the ramifications of failure to make payments. *See* ABA (O'Neill) Tr. at 96.

[88] *See, e.g., FTC v. Jubilee Fin. Servs., Inc.*, No. 02-6468 ABC (Ex) (C.D. Cal 2002) (alleging defendants instructed consumers, among other things, to submit change of address information to creditors so that mail would go directly to defendants); *FTC v. Debt-Set, Inc.,* No. 1:07-cv-00558-RPM, Exs. Supp. Mot. T.R.O., at Ex. 7 (D. Colo. 2007) (same).

[89] *See* US Debt Resolve (Johnson) Tr. at 72-74 (''It is my opinion that a front end-loaded model looks at that [sic] 40 percent or more of the service fee is collected within the first three or four months and, then typically, the remainder of the service fee paid by the consumer to the company is paid over a 12-month period of time, sometimes even less.''); TASC, *General Response* (Dec. 1, 2008), at 2 (''The settlement savings fee model bases the majority of the fee on a percentage of the savings realized by the consumer. In most instances the fees for this model equate to around 20%. Companies using the settlement savings model generally charge an initial fee collected over the first one to three months followed by a lower monthly fee over the life of the program.''); USOBA at 12 (''Some business models call for the fee to be paid up front in its entirety, over the first several months of the program prior to any negotiating with creditors takes [sic] place. Other business models include this percentage fee into a consumer's monthly payment, deducting a portion of the monthly payment and applying that portion towards the overall fee amount.''); *see also, e.g., FTC v. Connelly,* No. SA CV 06-701 DOC (RNBx) (C.D. Cal. 2006) (alleging that defendants required consumers to make a ''down payment'' of 30% to 40% of total fee in first two or three months with the remainder paid over the following 6 to 12 months).

[90] *See* US Debt Resolve (Johnson) Tr. at 73 (noting that the cost of a program may be tied to a percentage of the debt owed when the consumer enrolls in the program or based on an estimate of the amount of money the consumer may save); *see also* CFA (Plunkett) Tr. at 103, 110 (''Fifteen to 20 percent of the total debt enrolled in the program is collected in the first year of the program. So, if you have $50,000 in debt, we're talking about $7,500 or more in the first year . . . [T]hat makes it very difficult for most people to afford a program for which they have received nothing at that point.'').

[91] *See* CFA (Plunkett) Tr. at 103.

[92] *See, e.g., FTC v. Debt-Set, Inc.,* No. 1:07-cv-00558-RPM (D. Colo. 2007)(alleging defendant required full payment of fee – 8% of consumer's total unsecured debt – before contacting any creditors); *FTC v. Innovative Sys. Tech., Inc.,* No. CV04-0728 GAF JTLx (C.D. Cal. 2004) (alleging defendants required payment of ''all or some of the fee'' before they would perform services); US Debt Resolve (Johnson) Tr. at 108 (''I think there is concern on protection for the consumer because at different points in time[] the settlement firm will collect 65% of the fees in six months and the client won't have any results at that point in time.''); *id.* Tr. at 74 (''Typically on a front-end loaded program – I'm not saying that it's incorrect – but the opportunity for the average consumer will not have the ability to settle.''); *see also* USOBA Comment at 12 (''Some business models call for the fee to be paid up front in its entirety, over the first several months of the program prior to any negotiating with creditors takes place.''); *FTC v. National Credit Council,* Case. No. SACV04-0474 CJC (JWJx) (C.D. Cal. 2004) (alleging ''[o]nly after these [up-front] fees are paid in full do defendants begin to apply a consumer's monthly payments to his NCC-administered trust account for use in settling his debts'').

[93] *See* US Debt Resolve (Johnson) Tr. at 73.

[94] *See id.* at 73-74.

regarding fees or charges for the service, other than statements such as ''free online evaluation'' or ''free consultation.''[95] The issue of fees or charges is not broached until contact is made through a telemarketing sales call or even later – in the written contract the consumer receives after the telemarketing call.[96]

2) Consumer Protection Abuses in the Debt Settlement Industry

Debt settlement plans, as they are commonly marketed and implemented, raise several consumer protection concerns. These concerns begin with the marketing and advertising of the services,[97] but also extend to whether such plans are fundamentally sound for consumers.

The initial contact between a debt settlement company and a prospective customer is typically through Internet, television, or radio advertising.[98] The ads commonly urge consumers to call a toll-free number for more information.[99] Common claims in the ads and ensuing telemarketing pitches include representations that debt settlement companies will obtain for consumers who enroll in a debt settlement plan any of the following results: a reduction of their debts by 50%; elimination of debt in 12 to 36 months; cessation of harassing calls from debt collectors and collection lawsuits; and expert assistance from debt settlement providers who have special relationships with creditors and knowledge about available techniques to induce settlement.[100] Debt settlement companies also frequently represent that there is a high likelihood (sometimes even a ''guarantee'') of success.[101] Law enforcement actions, consumer complaints, and the Workshop record, however, cast serious doubt on the validity of such claims.[102] Indeed, even the industry's own figures, to the limited extent it has provided them,[103] indicate that a large proportion of consumers who enter a debt settlement plan do not attain the commonly touted results.[104]

In some instances debt settlement companies omit material information about the debt settlement process from their marketing presentations to consumers. Specifically, they often counsel consumers to stop paying their creditors[105] without informing them that failing to make payments to creditors may actually increase the amount they owe because of penalties and interest and likely will adversely affect their credit score. Consumers often are misled that their initial payments are taken by the debt settlement company as fees and not saved for settlement of their debt.[106] Further, debt settlement companies, in many instances, misrepresent to consumers how long it will take them to

[95] *See, e.g,. FTC v. Debt-Set, Inc.,* No. 1:07-cv-00558-RPM (D. Colo. 2007)(alleging defendants' website represented ''It's Free'' and ''No Fee Application''); *FTC v. Connelly,* No. SA CV 06-701 DOC (RNBx) (C.D. Cal. 2006) (alleging defendants offered consumers free analysis of their financial situation); *FTC v. Nat'l Credit Council,* Case. No. SACV04-0474 CJC (JWJx) (C.D. Cal. 2004) (alleging defendant purported to offer ''free counseling and assistance in debt management''); TASC (Young) Tr. at 138-139.

[96] *See, e.g.,* CFA (Plunkett) Tr. at 110 (''[Y]ou go on almost any website for a settlement firm and you can't find a simple explanation of what will be charged in general based on whatever, say a fee schedule.''); TASC (Young) Tr. at 155-56.

[97] *See* AADMO (Guimond) Tr. at 45-46 (''What are the real problems with debt settlement? I would mirror the earlier comments. I believe it's the advertising practices. It's an enticing offer to eliminate 75% of your debt in 12 months, but if that's not what's occurring it's an absolutely worthless claim.'').

[98] *See* USOBA at 7 (''Most consumers normally begin the debt settlement process by searching online through various search engines, such as, Yahoo, Google, MSN, ASK, etc. Consumers will type in a keyword or key phrase, such as 'debt help' or 'debt assistance' and the search engine will provide both natural and advertised results. . . . Other means of advertising include national radio, television, newspapers, and magazines. Most advertisements specifically target consumers who are in financial trouble.'').

[99] *See, e.g., FTC v. Debt-Set, Inc.,* No. 1:07-cv-00558-RPM (D. Colo. 2007); *FTC v. Edge Solutions, Inc.,* No. CV-07-4087 (E.D.N.Y. 2007); *FTC v. Connelly,* No. SA CV 06-701 DOC (RNBx) (C.D. Cal. 2006); *FTC v. Jubilee Fin. Servs., Inc.*, No. 02-6468 ABC (Ex) (C.D. Cal 2002).

[100] *See, e.g., FTC v. Debt-Set, Inc.,* No. 1:07-cv-00558-RPM (D. Colo. 2007); *FTC v. Better Budget Fin. Servs., Inc.,* No. 04-12326 (WG4) (D. Mass. 2004); *California v. Am. Debt Arb.,* No. 06CS01309 (Sup Ct. Sacramento Cty. 2006); *Florida v. Emergency Debt Relief*, AG Case No. L05-3-1033 (2006); *Florida v. Boyd,* 2008 CA 002909 (4 th Jud. Cir., Duval Cty Mar 2008); *see also* NFCC (Binzel) Tr. at 30.

[101] *See, e.g., FTC v. Innovative Sys. Tech., Inc.,* No. CV04-0728 GAF JTLx (C.D. Cal. 2004) (alleging that defendant represented that service was ''no risk'' because it guaranteed that its services would produce the advertised result).

[102] *See, e.g., FTC v. Nat'l Consumer Council, Inc.*, No. SACV04-0474 CJC(JWJX) (C.D. Cal. 2004) (showing that only 1.4% of the consumers that entered defendant's debt settlement program obtained the promised results); *FTC v. Connelly*, No. SA CV 06-701 DOC (RNBx), Order Denying Def's Mot. Summ. J. (Dec. 20, 2006), at 18 (finding that only 12% to 14% of defendant's consumers had debts settled with the represented reduction in overall debt); *FTC v. Debt Solutions, Inc.,* No. 06-0298 JLR, App. for T.R.O. (W.D. Wash. Mar. 6, 2006) at 15 (alleging that Defendants failed to achieve promised interest rate reductions for 99.5% of sample of accounts and failed to achieve any interest rate reductions in 80.4 percent of the accounts); New York Attorney General, Press Release, *Attorney General Cuomo Sues Debt Settlement Companies for Deceiving and Harming Consumers* (May 20, 2009) (alleging that two debt settlement companies only provided the promised results to 1% and 1/3% of their consumers, respectively), *available at* (*www.oag.state.ny.us/media_center/2009/may/may19b_09.html*).

[103] Generally, when asked for data to support its pervasive performance claims, the industry has not provided reliable statistical or empirical data. The lack of industry-wide statistics is not a new phenomenon. In its 2005 report on the debt settlement industry, the NCLC described its difficulty getting debt settlement companies or a trade association to provide data to support the advertising claims of debt settlement entities. *See* NCLC, *An Investigation of Debt Settlement Companies: An Unsettling Business for Consumers* (2005), at 1 (''[M]any debt settlement companies we called would not share information about their business.''); *id.* at 9 (''It is possible that the fee arrangements described above would be justifiable if the companies actually earned those fees. Unfortunately, it is not easy to determine what the companies actually do to earn these fees. As noted above, the debt settlement trade association (USOBA) and companies we called have either refused to speak with us or provided vague responses.''). Then, and now, the industry has not provided sufficient performance data to demonstrate that the typical consumer who enrolls in their debt relief services obtains the represented relief. For example, at the Workshop, USOBA's representative stated that it has undertaken a new study, but could not state whether the study would be made public. *See* USOBA (Keehnen) Tr. at 260-61; *see also* CFA (Plunkett) Tr. at 105 (''This is a very murky industry. It's not just consumers who have a hard time getting real information on what's really occurring. We need empirical information that's independently verified. Based on what we have seen in the industry, it has to be independently verified.'').

[104] TASC, a debt settlement industry trade association, submitted a study to the FTC purporting to show ''completion rates'' for consumers in debt settlement programs offered by TASC members. The study, which was voluntary for industry members, reported that ''completion rates'' ranged from 35% to 60%. *See* TASC *, Study on the Debt Settlement Industry*, at 1 (2007). However, this study's probative value is limited substantially by, among other things, the fact that it does not provide any information on the TASC members who participated in the survey – *i.e.*, how many TASC members participated, how long those who did participate had been in business, and how many consumers those members serviced. Additionally, the measurement of ''completion rates'' –a term undefined and subject to various interpretations – is not the correct means of judging success rates for the debt relief industry. For example, industry members may define ''completion'' to mean that consumers obtained even a single settlement, regardless of how many accounts a consumer may have outstanding. *See id.* at 1 (in explaining its methodology, TASC notes that some of those surveyed ''defined a completion as having all debts settled, [but that] there were two that considered a client completed if they had settled at least 80% of the debt and one if they had settled at least 50% of the debt''). Similarly, a settlement may be counted as ''completed'' regardless of whether it was obtained on the terms represented to the consumer, or on less favorable terms. Industry members might even include consumers who ceased paying for services prior to receiving the represented results in the count of ''completed'' accounts. The Commission believes, instead, that success rates should reflect the number or percentage of consumers who pay for the offered goods or services that then fully achieve the represented results.

[105] *See, e.g., FTC v. Connelly*, No. SA CV 06-701 DOC (RNBx) (C.D. Cal. 2006); *FTC v. Jubilee Fin. Servs., Inc.*, No. 02-6468 ABC (Ex) (C.D. Cal. 2002).

[106] *See, e.g., FTC v. Debt-Set, Inc.,* No. 1:07-cv-00558-RPM (D. Colo. 2007).

save sufficient funds in order to offer settlements to each creditor.[107]

Consumers often suffer irreparable injury as a result of paying a fee in advance of receiving services offered by a debt settlement company. These consumers, relying on the representations of results, pay fees to debt settlement companies believing that most or all of the payments are being saved for the promised debt settlement.[108] Telemarketers' practice of taking fees before a settlement is obtained results in a number of adverse consequences: late fees or other penalty charges, interest charges, delinquencies reported to credit bureaus that decrease the consumer's credit score, and sometimes legal action to collect the debt.[109] Given what appear to be the relatively low success rates for debt settlement plans, consumers who pay substantial fees up-front are likely to be harmed.

3) Law Enforcement Actions and Other Responses

The Commission and state enforcers have brought law enforcement actions and launched consumer education efforts to combat deceptive and unfair practices in the debt settlement industry. Since 2001, the Commission has brought seven actions against debt settlement entities for a variety of the abuses detailed above.[110] As in the FTC's actions against deceptive credit counselors, these suits commonly allege the misrepresentation of fees, or the failure to fully disclose them – including the significant up-front fees that are often charged.[111] Additionally, the Commission alleged that these defendants falsely promised high success rates,[112] promisedunattained results (*e.g.*, settlements for a certain percentage of the total original debt),[113] and misrepresented their refund policies.[114] Further, the Commission complaints charged that the defendants in these matters failed to warn consumers of the negative consequences of debt settlement, including the accumulation of late fees and other charges,[115] the effect on consumers' credit ratings,[116] and the fact that debt collectors would continue to contact consumers.[117]

To complement its law enforcement efforts, the Commission has worked to advance public awareness of the debt settlement industry through its September 25, 2008 Workshop to discuss the origins and current practices of the debt settlement industry and consumer protection issues, including the possible need for additional regulation by the Commission and the future of the industry. The Workshop record has aided Commission efforts to understand better, and now propose additional restrictions to curb, deceptive and unfair practices involving debt settlement and other forms of debt relief services.[118]

The states have also been active in attempting to regulate abuses in the debt settlement industry.[119] Many states have enacted statutes specifically designed to restrict deceptive practices in this area; in fact, some have banned for-profit debt settlement entirely[120] or the charging of up-front fees.[121] However, most of these statutes allow debt settlement but impose certain requirements, for example that companies be licensed in the state,[122] that they provide consumers with certain key disclosures (*e.g.*, schedule of payments and fees),[123] and/or that they provide consumers with some right to cancel enrollment.[124] Additionally, some states restrict the amount and timing of fees, including up-front fees and subsequent monthly charges.[125] In 2005, the National Conference of Commissioners on Uniform Laws (''NCCUSL'') drafted the Uniform Debt-Management Services Act (''Uniform Act'') in an attempt to provide consistent regulation of both for-profit and nonprofit debt relief services across the United States.[126] Among the key consumer protection provisions in the Uniform Act are: a fee cap[127]; mandatory education requirements[128]; certified counselors[129]; and accreditation requirements for

[107] *See, e.g.,* Debt Settlement USA, *Growth of the Debt Settlement Industry*, at 10 (''Fraudulent firms also regularly fail to provide the services promised to consumers by claiming that they can help them become debt free in an unrealistically short amount of time and/or promise too low of a settlement.'').

[108] *See, e.g., FTC v. Debt-Set, Inc.,* No. 1:07-cv-00558-RPM (D. Colo. 2007); *FTC v. Innovative Sys. Tech., Inc.,* No. CV04-0728 GAF JTLx (C.D. Cal. 2004); *see also* USOBA at 12 (''Some business models call for the fee to be paid up front in its entirety, over the first several months of the program prior to any negotiating with creditors takes place.'').

[109] One of the Commission's enforcement actions, *FTC v. Connelly,* No. SA CV 06-701 DOC (RNBx) (C.D. Cal. 2006), is particularly illustrative on this harm: In that matter, between 2004 and 2005, 5,679 lawsuits were filed against defendants' estimated 18,116 consumers (the total number of consumers as of October 2005). *See id.,* Trial Exs. 382, 561, 562, 623 & Schumann Test., Day 4, Vol. III, 37:21-40:12; 34:17-37:4; *see also infra* note 221.

[110] *FTC v. Debt-Set, Inc.*, No. 1:07-cv-00558-RPM (D. Colo. 2007); *FTC v. Edge Solutions*, No. CV-07-4087 (E.D.N.Y. 2007); *FTC v. Connelly*, No. SA CV 06-701 DOC (RNBx) (C.D. Cal. 2006); *FTC v. Better Budget Fin. Servs., Inc.*, No. 04-12326 (WG4) (D. Mass. 2004); *FTC v. Innovative Sys. Tech., Inc.*, No. CV04-0728 GAF JTLx (C.D. Cal. 2004); *FTC v. Nat'l Consumer Council*, No. SACV04-0474 CJC(JWJX)(C.D. Cal. 2004); *FTC v. Jubilee Fin. Servs., Inc.*, No. 02-6468 ABC (Ex) (C.D. Cal. 2002).

[111] *See, e.g., FTC v. Debt-Set, Inc.*, No. 1:07-cv-00558-RPM (D. Colo. 2007) (alleging that defendants misrepresented that they would not charge consumers any up-front fees before obtaining the promised debt relief, but required a substantial up-front fee).

[112] *See, e.g., id.*

[113] *See, e.g., id.*; *FTC v. Connelly*, No. SA CV 06-701 DOC (RNBx) (C.D. Cal. 2006).

[114] *See, e.g., FTC v. Innovative Sys. Tech., Inc.,* No. CV04-0728 GAF (JTLx) (C.D. Cal. 2004) (defendants misrepresented that they would refund consumers' money if unsuccessful).

[115] *See, e.g., id.*

[116] *See, e.g., FTC v. Connelly*, No. SA CV 06-701 DOC (RNBx) (C.D. Cal. 2006).

[117] *See, e.g., FTC v. Debt-Set, Inc.*, No. 1:07-cv-00558-RPM (D. Colo. 2007).

[118] In addition to the Workshop, the FTC has also published a number of relevant consumer education publications. *See e.g., Knee Deep in Debt, available at* (*www.ftc.gov/bcp/edu/pubs/consumer/credit/cre19.shtm;*) *Fiscal Fitness: Choosing a Credit Counselor, available at* (*www.ftc.gov/bcp/edu/pubs/consumer/credit/cre26.shtm.*)

[119] *See* AADMO (Guimond) Tr. at 44 (''If you also look at some states [which regulate debt settlement] . . . [t]here are no or very few licensed debt settlement companies.'').

[120] *See, e.g.*, Conn. Gen. Stat. § 36A-655, *et seq.*; La. Rev. Stat. § RS 14:331, *et seq.*, 37:2581, *et seq.*; N.D. Gen. Stat. § 13-06-01-03 & 13-07-01-07; Wyo. Stat. Ann. § 33-14-101, *et seq.*

[121] *See, e.g.,* N.C. Gen. Stat § 14-423 *et seq.*

[122] *See, e.g.,* Kan. Stat. Ann. § 50-1116, *et seq.*; Me. Rev. Stat. Ann. Tit. 17 § 701, *et seq.* &tit. 32 § 6171, *et seq.*, 1101-03; N.H. Rev. Stat. Ann. § 339-D:1, *et seq.*; Va. Code Ann. § 6.1-363.2, *et seq.*

[123] *See, e.g.,.* Kan. Stat. Ann. § 50-1116, et seq.; N.H. Rev. Stat. Ann. § 339-D:1, et seq; S.C. Code Ann. § 37-7-101, et seq.; Wash. Rev. Code § 18.28.010, *et seq.*

[124] *See, e.g.,* S.C. Code Ann. § 37-7-101, *et seq.*; Va. Code Ann. § 6.1-363.2, *et seq.*; Wash. Rev. Code § 18.28.010, *et seq.*

[125] *See, e.g.,* Fla. Stat. § 817.801, *et seq.* (limiting initial fee to $50 and monthly fee to $35 or 7.5% of total payment); Me. Rev. Stat. Ann. Tit. 17 § 701, *et seq.*, tit. 32 § 6171, *et seq.* (limiting set-up fee to $75, monthly charge to $40, and 15% of reduction for any settlement of debt).

[126] *See* AADMO (Guimond) Tr. at 42.

[127] *Unif. Debt-Mgmt. Servs. Act* § 23(d)(2) (2008) (allowing debt settlement entities to charge ''a fee for consultation, obtaining a credit report, setting up an account, and the like, in an amount not exceeding the lesser of $400 and four percent of the debt in the plan at the inception of the plan; and . . . a monthly service fee, not to exceed $10 times the number of creditors remaining in a plan at the time the fee is assessed, but not more than $50 in any month.''); *id.* § 23(d)(1) (2008) (allowing entities that offer to ''reduce finance charges or fees for late payment, default, or delinquency'' to charge ''a fee not exceeding $50 for consultation, obtaining a credit report, setting up an account, and the like; and . . . a monthly service fee, not to exceed $10 times the number of creditors remaining in a plan at the time the fee is assessed, but not more than $50 in any month.'').

[128] *Unif. Debt-Mgmt. Servs. Act* § 17(b) (requiring that debt management entities provide consumers ''with reasonable education about the management of personal finance'').

[129] *Unif. Debt-Mgmt. Servs. Act* § 2(6) (setting forth requirements for certification); *id.* § 16 (requiring that registered entities ''maintain a toll-free communication system, staffed at a level that reasonably permits an individual to speak to a certified counselor, certified debt specialist, or customer-service representative, as appropriate, during ordinary business hours.'').

sellers of debt management services.[130] At this point, only a handful of states have adopted the Uniform Act, but NCCUSL believes that with recent modifications to the Act in 2008 more states will adopt it in 2009.[131]

Further, state regulators and Attorneys General have filed numerous law enforcement actions against debt settlement companies.[132] Some states have sued these entities for alleged violations of state consumer protection laws banning unfair or deceptive acts and practices. For example, in one recent action, Texas sued a debt settlement entity under state consumer protection law for making deceptive claims that it could eliminate consumers' debts in 36 months or less and reduce their overall amount by as much as 60%.[133] Other states have brought lawsuits against companies for allegedly violating their debt management or settlement statutes.[134] In an illustrative case, Colorado recently settled suits against several debt settlement entities under its debt management statute for, among other things, failing to register with the state, charging illegal fees, and/or failing to allow consumers to cancel contracts.[135]

C. Debt Negotiation

In addition to credit counseling and debt settlement, the Commission has observed a third category of debt relief service which this Notice refers to as ''debt negotiation.'' Debt negotiation companies offer to obtain interest rate reductions or other concessions to lower consumers' monthly payment to creditors.[136] Unlike DMPs or debt settlement, debt negotiation does not purport to obtain full balance payment plans or lump sum settlements of less than the full balance. Rather debt negotiators offer to obtain interest rate reductions or other concessions from creditors to make monthly payments more affordable. However, similarly to debt settlement companies, some debt negotiation entities charge significant up-front fees.[137] Additionally, like some debt settlement companies, debt negotiators may represent or promise specific results, like a particular interest rate reduction or amount saved.[138]

The FTC has brought four actions against defendants for alleged deceptive debt negotiation practices.[139] In each case, defendants relied on telemarketing to deliver alleged deceptive representations to consumers – *i.e.*, that they could reduce consumers' interest payments by specific percentages or minimum amounts, in exchange for a fee of hundreds of dollars. The Commission also alleged that some of these entities falsely purported to be affiliated, or have close relationships, with consumers' creditors.[140] Finally, in each case, the Commission charged defendants with violations of the TSR.

III. Discussion of the Proposed Rule

Based on its enforcement and outreach experience, including information from the Workshop, the Commission tentatively has concluded that additional legal restrictions are needed to address pervasive illegal conduct occurring in the sale of debt relief services.[141] Thus, the Commission

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[130] *Unif. Debt-Mgmt. Servs. Act* § 6(8); *see also* AADMO (Guimond) Tr. at 42-43; NCCUSL (Kerr) Tr. at 207.

[131] According to NCCUSL, the recent amendments to the Uniform Act did not impact the consumer protection provisions referenced above, rather the amendments focused on addressing problems identified with the Uniform Act that made it difficult for states to implement. *See* NCCUSL (Kerr) Tr. at 211-12.

[132] *See, e.g., California v. American Debt Arb.,* Case No. 06CS01309 (Sup. Ct. Sacramento Cty. 2006); *Florida v. Emergency Debt Relief,* AG Case No. L05-3-1033 (2006); *Florida v. Boyd,* 2008 CA 002909 (4 th Jud. Cir., Duval Cty Mar. 2008); *see also,* Florida Attorney General, Press Release, *Attorney General Announces Settlement in Debt Relief Scheme that Victimized Thousands* (Nov. 25, 2008), *available at* (*www.myfloridalegal.com/newsrel.nsf/pv/352C2D099A1FA7EE8525750C006DF6B4*); North Carolina Attorney General, Press Release, *Debt relief firms ordered to stop taking money in NC, says AG*, *available at* (*www.ncdoj.gov/DocumentStreamerClient?directory=PressReleases/&file=Consumer%20Law%20Center.pdf*) (Feb. 15, 2008); Maryland Attorney General, Press Release, *Attorney General Settles with Companies Selling Debt Repayment Services*, *available at* (*www.oag.state.md.us/Press/2007/101907.htm*) (Oct. 19, 2007); West Virginia Attorney General, Press Release, *Attorney General McGraw Reaches Settlement with Four Debt Relief Companies for 366 Consumers* (May 16, 2007), *available at* (*www.wvago.gov/press.cfm?ID=343&fx=more*).

[133] *See Texas v. CSA-Credit Solutions of Am.*, Inc., No. 09-000417 (Dist. Travis Cty, filed Mar. 26, 2009), *available at* (*www.oag.state.tx.us/newspubs/releases/2009/032509csa_op.pdf*). In a similar case, Florida challenged the practices of another debt settlement provider. *See Florida v. Boyd*, 2008-CA-002909 (Cir. Ct. 4th Cir. Duval Cty, Mar. 5, 2008) (alleging deceptive and unfair practices for promises to settle debts for ''as little as 25-50%'' of the balance owed in 12 to 36 months), *available at* (*www.myfloridalegal.com/webfiles.nsf/WF/JFAO-7CFMMD/$file/FutureFinancialComplaint.PDF*.)

[134] *See, e.g., New Hampshire Banking Dept. v. Debt Relief USA*, No. 08-361 (Order of License Denial, Jan. 2, 2009) (denying company licencing for failing to abide by state requirements, including fee caps), *available at* (*www.nh.gov/banking/Order08_361DebtReliefUSA_DO.pdf*); *Florida v. Boyd*, 2008-CA-002909 (Cir. Ct. 4 th Cir. Duval Cty, Mar. 5, 2008) (alleging violations of Florida credit counseling statute for, inter alia, charging fees above statutory cap), *available at* (*www.myfloridalegal.com/webfiles.nsf/WF/JFAO-7CFMMD/$file/FutureFinancialComplaint.PDF*). West Virginia Attorney General, Press Release, *Attorney General McGraw Sues Texas Debt Settlement Company* (Apr. 14, 2009) (alleging that defendant charged more the 2% fee cap set by state law), *available at* (*www.wvago.gov/press.cfm?fx=more&ID=472*); Vermont Attorney General, *Debt Adjuster Sanctioned For Violating Licensing And Consumer Laws* (Mar. 9, 2009) (alleging, *inter alia*, that company violated state debt adjustment law by doing business in state without a license), *available at* (*www.atg.state.vt.us/display.php?smod=63&pubsec=4&curdoc=1659*). Maryland Attorney General, *Attorney General Settles with Companies Selling Debt Repayment Services* (Oct. 19, 2007), *available at* (*www.oag.state.md.us/Press/2007/101907.htm*).

[135] *See* Colorado Attorney General Press Release, *Eleven Companies Settle With The State Under New Debt-Management And Credit Counseling Regulations* (Mar. 12, 2009), *available at* (*www.ago.state.co.us/press_detail.cfmpressID=957.html*).

[136] *See e.g., FTC v. MCS Programs, LLC,* No. C09-5380RJB (W.D. Wash. 2009); *FTC v. Group One Networks, Inc.*, No. 8:09-cv-352-T-26-MAP (M.D. Fla. 2009) (amended complaint); *FTC v. Select Pers. Mgmt.,* No. 07- 0529 (N.D. Ill. 2007); *FTC v. Debt Solutions, Inc.,* No. 06-0298 JLR (W.D. Wash. 2006).

[137] *See FTC v. MCS Programs, LLC,* No. C09-5380RJB (W.D. Wash. 2009)(alleging defendants charged an up-front fee of $690 to $899); *FTC v. Group One Networks, Inc.*, No. 8:09-cv-352-T-26-MAP (M.D. Fla. 2009) (amended complaint) (alleging defendants charged an up-front fee of $595 to $895); *FTC v. Select Pers. Mgmt.,* No. 07- 0529 (N.D. Ill. 2007) (alleging defendants charged an up-front fee of $695); *FTC v. Debt Solutions, Inc.,* No. 06-0298 JLR (W.D. Wash. 2006) (alleging that defendants charged an up-front fee of $399 to $629).

[138] *See FTC v. MCS Programs, LLC,* No. C09-5380RJB (W.D. Wash 2009) (alleging defendants represented that their program would save consumers $2,500 or more); *FTC v. Group One Networks, Inc.*, No. 8:09-cv-352-T-26-MAP (M.D. Fla. 2009) (amended complaint) (alleging defendants represented they would provide consumers with savings of $1,500 to $20,000 in interest); *FTC v. Select Pers. Mgmt.,* No. 07- 0529 (N.D. Ill. 2007) (alleging defendants represented consumers would save a minimum of $2,500 in interest); *FTC v. Debt Solutions, Inc.,* No. 06-0298 JLR (W.D. Wash. 2006) (alleging defendants promised to save consumers $2500).

[139] *See FTC v. MCS Programs, LLC,* No. C09-5380RJB (W.D. Wash. 2009); *FTC v. Group One Networks, Inc.*, No. 8:09-cv-352-T-26-MAP (M.D. Fla. 2009) (amended complaint); *FTC v. Select Pers. Mgmt.,* No. 07- 0529 (N.D. Ill. 2007); *FTC v. Debt Solutions, Inc.,* No. 06-0298 JLR (W.D. Wash. 2006).

[140] *See FTC v. MCS Programs, LLC,* No. C09-5380RJB, App. for T.R.O. at 7 (W.D. Wash. 2009) (alleging that defendants ''create the impression of affiliation with consumers' banks or credit card companies''); *FTC v. Group One Networks, Inc.*, No. 8:09-cv-352-T-26-MAP (M.D. Fla. 2009) (amended complaint) (alleging defendants claimed to have ''close working relationship with over 50,000'' creditors); *FTC v. Select Pers. Mgmt.,* No. 07- 0529 (N.D. Ill. 2007) (alleging defendants claimed to be affiliated with consumers' credit card companies); *FTC v. Debt Solutions, Inc.,* No. 06-0298 JLR (W.D. Wash. 2006) (alleging that defendants claimed to have ''special relationships'' with creditors).

[141] Workshop participants expressed support for a federal legislative or regulatory solution to concerns about debt settlement. *See, e.g.,* American Credit Alliance (Franklin) Tr. at 212 (agreeing that federal regulation is necessary); NCCUSL (Kerr) Tr. at 212 (agreeing that federal regulation of debt settlement advertising is needed); USPIRG (Mierzwinski) Tr. at 212-213 (agreeing that federal regulation is necessary, but arguing that it should serve as a floor, not a ceiling, of protection); USOBA (Keehnen) Tr. at 213 (agreeing that federal regulation is necessary, but arguing that it should serve as a floor, not a ceiling, of protection); Gordon Feinblatt (Witzel) Tr. at 213 (agreeing that federal

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is proposing amendments to the TSR specifically to address debt relief services, the sale of which commonly involves telemarketing. The existing provisions of the TSR already apply to outbound calls made to induce the purchase of debt relief services and to any non-exempt inbound calls.[142] The proposed amendments would bring all *inbound* debt relief calls in response to direct mail or general media advertisements under the Rule and would add tailored provisions to address specific concerns about deceptive and abusive practices prevalent in the marketing of such offers.

While the Commission believes that the proposed amendments are an important step in the effort to prevent harm to consumers considering debt relief options, it believes that a comprehensive approach is needed to address the important consumer protection concerns at issue. Therefore, in addition to this rulemaking initiative, the Commission intends to continue law enforcement, as well as its consumer education efforts, to ensure that consumers considering debt relief make informed choices. Further, the Commission believes that creditors and debt collectors can do more to address the concerns at issue in this proceeding, such as developing innovative loss mitigation techniques.[143] Creditors are uniquely positioned to play a role in resolving issues related to debt relief because they have direct relationships with consumers in financial distress. With traditional DMPs out of reach for many consumers and significant concerns about the efficacy of the debt settlement model, at least as it currently exists, the Commission encourages creditors to step up efforts to reach consumers directly and determine what, if any, debt relief options may be available. One positive development in this regard came with the recent announcement that the ten top credit card issuers are amenable to more flexible DMPs.[144]

The Commission invites written comments on the proposed Rule, and, in particular, answers to the specific questions set forth in Section VIII, to assist it in determining whether the proposed Rule provisions strike an appropriate balance between maximizing protections for consumers from deceptive and abusive conduct in the telemarketing of debt relief services, while avoiding the imposition of unnecessary compliance burdens on legitimate industry actors.

A. Section 310.1: Scope

Although no amendment is proposed with regard to the scope of the Rule, it is worth noting, for the benefit of those who may be unfamiliar with the TSR, that the Telemarketing Act dictates that the jurisdictional limits of the FTC Act apply to the TSR. Specifically, the Act states that ''no activity which is outside of the jurisdiction of [the FTC Act] shall be affected by this chapter.''[145] One example of such an activity, which merits mention here, is the exemption of nonprofit entities from the jurisdiction of the FTC Act and, by extension, the TSR. This jurisdictional limitation is rooted in Sections 4 and 5 of the FTC Act which, by their terms, provide the Commission with jurisdiction only over persons, partnerships, or corporations organized to carry on business for their profit or that of their members.[146]

Thus, legitimate nonprofit credit counseling agencies that conduct telemarketing campaigns on their own behalf will not be subject to the amended Rule. As the Commission previously has stated, however, the TSR ''does apply to any third-party telemarketers [that exempt] entities might use to conduct telemarketing activities on their behalf.''[147] Thus, if a for-profit telemarketer is engaged on behalf of a nonprofit entity in a telemarketing campaign to offer a ''debt relief service,'' as defined in proposed Section 310.2(m), that telemarketer would be subject to the Rule.[148] Additionally, the Commission has jurisdiction over sham nonprofits that operate as for-profit entities in practice.[149]

Indeed, the Commission's law enforcement record shows that sham nonprofit CCAs have been a source of significant consumer injury. Although these entities purport to operate as nonprofits, their activities in fact earn profits for affiliated entities or individuals. The Commission has obtained robust injunctive and monetary relief in actions against these bogus nonprofit credit counselors for deceptive practices in violation of the FTC Act.[150]

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legislation is necessary); NFCC (Binzel) Tr. at 33 (''[I]f debt settlement companies are going to be allowed to do business, they should be subjected to strong Federal legislation. At a minimum, the legislation should define the scope of the services that may be provided;. . . set caps on the range of fees that may be charged and ensure that the fees are commensurate with the services being provided; prohibit the collection of fees until actual services are provided; require full disclosure to consumers to inform them of the fees that are being charged, the potential consequence of utilizing debt settlement, the potential impact of debt settlement services on their credit history and the tax consequences of debt settlement''); AADMO (Guimond) Tr. at 46 (''AADMO does support federal legislation and state regulation that regulates both credit counseling and debt settlement, just not necessarily together'').

142 Outbound telemarketing of debt relief services is already subject to the TSR. *See, e.g., FTC v. Express Consolidation*, No. 06-cv-61851-WJZ (S.D. Fla. 2006) (alleging violation of TSR by defendant offering consumers assistance in obtaining lower credit card interest rates); *FTC v. Debt Solutions, Inc.,* No. 06-0298 JLR (W.D. Wash. 2006) (alleging violations of the TSR by debt settlement company). Inbound telemarketing of debt relief services in response to general media advertisements currently is exempt from the Rule, 16 CFR 310.6(b)(5), as is inbound calling in response to direct mail advertisements that make the requisite disclosures required in Section 310.3(a)(1) of the Rule. 16 CFR 310.6(b)(6). Inbound calls in response to direct mail advertisements that do not make these disclosures, however, are presently subject to the Rule. 16 CFR 310.6(b)(6).

143 *See* CFA (Plunkett) Tr. at 101-02 (''It's not like there isn't some responsibility here on the part of the credit card industry for the fact that the debt settlement industry is surfacing and appears to be growing. Creditors do share some responsibility for this growth. As I mentioned, there's demand and CFA has documented over the last decade that credit card issuers have reduced the concessions, the benefits that they offer to consumers in credit counseling. So, therefore, the demand for an alternative has been even stronger. And we'd like to *see* creditors work harder in their work-out programs, their individual one-on-one programs, to meet the needs of the consumers who clearly have a hardship and clearly need some form of a settlement.'').

144 *See supra* notes 35-38 and accompanying text; *see also* CFA (Plunkett) Tr. at 104 (''One of the market-based solutions that's very promising are the ongoing efforts by creditors and credit counseling agencies to develop what I think is a much more viable and a consumer-friendly alternative to bankruptcy and to, on the other extreme, a traditional debt management plan.'').

145 15 U.S.C. 6105(a).

146 Section 5(a)(2) of the FTC Act states: ''The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations . . . from using unfair or deceptive acts or practices in or affecting commerce.'' 15 U.S.C. 45(a)(2). Section 4 of the Act defines ''corporation'' to include: ''any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, *which is organized to carry on business for its own profit or that of its members*. . . .'' 15 U.S.C. 44 (emphasis added).

147 *See TSR; Proposed Rule*, 67 FR 4492, 4497 (Jan. 30, 2002) (*citing TSR; Statement of Basis and Purpose and Final Rule*, 60 FR, 43842, 43843 (Aug. 23, 1995)) (''As the Commission stated when it promulgated the Rule, '[t]he Final Rule does not include special provisions regarding exemptions of parties acting on behalf of exempt organizations; where such a company would be subject to the FTC Act, it would be subject to the Final Rule as well.'''); *see also Nat'l Fed'n of the Blind v. FTC*, 420 F.3d 331, 334-35 (4th Cir. 2005).

148 Pursuant to the USA PATRIOT Act amendments to the TSR in 2001, the Rule now reaches ''not only the sale of goods or services, but also charitable solicitations by for-profit entities on behalf of nonprofit organizations.'' *TSR; Final Amended Rule*, 68 FR 4580, 4585 (Jan. 29, 2003).

149 *Supra note* 147.

150 Specifically, in these actions, the Commission has secured injunctive relief and significant monetary judgments. *See, e.g., FTC v. AmeriDebt, Inc.*, No. PJM 03-3317 (D. Md. 2005) (stipulated final judgment for $172 million suspended judgment, and barring defendants from making nonprofit claims, with $12.7 million returned to consumers as a result of the FTC action and $7-million as a result of class action settlements); *see*

B. Section 310.2: Definitions

The only proposed change to the definitions section of the Rule is the addition of newly renumbered Section 310.2(m), which defines the term ''debt relief service'' to mean:

> any service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a consumer and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a consumer to an unsecured creditor or debt collector.[151]

The Commission intends that the definition of ''debt relief service'' encompass a broad swath of debt relief activities, including offers of debt settlement or negotiation services and debt management plans.[152] The definition of ''debt relief service'' is, however, limited with regard to the underlying nature of the debt involved and would not reach offers regarding consumers' secured debt, such as mortgage loans. Deceptive foreclosure rescue and mortgage loan modification schemes, which have proliferated as a result of the mortgage crisis, cause significant harm to homeowners already in financial distress.[153] The Commission tentatively has determined not to address these types of transactions under the proposed amendments because it anticipates comprehensively regulating such conduct under its new mortgage loan rulemaking authority pursuant to the Omnibus Appropriations Act.[154] On June 1, 2009, the Commission commenced a rulemaking proceeding to address deceptive or unfair practices in connection with mortgage assistance relief services (including loan modification and foreclosure rescue).[155] That Notice sets forth the law enforcement and education efforts undertaken by the Commission and state enforcers and seeks comment about the appropriate contours of a mortgage relief rule.

C. Section 310.3: Deceptive Telemarketing Acts or Practices

Section 310.3 of the Rule addresses deceptive acts or practices in telemarketing. Specifically, this provision sets forth required disclosures that must be made in every telemarketing call; prohibits misrepresentations of material information; requires that a telemarketer obtain a customer's express verifiable authorization by following specified procedures whenever a payment method other than a credit or debit card is used; prohibits false or misleading statements to induce a person to pay for goods or services or to induce a charitable contribution; holds liable anyone who provides substantial assistance to another in violating the Rule; and prohibits credit card laundering in telemarketing transactions.[156]

Outbound calls to solicit the purchase of debt relief services are already subject to the TSR, including the provisions of Section 310.3. The proposed amendments to Section 310.6, discussed in detail below, would also bring *inbound* debt relief calls within the ambit of the Rule.[157] As a result, virtually all debt relief telemarketing transactions would be subject to the TSR if the proposed modifications to the Rule are adopted.[158]

As context for examining how the Rule, including the proposed modifications, applies to debt relief marketing practices, it is important to understand the fundamental nature of debt relief services and the ways in which they are commonly marketed. As discussed above in Section II, various types of debt relief services have different goals, and each employs different means of reaching those goals. A debt management plan, for example, is intended to enable a consumer to repay his or her full debt by making regular payments over a period of 3 to 5 years. Debt settlement, on the other hand, envisions a consumer repaying only a fraction of each debt owed by making one lump sum payment to each creditor. Distinct from DMPs or debt settlement services, debt negotiators offer to obtain interest rate reductions or other concessions to lower consumers' monthly payment to creditors. Nevertheless, there are some common techniques used to market these debt relief services. The following section explains how the existing provisions of the TSR and proposed amendments set forth in this NPRM would apply to debt relief services.

also, e.g., FTC v. Express Consolidation, No. 06-cv-61851-WJZ (S.D. Fla. 2008) (stipulated final judgment for over $40 million); *United States v. Credit Found. of Am.*, No. CV 06-3654 ABC(VBKx) (C.D. Cal. 2006) (stipulated final judgment of $926,754 in consumer redress and civil penalties, a $102,540 suspended judgment, and injunctive relief); *FTC v. Integrated Credit Solutions*, No. 06-806-SCB-TGW (M.D. Fla. 2006) (stipulated final judgment of $2,371,380 in consumer redress and ordering defendants to set aside $415,000 to refund enrollment fees); *FTC v. Debt Mgmt. Found. Svcs.*, No. 04-1674-T-17-MSS (M.D. Fla. 2005)(stipulated suspended judgment for over $11 million and injunctive relief); *FTC v. Nat'l Consumer Council*, No. SACV04-0474CJC(JWJX) (C.D. Cal. 2005) (stipulated suspended judgment of $84.3 million and injunctive relief).

[151] Former Section 310.2(m) (definition of ''donor'') and all subsequent definitions have been renumbered accordingly in the proposed amended Rule.

[152] The definition is focused on the provision of debt relief services, but Section VIII of this Notice includes questions to aid the Commission in determining whether this definition, and by extension, the coverage of the proposed amendments, should include ''debt relief products'' as well.

[153] The Commission has brought actions against entities and individuals alleging mortgage-related debt relief fraud using its authority under Section 5 of the FTC Act. These cases allege false guarantees of success; false representations about refund policies; undisclosed up-front fees; misrepresentations regarding affiliations with nonprofit or government entities; and failure to deliver the promised services. *See FTC v. Dinamica Financiera LLC,* No. 09-CV-03554 CAS PJWx (C.D. Cal., filed May 19, 2009); *FTC v. Cantkier,* No. 1:09-cv-00894 (D.D.C. filed May 14, 2009); *FTC v. Federal Loan Modification Law Center, LLP,* Case No. SACV09-401 CJC (MLGx) (C.D. Cal. filed Apr. 3, 2009); *FTC v. (http://bailout.hud-gov.us) and Ryan*, Civil No. 1:09-00535 (HHK) (D.D.C. filed Mar. 25, 2009); *FTC v. Home Assure, LLC,* Case No. 8:09-CV-00547-T-23T-SM (M.D. Fla. filed Mar. 24, 2009); *FTC v. New Hope Property LLC,* Case No. 1:09-cv-01203-JBS-JS (D.N.J. filed Mar. 17, 2009); *FTC v. Hope Now Modifications, LLC,* Case No. 1:09-cv-01204-JBS-JS (D.N.J. filed Mar. 17, 2009); *FTC v. National Foreclosure Relief, Inc.*, Case No. SACV09-117 DOC (MLGx) (C.D. Cal. filed Feb. 2, 2009); *FTC v. United Home Savers, LLP*, Case No. 8:08-cv-01735-VMC-TBM (M.D. Fla. filed Sept. 3, 2008); *FTC v. Foreclosure Solutions*, LLC, No. 1:08-cv-01075 (N.D. Ohio filed Apr. 28, 2008); *FTC v. Mortgage Foreclosure Solutions, Inc.*, Case No. 8:08-cv-388-T-23EAJ (M.D. Fla. filed Feb. 26, 2008); *FTC v. Nat'l Hometeam Solutions, Inc.*, Case No. 4:08-cv-067 (E.D. Tex. filed Feb. 26, 2008); *see also* FTC Press Release, *Federal and State Agencies Crack Down on Mortgage Modification and Foreclosure Rescue Scams* (Apr. 6, 2009), *available at* (*www.ftc.gov/opa/2009/04/hud.shtm*).

[154] *See* Omnibus Appropriations Act of 2009, Pub. L. No. 111-8, § 626, 123 Stat. 524 (Mar. 11, 2009) (2009 Omnibus Appropriations Act). Further, to the extent that outbound telemarketing is used to further mortgage-related debt relief schemes, the Commission may use the existing provisions of the TSR, in addition to Section 5, to challenge the conduct if appropriate.

[155] *See Advance Notice of Proposed Rulemaking: Mortgage Assistance Relief Services,* 74 FR 26130 (June 1, 2009).

[156] *See generally* 16 CFR 310.3.

[157] Most inbound calls placed by consumers in response to direct mail or general media advertising are exempt from the Rule. *See* 16 CFR 310.6(b)(5) & (6). Certain exceptions to the exemption have been created to require TSR compliance for the sale of products or services that have been the subject of significant fraudulent or deceptive telemarketing activity. The proposed amendments would create an exception to the direct mail and general media exemptions for the sale of debt relief services, requiring sellers and telemarketers of these services to comply with the Rule in both inbound and outbound calls.

[158] Another exemption provides that ''[t]elephone calls initiated by a customer or donor that are not the result of any solicitation by a seller, charitable organization, or telemarketer'' are exempt. 16 CFR 310.6(a)(4). Thus, if a customer were to call a seller or telemarketer regarding debt relief services independent of any solicitation, such a call would not be subject to the proposed revised TSR.

1) Application of Section 310.3(a)(1) to Debt Relief Services: Disclosure Obligations

The existing requirements of Section 310.3(a)(1)(i)-(vii), while not subject to amendment in this proceeding, provide the framework for understanding the general disclosure obligations of sellers and telemarketers of debt relief services who are now (in the case of outbound telemarketing) or may be as a result of this rulemaking (in the case of most inbound telemarketing) subject to the TSR. The subparts that are most likely applicable to debt relief services – Sections 310.3(a)(1)(i), (ii), and (iii) – relate to disclosure of the total costs of services; all material restrictions, limitations or conditions to purchase, receive, or use the services; and the seller's refund policy.[159] Accordingly, it is important to examine how these provisions establish the general obligations of debt relief providers.

Section 310.3(a)(1)(i) of the TSR prohibits a telemarketer from failing to disclose truthfully, in a clear and conspicuous manner, certain material information including ''the total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer'' before a customer pays for goods or services offered. Debt relief companies and industry association representatives contend that industry members disclose costs to consumers during telemarketing sales calls or after the call, in written disclosures.[160] Yet, law enforcement actions allege, and consumers consistently complain, that the debt relief telemarketers say little, if anything, about fees or misrepresent the amount and timing of fee payments.[161] As a result of these practices, consumers who enter into debt relief agreements often do so unaware of the total costs they will incur, which commonly amount to thousands of dollars.

The Commission believes that disclosure of total costs is particularly crucial in the sale of debt relief services.[162] This is especially true for debt settlement plans, for which the costs are often significant. According to TASC, the median fee under the predominant debt settlement model calls for a consumer to pay the equivalent of 14% to 18% of the debt enrolled in the program.[163] Using this formula, a consumer with $20,000 in debt would pay between $2,800 and $3,600 for debt settlement services. Such large amounts of money are especially significant given that the typical consumer seeking debt relief is almost certainly experiencing serious financial distress and thus, is unable to afford existing financial obligations. Similarly, in the sale of debt management plans, disclosure of total costs is crucial to ensure that consumers understand what they will need to pay for the touted services. Indeed, in the cases brought against sham nonprofit credit counselors, consumers allegedly have been misled not only as to the total costs, but also as to the nature of monies paid because they are told that the only fees are ''voluntary contributions'' used to offset the operating expenses of the allegedly nonprofit service provider.[164] Adherence to the requirements of Section 310.3(a)(1)(i) by all sellers and telemarketers of debt relief services will provide consumers with material information necessary to evaluate their offers.[165]

Section 310.3(a)(1)(ii) requires disclosure of ''[a]ll material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer.'' A seller or telemarketer of debt relief services would be required, pursuant to this provision, to disclose that the debt relief services will only extend to unsecured debt, if that is the case. Similarly, if a debt relief provider places other limits on the services they provide – such as requiring that a consumer have a minimum amount of debt to be eligible or providing that only individual debts of a certain amount will be enrolled – this would need to be disclosed pursuant to Section 310.3(a)(1)(ii). Such information would be material to consumers in determining whether the offered services would provide all, or merely some, of the debt relief they seek.

Section 310.3(a)(1)(iii) of the TSR requires that ''[i]f the seller has a policy of not making refunds, cancellations, exchanges, or repurchases,'' disclosure of this policy must be made to consumers. Further, the provision requires that, ''if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy'' be made. This TSR provision signifies the Commission's view that a seller's unwillingness to provide refunds is a material term that a consumer must know about before

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[159] *See* 16 CFR 310.3(a)(1)(i)-(iii). In addition to these provisions, Section 310.3(a)(1) of the TSR also requires disclosures specific to offers involving prize promotions, credit card loss protection plans, and negative option plans. *See* 16 CFR 310.3(a)(1)(iv)-(vii).

[160] *See* Debt Settlement USA (Craven) Tr. at 109 (stating that all fees are disclosed to consumers in the telemarketing call); TASC (Young) Tr. at 155-156 (noting that fees should be disclosed on the phone and again in writing following the call). The Commission's law enforcement experience suggests that in many cases, post hoc written disclosures contradict what telemarketers have told consumers. *See, e.g., FTC v. Connelly*, No. SA CV 06-701 DOC (RNBx), Opp. to FTC Mot. Summ. J., at 12 (Aug. 3, 2006) (arguing that subsequent telephone calls would have ''corrected any misconceptions the consumer had about the program based on [previous] correspondence''). However, such contradictory post hoc disclosures do not adequately modify or qualify the claims made in the telemarketing sales pitch. *See, e.g., Resort Car Rental System, Inc. v. FTC*, 518 F.2d 962, 964 (9th Cir. 1975).

[161] *See, e.g., FTC v. Better Budget Fin. Servs., Inc.,* No. 04-12326 (WG4) (D. Mass. 2004) (alleging that defendant obfuscated the total costs for the products and services by separately reeling off various fees, such as retainer fees, monthly fees, and fees correlated to the percentage of money that a customer saves using the services, without ever disclosing the total cost, which sometimes was as high as thousands of dollars); *FTC v. Debt-Set, Inc.*, No. 1:07-cv-00558-RPM (D. Colo. 2007) (alleging that, in numerous instances, defendants represented that there would be no up-front fees or costs for their debt settlement program, when in fact the defendants required consumers to pay, through monthly payments, an up-front fee of approximately 8% of the consumers' total unsecured debt); *FTC v. Connelly*, No. SA CV 06-701 DOC (RNBx) (C.D. Cal. 2006) (alleging that defendant failed to disclose to consumers that they would have to pay 45% of their total program fees up-front, before any payments would be made to the customers' creditors).

[162] According to one industry participant, ''disclosure is often very inadequate, especially with regards to program fees.'' Debt Settlement USA - Revised White Paper at 10.

[163] TASC, *General Response* (Dec. 1, 2008), at 2 (stating that in the predominant flat fee model, the cost for debt settlement services ''is calculated based on a percentage of debt enrolled into the program. The approximate median flat fee is 14% to 18% of the debt brought into the program depending on the amount of debt enrolled.'').

[164] *See, e.g., FTC v. AmeriDebt, Inc.*, No. PJM 03-3317 (D. Md. 2003) (alleging that, ''[i]n response to the question, 'How much will it cost me to be on the Debt Management Program,' AmeriDebt's website . . . stated, 'Due to the fact that AmeriDebt is a nonprofit organization, we do not charge any advance fees for our service. We do request that clients make a monthly contribution to our organization to cover the costs involved in handling the accounts on a monthly basis.'' In fact, the Commission alleged that defendants retained all of consumers' first monthly payment as a fee without notice to the consumer.).

[165] The Commission previously has explained the compliance obligations when marketing installment contracts, some of which are particularly applicable to debt relief services. Specifically, the Commission noted that ''it is possible to state the cost of an installment contract in such a way that, although literally true, obfuscates the actual amount that the consumer is being asked to pay.'' *TSR; Proposed Rule,* 67 FR 4492, 4502 (Jan. 30, 2002). It goes on to state that ''[t]he Commission believes that the best practice to ensure the clear and conspicuous standard is met is to **do the math for the consumer** wherever possible. For example, where the contract entails 24 monthly installments of $8.99 each, the best practice would be to disclose that the consumer will be paying $215.76. In open-ended installment contracts, it may not be possible to do the math for the consumer. In such a case, particular care must be taken to ensure that the cost disclosure is easy for the consumer to understand.'' *Id.* at n.92. (emphasis supplied, internal quotations omitted).

paying for goods or services. Similarly, if a seller or telemarketer chooses to tout the availability of a refund policy, that entity is affirmatively obliged to disclose the material terms and conditions of the policy. Application of this provision to sellers and telemarketers of debt relief services is particularly important given that data from law enforcement actions and consumer complaints indicate that, commonly, consumers either are not apprised that refunds are unavailable or are misled by material omissions regarding the full terms and conditions of these policies.[166]

2) Proposed Amendments to Section 310.3(a)(1): Disclosure Obligations

In addition to the application of the relevant provisions of the existing Rule, Section 310.3(a)(1) of the proposed Rule contains a new disclosure provision specifically applicable to the sale of debt relief services. Proposed Section 310.3(a)(1)(viii) would prohibit a telemarketer of any debt relief service from failing to disclose, clearly and conspicuously before any services are rendered,[167] six material pieces of information. These proposed disclosures have been tailored to address recurrent concerns that arise in Commission and state enforcement actions, and consumer complaints, regarding the practices of debt relief providers. Each of these proposed amendments is discussed immediately below.

Proposed Section 310.3(a)(1)(viii)(A) would require telemarketers of debt relief services to disclose ''the amount of time necessary to achieve the represented results, and to the extent that the offered service may include the making of a settlement offer to one or more of the customer's creditors or debt collectors, the specific time by which the debt relief service provider will make such a bona fide settlement offer to each of the customer's creditors or debt collectors.'' Proposed Section 310.3(a)(viii)(B) would require covered entities to disclose, ''to the extent that the offered service may include the making of a settlement offer to one or more of the customer's creditors or debt collectors, the amount of money or the percentage of each outstanding debt that the customer must accumulate before a debt relief service provider will make a bona fide settlement offer to each of the customer's creditors or debt collectors.'' These disclosures are intended to ensure that consumers have material information about how debt relief services operate, thereby enabling them to make an informed purchasing decision before paying for the offered services.

The Commission's law enforcement actions and consumer complaints show that consumers often do not understand the mechanics of debt relief. Indeed, some Workshop participants suggested that consumers are often unaware of their ability, independent of a third party, to initiate debt settlement negotiations.[168] In particular, consumers may not understand the amount of time required to achieve the represented results or that there may be prerequisites to attaining debt relief. For example, consumers considering a DMP may not know that these plans often take three to five years to complete. In the case of debt settlement, consumers often fail to understand that certain conditions must be present in order for a debt settlement offer to be accepted. In particular, consumers misunderstand that settlement negotiations rarely, if ever, begin immediately upon enrollment. Indeed, debt settlement negotiations generally do not begin until the consumer has saved a significant portion – often 50%– of the total amount of a single debt enrolled in the program and is significantly delinquent. Only when both these conditions are met is it likely that a creditor or debt collector will find agreeing to settle the account is advantageous.

Given this information deficit, the Commission intends that the disclosures in proposed Section 310.3(a)(1)(viii)(A) and (B) will put consumers on notice about the length of time it will take to achieve the represented results. In particular, the disclosures address the fact that the timing and likelihood of success may be, as is generally the case for debt settlement, entirely contingent on the consumer's ability to accumulate sufficient funds and to become sufficiently delinquent for settlement. In the case of a consumer who has six outstanding accounts to be included in the debt settlement plan, each with balances of between $4,000 and $8,000, for example, a debt settlement provider would be required to explain the anticipated length of the entire program and also the specific time frame under which each debt included in the program is expected to be settled to comply with Section 310.3(a)(1)(viii)(A). In so doing, the debt relief provider must disclose the fact that negotiations will not take place with all creditors simultaneously, but rather seriatim, if such is the case. To comply with Section 310.3(a)(1)(viii)(B), the debt settlement provider or telemarketer would have to disclose the specific amount or percentage of money that must be accumulated before an offer of settlement could be made to the first creditor or debt collector and that additional monies would have to accumulate to make an offer to a second creditor or debt collector, and so on.

These disclosures will help a consumer to understand not only the time commitment required for the plan to achieve its full effect, but also that each debt brought into the program would likely be settled one by one, and not as part of a single negotiation, if that is the case. Further, they will make clear that the debt relief is conditioned upon the consumer saving enough money to make a settlement offer. Awareness of these key facets of the debt relief program, together with the information required to be disclosed by proposed Section 310.3(a)(viii)(E) regarding failure to make timely payments, will provide the consumer with material information about the risks involved in failing to make timely payments to creditors for long periods of time, as settlement negotiations may not begin for months or even years, if ever.

Proposed Section 310.3(a)(1)(viii)(C) would require telemarketers of debt relief services to disclose that ''not all creditors or debt collectors will accept a reduction in the balance, interest rate, or fees a customer owes such creditor or

[166] *See, e.g., FTC v. Select Personnel Mgmt., Inc.*, No. 07-0529 (N.D. Ill. 2007); *FTC v. Connelly*, No. SA CV 06-701 DOC (RNBx) (C.D. Cal. 2006); *FTC v. Debt Solutions, Inc.*, No. 06-0298 JLR (W.D. Wash. 2006); *FTC v. Innovative Sys. Tech., Inc.*, No. CV04-0728 GAF JTLx (C.D. Cal. 2004); *FTC v. Debt Mgmt. Found. Svcs.*, No. 04-1674-T-17-MSS (M.D. Fla. 2004). Commission staff has reviewed a sample of debt relief complaints received between April 1, 2008, and March 31, 2009, included in the Commission's Consumer Sentinel database. These complaints routinely allege that debt relief providers fail to give dissatisfied consumers refunds.

[167] Note that proposed Section 310.3(a)(1) provides that all of the disclosures required under that provision be made not only before the consumer pays, but also ''before any services are rendered.'' This change is intended to account for the fact that, under proposed Section 310.4(a)(5), debt relief services would be prohibited from requesting or receiving an advance fee and as a result would be providing services before the consumer has paid for them. Under proposed Section 310.3(a)(1), a debt relief service entity must provide a consumer with all required disclosures before it enrolls that consumer in a debt relief program and begins providing services.

[168] *See* American Express (Flores) Tr. 142-43 (''[American Express'] primary goal as a company is to work directly with our card members in resolving these sorts of issues. We don't feel that there is anything, any service or benefit that a debt settlement company can offer one of our card members that we can't offer ourselves directly.''); ABA (O'Neill) Tr. at 96-97 (opining that debt settlement providers are unnecessary because consumers can obtain same options as the provider and noting that interposition of debt settlement providers hinders a creditor's ability to inform consumers of their options).

debt collector.'' The fact that some creditors and debt collectors will not participate in debt relief programs – whether to offer concessions or accept a lower balance repayment option – is likely unknown to consumers.[169] Similarly, consumers may be unaware that even those creditors and debt collectors that do not have a blanket policy against debt relief will evaluate each consumer's circumstances individually and may be unwilling to grant favorable terms to a consumer based on a variety of factors. Debt relief providers often tout their ability to obtain favorable outcomes for consumers, representing that they have special expertise or relationships with creditors and debt collectors that give them an edge in negotiations.[170] Particularly in light of these claims in advertising and telemarketing pitches, and their significance to consumers, the Commission believes that disclosure of the fact that not all creditors or debt collectors will participate in debt relief plans is material to a consumer's decision whether to pay for debt relief services.

Proposed Section 310.3(a)(1)(viii)(D) would require disclosure ''that pending completion of the represented debt relief services, the customer's creditors or debt collectors may pursue collection efforts, including initiation of lawsuits.'' Thus, to comply with this provision, a telemarketer of debt relief services would have to disclose that enrollment alone will not stop creditors' collection efforts, including lawsuits. Indeed, creditors and debt collectors may continue to call a consumer pending resolution of the debt and even proceed with a lawsuit and later enforcement of any judgment, such as through garnishment.[171] It is vital that telemarketers of debt relief services disclose this information because, in many instances, consumers who seek debt relief services are already behind on payments and are regularly contacted by creditors or collectors. Accordingly, they may be motivated to seek debt relief services, in part, as a means of stopping such contacts. Thus, the fact that debt relief services may fail to achieve this result is material to a consumer's purchase decision.

Proposed Section 310.3(a)(1)(viii)(E) would require disclosure that, ''to the extent that any aspect of the debt relief service relies upon or results in the customer failing to make timely payments to creditors or debt collectors, that use of the debt relief service will likely adversely affect the customer's creditworthiness, may result in the customer being sued by one or more creditors or debt collectors, and may increase the amount of money the customer owes to one or more creditors or debt collectors due to the accrual of fees and interest.'' Given the harm that can accrue from missing even a few payments, the Commission believes that it is important to require a debt relief provider to disclose the likely adverse consequences of failing to make timely payments to creditors. This is especially important for consumers who are, in fact, able to make monthly payments, but who stop paying creditors and instead fund a settlement account – either because they are encouraged to do so or because they simply cannot afford to both make monthly payments and pay fees to the debt settlement company.[172]

If consumers stop paying their creditors, their creditworthiness will likely be harmed as a result.[173] This fact is likely material to a consumer's decision about whether to purchase debt settlement services because it imposes a significant cost on proceeding in this manner – the risk that a consumer's ability to obtain credit in the future will be negatively impacted.[174] Another serious and negative consequence that may result from a consumer's decision to engage a debt relief service provider is the accrual of late fees or interest on their accounts. Finally, if payments are missed, the likelihood of being sued by one or more creditors may actually increase.

The Commission recognizes that some consumers considering debt relief are unable to make payments, and may be subject to late fees or other charges in any event. However, the record shows that, in a significant number of instances, particularly in debt settlement programs, consumers are counseled to stop making payments to their creditors in order to facilitate settlement.[175] In other cases, consumers are misled regarding the use to which their monthly payments will be put and erroneously believe that money the debt relief provider is making monthly payments to creditors when this is not the case.[176] Thus, proposed Section 310.3(a)(1)(viii)(E) is designed to ensure that, in cases where the debt relief service relies upon or results in the customer failing to make timely payments to creditors or debt collectors, the telemarketer of the debt relief service discloses the likely negative consequences – *i.e.*, harm to creditworthiness, an increase in the amount owed and possible lawsuits.

Finally, proposed Section 310.3(a)(1)(viii)(F) would require that a telemarketer of debt relief services disclose ''that savings a customer realizes from use of a debt relief service may be taxable income.'' Participants at the Workshop noted that many consumers fail to understand that savings realized from a debt relief program may be considered taxable income.[177] If savings realized from debt

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[169] *See, e.g.,* CFA (Plunkett) Tr. at 101 (''[T]here is no guarantee . . . or reasonable chance of a guarantee of a reduction in the amount of debt owed by consumers who meet required conditions. In fact, some creditors insist that they won't settle.''); American Express (Flores) Tr. at 164 (''[O]ur policy is not to . . . accept settlements from debt settlement companies.''); *see also, e.g.,* Phil Britt , *Debt Settlement Companies Largely Ignored by Banks,* Inside ARM (Nov. 3, 2008)(noting statement by Discover Financial Services spokesman that ''[w]e choose not to work with debt settlement companies''), *available at* (*www.insidearm.com/go/arm-news/debt-settlement-companies-largely-ignored-by-banks*).

[170] *See e.g., FTC v. Group One Networks, Inc.*, No. 8:09-cv-352-T-26-MAP (M.D. Fla. 2009) (amended complaint) (alleging defendants claimed to have close working relationships with over 50,000 creditors); *FTC v. Select Pers. Mgmt.*, No. 07- 0529 (N.D. Ill. 2007) (alleging defendants claimed to be affiliated with consumers' credit card companies); *see also, e.g., FTC v. Debt Solutions, Inc.*, No. 06-0298 JLR (W.D. Wash. 2006); *FTC v. Better Budget Fin. Servs., Inc.*, No. 04-12326 (WG4), Mem. Supp. T.R.O. Mot. at 6 (D. Mass. 2004).

[171] The FDCPA governs, among other things, debt collectors' communications with consumers and provides consumers the right to request that a debt collector cease communication. 15 U.S.C. 1692c. Creditors collecting their own debts, however, are not subject to this provision. *See also supra* Section II.B.1, and notes 86-88.

[172] *See supra* note 105 and accompanying text.

[173] *See* CFA (Plunkett) Tr. at 102 (noting that the length of time it takes to achieve settlement, combined with withheld payments, has a negative effect on consumers); *see also* Fair Isaac Corp, *Understanding Your FICO Score*, at 7 (noting that payment history is typically the most important factor used to determine a consumer's FICO score), *available at* (*www.myfico.com/Downloads/Files/myFICO_UYFS_Booklet.pdf.*)

[174] As frequently noted by the Commission, a consumer's credit score can impact the availability of a wide variety of opportunities, including the ability to obtain loans, find employment, or even obtain affordable insurance. *See, e.g.*, FTC , *Need Credit or Insurance? Your Credit Score Helps Determine What You'll Pay, available at* (*www.ftc.gov/bcp/edu/pubs/consumer/credit/cre24.shtm*).

[175] *See, e.g., FTC v. Connelly,* No. SA CV 06-701 DOC (RNBx) (C.D. Cal. 2006); *FTC v. Jubilee Fin. Servs., Inc.*, No. 02-6468 ABC (Ex) (C.D. Cal 2002).

[176] *See FTC v. Debt-Set, Inc.*, No. 1:07-cv-00558-RPM, Mem. Supp. Mot. T.R.O. at 8-9 (D. Colo. Mar. 20, 2007) (''Defendants lead consumers to conclude that, once enrolled, the Defendants in turn will disburse consumers' monthly payments to the appropriate creditors every month.'').

[177] *See* Debt Settlement USA (Craven) Tr. at 91 (''Amounts greater than $600 in savings obtained through a settlement may be reported to the IRS. Again, this has to be disclosed to consumers.''); American Credit Alliance (Franklin), Tr. at 223 (''Unless they get that early disclosure that they may have the tax consequence, they may opt for the

relief programs may be considered taxable income,[178] then the financial benefits of such programs may be significantly limited. As a result, the Commission believes that this fact is material to a consumer's decision about whether to pursue debt relief and should be disclosed to consumers.

3) Application of Section 310.3(a)(2) to Debt Relief Services: Prohibited Misrepresentations

Section 310.3(a)(2) prohibits a seller or telemarketer from making certain prohibited misrepresentations of material information. As with the analysis above relating to Section 310.3(a)(1), the existing provisions of Section 310.3(a)(2) establish the general obligations of sellers and telemarketers of debt relief services who are now, or may be as a result of this rulemaking, subject to the TSR. The subparts of Section 310.3(a)(2) that are most likely applicable to debt relief services prohibit misrepresentations regarding the total costs of services; any material restriction to purchase, receive, or use the services; any limitation about any material aspect of the performance, efficacy, nature, or central characteristics of the services; the seller's refund policy; and a seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity.[179]

Specifically, Section 310.3(a)(2)(i) of the TSR prohibits misrepresentations regarding the ''total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer.'' As with the parallel required disclosure of total costs contained in Section 310.3(a)(1)(i), and discussed above, the Commission believes the prohibition of misrepresentations regarding the cost of debt relief services is critical to ensure that consumers receive complete and truthful information regarding the monetary cost of the services offered. While in many cases telemarketers of debt relief services fail to disclose any information about the total costs involved, in other instances telemarketers misrepresent the costs.[180] Deception involving the true costs of the services, which often are significant, is particularly harmful to consumers whose financial situation already is tenuous. Adherence to this requirement by all sellers and telemarketers of debt relief services is important to ensure that consumers have truthful and accurate information on which to base their decisions about whether to use such services.

Section 310.3(a)(2)(ii) of the TSR prohibits misrepresentations regarding ''any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer.'' This provision, too, has a parallel required disclosure, found at Section 310.3(a)(1)(ii). Taken together with Section 310.3(a)(2)(iii), which prohibits misrepresentations regarding ''any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer,'' these provisions would ensure that the important aspects or features of offered debt relief services are not misrepresented to consumers in the course of a telemarketing transaction.

Section 310.3(a)(2)(iv) of the TSR prohibits misrepresentations regarding ''any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies.'' For the reasons enunciated above, in the section discussing the parallel disclosure of debt relief services sellers' refund policies, this prohibited misrepresentation protects consumers by ensuring that they are not deceived regarding the existence or terms of a seller's refund policies. Given the low success rates for all consumers who pay telemarketers for debt relief plans and the evidence showing consumers' frustration regarding their inability to receive refunds for these plans, this provision provides essential protections in the context of debt relief.

4) Proposed Amendments to Section 310.3(a)(2): Prohibited Misrepresentations

The proposed Rule contains a new misrepresentation prohibition to address specifically the sale of debt relief services. While these specific prohibited misrepresentations regarding debt relief services are arguably covered by the existing provision of Section 310.3(a)(2), as well as the broad prohibition contained in Section 310.3(a)(4) against ''[m]aking a false or misleading statement to induce any person to pay for goods or services,'' the Commission believes that expressly including them in the proposed amended Rule text provides the best opportunity for stakeholders to evaluate and comment on them.[181] Further, the Commission believes that setting forth these requirements with specificity provides greater clarity to debt relief service providers subject to the TSR of their obligations to ensure their claims are truthful and non-deceptive.[182] Accordingly, proposed Section 310.3(a)(2)(x) would prohibit telemarketers of debt relief services from making misrepresentations regarding any material aspect of any debt relief service, including, but not limited to:

- the amount of money or the percentage of the debt amount that a customer may save by using such service;
- the amount of time necessary to achieve the represented results;

– what sounds to be the better of the two, which would be the debt settlement, which might not be the best solution for them. So, there has to be some sort of a disclosure that says look, this is it. If you're going to settle a debt for greater than $600, you're going to have an IRS tax consequence this year.'').

[178] IRS, *Publication 525 - Taxable and Nontaxable Income* (Feb. 19, 2009), at 19-20 (''Generally, if a debt you owe is canceled or forgiven, other than as a gift or bequest, you must include the canceled amount in your income.''), *available at* (*www.irs.gov/pub/irs-pdf/p525.pdf*).

[179] *See* 16 CFR 310.3(a)(2)(i)-(iv), (vii). Section 310.3(a)(2)(vii) of the TSR prohibits misrepresentations of ''seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity.''

[180] Debt relief providers also sometimes request consumers' billing information during the telemarketing sales call or pressure them to return payment authorization forms and signed contracts as quickly as possible following the call. *See, e.g., FTC v. Debt-Set, Inc.*, No. 1:07-cv-00558-RPM (D. Colo. 2007) (alleging ''[c]onsumers who agree to enroll . . . are sent an initial set of enrollment documents from Debt Set Colorado. During their telephone pitches, the defendants' telemarkers also exhort consumers to fill out the enrollment documents and return the papers as quickly as possible . . . . Included in these documents are forms for the consumer to authorize direct withdrawals from the consumer's checking account, to identify the amounts owed to various creditors, and a Client Agreement.''). Consequently, unauthorized payments may automatically be taken from consumers' accounts without their consent. The TSR currently prohibits telemarketers from charging consumers' accounts without first obtaining express informed consent in all transactions, and it requires express verifiable authorization in cases where a consumer uses a payment method other than a credit or debit card. *See* 16 CFR 310.3(a)(3); 16 CFR 310.4(a)(6). The proposed amended Rule would apply these existing requirements to inbound debt relief telemarketing calls, as well.

[181] Moreover, this decision is consistent with the inclusion elsewhere in the Rule of specific misrepresentations made in the sale of other goods or services. *See, e.g.,* 16 CFR 310.3(a)(2)(v) (prohibiting certain misrepresentation in connection with prize promotions); 16 CFR 310.3(a)(2)(vi) (prohibiting certain misrepresentations in connection with investment opportunities).

[182] Claims made by debt relief providers must be truthful and non-deceptive. To establish that a claim is deceptive in violation of Section 5 of the FTC Act, the Commission must prove that the representation, omission, or practice is likely to mislead consumers acting reasonably under the circumstances and is material. *See In re Cliffdale Assocs.*, 103 F.T.C. 110 (1984). To be non-deceptive, specific, unqualified performance claims made by marketers of debt relief services must be true for the typical consumer who pays money to enroll in a debt relief service. *See FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 528-29 (S.D.N.Y. 2000) (holding that, in the face of express earnings claims for multi-level marketing scheme, it was reasonable for consumers to have assumed the promised rewards were achieved by the typical Five Star participant).

- the amount of money or the percentage of each outstanding debt that the customer must accumulate before the provider of the debt relief service will initiate attempts with the customer's creditors debt collectors to negotiate, settle, or modify the terms of customer's debt;
- the effect of the service on a customer's creditworthiness;
- the effect of the service on collection efforts of the consumer's creditors or debt collectors;
- the percentage or number of customers who attain the represented results; and
- whether a service is offered or provided by a nonprofit entity.

Proposed Section 310.3(a)(2)(x) contains a prohibition on misrepresentations about ''the amount of money or the percentage of the debt amount that a customer may save by using such service,'' which is intended to ensure that consumers are not misled regarding the potential financial benefits of various debt relief services. The Commission's law enforcement experience and consumer complaints show that a pivotal claim made in most debt relief telemarketing pitches is that the offered plan can save the consumer money, either by lowering monthly payments or by eliminating debt altogether.[183] Thus, this prohibition will help ensure that consumers are not misled regarding this fundamental characteristic of the offered services.

Proposed Section 310.3(a)(2)(x) would also prohibit telemarketers of debt relief services from misrepresenting ''the amount of time necessary to achieve the promised results'' and ''the amount of money or the percentage of each outstanding debt that the customer must accumulate before the provider of the debt relief service will initiate attempts with the customer's creditors debt collectors to negotiate, settle, or modify the terms of customer's debt.'' As set forth in detail above in the discussion of Proposed Section 310.3(a)(1)(viii)(A) and (B), consumers often have little understanding of the mechanics of the debt collection process and are often deceived about the fact that many sellers collect fees up-front before any funds are saved to be used as payments to creditors. As a result it would take months, or even years, for a final resolution of all of a consumer's debts to be achieved. Often, however, telemarketers of these services tell consumers that results can be achieved more quickly.[184] Consumers seeking debt relief are often in exigent circumstances, having exhausted their financial resources and are eager to end their debt problems. The Commission believes that this prohibition against misrepresenting the time necessary to achieve the promised results will serve two key purposes. First, it will prevent consumer confusion about the time commitment necessary to attain results, and second, it will act as a check on unscrupulous practices by purveyors of debt relief services who might otherwise misrepresent the speed with which results can be achieved in order to induce a consumer to enroll in a debt relief plan.

Another provision of proposed Section 310.3(a)(2)(x) would prohibit misrepresentations regarding ''the effect of the service on a customer's creditworthiness.'' Like the disclosure required by proposed Section 310.3(a)(1)(viii)(E), discussed above, this provision is designed to ensure that consumers are not misled about the negative effects that will likely result if they fail to make timely payments to their creditors.

Proposed Section 310.3(a)(2)(x) would also prohibit a telemarketer from misrepresenting the ''effect of the service on collection efforts of the consumer's creditors or debt collectors.'' This provision, like the disclosure required by proposed Section 310.3(a)(1)(viii)(D), discussed above, would ensure that consumers are not misled regarding the effect that enrollment in a debt relief plan may have on collection efforts.

Another prohibited misrepresentation relates to ''the percentage of customers who attain the represented results.'' As noted above, success rates for debt relief services appear to be low, even according to industry-provided data.[185] Given this fact, the Commission believes that it is imperative that telemarketers of debt relief services not mislead consumers regarding the likelihood of success if they enroll in such services. In particular, this provision would operate to curb misrepresentations that state or imply that more customers have attained the promised results than is truly the case.

Finally, proposed Section 310.3(a)(2)(x) would prohibit telemarketers of debt relief services from misrepresenting ''whether a service is offered or provided by a nonprofit entity.'' This provision is particularly relevant to entities that masquerade as nonprofits, but in fact operate for their own profit, or that of related entities. The Commission has brought law enforcement actions against such entities, each of which represented that it operated as a nonprofit and could provide debt relief services – often involving credit counseling or debt negotiation – to consumers.[186] As the Commission has stated in testimony before the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs, significant harm to consumers may accrue from misrepresentations regarding an entity's nonprofit status.[187]

5) Application of Section 310.3(a)(4): Prohibited False or Misleading Statements

In addition to the prohibited misrepresentations contained in Section 310.3(a)(2), Section 310.3(a)(4) of the TSR prohibits covered telemarketers

[183] As noted above, the FTC has alleged deceptive debt settlement operations often promise to reduce consumer debt by large amounts. *See, e.g., FTC v. Debt-Set, Inc.*, No. 1:07-cv-00558-RPM (D. Colo. 2007) (promising to reduce amount owed to 50% to 60% of amount at time of enrollment); *FTC v. Connelly*, No. SA CV 06-701 DOC (RNBx) (C.D. Cal. 2006) (promising to reduce overall amount owed by up to 40% to 60%). In other cases, the FTC has alleged that defendants made deceptive promises to lower consumer consumers' monthly payments. *See, e.g., FTC v. Express Consolidation,* No. 06-cv-61851-WJZ (S.D. Fla. 2006); *United States v. Credit Found. of Am.,* No. CV 06-3654 ABC(VBKx) (C.D. Cal. 2006); *FTC v. Debt Mgmt. Found. Svcs., Inc.*, No. 04-1674-T-17-MSS (M.D. Fla. 2004); *FTC v. Integrated Credit Solutions*, No. 06-806-SCB-TGW (M.D. Fla. 2006).

[184] *See, e.g., FTC v. Debt Solutions, Inc.,* No. 06-0298 JLR (W.D. Wash. 2006) (alleging that defendant misrepresented that consumers could pay off debt three to five times faster without increasing monthly payments); *FTC v. Integrated Credit Solutions*, No. 06-806-SCB-TGW (M.D. Fla. 2006) (alleging that defendants misrepresented that debt relief would be achieved before consumers' next billing cycle); *FTC v. Better Budget Fin. Servs., Inc.,* No. 04-12326 (WG4) (D. Mass. 2004)(alleging defendant told consumers it could shorten period of time to pay off debts).

[185] *See supra* notes 102-104; CFA (Plunkett) Tr. at 102 (''It appears to be a crap shoot. It's not like settlement doesn't occur, but it does appear – there does appear to be significant evidence that these firms are greatly exaggerating the number of settlements that do occur.'').

[186] *See, e.g., FTC v. AmeriDebt, Inc.,* No. PJM 03-3317 (D. Md. 2003); *FTC v. Debt Mgmt. Found. Svcs.*, No. 04-1674-T-17-MSS (M.D. Fla. 2004); *FTC v. Integrated Credit Solutions*, No. 06-806-SCB-TGW (M.D. Fla. 2006); *FTC v. Express Consolidation*, No. 06-cv-61851-WJZ (S.D. Fla. 2006).

[187] *See Consumer Protection Issues in the Credit Counseling Industry: Hearing Before the Permanent Subcommittee on Investigations Senate Committee on Governmental Affairs*, 108 th Cong. 2d Sess. (2004) (Testimony of the FTC) (''[S]ome CCAs appear to use their 501(c)(3) status to convince consumers to enroll in their DMPs and pay fees or make donations. These CCAs may, for example, claim that consumers' 'donations' will be used simply to defray the CCA's expenses. Instead, the bulk of the money may be passed through to individuals or for-profit entities with which the CCAs are closely affiliated. Tax-exempt status also may tend to give these fraudulent CCAs a veneer of respectability by implying that the CCA is serving a charitable or public purpose. Finally, some consumers may believe that a 'non-profit' CCA will charge lower fees than a similar for-profit.''), *available at* (*www.ftc.gov/os/2004/03/040324testimony.shtm*).

from ''[m]aking a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution.''[188] Thus, this provision acts as a catch-all prohibition of misrepresentations and other deceptive statements, some of which are also captured by specific subsections of Section 310.3(a)(2). Accordingly, it prohibits a number of false representations commonly observed in the debt relief services industry, including some specifically set forth in proposed amended Section 310.3(a)(2)(x) above.

By way of illustration, the FTC has brought cases against debt relief service providers alleging violations of this provision for misleading statements made in connection with outbound telemarketing, including statements that the entity:

- will obtain a favorable settlement of the consumer's debt promptly or in a specific period of time;[189]
- will stop or lessen creditors' collection efforts against the consumer;[190]
- will secure concessions, such as interest rates, by specific amounts or percentages;[191]
- that the provider has a close relationship with the creditor;[192]

Under the proposed amended Rule, debt relief service providers would be prohibited from making these sorts of misleading statements, and others prohibited by existing Section 310.3(a)(4), in not only outbound, but also inbound telemarketing transactions.

D. Section 310.4: Abusive Telemarketing Acts or Practices

The Commission proposes to amend Section 310.4 to prohibit a debt relief service provider from requesting or receiving any fee until it has provided the customer with documentation that a particular debt has, in fact, been renegotiated, settled, reduced, or otherwise altered. An overview of the requirements of the Section and a discussion of the proposed amendment follow.

1) Background

The Telemarketing Act authorizes the Commission to promulgate rules ''prohibiting deceptive telemarketing acts or practices and *other abusive telemarketing acts or practices.*''[193] Section 310.4 of the TSR sets forth telemarketing acts or practices deemed abusive, together with provisions to curb the deleterious effects these acts or practices may have on consumers. Compliance with the existing provisions of Section 310.4 already is required for outbound telemarketing calls offering debt relief services and would be required for inbound calls as well if the proposed amendments to Section 310.6(a)(5) and (a)(6) are adopted.

The Rule delineates five categories of abusive conduct: (1) abusive conduct generally;[194] (2) conduct related to the pattern of calls, including the Rule's Do Not Call provisions;[195] (3) violations of the Rule's calling time restrictions;[196] (4) failure to make required oral disclosures in the sale of goods or services;[197] and (5) failure to make required oral disclosures in charitable solicitations.[198] The first of these categories is at issue in this proceeding.

As discussed at considerable length in the January 2002 NPRM,[199] issued pursuant to the initial review of the TSR, the Commission has articulated an analytical framework for implementing its authority to proscribe abusive telemarketing acts or practices.[200] The Telemarketing Act directs the Commission to include in the TSR provisions to address three specific practices denominated by Congress as ''abusive.''[201] However, the Act ''does not limit the Commission's authority to address abusive practices beyond these three practices legislatively determined to be abusive.''[202]

In determining which conduct should be characterized by the TSR as abusive, the Commission noted that each of the statutorily-denominated abusive practices implicate consumers' privacy.[203] Nevertheless, the plain meaning of the term ''abusive'' suggests that no such inherent limitation in the meaning of the term constrains the Commission in crafting the Rule.[204] Thus, to give full effect to the statutory mandate to protect consumers from harmful telemarketing practices, the Commission has used its authority to prohibit abusive practices related to telemarketing of credit repair services, recovery services, and advance fee loans. Although not rooted in privacy protection, each of these services had been the subject of significant numbers of law enforcement actions and consumer complaints and resulted in demonstrated consumer harm.

As explained in the 2002 NPRM, ''[w]hen the Commission seeks to identify practices as abusive that are less distinctly within [the ambit of privacy], the Commission now thinks it appropriate and prudent to do so within the purview of its traditional unfairness analysis as developed in Commission jurisprudence.''[205] Thus, in considering any amendment to Section 310.4 of the TSR not relating to consumers' privacy rights, the Commission will determine whether the conduct at issue meets the criteria for unfairness. To make such a showing, the Commission must demonstrate that: 1) the conduct at issue causes substantial injury to consumers; 2) the harm resulting from the conduct is not outweighed by any countervailing benefits; and 3) the harm is not reasonably avoidable.[206]

2) Advance Fees for Debt Relief Services as an Abusive Practice

It appears that requesting or receiving payment of a fee for any debt relief service before the seller has provided

[188] 16 CFR 310.3(a)(4).

[189] *See, e.g., FTC v. Nat'l Consumer Council,* No. SACV04-0474 CJC(JWJX) (C.D. Cal. 2004).

[190] *See, e.g., id.*; *FTC v. Group One Networks, Inc.*, Case No. 8:09-cv-352-T-26-MAP (M.D. Fla. 2009) (amended complaint).

[191] *See, e.g., FTC v. Debt Mgmt. Found. Svcs., Inc.*, No. 04-1674-T-17-MSS (M.D. Fla. 2004).

[192] *See, e.g., FTC v. Group One Networks, Inc.,* Case No. 8:09-cv-352-T-26-MAP (M.D. Fla. 2009) (amended complaint).

[193] 15 U.S.C. 6102(a)(1) (emphasis added).

[194] 16 CFR 310.4(a) (this category includes the following acts or practices: threats, intimidation, or the use of profane or obscene language; requesting or receiving an advance fee for credit repair or recovery services or the arrangement of a loan or other extension of credit when the telemarketer guarantees or represents a high likelihood of success; disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing; causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor; and failure to transmit Caller ID information).

[195] 16 CFR 310.4(b).

[196] 16 CFR 310.4(c).

[197] 16 CFR 310.4(d).

[198] 16 CFR 310.4(e).

[199] *See TSR; Proposed Rule*, 67 FR 4492 (Jan. 30, 2002).

[200] *See id.* at 4510-4511.

[201] 15 U.S.C. 6102(a)(3) (these three delineated practices are for any telemarketer to: (1) ''[u]ndertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumers right to privacy; (2) make unsolicited phone calls to consumers during certain hours of the day or night; and (3) fail to promptly and clearly disclose to the person receiving the call that the purpose of the call is to sell goods or services and make such other disclosures as the Commission deems appropriate, including the nature and price of the goods and services.).

[202] *See TSR; Proposed Rule*, 67 FR at 4510.

[203] *See id.*

[204] The ordinary meaning of abusive is (1) wrongly used; perverted; misapplied; catachrestic; (2) given to or tending to abuse, (which is in turn defined as improper treatment or use; application to a wrong or bad purpose). *See* Webster's International Dictionary, Unabridged (1949).

[205] *See TSR; Proposed Rule*, 67 FR at 4511.

[206] 15 U.S.C. 45(n) (codifying the Commission's unfairness analysis); *see also* Letter from the FTC to Hon. Wendell Ford and Hon. John Danforth, Committee on Commerce, Science and Transportation, United States Senate, Commission Statement of Policy on the Scope of Consumer Unfairness Jurisdiction, *reprinted in In re Int'l Harvester Co.*, 104 F.T.C. 949, 1079, 1074 n.3 (1984) (''Unfairness Policy Statement'').

the customer with documentation that the promised services have been rendered meets the criteria for unfairness, as is the case with credit repair services, recovery services, and advance fee loans, each of which is subject to an advance fee ban under the TSR.[207] With respect to these services, the Commission found that telemarketers commonly take consumers' money for services that the seller has no intention of providing and in fact does not provide.[208] Each of these services had been the subject of large numbers of consumer complaints and enforcement actions, and in each case caused substantial injury to consumers.[209] Taking money without providing anything in return caused substantial harm to consumers without any countervailing benefits to consumers or competition.[210] Finally, having no way to know these offered services were illusory, consumers had no reasonable means to avoid the harm that resulted from accepting the offers.[211] Thus, an advance fee ban for such services was found to meet the test for unfairness.

At the Workshop, consumer advocates and others argued that unless and until a debt is settled, the job is incomplete and it is therefore unfair for a provider to request or receive a fee.[212] These participants generally agreed that a ban on the receipt of fees for debt settlement services prior to the performance of those services is essential to effect consumer protection in this area. Pending the receipt of public comment, the Commission agrees with this view, and information currently available to the Commission indicates that other debt relief services, including debt negotiation and for-profit credit counseling, should similarly be subject to such a ban. The analysis supporting the Commission's current view is set forth below.

Substantial Injury to Consumers. As an initial matter, the information available to the Commission from its complaint data, its law enforcement experience, as well as state enforcement efforts, the Workshop record, and additional independent research conducted by Commission staff indicates that collecting up-front fees for debt relief services causes substantial injury to consumers.[213] Consumers suffer monetary harm – often in the hundreds or thousands of dollars – when they pay in advance for services that, in most cases, are never provided. Further, in the case of debt settlement, in order to pay these high fees, consumers typically need to (and are frequently encouraged to) stop paying their creditors and therefore suffer lasting injury to their creditworthiness. These main categories of harm caused are detailed below as follows:

(1) *The low likelihood of success.* At the most fundamental level, it appears that a ban on advance fees may be justified in the telemarketing of debt relief services because the information currently available on the debt relief industry indicates that, in the vast majority of cases, consumers are required to pay in advance for services that, in most cases, are never rendered. The information obtained through FTC law enforcement actions against debt relief providers suggests that most consumers do not receive the promised debt relief services. For example, in one FTC case only 1.4% of consumers enrolled in a debt settlement plan by the defendants obtained the promised results.[214] The New York Attorney General recently filed cases against two debt settlement companies alleging that, respectively, these entities were providing the represented services to only 1% and 1/3% of their consumers.[215] This information is not sufficiently rebutted by industry data to the limited extent it has been provided.[216] Accordingly, based on the current record available, the prevailing debt settlement business model requires consumers to pay in advance for services that, according to available data, in most cases, are never provided to the vast majority of consumers.

Similarly, in other types of debt relief services, including for-profit credit counseling and debt negotiation, it appears that advance fees are taken and the represented services are never provided in the majority of cases. A primary concern regarding for-profit credit counseling is that, after fees are taken, the represented counseling services are often not provided and, instead, consumers are placed in DMPs without regard to whether such plans will be an appropriate means of providing them debt relief.[217] In cases the Commission has brought against providers of debt negotiation services, advance fees are taken, but claims that credit card interest rates can be reduced turn out to be false.[218]

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[207] In addition to the ban on advance fees for credit repair in the TSR, the Credit Repair Organizations Act expressly prohibits any credit repair organization from charging or receiving ''any money or other valuable consideration for the performance of any service which the credit repair organization has agreed to perform for any consumer before such service is fully performed.'' 15 U.S.C. 1679b(b).

[208] *See TSR; Final Rule*, 68 FR 4580, 4614 (Jan. 29, 2003).

[209] *See id.*

[210] *See id.*

[211] *See id.*

[212] *See* CFA (Plunkett) Tr. at 106 (''[T]here is really no service that's being offered until there is a settlement. And just like credit repair organizations are forbidden under the Credit Repair Organizations Act from charging up-front fees for services, we think there should be a prohibition on up-front fees for services here because the major service that's being promised, the only service consumers really want is a settlement. If you can't get a settlement, you shouldn't have to pay a fee.''); *see also* NFCC (Binzel) Tr. at 33 (arguing that debt settlement companies should be subject to strong federal regulation, including a prohibition on the collection of fees until actual services are provided); NFCC (Binzel) Tr. at 40 (endorsing the idea that the government should intervene to prohibit debt settlement companies from collecting fees until services have been provided); SCDCA (Lybarker) Tr. at 223 (positing that there should not be any sort of payment until activity begins on the account); National Consumer Law Center, Inc., *An Investigation of Debt Settlement Companies: An Unsettling Business for Consumers* (2005), at 9 (''It is possible that the fee arrangements described above would be justifiable if the companies actually earned those fees. Unfortunately, it is not easy to determine what the companies actually do to earn these fees. As noted above, the debt settlement trade association (USOBA) and companies we called have either refused to speak with us or provided vague responses.'').

[213] The injury caused by up-front fees applies particularly to debt settlement. However, it appears that, like debt settlement, other debt relief services, such as for-profit credit counseling services, commonly take consumers' money in advance for services that are almost never provided. For that reason, the proposed Rule's advance fee ban reaches all providers of debt relief services.

[214] *See FTC v. Nat'l Consumer Council, Inc.,* No. SACV04-0474 CJC(JWJX) (C.D. Cal. 2004); *see also supra* notes 102-104 (setting forth the low rates of success characteristic of cases brought by the FTC and the states against debt relief providers and explaining that little probative empirical evidence has been offered by industry members to the contrary).

[215] Press Release, *Attorney General Cuomo Sues Debt Settlement Companies for Deceiving and Harming Consumers* (May 20, 2009), *available at* (*www.oag.state.ny.us/media_center/2009/may/may19b_09.html*).

[216] *See supra* notes 103-104.

[217] *See, e.g., FTC v. Integrated Credit Solutions,* No. 06-806-SCB-TGW (M.D. Fla. 2006); *FTC v. Nat'l Consumer Council*, No. SACV04-0474 CJC(JWJX) (C.D. Cal. 2004); *FTC v. AmeriDebt, Inc.,* No. PJM 03-3317 (D. Md. 2003).

[218] *See, e.g., FTC v. Debt Solutions, Inc.,* No. 06-0298 JLR, App. for T.R.O. (W.D. Wash. Mar. 6, 2006) at 15 (''Approximately four months' worth of consumer data obtained from Defendants show that they failed to achieve interest rate reductions [to the promised rate] on 99.5 percent of the accounts reviewed and failed to achieve any interest rate reductions at all in 80.4 percent of the accounts.'');. *see also FTC v. Group One Networks, Inc.*, No. 8:09-cv-352-T-26-MAP (M.D. Fla. 2009) (amended complaint); *FTC v. Select Pers. Mgmt.,* No. 07- 0529 (N.D. Ill. 2007). The Commission acknowledges that debt negotiation services were not the focus of the FTC's September 2008 Workshop and, therefore, that the current record with regard to this category of service is based largely on the agency's law enforcement actions against debt negotiation entities. Accordingly, the Commission invites comments, including any data, demonstrating the ability (or lack thereof) of debt negotiation entities to secure the results they represent to consumers.

(2) *The significant burden on consumers of front-loaded fees.* As discussed above in Section II, of the three basic fee models in the debt settlement industry, the front-end fee model is the most prevalent. Under this model, as much as 40% or more of the fee is collected within the first three or four months of enrollment, with the remaining fee collected over a twelve-month period.[219] Collecting fees in advance of providing the represented services also appears to be the most common business model in for-profit credit counseling and debt negotiation.[220]

As discussed above, substantial harm accrues when debt relief providers charge fees and then fail to provide the represented services. The practice of charging substantial up-front fees, as is the case with many debt relief services, is inherently inconsistent with the purported goal of the services. Specifically, debt settlement providers represent settlement as a way to pay off unsecured debts with a one-time lump sum payment. However, given that consumers to whom they market are typically already delinquent or in danger of becoming delinquent on their payments to creditors, the practice of taking substantial up-front fees before any monies are saved for the purported settlement forces many consumers – who cannot pay both the debt settlement provider and their creditors – to stop making payments to creditors. Additionally, once consumers realize that the telemarketers have kept their initial payments as a large up-front fee, many then drop out of the program, often with higher balances, among other detrimental results, thereby suffering substantial injury.[221] At the Workshop, even a representative from the industry group, TASC, expressed concern about the front-end fee model.[222]

In this regard, it is telling that nearly all states have now adopted laws that regulate the provision of some or all debt relief services, and some of these directly address the ability of a debt relief service provider to take an up-front fee. Several of these laws ban for-profit debt settlement entirely,[223] while others prohibit the charging of up-front fees.[224] However, at present a larger number of states instead allow debt relief service providers to charge a small up-front or set-up fee (*i.e.*, less than one hundred dollars), and then some combination of the following: (1) subsequent flat monthly fees for service; or (2) a choice between flat monthly fees for service or some set percentage (*i.e.*, a percentage of the total debt enrolled in the program or a percentage of the amount by which the consumer's debt is reduced).[225]

The record indicates that the harm to consumers from advance fees for debt relief services is substantial because they pay in advance for services that it appears are only rarely rendered. Further, the record suggests that substantial fees – such as those commonly charged for debt settlement – are particularly onerous because they may actually impede the ultimate goal of attaining debt relief for the consumer. In addition, the recognition by state legislatures of the need to regulate these fees indicates that federal regulation of fees for debt relief services may be justified.[226]

Potential Countervailing Benefits. The second prong of the unfairness test requires a determination of whether the harm to consumers is outweighed by countervailing benefits to consumers or competition.[227] The inclusion of this criteria signals the recognition that costs and benefits attach to most business practices. As the Commission previously has stated, it will ''not find that a practice unfairly injures consumers unless it is injurious in its net effects.''[228]

Representatives of the debt relief industry have advanced several arguments as to the countervailing benefits of charging advance fees. First, they have stated that cash flow is a benefit of the up-front fee structure prevalent in the industry and that disallowing this fee method would limit new entrants to the industry. Specifically, debt settlement industry representatives argue that allowing only back-end fees would be an unsustainable business model and that no new companies would enter the market, which would reduce competition.[229]

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[219] *See supra* notes 89-92 and accompanying text.

[220] *See, e.g., FTC v. Debt Solutions, Inc.,* No. 06-0298 JLR (W.D. Wash. 2006) (alleging that consumers paid an advance fee of between $329 and $629 before any debt negotiation was attempted); *FTC v. Integrated Credit Solutions*, No. 06-806-SCB-TGW (M.D. Fla. 2006) (alleging that defendants charged between $99 and $499 as an initial fee for credit counseling services that were not, in fact, provided).

[221] *See, e.g., FTC v. Edge Solutions*, No. CV-07-4087 (E.D.N.Y Oct. 1, 2007) (complaint alleging that ''[c]ontrary to Defendants' representations,'' consumers in numerous instances ''have in fact increased the amount of their debt by incurring late fees, finance charges and overdraft charges, causing their financial situation to worsen. In numerous instances, as a result of Defendants' services, consumers' credit reports include significant negative information such as late payments, charge-offs, collections, and garnishments.''); *see also FTC v. Debt-Set, Inc.*, No. 07-558, Mem. Supp. Mot. T.R.O. at 16-19 (D. Colo. Mar. 20, 2007) (alleging that ''[c]onsumers' financial condition deteriorates precipitously with hundreds, if not thousands, of dollars in monthly payments lost to Defendants''); *FTC v. Express Consolidation*, No. 06-cv-61851-WJZ, Pls. Mem. Law Supp. T.R.O. at 17 (S.D. Fla. Dec. 11, 2006) (alleging consumers paid up-front fees and that savings claims ''falsely report benefit to the consumer from plans that actually will make the consumer worse off''); *FTC v. Better Budget Fin. Servs., Inc.,* No. 04-12326 (WG4), Pls. Mem. Law Supp. T.R.O. at 8-9 (D. Mass. 2004) (alleging that ''[t]ypically, consumers leave the program after finding that defendants have never contacted their creditors, nor done anything to stop creditors from making harassing calls to consumers, as promised. When consumers do terminate their contracts, they often find that their overall debt has actually *increased* because they owe interest and late fees due to not paying creditors as required by defendants' program. Many consumers, prior to entering the program, were able to pay their credit accounts on time, but find that enrolling in defendants' debt management scheme caused their financial situation to deteriorate. Some consumers find their financial situation has deteriorated to the point of their being forced to file bankruptcy.'').

[222] TASC (Young) Tr. at 183 (arguing that fees should be ''spread out over no less than half of the length of the program'' so the consumer can save money to pay creditors).

[223] *See, e.g.,* Conn. Gen. Stat. § 36A-655 *et seq.*; La. Rev. Stat. § RS 14:331 *et seq.*, & 37:2581, *et seq.*; N.D. Gen. Stat. § 13-06-01-03 & 13-07-01-07; Wyo. Stat. § 33-14-101 *et seq.*

[224] *See, e.g.,* N.C. Gen. Stat § 14-423 *et seq.*

[225] *See, e.g., supra* note 125. To the extent that state laws permit, rather than mandate, that fees for debt relief services be collected before the promised goods or services are documented as provided, there is no conflict with the proposed Rule, and thus, no preemption. *See* 16 CFR 310.7(b) (''Nothing contained in this Section shall prohibit any attorney general or other authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state.'').

[226] *See supra* notes 121, 125; *see, e.g.,* Illinois Attorney General, Press Release, *Attorney General Madigan Sues Two Debt Settlement Firms* (May 4, 2009) (encouraging ''consumers in financial trouble to consider credit counseling instead of debt settlement services'' and ''to look for credit counseling services that charge modest fees and provide true financial and budget counseling based on a consumer's personal circumstances''), *available at* (*www.illinoisattorneygeneral.gov/pressroom/2009_05/20090504.pdf*).

[227] Unfairness Policy Statement at 1073 (''The Commission also takes account of the various costs that a remedy would entail. These include not only the costs to the parties directly before the agency, but also the burdens on society in general in the form of increased paperwork, increased regulatory burdens on the flow of information, reduced incentives to innovation and capital formation, and similar matters.''); *see also* J. Howard Beales, *The FTC's Use of Unfairness Authority: Its Rise, Fall, and Resurrection*, *available at* (*www.ftc.gov/speeches/beales/unfair0603.shtm*) (noting that ''[g]enerally, it is important to consider both the costs of imposing a remedy (such as the cost of requiring a particular disclosure in advertising) and any benefits that consumers enjoy as a result of the practice, such as the avoided costs of more stringent authorization procedures and the value of consumer convenience.'').

[228] *Id.* at 1075 (''As we have indicated before, the Commission believes that considerable attention should be devoted to the analysis of whether substantial net harm has occurred, not only because that is part of the unfairness test, but also because the focus on injury is the best way to ensure that the Commission acts responsibly and uses its resources wisely.'').

[229] *See, e.g.,* TASC (Young) Tr. at 186-87.

Second, one debt settlement industry association claims that their fees are required to pay for labor or services engaged in before settlement occurs.[230] The debt relief provider must obtain information about the consumer's debts, familiarize themselves with the consumer's finances, and call creditors and/or debt collectors to ascertain whether debt relief is possible for the consumer. According to one participant at the Commission's workshop, such an effort can involve numerous phone calls to the creditor.[231] If the creditor or debt collector agrees to provide some kind of debt relief, the telemarketers must coordinate the execution of the debt relief, which may include, for example, arranging the debt management plan terms, ensuring the savings or transfer of funds for settlement, and receipt of appropriate documentation of completed services. These operating costs must be recovered for the firm to remain solvent, and under the prevailing model whereby these providers operate on a for profit basis, the costs are likely recovered substantially in the form of up-front fees.

Third, industry representatives have expressed concern that if they complete services before receiving payment, they may become one of their clients' creditors.[232] Because their customer base, to a large extent, is comprised of financially distressed consumers with limited ability to pay their current debts, they argue that ensuring that the debt relief firm can obtain payment for services dictates that the fees are collected up-front.

Based on the evidence in the record at this time, it appears that insufficient empirical data have been presented to substantiate that these purported benefits outweigh what appears to be substantial harm to consumers. With regard to the possible curtailment of competition if an advance fee ban is imposed, the Commission acknowledges that, at least conceivably, such a prohibition could increase the costs incurred by any legitimate providers of debt relief services, make it impossible for some firms to continue to exist, and reduce the ability of new firms to enter the market. For example, additional capitalization, in the form of borrowing or investment, may be necessary for firms who would otherwise have relied upon advance fees for cash flow.[233] If existing providers' costs are increased, they could be forced to increase the prices they charge consumers for their services in order to remain solvent. However, the record lacks empirical data on whether debt relief companies actually provide the debt relief as represented to consumers. In fact, the federal and state law enforcement record demonstrates that few, if any consumers who pay upfront fees, receive any benefits from the advance fee practice. Thus, any increase in costs resulting from the advance fee ban would be unlikely to outweigh the consumer injury resulting from the current fee practice.

Moreover, while the Commission acknowledges that debt relief services may have labor and operating costs, it notes that the actual benefit of allowing entities to recover these costs largely rests on their ability to deliver represented results – an ability that still remains largely unsupported by the record. In addition, industry has conceded that a large portion of its purported operating costs are actually devoted to marketing, and not provision of services to consumers.[234] Finally, the proposed Rule's allowance for legitimate, third-party escrow services is intended to ensure that debt relief service entities will be able to obtain payment if, and once, they have completed their represented services.

Reasonably Avoidable Harm. The third and final prong of the unfairness analysis precludes a finding of unfairness in cases where the injury is one that consumers can reasonably avoid.[235] The extent to which a consumer may reasonably avoid injury is determined in part by whether the consumer can make an informed choice. In this regard, the Unfairness Policy Statement explains:

> Normally we expect the marketplace to be self-correcting, and we rely on consumer choice – the ability of individual consumers to make their own private purchasing decisions without regulatory intervention – to govern the market. We anticipate that consumers will survey the available alternatives, choose those that are most desirable, and avoid those that are inadequate or unsatisfactory. However, it has long been recognized that certain types of sales techniques may prevent consumers from effectively making their own decisions, and that corrective action may then become necessary. Most of the Commission's unfairness matters are brought under these circumstances. They are brought, not to second-guess the wisdom of particular consumer decisions, but rather to halt some form of seller behavior that unreasonably creates or takes advantage of an obstacle to the free exercise of consumer decisionmaking.[236]

Consumers seeking debt relief services are unable reasonably to avoid the injury caused by the payment of up-front fees because business practices prevalent among debt relief service providers make it impossible for consumers to know the offered services are illusory. Relying on the representations made in advertisements and in telemarketing calls, these vulnerable consumers expect to receive the promised services from those who purport to be experts and have no way of knowing that the promised services are almost never provided.[237] Further, deceptive representations and inadequate disclosures about fees and their timing leave consumers unaware that the bulk of fees will be collected as up-front payments.[238] As a result, in many instances, consumers do not even anticipate that they will be paying fees before settlements are achieved.

Thus, the Commission proposes a ban on advance fees for the provision of debt relief services. As described above, the practice appears to meet the statutory test for unfairness because it appears to cause significant harm to consumers that is not outweighed by countervailing benefits to consumers or competition,

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[230] *See* TASC, *Study on the Debt Settlement Industry* (2007), at 6 (''Debt settlement companies do not simply negotiate the debts at the beginning of the contract and act as a repayment collection clearinghouse for the creditors, as is the case with credit counseling agencies. Debt settlement companies must negotiate and actively monitor the creditor's activities with respect to their client's accounts throughout the length of the program.'').

[231] *See* Debt Settlement USA (Craven) Tr. at 113.

[232] *See, e.g.,* TASC (Young) Tr. at 185.

[233] Some states already impose licensing and bonding requirements on companies and thus require some capitalization. *See, e.g.,* Kan. Stat. Ann. § 50-1116, *et seq.*; Me. Rev. Stat. Ann. Tit. 17 § 701, *et seq.* & tit. 32 §§ 6171-82, 1101-03; S.C. Code Ann. § 37-7-101, *et seq.*

[234] As TASC has commented: ''One of the primary costs is the client acquisition. . . . Since the concept of debt settlement is not well-known to the public, debt settlement companies must spend more time, effort and money marketing their services. The lead cost for acquiring one debt settlement client ranges from $300 to $400. Once the intake costs associated with contacting the potential clients and the overhead costs are factored into the lead costs, the cost to acquire and set up a single debt settlement client can range from approximately $425 to $1,000. The data reveals that most debt settlement companies report this cost at $700 to $1,000 range. This necessitates debt settlement companies to charge a greater portion of fees during the initial phase of the program.'' TASC, *Study on the Debt Settlement Industry* (2007), at 4.

[235] Unfairness Policy Statement at 1073.

[236] *Id.*

[237] *See* Summary of Prepared Remarks of Commissioner Roscoe B. Starek, III, FTC, *Advertising and Promotion Law 1997* (July 25, 1997) (''In assessing whether injury is reasonably avoidable, the Commission looks at how susceptible the affected audience may be to the act or practice in question.'').

[238] *See supra* note 161.

and the harm is not reasonably avoidable.

Accordingly, proposed amended Rule Section 310.4(a)(5) would prohibit:

> Requesting or receiving payment of any fee or consideration from a person for any debt relief service until the seller has provided the customer with documentation in the form of a settlement agreement, debt management plan, or other such valid contractual agreement, that the particular debt has, in fact, been renegotiated, settled, reduced, or otherwise altered.[239]

The focus of the provision is to prevent a seller or telemarketer from charging a fee in advance of completion of represented services.

The Commission intends for this proposed amendment to apply to all of the debt relief services described in this Notice and encompassed by proposed amended provision 310.2(m). With regard to debt settlement, proposed amended Section 310.4(a)(5) is intended to prohibit up-front fees, and require debt settlement entities to provide the represented services – that is, to settle a consumer's debt – before collecting any fee in connection with that debt.[240] The Commission does not intend that the advance fee ban be interpreted to prohibit a consumer from using legitimate escrow services – services where funds are controlled by the consumer – to save money in anticipation of settlement, including money that may eventually be used to pay a debt relief service provider. Such monies held in escrow are the consumer's property, held by a fiduciary. However, the proposed advance fee ban would prohibit any debt relief provider from taking any fee or consideration from funds held in escrow until such time as the represented services are delivered. At such time, a fee proportional to the work completed may be requested by the debt settlement provider. In the context of for-profit credit counseling, the proposed amended Rule would require that the provider successfully provide the consumer with the represented services, such as counseling and enrollment in a DMP – with the consent of both the consumer and his or her creditors – before charging any fees.[241] In the context of debt negotiation, the proposed amended Rule would require that the debt negotiation provider successfully negotiate an agreement between the consumer and his or her creditor(s) to provide the concession or result represented by the debt negotiation entity (*e.g.*, a lower interest rate, lower monthly payments, etc.).[242]

Moreover, in light of the abuses observed in the debt relief services industry, the proposed rule would require providers to give consumers proof that they have received the debt relief services as contracted for or promised. In the case of debt settlement, this would require delivery of proof to the customer that the accounts subject to debt settlement have, indeed, been successfully settled.[243] The Commission has learned that, presently, many creditors prepare a written instrument referred to as a ''settlement in full'' to memorialize the settlement of a debt in connection with a debt settlement service provider. The Commission intends for proposed amended Rule Section 310.4(a)(5) to encompass not only the ''settlement in full'' document, but also such other legally-binding documents as may be presently used by other debt relief services or adapted in the future. For, example, in the case of for-profit credit counseling, an executed DMP, accepted by each of the consumers creditors as well as the consumer, would evidence that the proffered services had been successfully completed. With regard to debt negotiation, documentation that, for example, a creditor has agreed to lower the interest rate for a particular credit card would suffice. These documents would serve as objective proof to the consumer that the promises or contracted services have, indeed, been provided.

Section VIII of this Notice solicits comments regarding this provision. Specifically, as set forth in the questions in Section VIII, the Commission seeks input regarding an advance fee ban for the debt relief industry that parallels the advance fee loan ban.[244] Under that alternative formulation, sellers or telemarketers of debt relief services would be prohibited from requesting or receiving payment of any fee or consideration for debt relief services only when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging the promised debt relief for a person. In Section VIII, the Commission seeks comments on the relative merits of the two versions of the advance fee ban, other possible alternatives, and the impact on industry of this proposed amendment.

E. Section 310.5: Recordkeeping

Section 310.5 of the Rule describes the types of records sellers or telemarketers must keep, and the time period for retention. Specifically, this provision requires that telemarketers must keep for a period of 24 months: all substantially different advertising, brochures, scripts, and promotional materials; information about prize recipients; information about customers, including what they purchased, when they made their purchase and how much they paid for the goods or services they purchased; information about employees; and all verifiable authorizations or records of express informed consent or express agreement required to be provided or received under this Rule.[245]

Although the provisions of this section remain unchanged in the proposed Rule, the operation of the other proposed amendments may result in some providers of debt relief services being subject to this provision of the TSR for the first time. As a result, the Commission believes it prudent to direct the attention of interested parties to the recordkeeping provision of the Rule, 16 CFR 310.5. Further, the Commission solicits comments with regard to the impact of this provision on the business operations of providers of debt relief services and responses to the specific questions regarding this provision in Section VIII of this Notice.

[239] The provisions currently contained in 310.4(a)(5) - 310.4(a)(7) will be renumbered to accommodate the new section 310.4(a)(5) and will shift to 310.4(a)(6) - 310.4(a)(8), respectively.

[240] Accordingly, if a consumer has more than one debt enrolled in a debt settlement program, amended Section 310.4(a)(5) would allow the debt settlement entity to collect the fee associated with each individual debt once it has settled that debt.

[241] As noted in Section II, CCAs commonly charge consumers not only an initial setup fee, but also periodic – usually monthly – fees throughout the consumer's enrollment in the DMP after the consumer is enrolled. Proposed amended Rule Section 310.4(a)(5) would prohibit CCAs from charging periodic fees before the consumer has enrolled in a DMP, but would not prevent subsequent periodic fees taken for servicing the account.

[242] Although proposed amended Rule Section 310.4(a)(5) would prohibit a debt negotiator from charging any fee until it has achieved the represented results, if multiple accounts are to be negotiated a proportional fee may be charged as work on each account is completed.

[243] *See, e.g.,* USOBA at 8 (''After the final payment is processed by the creditor or collection agency, a request for a confirmation letter is made showing the settlement agreement amount has been paid, along with the settlement agreement and copies of payments to the creditor or collection agency which serve as a record that the account has been satisfied and no outstanding balance is owed.'').

[244] *See* 16 CFR 310.4(a)(4).

[245] 16 CFR 310.5.

F. Section 310.6: Proposed Modification to General Media and Direct Mail Exemptions for Debt Relief Services

Section 310.6 sets forth the Rule's exemptions, which are designed to ensure that legitimate businesses are not unduly burdened by the Rule. Each is justified by one of four factors: (1) whether Congress intended a particular activity to be exempt from the Rule; (2) whether the conduct or business in question is already the subject of extensive federal or state regulation;[246] (3) whether the conduct at issue lends itself easily to the forms of abuse or deception the Telemarketing Act was intended to address; and (4) whether the risk that fraudulent sellers or telemarketers would avail themselves of the exemption outweighs the burden to legitimate industry of compliance with the Rule.

Based on its law enforcement experience and the information gleaned from the Workshop, the Commission proposes to modify the general media exemption and the direct mail exemption (Sections 310.6(b)(5) and 310.6(b)(6)) to make them unavailable to telemarketers of debt relief services.[247] This treatment would parallel the existing exceptions for investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule,[248] credit card loss protection plans, credit repair services, recovery services, and advance fee loans.[249] Like debt relief services, each of those services has been the subject of significant numbers of deceptive telemarketing campaigns that capitalize on mass media or general advertising to entice their victims to place an inbound telemarketing call.

The Commission, using its authority under Section 5 of the FTC Act, has devoted significant law enforcement resources to combating deceptive and unfair practices by debt relief services providers over the last several years.[250] All indications are that the industry is growing. Industry statistics suggest that the number of firms offering debt settlement services has increased in recent years from 300 to over 1,000.[251] It is reasonable to assume that this trend will continue, given that increasing numbers of consumers are in financial distress and thus ripe for solicitation by debt relief providers. The growth in the industry has been accompanied by a rise in the volume of complaints about deceptive, unfair, and abusive practices involving debt settlement. Recognizing that telemarketing fraud perpetrated by debt relief services providers is a prevalent and growing phenomenon, the Commission proposes to make the general media advertising exemption and the direct mail exemption unavailable to sellers and telemarketers of debt relief services. Otherwise, the Commission believes that the proposed amended Rule's focus on debt relief services may create some incentive for unscrupulous sellers to market these programs via general media advertising or direct mail specifically to ensure that their efforts are exempt from the Rule's coverage. The proposed modification to the exemptions will ensure that sellers and telemarketers who market these goods and services would be required to abide by the Rule regardless of the medium used to advertise their services.

The Commission solicits comments with regard to the impact of these proposed amendments to Section 310.6 and responses to the specific questions regarding this provision in Section VIII of this Notice.

IV. Public Forum

FTC staff will conduct a public forum to discuss the issues raised in this NPRM and the written comments received in response to this Notice. The Commission will post the date, time, and location of the public forum on its website no later than 30 days after the publication of this NPRM. The purpose of the forum is to afford Commission staff and interested parties an opportunity to discuss issues raised by the proposal and in the comments and, in particular, to examine publicly any areas of significant controversy or divergent opinion that are raised in the written comments. The forum is not intended to achieve a consensus among participants or between participants and Commission staff with respect to any issue raised in the comments. Commission staff will consider the views and suggestions made during the forum, in conjunction with the written comments, in formulating its final recommendation to the Commission regarding amendment of the TSR.

The forum will be open to the public, and there is no fee for attendance. For admittance to the building, all attendees will be required to show a valid photo identification, such as a driver's license. Pre-registration is not required for attendees. Members of the public and the press who cannot attend in person may view a live webcast of the forum on the FTC's website. The proceedings will

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[246] One such exemption involves the sale of franchises and business opportunities. *See* 16 C.F.R. 310.6(b)(2). When originally promulgated in 1995, the TSR included an exemption for the sale of franchises and business opportunities subject to the Commission's Rule entitled ''Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures,'' 16 C.F.R. Part 436. *See* TSR; Statement of Basis and Purpose and Final Rule, 60 FR 43842, 43859 (Aug. 23, 1995). However, in 2007, the Commission took the final step to separate the rule requirements applicable to franchises from those applicable to business opportunity ventures. Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunities; Final Rule, 72 FR 15444 Mar. 30, 2007. Part 436 now covers only franchises, while a newly-numbered Part 437 preserves the text of the original rule in so far as it covers business opportunity ventures. The bifurcation of the original Franchise Rule necessitates a non-substantive modification to the language of TSR Section 310.6(b)(2) to clarify that sales of franchises subject to the Franchise Rule, 16 C.F.R. Part 436, and business opportunities subject to the Business Opportunities Rule, 16 C.F.R. Part 437, are exempt from the TSR. Any business venture not covered either by Part 436 or Part 437 remains outside the scope of the exemption set forth at TSR § 310.6(b)(2).

In addition, the Commission is conducting a separate proceeding to consider amendments to what is now designated Part 437, the Business Opportunity Rule. *See* Business Opportunity Rule; Proposed Rule, 73 FR 16110 (Mar. 26, 2008). The proposed amendments would embody a more streamlined regulatory approach and require far fewer disclosures, while broadening the coverage of the Business Opportunity rule to reach ventures previously regulated by neither the Franchise Rule nor the Business Opportunity Rule. If rules along these lines are adopted, the Commission would need to evaluate whether the final Business Opportunity Rule would obviate the need for the protections of the TSR.

[247] Section 310.6(b)(3) would continue to exempt telemarketing of debt relief services where the sale of services is not completed, and payment or authorization of payment is not required until after a face-to-face sales presentation by the seller from compliance with most provisions of the Rule.

[248] The bifurcation of the Franchise Rule, *see supra* note 246, necessitates a non-substantive modification to the language of Sections 310.6(b)(5) and (6). Specifically, the general media and direct mail exemptions to the Rule (Sections 310.6(b)(5) and (6), respectively) are amended to make clear that those exemptions do not apply to calls initiated by a customer or donor in response to an advertisement relating to business opportunities other than business arrangements covered by the Franchise Rule or the Business Opportunity Rule.

[249] Each of these categories is excepted from the exemptions for both general media and direct mail advertising. In addition, prize promotions are excepted from the direct mail exemption.

[250] *See, e.g., FTC v. MCS Programs, LLC,* No. C09-5380RJB (W.D. Wash 2009); *FTC v. Group One Networks, Inc.,* Case No. 8:09-cv-352-T-26-MAP (M.D. Fla. 2009) (amended complaint); *FTC v. Edge Solutions, Inc.,* No. CV-07-4087 (E.D.N.Y. 2007); *FTC v. Express Consolidation*, No. 06-cv-61851-WJZ (S.D. Fla. 2006); *FTC v. Debt-Set, Inc.,* No. 1:07-cv-00558-RPM (D. Colo. 2007); *FTC v. Select Personnel Mgmt., Inc.*, No. 07-0529 (N.D. Ill. 2007); *FTC v. Integrated Credit Solutions, Inc.,* No. 06-806-SCB-TGW (M.D. Fla. 2006); *FTC v. Connelly,* No. SA CV 06-701 DOC (RNBx) (C.D. Cal. 2006); *United States v. Credit Found. of Am.,* No. CV 06-3654 ABC(VBKx) (C.D. Cal. 2006); *FTC v. Debt Solutions, Inc.,* No. 06-0298 JLR (W.D. Wash. 2006); *FTC v. Debt Mgmt. Found. Svcs., Inc.*, No. 04-1674-T-17-MSS (M.D. Fla. 2004); *FTC v. Nat'l Consumer Council,* No. SACV04-0474 CJC(JWJX) (C.D. Cal. 2004); *FTC v. Better Budget Fin. Servs., Inc.,* No. 04-12326 (WG4) (D. Mass. 2004); *FTC v. Innovative Sys. Tech., Inc.,* No. CV04-0728 GAF JTLx (C.D. Cal. 2004); *FTC v. AmeriDebt, Inc.,* No. PJM 03-3317 (D. Md. 2003); *FTC v. Jubilee Fin. Servs., Inc.*, No. 02-6468 ABC (Ex) (C.D. Cal 2002).

[251] *See* Birnbaum, Jane, *Debt Relief Can Cause Headaches of Its Own*, N.Y. Times, Feb. 9, 2008.

be transcribed, and the transcript will be placed on the public record.

The forum venue will be accessible to persons with disabilities. If you need an accommodation related to a disability, call Carrie McGlothin at (202) 326-3388. Such requests should include a detailed description of the accommodations needed and a way to contact you if we need more information. Please provide advance notice of any needs for such accommodations.

Commission staff will select a limited number of parties from among those who submit requests to participate to represent the significant interests affected by the issues raised in the Notice. These parties will participate in an open discussion of the issues, including asking and answering questions based on their respective comments. In addition, the forum will be open to the general public.

To the extent possible, Commission staff will select parties to represent the following interests: providers of debt relief services; telemarketers, lead generators, and aggregators; consumer advocacy groups; federal and state law enforcement and regulatory authorities; and any other interests that Commission staff may identify and deem appropriate for representation. FTC staff will select panelists based on the following criteria: 1) the party has expertise in or knowledge of the issues that are the focus of the workshop; 2) the party's participation would promote a balance of interests represented at the workshop; and 3) the party has been designated by one or more interested parties (who timely file requests to participate) as a party who shares the interests of the designator(s). Members of the general public who attend the workshop may have an opportunity to make brief oral statements presenting their views on issues raised in the NPRM. Oral statements by members of the general public will be limited on the basis of the time available and the number of persons who wish to make statements.

Parties interested in participating as panelists must submit written comments addressing the issues raised in the NPRM, in addition to a formal written request to participate in the form and manner described above. Parties must include in their request a brief statement setting forth their expertise or knowledge of the issues on which the workshop will focus, as well as their contact information, including, if available: a telephone number, facsimile number, and e-mail address to enable the FTC to notify requesters whether they have been selected to participate.

V. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record.[252]

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (''RFA'')[253] requires a description and analysis of proposed and final rules that will have a significant economic impact on a substantial number of small entities.[254] The RFA requires an agency to provide an Initial Regulatory Flexibility Analysis (''IRFA'')[255] with the proposed Rule and a Final Regulatory Flexibility Analysis (''FRFA'')[256] with the final rule, if any. The Commission is not required to make such analyses if a rule would not have such an economic effect.[257]

The Commission does not have sufficient empirical data at this time regarding the debt relief industry to determine whether the proposed amendments to the Rule may impact a substantial number of small entities as defined in the RFA.[258] It is also unclear whether the proposed amended Rule would have a significant economic impact on small entities. Thus, to obtain more information about the impact of the proposed rule on small entities, the Commission has decided to publish the following IRFA pursuant to the RFA and to request public comment on the impact on small businesses of its proposed amended Rule.

[252] *See* 16 CFR 1.26(b)(5).

[253] 5 U.S.C. 601-612.

[254] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small-business concern'' as a business that is ''independently owned and operated and which is not dominant in its field of operation.'' 15 U.S.C. 632(a)(1).

[255] 5 U.S.C. 603.

[256] 5 U.S.C. 604.

[257] 5 U.S.C. 605.

[258] In response to a request for comments issued in conjunction with the Workshop, the Commission received no empirical data regarding the revenues of debt relief companies generally, or debt settlement companies specifically. One Workshop commenter opined, without attribution, that the vast majority of debt settlement companies have fewer than 100 employees. *See* Able Debt Settlement at 6 (''[o]f the thousand plus or minus companies whose business activities are related to debt settlement, the estimates for the numbers of companies and the numbers of individuals either working for or affiliated with them are as follows: Two percent consist of more than 100 individuals; Eight percent consist of 25 to 100 individuals; and the remaining Ninety percent consist of less than 25 individuals.'').

A. Description of the Reasons Why Action by the Agency is Being Considered

As described in Section III, above, the proposed amendments are intended to address consumer protection concerns regarding telemarketing of debt relief services and are based on evidence in the record to date suggesting that deceptive and abusive acts are pervasive in telemarketing of debt relief services to consumers.

B. Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Amended Rule

The objective of the proposed amended Rule is to curb deceptive and abusive practices occurring in the telemarketing of debt relief services. The legal basis for the proposed amendments is the Telemarketing Act.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Amended Rule Will Apply

The proposed amendments to the Rule will affect sellers and telemarketers of debt relief services engaged in ''telemarketing,'' as defined by the Rule to mean ''a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call.''[259] Staff estimates that the proposed amended Rule will apply to approximately 2000 entities. Determining a precise estimate of how many of these are small entities, or describing those entities further, is not readily feasible because the staff is unaware of published data that reports annual revenue figures for debt relief service providers.[260] Further, the Commission's requests for information about the number and size of debt settlement companies yielded virtually no information.[261] The Commission invites comment and information on this issue.

[259] 16 CFR 310.2(cc) (in the proposed amended Rule, this definition is renumbered as Section 310.2(dd)).

[260] Directly covered entities under the proposed amended Rule are classified as small businesses under the Small Business Size Standards component of the North American Industry Classification System (''NAICS'') as follows: All Other Professional, Scientific and Technical Services (NAICS code 541990) with no more than $7.0 million dollars in average annual receipts (no employee size limit is listed). *See* SBA, Table of Small Business Size Standards Matched to North American Industry Classification System codes (Aug. 22, 2008), *available at* (*www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf*)

[261] *See* Able Debt Settlement at 6.

D. Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Proposed rule, Including an Estimate of the Classes of Small Entities which will be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The proposed amended Rule would impose disclosure and recordkeeping burden within the meaning of the PRA, as set forth in Section VII of this NPRM. The Commission is seeking clearance from the OMB for these requirements, and the Commission's Supporting Statement submitted as part of that process is being made available on the public record of this rulemaking. Specifically, the proposed amended Rule would require specific disclosures in telemarketing of debt relief services,[262] and it would subject inbound debt relief service telemarketing to the Rule's requirements, including the existing disclosure and recordkeeping provisions. In addition, the proposed amended Rule would prohibit a seller or telemarketer of debt relief services from requesting or receiving a fee in advance of providing the offered services.

The classes of small entities affected by the amendments include telemarketers or sellers engaged in acts or practices covered by the Rule. The types of professional skills required to comply with the Rule's recordkeeping, disclosure, or other requirements would include attorneys or other skilled labor needed to ensure compliance. As noted in the PRA analysis below, the total estimated cost burden for all entities subject to the proposed rule will be approximately $967,436. The Commission seeks further comment on the costs and burdens of small entities in complying with the requirements of the proposed amended Rule.

E. Identification, to the Extent Practicable, of all Relevant Federal Rules which may Duplicate, Overlap or Conflict with the Proposed Amended Rule

The FTC has not identified any other federal statutes, rules, or policies currently in effect which may duplicate, overlap or conflict with the proposed rule. However, several state laws do regulate debt relief services.[263] The Commission invites comment and information regarding any potentially duplicative, overlapping, or conflicting federal statutes, rules, or policies.

F. Description of any Significant Alternatives to the Proposed Rule

In drafting the proposed amended rule, the Commission has made every effort to avoid unduly burdensome requirements for entities. The Commission believes that the proposed amendments that are specific to the debt relief services industry – including the newly proposed disclosures, prohibited misrepresentations, and the advance fee ban – are necessary in order to protect consumers considering the purchase of debt relief services. Similarly, at this time the Commission is proposing to extend the coverage of the existing provisions of the Rule to inbound telemarketing of debt relief services. This amendment is designed to ensure that in all telemarketing transactions to sell debt relief services, consumers receive the benefit of the Rule's protections. For each of these proposed amendments, the Commission has attempted to tailor the provision to the concerns evidenced by the record to date. On balance, the Commission believes that the benefits to consumers of each outweighs the costs to industry of implementation.

The Commission considered, but decided against, providing an exemption for small entities in the proposed amended Rule. The protections afforded to consumers from the proposed amendments are equally important regardless of the size of the debt relief service provider with whom they transact. Indeed, small debt relief service providers possess no intrinsic characteristics that would warrant exempting them from provisions, such as the proposed debt relief disclosures. The information provided in the disclosures is material to the consumer regardless of the size of the entity offering the services. Similarly, the protections afforded to consumers by the advance fee ban are equally necessary regardless of the size of the entity providing the services. Thus, the Commission believes that creating an exemption for small businesses from compliance with the proposed amendments would be contrary to the goals of the amendments because it would arbitrarily limit their reach to the detriment of consumers.

Nonetheless, the Commission has taken care in developing the proposed amendments to set performance standards, which establish the objective results that must be achieved by regulated entities, but do not establish a particular technology that must be employed in achieving those objectives. For example, the Commission does not specify the form in which records required by the TSR must be kept.

The Commission seeks comments on the ways in which the rule could be modified to reduce any costs or burdens for small entities.

VII. Paperwork Reduction Act

The Commission is submitting this proposed amended Rule and a Supporting Statement to OMB for review under the Paperwork Reduction Act (''PRA'').[264] The recordkeeping and disclosure requirements under the proposed amendments to the TSR discussed above constitute ''collections of information'' for purposes of the PRA.[265] Accordingly, the Commission is providing PRA burden estimates for those requirements, which are set forth below.

The proposed amendments would require specific new disclosures in the sale of a ''debt relief service,'' as that term is defined in proposed Section 310.2(m), which would result in PRA burden for all entities – both new and existing respondents[266] – that engage in telemarketing of these services. In addition, if the proposed amendments are adopted, new respondents would be subject to the existing provisions of the TSR, including its general sales disclosures and recordkeeping provisions.[267] Specifically, as a result of the proposed exceptions to the general media and direct mail exemptions, entities that currently engage exclusively in inbound telemarketing of debt relief services, and thus are likely exempt under the current Rule, would be covered by the amended Rule. The PRA burden of these requirements will depend on various factors, including the number of covered firms and the percentage of such firms that conduct inbound or outbound telemarketing.

The definition of ''debt relief service'' in the proposed Rule would include debt settlement companies, for-profit credit counselors, and debt negotiation companies. Commission staff estimates that approximately 2,000 entities sell debt relief services and thus would be covered by the Commission's proposed Rule.[268] This includes existing entities already subject to the TSR for which there would be new recordkeeping or disclosure requirements (''existing

[262] *See* Proposed Rule Section 310.3(a)(1)(viii).

[263] *See supra* notes 120-125.

[264] 44 U.S.C. 3501-3521.

[265] *See* 5 CFR 1320.3(c).

[266] ''Respondents'' denote already existing entities that have or will have, as a result of this proceeding, recordkeeping and/or disclosure obligations under the TSR.

[267] *See* 16 CFR 310.3(a)(1); 16 CFR 310.5.

[268] To err in favor of being over inclusive, staff assumes that every entity that sells debt relief services does so using telemarketing.

respondents''),[269] as well as existing entities that newly will be subject to the TSR (''new respondents'').[270] Staff has arrived at this estimate by using available figures obtained through research and from industry sources of the number of debt settlement companies[271] and the number of for-profit credit counselors.[272] Although these inputs suggest that an estimate of 2,000 entities might be overstated, staff has used it in its burden calculations in an effort to account for all entities that would be subject to the proposed amendments, including debt negotiation companies, for which no reliable external estimates are available.

Burden Statement:

Estimated Additional Annual Hours Burden: 42,580 hours

As explained below, the estimated annual burden for recordkeeping attributable to the proposed Rule amendments, averaged over a prospective 3-year PRA clearance, is 29,886 hours for all industry members affected by the Rule. Although the first year of compliance will entail setting up compliant recordkeeping systems, burden will decline in succeeding years as they will then have such systems in place. The estimated burden for the disclosures that the Rule requires, including the newly proposed disclosures relating to debt relief services, is 12,694 hours for all affected industry members. Thus, the total PRA burden is 42,580 hours.

A. Number of Respondents

Based on its estimate that 2,000 entities sell debt relief services, and that each of these entities engages in telemarketing as defined by the TSR, staff estimates that 879 new respondents will be subject to the Rule as a result of the proposed amendments. The latter figure is derived by a series of calculations, beginning with an estimate of the number of these entities that conduct inbound versus outbound telemarketing of debt relief services. This added estimate is needed to determine how many debt relief service providers are existing respondents and how many are new respondents, the distinction being relevant because their respective PRA burdens will differ.

Staff is unaware of any source that directly states the number of outbound or inbound debt relief telemarketers; instead, estimates of these numbers are extrapolated from external data. According to the DMA, 21% of all direct marketing in 2007 was by inbound telemarketing and 20% was by outbound telemarketing.[273] Using this relative weighting, staff estimates that the number of inbound debt relief telemarketers is 1,024 (2,000 x 21 ÷ (20 + 21)) and the number of outbound telemarketers is 976 (2,000 x 20 ÷ (20 + 21).

Of the estimated 1,024 entities engaged in inbound telemarketing of debt relief services, an estimated 217 entities conduct inbound debt relief telemarketing through direct mail; the remaining 807 entities do so through general media advertising and would thus far largely be exempt from the Rule's current requirements.[274] Of the 217 entities using direct mail, staff estimates that 72, approximately one-third, make the disclosures necessary to exempt them from the Rule's existing requirements.[275] Thus, an estimated 879 entities (807 + 72) are new respondents that will be newly subject to the TSR and its PRA burden, including burden derived from the new debt relief disclosures.

The remaining 145 entities (217 - 72) conducting inbound telemarketing for debt relief through direct mail would be existing respondents because they receive inbound telemarketing calls in response to direct mail advertisements that do not make the requisite disclosures to qualify for the direct mail exemption.[276] The estimated 976 entities conducting outbound telemarketing of debt relief services are already subject to the TSR and thus, too, would be existing respondents. Accordingly, an estimated 1,121 telemarketers selling debt relief services would be subject only to the additional PRA burden imposed by the newly proposed debt relief disclosures in proposed amended Rule Section 310.3(a)(1)(viii).

B. Recordkeeping Hours

Staff estimates that in the first year following promulgation of the proposed amended Rule, it will take 100 hours for each of the 879 new respondents identified above to set up compliant recordkeeping systems. This estimate is consistent with the amount of time allocated in other PRA analyses that have addressed new entrants, *i.e.*, newly formed entities subject to the TSR.[277] The recordkeeping burden for these entities in the first year following the proposed amended Rule's adoption is 87,900 hours (879 new respondents x 100 hours each). In subsequent years, when TSR-compliant recordkeeping systems will, presumably, have already been established, the burden for these entities should parallel the one hour of ongoing recordkeeping burden staff has previously estimated for existing respondents under the Rule.[278] Thus, annualized over a prospective three-year PRA clearance period, cumulative annual recordkeeping burden for the 879 new respondents would be 29,886 hours (87,900 hours in Year 1: 879 hours for each of Years 2 and 3). Burden

[269] Outbound telemarketing and non-exempt inbound telemarketing of debt relief services are currently subject to the TSR. Non-exempt inbound telemarketing would include calls to debt relief service providers by consumers in response to direct mail advertising that does not contain disclosures required by Section 310.3(a)(1) of the Rule. *See* 16 CFR 310.6(b)(6) (providing an exemption for ''[t]elephone calls initiation by a customer . . . in response to a direct mail solicitation . . . that clearly, conspicuously, and truthfully discloses all material information listed in § 310.3(a)(1) of this Rule . . . .'').

[270] Inbound telemarketing calls in response to advertisements in any medium other than direct mail solicitation are generally exempt from the Rule's coverage under the ''general media exemption.'' 16 CFR 310.6(b)(5). Inbound telemarketing calls in response to direct mail advertisements are also exempt to the extent that the direct mail pieces ''clearly, conspicuously, and truthfully disclose[] all material information listed in § 310.3(a)(1) of this Rule.'' 16 CFR 310.6(b)(6).

[271] *See* Streitfeld, David, *Debt Settlers Offer Promises But Little Help*, N.Y. Times, Apr. 19, 2009 (stating, without attribution, that ''[a]s many as 2,000 settlement companies operate in the United States, triple the number of a few years ago''); Birnbaum, Jane, *Debt Relief Can Cause Headaches of Its Own*, N.Y. Times, Feb. 9, 2008 (noting that ''[a] thousand such [debt settlement] companies exist nationwide, up from about 300 a couple of years ago, estimated David Leuthold, vice president of the Association of Settlement Companies, which has 70 members and is based in Madison, Wis.''); Able Debt Settlement at 5 (''At the time of this FTC Workshop there are nearly a thousand debt settlement companies within the US and a few companies servicing US consumers from outside the US with operations in Canada, Mexico, Argentina, India and Malaysia.''); *see also* SIC Code 72991001 (''Debt Counseling or Adjustment Service, Individuals''): 1,598 entities.

[272] According to industry sources consulted by Commission staff, there are believed to be fewer than 100 for-profit credit counseling firms operating in the United States.

[273] *See* Direct Marketing Association *Statistical Fact Book* 17 (30 th ed. 2008).

[274] According to the DMA, 21.2% of annual U.S. advertising expenditures for direct marketing is through direct mail; the remaining 78.8% is through all other forms of general media (*e.g.*, newspapers, television, Internet, Yellow Pages). *See Id.* at 11. Thus, applying these percentages to the above estimate of 1,024 inbound telemarketers, 217 entities (21.2%) advertise by direct mail and 807 (78.8%) use general media.

[275] The apportionment of one-third is a longstanding assumption stated in past FTC analyses of PRA burden for the TSR. *See, e.g., Agency Information Collection Activities*, 74 FR 25540, 25543 (May 28, 2009); *Agency Information Collection Activities*, 71 FR 28698, 28700 (May 17, 2006). No comments have been received to date with an alternative apportionment or reasons to modify it.

[276] 16 CFR 310.6(b)(6).

[277] *See, e.g., Agency Information Collection Activities*, 74 FR at 25542; *Agency Information Collection Activities*, 71 FR at 28699.

[278] *Id.*

accruing to new entrants, 100 hours apiece to set up new recordkeeping systems compliant with the Rule, has already been factored into the FTC's existing clearance from OMB for an estimated 75 entrants per year, and is also incorporated within the FTC's latest pursuit of renewed clearance for the TSR under OMB Control No. 3084-0097.[279]

Staff believes that the 1,121 existing respondents identified above will not have recordkeeping burden associated with setting up compliant recordkeeping systems. These entities are already required to comply with the Rule, and thus should already have recordkeeping systems in place. As noted above, these existing respondents will each require approximately one hour per year to file and store records required by the TSR. Here, too, however, this recordkeeping task is already accounted for in the FTC's existing PRA clearance totals and included within the latest request for renewed OMB clearance for the TSR.[280]

C. Disclosure Hours

As has been stated in prior FTC analyses for the TSR under the PRA, staff believes that in the ordinary course of business a substantial majority of sellers and telemarketers make the disclosures the Rule requires because doing so constitutes good business practice.[281] To the extent this is so, the time and financial resources needed to comply with disclosure requirements do not constitute ''burden.''[282] Moreover, some state laws require the same or similar disclosures as the Rule mandates. Thus, the disclosure hours burden attributable to the Rule is far less than the total number of hours associated with the disclosures overall. Staff continues to assume that most of the disclosures the Rule requires would be made in at least 75 percent of telemarketing calls even absent the Rule.[283]

To determine the number of outbound and inbound calls regarding debt relief services, staff has combined external data with internal assumptions. Staff assumes that outbound calls to sell and inbound calls to buy debt relief services are made only to and by consumers who are delinquent on one or more credit cards.[284] For simplicity, and lacking specific information to the contrary, staff further assumes that each such consumer or household will receive one outbound call and place one inbound call for these services.

According to recently published figures, 78% of U.S. households, or 91.1 million households, had one or more credit cards at the end of 2008.[285] The Federal Reserve Board reported in May 2009 that the delinquency rate for credit cards had risen to 6.5%.[286] Applying this rate to the stated number of households, 91.1 million, yields 5,921,500 consumers who will receive and place a call for debt relief services in a given year.

Because outbound calls are already subject to the existing provisions of the TSR, each such call will entail only the incremental PRA burden resulting from the new debt relief disclosures. For inbound calls, however, there will be new respondents in addition to existing ones, and associated underlying distinctions between current exemptions applicable to direct marketing via direct mail and those for general media (discussed further below). Accordingly, separate estimates are necessary for inbound debt relief calls attributable to each.

To determine the number of inbound debt relief calls attributable to general media advertising versus direct mail advertising, staff relied upon the DMA estimate that 21.2% of direct marketing is done by direct mail[287] and 78.8% of direct marketing is done by general media methods.[288] Applying these percentages to the above-noted estimate of 5,921,500 inbound debt relief calls translates to 4,666,142 calls resulting from general media advertising and 1,255,358 calls arising from direct mail. Staff then estimated that 1/3 of inbound direct mail debt relief calls, or 418,453 such calls, are currently exempt from the TSR because they are in response to direct mail advertising that makes the requisite Section 310.3(a)(1) disclosures. The remaining 2/3, or 836,905 inbound direct mail calls, are non-exempt.

1) Existing respondents' disclosure burden

As discussed above in this NPRM, the proposed amended Rule includes a new provision, Section 310.3(a)(1)(viii), which includes six disclosures specific to providers of debt relief services. Staff estimates that reciting these disclosures in each sales call pertaining to debt relief services will take 12 seconds.

For outbound calls, the disclosure burden for existing entities from the new debt relief disclosures is 4,935 hours [5,921,500 outbound calls involving debt relief x 12 seconds each (for new debt relief disclosures) x 25% TSR burden].

Similarly, currently non-exempt inbound calls – inbound calls placed as a result of direct mail solicitations that do not include the Section 310.3(a)(1) disclosures – will only entail the incremental PRA burden resulting from the new debt relief disclosures. As noted above, this totals 836,905 such calls each year. The associated disclosure burden for these calls would be 697 hours (836,905 non-exempt direct mail inbound calls x 12 seconds for debt relief disclosures x 25% burden from TSR).

Thus, the total disclosure burden under the proposed amended Rule for all existing respondents is 5,632 hours (4,935 hours for entities conducting outbound calls + 697 hours for entities conducting inbound, non-exempt telemarketing).

2) New respondents' disclosure burden

New respondents – those currently exempt from the Rule's coverage as a result of the direct mail or general media exemptions for inbound calls – will incur disclosure burden not only for the debt relief disclosures in proposed Section 310.3(a)(1)(viii), but also for the existing general disclosures for which such entities will newly be responsible.[289]

As noted above, inbound calls responding to debt relief services advertised in general media are

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[279] *Agency Information Collection Activities*, 74 FR at 25542 (''The Commission staff also estimates that 75 new entrants per year would need to spend 100 hours each developing a recordkeeping system that complies with the TSR for an annual total of 7,500 burden hours.''). The term ''new entrant'' denotes an entity that has not yet, but may in the future come into being.

[280] *Id.*

[281] *See, e.g., id.* (''Staff believes that in the ordinary course of business a substantial majority of sellers and telemarketers make the disclosures the Rule requires because to do so constitutes good business practice.'').

[282] 16 CFR 1320.3(b)(2).

[283] *See, e.g., Agency Information Collection Activities*, 74 FR at 25543; *Agency Information Collection Activities*, 71 FR at 28699. Accordingly, staff has continued to estimate that the hours burden for most of the Rule's disclosure requirements is 25 percent of the total hours associated with disclosures of the type the TSR requires.

[284] By extension upsells on these initial calls would not be applicable. Moreover, staff believes that few, if any, upsells on initial outbound and inbound calls would be for debt relief.

[285] *See* Woolsey, Ben and Schulz, Matt, *Credit Card Statistics, industry facts, debt statistics, available at* (*www.creditcards.com/credit-card-news/credit-card-industry-facts-personal-debt-statistics-1276.php*).

[286] FRB, *Federal Reserve Statistical Release: Charge Offs and Delinquency Rates on Loans and Leases at Commercial Banks, available at* (*www.federalreserve.gov/releases/chargeoff/delallsa.htm*) (reporting a 6.5% delinquency rate for credit cards for the first quarter of 2009).

[287] *Supra* note 274.

[288] *Id.*

[289] *See Agency Information Collection Activities*, 74 FR at 25542.

currently exempt from the Rule.[290] The disclosure burden for these calls would be 20 seconds each [8 seconds for existing Section 310.3(a)(1) disclosures + 12 seconds for debt relief disclosures]. Applying this unit measure to the estimated 4,666,142 inbound debt relief calls arising from general media advertising, the cumulative disclosure burden is 6,481 hours per year (4,666,142 inbound debt relief calls in response to general media advertising x 20 seconds x 25% burden from TSR).

Applying the previously stated estimates and assumptions, the disclosure burden for new respondents attributable to currently exempt inbound calls tied to direct mail (*i.e.*, currently exempt when the requisite Section 310.3(a)(1) disclosures are made), is 581 hours per year (418,453 exempt inbound direct mail calls x 20 seconds x 25% burden from TSR).

Thus, the total disclosure burden attributable to the revised proposed Rule is 12,694 hours (4,935 + 697 + 6,481 + 581).

Estimated Annual Labor Cost: $905,726

Estimated Annual Non-Labor Cost: $61,716

D. Recordkeeping Labor and Non-Labor Costs

1) Labor Costs

Assuming a cumulative burden of 87,900 hours in Year 1 (of a prospective 3-year PRA clearance for the TSR) to set up compliant recordkeeping systems for existing debt relief service providers newly subject to the Rule (879 new respondents x 100 hours each in Year 1 only), and applying to that a skilled labor rate of $25/hour,[291] labor costs would approximate $2,197,500 in the first year of compliance for new respondents.[292] As discussed above, however, in succeeding years, recordkeeping associated with the Rule will only require 879 hours, cumulatively, per year. Applied to a clerical wage rate of $14/hour, this would amount to $12,306 in each of those years. Thus, the estimated annual labor costs for recordkeeping associated with the revised proposed Rule, averaged over a prospective 3-year clearance period, is $740,704.

2) Non-Labor Costs

Staff believes that the capital and start-up costs associated with the TSR's information collection requirements are *de minimis*. The Rule's recordkeeping requirements mandate that companies maintain records, but not in any particular form. While those requirements necessitate that affected entities have a means of storage, industry members should have that already regardless of the Rule. Even if an entity finds it necessary to purchase a storage device, the cost is likely to be minimal, especially when annualized over the item's useful life.

Affected entities need some storage media such as file folders, electronic storage media or paper in order to comply with the Rule's recordkeeping requirements. Although staff believes that most affected entities would maintain the required records in the ordinary course of business, staff estimates that the previously determined 879 new respondents newly subject to the revised proposed Rule will spend an annual amount of $50 each on office supplies as a result of the Rule's recordkeeping requirements, for a total recordkeeping cost burden of $43,950.

E. Disclosure Labor & Non-Labor Costs

1) Labor Costs

The estimated annual labor cost for disclosures for under the revised proposed Rule is $165,022. This total is the product of applying an assumed hourly wage rate of $13[293] to the earlier stated estimate of 12,694 hours pertaining to general and specific disclosures in initial outbound and inbound calls.

2) Non-Labor Costs

Estimated outbound disclosure hours (4,935) per above multiplied by an estimated commercial calling rate of 6 cents per minute ($3.60 per hour) equals $17,766 in phone-related costs.[294]

The Commission invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility; (2) the accuracy of the FTC's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collecting information on those who respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

VIII. Questions for Comment

The Commission seeks comment on various aspects of the proposed Rule. Without limiting the scope of issues on which it seeks comment, the Commission is particularly interested in receiving comments on the questions that follow. In responding to these questions, include detailed, factual supporting information whenever possible.

A. General Questions for Comment

Please provide comment on each aspect of the proposed Rule, including answers to the following questions.

(1) How would the proposed Rule impact different entities or the provision of different types of debt relief services? Please provide as much detail as possible. Useful information would include information about the services provided by particular entities or types of entities, and how different entities perform their services.

a. In particular, do entities differ in how they currently collect their fees, *e.g.*, what payments are required before the services are begun, what payments are required while services are being provided, and what payments are not collected until after the work is completed? Which providers of debt relief services currently require consumers to make some payment before services are completely provided? Which entities do and do not require such payments? How much of the total fee do the various providers charge prior to completion of the services being offered?

b. How do the various types of entities measure their success in providing the represented services and what level of success are they able to achieve? (Please

[290] This is so because, at present, no limitation or exemption would limit use of the general media exemption by those selling debt relief services via inbound telemarketing. *See* 16 CFR 310.6(b)(5) (the general media exemption, unlike the direct mail exemption, is not conditional and does not presently except from its coverage debt relief services).

[291] This rounded figure is derived from the mean hourly earnings shown for computer support specialists found in the National Compensation Survey: Occupational Earnings in the United States 2007, U.S. Department of Labor released August 2008, Bulletin 2704, Table 3 (''Full-time civilian workers,'' mean and median hourly wages). *See* (*www.bls.gov/ncs/ncswage2007.htm*).

[292] As discussed above, existing respondents should already have compliant recordkeeping systems and thus are not included in this calculation.

[293] This rounded figure is derived from the mean hourly earnings shown for telemarketers found in the National Compensation Survey: Occupational Earnings in the United States 2007, U.S. Department of Labor released August 2008, Bulletin 2704, Table 3 (''Full-time civilian workers,'' mean and median hourly wages). *See* (*www.bls.gov/ncs/ncswage2007.htm*).

[294] Staff believes that remaining non-labor costs would largely be incurred by affected entities, regardless, in the ordinary course of business and/or marginally be above such costs.

provide data to support these representations.)

(2) What would be the effect of the proposed Rule changes (including any benefits and costs), if any, on consumers? Would the benefits to consumers differ depending on the service offered or the type of provider offering it, and if so, how? What evidence is there that consumers are or are not misled in the promotion and sale of different types of goods or services or by different providers? Please provide as much detail as possible.

(3) What would be the impact of the proposed Rule changes (including any benefits and costs), if any, on industry?

(4) What changes, if any, should be made to the proposed Rule to increase benefits to consumers and competition?

(5) What changes, if any, should be made to the proposed Rule to decrease any unnecessary cost to industry or consumers?

(6) How would the proposed Rule affect small business entities with respect to costs, profitability, competitiveness, and employment?

B. Questions on Proposed Specific Provisions

Section 310.2 – Definitions

(1) Does the definition of ''debt relief service'' in proposed Section 310.2(m) adequately describe the scope of the proposed Rule's coverage? If not, how should it be modified? Is the proposed definition accurate? Are there alternative definitions that the Commission should consider? Should additional terms be defined, and, if so, how? What would be the costs and benefits of each suggested definition?

(2) Are there reasons to broaden the definition of ''debt relief service'' to include the word ''product''? Would the addition of ''products'' allow the Rule to reach additional deceptive and abusive practices engaged in by sellers and telemarketers of debt relief products and services? Are there reasons to include ''products'' to ensure that the scope of the definition is appropriately broad to anticipate likely changes in the marketplace? Why or why not?

(3) The definition of ''debt relief service'' in proposed Section 310.2(m) would apply to ''any service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a consumer and one or more *unsecured* creditors or debt collectors.'' (emphasis added). The Commission has so limited the provision in anticipation of covering mortgage loan modification and foreclosure rescue services under its new rulemaking authority with respect to mortgage loans. As a result of this determination, with a few exceptions, only outbound telemarketing calls to sell mortgage loan modification or foreclosure rescue debt relief services would be covered by the TSR. Is this determination appropriate? Why or why not?

(4) Should any entities encompassed by the definition in proposed Section 310.2(m) be excluded or exempted from this definition? If so, which entities? Why or why not?

Section 310.3 –Deceptive telemarketing acts or practices

(1) The proposed amended Rule contemplates extending coverage of the existing TSR disclosure and misrepresentation provisions contained in Section 310.3(a) to inbound debt relief sales calls (as defined in the proposal). Would this adequately address the harms to consumers that occur in the sale of debt relief services? Why or why not?

(2) Proposed Section 310.3(a)(1)(viii) has six required disclosures. For each disclosure, please provide comment on the following questions:

a. Is this disclosure appropriate to address harms to consumers that occur in the sale of debt relief services? If not, why or why not? How could the proposed amended Rule be modified to better address such harms?

b. Should this provision be applicable to all providers of debt relief services, or should this provision be tailored to apply only to certain debt relief providers? Why or why not? If so, which entities should be covered?

c. What would be the benefits to consumers of this proposed requirement?

d. What burdens would be imposed on providers of debt relief services if this requirement were adopted?

e. As a practical matter, how would providers comply with the requirement? Would it be necessary to provide disclosures that were specific to the situation of an individual consumer or could the requirement be satisfied with a generic disclosure that would be given to all of the provider's potential customers? What would such a disclosure look like?

f. Are there changes that could be made to lessen the burdens without reducing the benefits to consumers?

(3) Are there other disclosures that should be included in the Rule to address harmful practices in the sale of debt relief services? If so, provide the suggested disclosure and discuss the relative costs and benefits to industry and consumers of such a requirement.

(4) Proposed Section 310.3(a)(2)(x) prohibits misrepresentations of any material aspect of a debt relief services, and provides specific examples of such prohibited misrepresentations. Is each specified misrepresentation sufficiently widespread to justify inclusion in the Rule?

(5) Are there other prohibited misrepresentations that should be specified in the Rule to address harmful practices in the sale of debt relief services? If so, why?

(6) Does the proposed Rule need to be modified in any way to better address any misrepresentations or omissions, and if so, what should those modifications be?

Section 310.4 – Abusive telemarketing acts or practices

(1) What has been the experience in states that have regulated the fees that debt relief providers can charge – for example, allowing a limited initial or set-up fee, and then limiting the fees that can be charged while the services are being provided? Have providers of debt relief services been able to comply with these restrictions and still operate successfully in those states? What kinds of providers have been able to do so? Would it be appropriate for the Commission to consider such an approach? Why or why not? If providers were permitted to collect such limited fees, what fees should be permitted and what limits should be established on them?

(2) To what extent does proposed Section 310.4(a)(5) prevent harm to consumers that would not be eliminated by the disclosure requirements in proposed Section 310.3(a)(1) and misrepresentation prohibitions in proposed Section 310.3(a)(2)? Alternatively, if you believe that proposed Section 310.4(a)(5) would not prevent any additional harms, please explain why.

(3) Proposed Section 310.4(a)(5) provides that payment may not be requested or received until a seller provides a customer with ''documentation in the form of a settlement agreement, debt management plan, or other such valid contractual agreement, that the particular debt has, in fact, been renegotiated, settled, reduced, or otherwise altered.'' Is it appropriate to require provision of these documents before a covered entity can request or receive payment of any fee or consideration? In addition to those listed in the proposed amended Rule or described this Notice, are there other documents that typically evidence the completion of a debt relief service? Do such documents adequately

demonstrate that a consumer's debt has been successfully renegotiated, settled, reduced, or otherwise altered? Is one type of document preferable to another?

(4) Should any type or portion of fees charged by entities offering debt relief services be exempted from Section 310.4(a)(5)? If so, which fees – either by type of entity providing the service or by type of fee – should be exempted, and why? Will entities that offer a measurably beneficial service to consumers be adversely affected by this proposed Section? Why or why not? Will covered providers find it is no longer possible to provide particular types of services if this requirement is imposed? Which services will it no longer be economic to provide and why will it no longer be economic to provide them?

(5) Would an alternative formulation of an advance fee ban, such as the one in Section 310.4(a)(4) of the existing Rule (prohibiting requesting or receiving a fee in advance only when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging the promised services), be more appropriate than a ban conditioned on the provision of the promised goods or services? Why or why not?

(6) Are there alternatives to an advance fee ban exist that would sufficiently address the problem of low success rates in the debt settlement industry? If so, please explain.

(7) As noted, the Commission does not intend that the advance fee ban be interpreted to prohibit a consumer from using legitimate escrow services – services controlled by the consumer – to save money in anticipation of settlement. Is it appropriate to allow the use of such escrow services? Why or why not?

Section 310.5 – Recordkeeping requirements

(1) No changes to Section 310.5 are included in the proposed Rule, but the application of the Rule to inbound debt relief calls would require some sellers and telemarketers to comply with these requirements for the first time. What would be the costs and benefits to industry and consumers of this result?

Section 310.6 – Exemptions

(1) Proposed Sections 310.6(b)(5) and 310.6(b)(6) modify the general media and direct mail inbound call exemptions to make them unavailable to telemarketers of debt relief services. Is there a sufficient basis for this modification? Why or why not?

Regulatory Flexibility Act

(1) As noted in this NPRM, it is not readily feasible to determine a precise estimate of how many small entities will be subject to the proposed Rule. Please provide any information which would assist in making this determination.

(2) Identify any statutes or rules that may conflict with the proposed Rule requirements, as well as any other state, local, or industry rules or policies that require covered entities to implement practices that comport with the requirements of the proposed Rule.

(3) Do the prohibited practices in the proposed Rule impose a significant impact upon a substantial number of small entities? If so, what modifications to the proposed Rule should the Commission consider to minimize the burden on small entities?

IX. Proposed Rule

List of Subjects in 16 CFR Part 310

Telemarketing, Trade Practices

■ Therefore, as stated in the preamble, the Federal Trade Commission proposes to revise part 310 of title 16, Code of Federal Regulations, to read as follows:

PART 310—TELEMARKETING SALES RULE

Section Contents

Authority: 15 U.S.C. 6101-6108.

§ 310.1 Scope of regulations of this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108, as amended.

§ 310.2 Definitions.

(a) *Acquirer* means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(b) *Attorney General* means the chief legal officer of a state.

(c) *Billing information* means any data that enables any person to access a customer's or donor's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.

(d) *Caller identification service* means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone.

(e) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(f) *Charitable contribution* means any donation or gift of money or any other thing of value.

(g) *Commission* means the Federal Trade Commission.

(h) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(i) *Credit card* means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(j) *Credit card sales draft* means any record or evidence of a credit card transaction.

(k) *Credit card system* means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(l) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.

(m) *Debt relief service* means any service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a consumer and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a consumer to an unsecured creditor or debt collector.

(n) *Donor* means any person solicited to make a charitable contribution.

(o) *Established business relationship* means a relationship between a seller and a consumer based on:

(1) the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the eighteen (18) months immediately preceding the date of a telemarketing call; or

(2) the consumer's inquiry or application regarding a product or

service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

(p) *Free-to-pay conversion* means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

(q) *Investment opportunity* means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(r) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution.

(s) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(t) *Merchant agreement* means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(u) *Negative option feature* means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.

(v) *Outbound telephone call* means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

(w) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(x) *Preacquired account information* means any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

(y) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(z) *Prize promotion* means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(aa) *Seller* means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(bb) *State* means any state of the United States, the District of Columbia, Puerto Rico, the

Northern Mariana Islands, and any territory or possession of the United States.

(cc) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

(dd) *Telemarketing* means a plan, program, or campaign which is conducted to induce thepurchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term ''further solicitation'' does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

(ee) *Upselling* means soliciting the purchase of goods or services following an initial transaction during a single telephone call. The upsell is a separate telemarketing transaction, not a continuation of the initial transaction. An ''external upsell'' is a solicitation made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer. An ''internal upsell'' is a solicitation made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer.

§ 310.3 Deceptive telemarketing acts or practices.

(a) *Prohibited deceptive telemarketing acts or practices.* It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer pays [295] for goods or services offered, and before any services are rendered, failing to disclose truthfully, in a clear and conspicuous manner, the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;[296]

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) If the seller has a policy of not making refunds, cancellations, exchanges, orrepurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and, if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion and that any purchase or payment will not increase the person's chances of winning; and the no-purchase/no-payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate;

(v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

[295] When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by § 310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or directing a customer to have a courier pick up payment or authorization for payment.

[296] For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 et seq., and Regulation Z, 12 CFR 226, compliance with the disclosure requirements under the Truth in Lending Act and Regulation Z shall constitute compliance with § 310.3(a)(1)(i) of this Rule.

(vi) In the sale of any goods or services represented to protect, insure, or otherwise limit a customer's liability in the event of unauthorized use of the customer's credit card, the limits on a cardholder's liability for unauthorized use of a credit card pursuant to 15 U.S.C. 1643;

(vii) If the offer includes a negative option feature, all material terms and conditions of the negative option feature, including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s); and

(viii) In the sale of any debt relief service,

(A) the amount of time necessary to achieve the represented results, and to the extent that the offered service may include the making of a settlement offer to one or more of the customer's creditors or debt collectors, the specific time by which the debt relief service provider will make such a bona fide settlement offer to each of the customer's creditors or debt collectors;

(B) to the extent that the offered service may include the making of a settlement offer to one or more of the customer's creditors or debt collectors, the amount of money or the percentage of each outstanding debt that the customer must accumulate before a debt relief service provider will make a bona fide settlement offer to each of the customer's creditors or debt collectors;

(C) that not all creditors or debt collectors will accept a reduction in the balance, interest rate, or fees a customer owes such creditor or debt collector;

(D) that pending completion of the represented debt relief services, the customer's creditors or debt collectors may pursue collection efforts, including initiation of lawsuits;

(E) to the extent that any aspect of the debt relief service relies upon or results in the customer failing to make timely payments to creditors or debt collectors, that use of the debt relief service will likely adversely affect the customer's creditworthiness, may result in the customer being sued by one or more creditors or debt collectors, and may increase the amount of money the customer owes to one or more creditors or debt collectors due to the accrual of fees and interest; and

(F) that savings a customer realizes from use of a debt relief service may be taxable income.

(2) Misrepresenting, directly or by implication, in the sale of goods or services any of the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;

(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;

(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;

(iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;

(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability;

(vii) A seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity;

(viii) That any customer needs offered goods or services to provide protections a customer already has pursuant to 15 U.S.C. 1643;

(ix) Any material aspect of a negative option feature including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s); or

(x) Any material aspect of any debt relief service, including, but not limited to, the amount of money or the percentage of the debt amount that a customer may save by using such service; the amount of time necessary to achieve the represented results; the amount of money or the percentage of each outstanding debt that the customer must accumulate before the provider of the debt relief service will initiate attempts with the customer's creditors debt collectors to negotiate, settle, or modify the terms of customer's debt; the effect of the service on a customer's creditworthiness; the effect of the service on collection efforts of the consumer's creditors or debt collectors; the percentage or number of customers who attain the represented results; and whether a debt relief service is offered or provided by a non-profit entity.

(3) Causing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or services or a charitable contribution, directly or indirectly, without the customer's or donor's express verifiable authorization, except when the method of payment used is a credit card subject to protections of the Truth in Lending Act and Regulation Z,[297] or a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation E.[298] Such authorization shall be deemed verifiable if any of the following means is employed:

(i) Express written authorization by the customer or donor, which includes the customer's or donor's signature; [299]

(ii) Express oral authorization which is audio-recorded and made available upon request to the customer or donor, and the customer's or donor's bank or other billing entity, and which evidences clearly both the customer's or donor's authorization of payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction and the customer's or donor's receipt of all of the following information:

(A) The number of debits, charges, or payments (if more than one);

(B) The date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;

(C) The amount(s) of the debit(s), charge(s), or payment(s);

(D) The customer's or donor's name;

(E) The customer's or donor's billing information, identified with sufficient specificity such that the customer or donor understands what account will be used to collect payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction;

(F) A telephone number for customer or donor inquiry that is answered during normal business hours; and

(G) The date of the customer's or donor's oral authorization; or

(iii) Written confirmation of the transaction, identified in a clear and conspicuous manner as such on the outside of the envelope, sent to the customer or donor via first class mail prior to the submission for payment of the customer's or donor's billing information, and that includes all of the information contained in

[297] Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

[298] Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.*, and Regulation E, 12 CFR part 205.

[299] For purposes of this Rule, the term ''signature'' shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

§§ 310.3(a)(3)(ii)(A)-(G) and a clear and conspicuous statement of the procedures by which the customer or donor can obtain a refund from the seller or telemarketer or charitable organization in the event the confirmation is inaccurate; provided, however, that this means of authorization shall not be deemed verifiable in instances in which goods or services are offered in a transaction involving a free-to-pay conversion and preacquired account information.

(4) Making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution.

(b) *Assisting and facilitating.* It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§ 310.3(a), (c) or (d), or § 310.4 of this Rule.

(c) *Credit card laundering.* Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant, or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

(d) *Prohibited deceptive acts or practices in the solicitation of charitable contributions.* It is a fraudulent charitable solicitation, a deceptive telemarketing act or practice, and a violation of this Rule for any telemarketer soliciting charitable contributions to misrepresent, directly or by implication, any of the following material information:

(1) The nature, purpose, or mission of any entity on behalf of which a charitable contribution is being requested;

(2) That any charitable contribution is tax deductible in whole or in part;

(3) The purpose for which any charitable contribution will be used;

(4) The percentage or amount of any charitable contribution that will go to a charitable organization or to any particular charitable program;

(5) Any material aspect of a prize promotion including, but not limited to: the odds of being able to receive a prize; the nature or value of a prize; or that a charitable contribution is required to win a prize or to participate in a prize promotion; or

(6) A charitable organization's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity.

§ 310.4 Abusive telemarketing acts or practices.

(a) *Abusive conduct generally.* It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:

(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and

(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;

(3) Requesting or receiving payment of any fee or consideration from a person for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney;

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person;

(5) Requesting or receiving payment of any fee or consideration from a person for any debt relief service until the seller has provided the customer with documentation in the form of a settlement agreement, debt management plan, or other such valid contractual agreement, that the particular debt has, in fact, been renegotiated, settled, reduced, or otherwise altered.

(6) Disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing; provided, however, that this paragraph shall not apply to the disclosure or receipt of a customer's or donor's billing information to process a payment for goods or services or a charitable contribution pursuant to a transaction;

(7) Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor. In any telemarketing transaction, the seller or telemarketer must obtain the express informed consent of the customer or donor to be charged for the goods or services or charitable contribution and to be charged using the identified account. In any telemarketing transaction involving preacquired account information, the requirements in paragraphs (a)(6)(i) through (ii) of this section must be met to evidence express informed consent.

(i) In any telemarketing transaction involving preacquired account information and a free-to-pay conversion feature, the seller or telemarketer must:

(A) obtain from the customer, at a minimum, the last four (4) digits of the account number to be charged;

(B) obtain from the customer his or her express agreement to be charged for the goods or services and to be charged using the account number pursuant to paragraph (a)(6)(i)(A) of this section; and,

(C) make and maintain an audio recording of the entire telemarketing transaction.

(ii) In any other telemarketing transaction involving preacquired account information not described in paragraph (a)(6)(i) of this section, the seller or telemarketer must:

(A) at a minimum, identify the account to be charged with sufficient specificity for the customer or donor to understand what account will be charged; and

(B) obtain from the customer or donor his or her express agreement to be charged for the goods or services and to be charged using the account number identified pursuant to paragraph (a)(6)(ii)(A) of this section; or

(8) Failing to transmit or cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call; provided that it shall not be a violation to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller or charitable organization on behalf of which a telemarketing call is placed, and the seller's or charitable organization's customer or donor service telephone number, which is answered during regular business hours.

(b) *Pattern of calls.*

(1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;

(ii) Denying or interfering in any way, directly or indirectly, with a person's right to be placed on any registry of names and/or telephone numbers of persons who do not wish to receive outbound telephone calls established to comply with § 310.4(b)(1)(iii);

(iii) Initiating any outbound telephone call to a person when:

(A) that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made on behalf of the charitable organization for which a charitable contribution is being solicited; or

(B) that person's telephone number is on the ''do-not-call'' registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services unless the seller

(i) has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature [300] of that person; or

(ii) as an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls under paragraph (b)(1)(iii)(A) of this section; or

(iv) Abandoning any outbound telephone call. An outbound telephone call is''abandoned'' under this section if a person answers it and the telemarketer does not connect the call to a sales representative within two (2) seconds of the person's completed greeting.

(v) Initiating any outbound telephone call that delivers a prerecorded message, other than a prerecorded message permitted for compliance with the call abandonment safe harbor in § 310.4(b)(4)(iii), unless:

(A) in any such call to induce the purchase of any good or service, the seller has obtained from the recipient of the call an express agreement, in writing, that:

(i) The seller obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person;

(ii) The seller obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;

(iii) Evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific seller; and

(iv) Includes such person's telephone number and signature; [301] and

(B) In any such call to induce the purchase of any good or service, or to induce a charitable contribution from a member of, or previous donor to, a non-profit charitable organization on whose behalf the call is made, the seller or telemarketer:

(i) Allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call; and

(ii) Within two (2) seconds after the completed greeting of the person called, plays a prerecorded message that promptly provides the disclosures required by § 310.4(d) or (e), followed immediately by a disclosure of one or both of the following:

(A) In the case of a call that could be answered in person by a consumer, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a Do Not Call request pursuant to § 310.4(b)(1)(iii)(A) at any time during the message. The mechanism must:

(1) Automatically add the number called to the seller's entity-specific Do Not Call list;

(2) Once invoked, immediately disconnect the call; and

(3) Be available for use at any time during the message; and

(B) In the case of a call that could be answered by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a Do Not Call request pursuant to § 310.4(b)(1)(iii)(A). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:

(1) Automatically adds the number called to the seller's entity-specific Do Not Call list;

(2) Immediately thereafter disconnects the call; and

(3) Is accessible at any time throughout the duration of the telemarketing campaign; and

(iii) Complies with all other requirements of this part and other applicable federal and state laws.

(C) Any call that complies with all applicable requirements of this paragraph (v) shall not be deemed to violate § 310.4(b)(1)(iv) of this part.

(D) This paragraph (v) shall not apply to any outbound telephone call that delivers a prerecorded healthcare message made by, or on behalf of, a covered entity or its business associate, as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103.

(2) It is an abusive telemarketing act or practice and a violation of this Rule for any person to sell, rent, lease, purchase, or use any list established to comply with § 310.4(b)(1)(iii)(A), or maintained by the Commission pursuant to § 310.4(b)(1)(iii)(B), for any purpose except compliance with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on such lists.

(3) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(ii) and (iii) if it can demonstrate that, as part of the seller's or telemarketer's routine business practice:

(i) It has established and implemented written procedures to comply with § 310.4(b)(1)(ii) and (iii);

(ii) It has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to § 310.4(b)(3)(i);

[300] For purposes of this Rule, the term ''signature'' shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

[301] For purposes of this Rule, the term ''signature'' shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

(iii) The seller, or a telemarketer or another person acting on behalf of the seller or charitable organization, has maintained and recorded a list of telephone numbers the seller or charitable organization may not contact, in compliance with § 310.4(b)(1)(iii)(A);

(iv) The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to § 310.4(b)(3)(iii) or 310.4(b)(1)(iii)(B), employing a version of the ''do-not-call'' registry obtained from the Commission no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process;

(v) The seller or a telemarketer or another person acting on behalf of the seller or charitable organization, monitors and enforces compliance with the procedures established pursuant to § 310.4(b)(3)(i); and

(vi) Any subsequent call otherwise violating § 310.4(b)(1)(ii) or (iii) is the result of error.

(4) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(iv) if:

(i) The seller or telemarketer employs technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues.

(ii) The seller or telemarketer, for each telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

(iii) Whenever a sales representative is not available to speak with the person answering the call within two (2) seconds after the person's completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed[302]; and

(iv) The seller or telemarketer, in accordance with § 310.5(b)-(d), retains records establishing compliance with § 310.4(b)(4)(i)-(iii).

(c) *Calling time restrictions.* Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location.

[302] This provision does not affect any seller's or telemarketer's obligation to comply with relevant state and federal laws, including but not limited to the TCPA, 47 U.S.C. 227, and 47 CFR part 64.1200.

(d) *Required oral disclosures in the sale of goods or services.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call or internal or external upsell to induce the purchase of goods or services to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the seller;

(2) That the purpose of the call is to sell goods or services;

(3) The nature of the goods or services; and

(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered and that any purchase or payment will not increase the person's chances of winning. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion; provided, however, that, in any internal upsell for the sale of goods or services, the seller or telemarketer must provide the disclosures listed in this section only to the extent that the information in the upsell differs from the disclosures provided in the initial telemarketing transaction.

(e) *Required oral disclosures in charitable solicitations.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer, in an outbound telephone call to induce a charitable contribution, to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the charitable organization on behalf of which the request is being made; and

(2) That the purpose of the call is to solicit a charitable contribution.

§ 310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

(1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;

(2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of $25.00 or more;

(3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services; [303]

(4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales or solicitations; provided, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(5) All verifiable authorizations or records of express informed consent or express agreement required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by § 310.5(a) in any form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by § 310.5(a) shall be a violation of this Rule.

(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, the seller shall be responsible for complying with §§ 310.5(a)(1)-(3) and (5); the telemarketer shall be responsible for complying with § 310.5(a)(4).

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this section.

§ 310.6 Exemptions.

(a) Solicitations to induce charitable contributions via outbound telephone calls are not covered by § 310.4(b)(1)(iii)(B) of this Rule.

(b) The following acts or practices are exempt from this Rule:

[303] For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 et seq., and Regulation Z, 12 CFR 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with § 310.5(a)(3) of this Rule.

(1) The sale of pay-per-call services subject to the Commission's Rule entitled ''Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992,'' 16 CFR Part 308, *provided,* however, that this exemption does not apply to the requirements of §§ 310.4(a)(1), (a)(7), (b), and (c);

(2) The sale of franchises subject to the Commission's Rule entitled ''Disclosure Requirements and Prohibitions Concerning Franchising,'' (''Franchise Rule'') 16 CFR Part 436, and the sale of business opportunities subject to the Commission's Rule entitled ''Disclosure Requirements and Prohibitions Concerning Business Opportunities,'' (''Business Opportunities Rule'') 16 CFR Part 437, *provided,* however, that this exemption does not apply to the requirements of §§ 310.4(a)(1), (a)(7), (b), and (c);

(3) Telephone calls in which the sale of goods or services or charitable solicitation is not completed, and payment or authorization of payment is not required, until after a face-to-face sales or donation presentation by the seller or charitable organization, *provided,* however, that this exemption does not apply to the requirements of §§ 310.4(a)(1), (a)(7), (b), and (c);

(4) Telephone calls initiated by a customer or donor that are not the result of any solicitation by a seller, charitable organization, or telemarketer, *provided,* however, that this exemption does not apply to any instances of upselling included in such telephone calls;

(5) Telephone calls initiated by a customer or donor in response to an advertisement through any medium, other than direct mail solicitation, *provided,* however, that this exemption does not apply to calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or the Business Opportunity Rule, or advertisements involving goods or services described in §§ 310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls;

(6) Telephone calls initiated by a customer or donor in response to a direct mail solicitation, including solicitations via the U.S. Postal Service, facsimile transmission, electronic mail, and other similar methods of delivery in which a solicitation is directed to specific address(es) or person(s), that clearly, conspicuously, and truthfully discloses all material information listed in § 310.3(a)(1) of this Rule, for any goods or services offered in the direct mail solicitation, and that contains no material misrepresentation regarding any item contained in § 310.3(d) of this Rule for any requested charitable contribution; *provided,* however, that this exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or the Business Opportunity Rule, or goods or services described in §§ 310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls; and

(7) Telephone calls between a telemarketer and any business, except calls to induce the retail sale of nondurable office or cleaning supplies; *provided,* however, that § 310.4(b)(1)(iii)(B) and § 310.5 of this Rule shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.

§ 310.7 Actions by states and private persons.

(a) Any attorney general or other officer of a state authorized by the state to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, and shall include a copy of the state's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the state or private person shall serve the Commission with the required notice immediately upon instituting its action.

(b) Nothing contained in this Section shall prohibit any attorney general or other authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state.

§ 310.8 Fee for access to the National Do Not Call Registry.

(a) It is a violation of this Rule for any seller to initiate, or cause any telemarketer to initiate, an outbound telephone call to any person whose telephone number is within a given area code unless such seller, either directly or through another person, first has paid the annual fee, required by § 310.8(c), for access to telephone numbers within that area code that are included in the National Do Not Call Registry maintained by the Commission under § 310.4(b)(1)(iii)(B); provided, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§ 310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(b) It is a violation of this Rule for any telemarketer, on behalf of any seller, to initiate an outbound telephone call to any person whose telephone number is within a given area code unless that seller, either directly or through another person, first has paid the annual fee, required by § 310.8(c), for access to the telephone numbers within that area code that are included in the National Do Not Call Registry; provided, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§ 310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is $54 for each area code of data accessed, up to a maximum of $14,850; provided, however, that there shall be no charge to any person for accessing the first five area codes of data, and provided further, that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing area codes of data in the National Do Not Call Registry if the person is permitted to access, but is not required to access, the National Do Not Call Registry under this Rule, 47 CFR 64.1200, or any other Federal regulation or law. Any person accessing the National Do Not Call Registry may not participate in any arrangement to share the cost of accessing the registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) Each person who pays, either directly or through another person, the annual fee set forth in § 310.8(c), each person excepted under § 310.8(c) from paying the annual fee, and each person excepted from paying an annual fee under § 310.4(b)(1)(iii)(B), will be provided a unique account number that will allow that person to access the registry data for the selected area codes at any time for the twelve month period beginning on the first day of the month in which the person paid the fee (''the annual period''). To obtain access to additional area codes of data during the

first six months of the annual period, each person required to pay the fee under § 310.8(c) must first pay $54 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, each person required to pay the fee under § 310.8(c) must first pay $27 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

(e) Access to the National Do Not Call Registry is limited to telemarketers, sellers, others engaged in or causing others to engage in telephone calls to consumers, service providers acting on behalf of such persons, and any government agency that has law enforcement authority. Prior to accessing the National Do Not Call Registry, a person must provide the identifying information required by the operator of the registry to collect the fee, and must certify, under penalty of law, that the person is accessing the registry solely to comply with the provisions of this Rule or to otherwise prevent telephone calls to telephone numbers on the registry. If the person is accessing the registry on behalf of sellers, that person also must identify each of the sellers on whose behalf it is accessing the registry, must provide each seller's unique account number for access to the national registry, and must certify, under penalty of law, that the sellers will be using the information gathered from the registry solely to comply with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on the registry.

§ 310.9 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission.

Donald S. Clark,

Secretary

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Attachment A

Consumer Protection and the Debt Settlement Industry Workshop Commenters

Able Debt Settlement, Inc. (''Able Debt Settlement'')
ACA International (''ACA'')
American Association of Debt Management Organizations (''AADMO'')
American Financial Services Association (''AFSA'')
CareOne Credit Counseling Services (''CareOne'')
Carlson, N. (''Carlson'')
Consumer Bankers Association (''CBA'')
Consumer Recovery Network (''CRN'')
Credit Advisors, Inc. (''Credit Advisors'')
Debt Settlement USA (''Debt Settlement USA'')
First Stone Credit Counseling (''First Stone'')
Gilpin, William (''Gilpin'')
Manning, Robert (''Manning'')
McClendon (''McClendon'')
Merry, Jack (''Merry'')
Morgan Drexen Integrated Legal Systems (''Morgan Drexen'')
Rhode, Steve (''Rhode'')
The Association of Settlement Companies (''TASC'')
United States Organizations for Bankruptcy Alternatives (''USOBA'')
US Debt Resolve (''US Debt Resolve'')

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Attachment B

Consumer Protection and the Debt Settlement Industry Workshop Participants

American Association of Debt Management Organizations (''AADMO''): Mark Guimond

American Bankers Association, Center for Regulatory Compliance (''ABA''): Virginia O'Neill

American Credit Alliance, Inc. (American Credit Alliance''): Alan Franklin

American Express, Consumer Affairs Division (''American Express''): Anna Flores

Center for Consumer Financial Services, Rochester Institute of Technology (''CCFS''): Robert Manning

Consumer Federation of America (''CFA''): Travis Plunkett

Debt Settlement USA (''Debt Settlement USA''): Jack Craven

EFA Data Processing, L.P (''EFA'').: John Ansbach

Federal Trade Commission (''FTC''): Lydia Parnes

Gordon, Feinblatt, Rothman, Hoffberger & Hollander, LLC (''Gordon Feinblatt''): Carla Stone Witzel

Internal Revenue Service (''IRS''), EO Technical Group, Ruling and Agreements: Steve Grodnitzky

Loeb & Loeb, LLP (''Loeb''): Michael Mallow

Maryland Consumer Rights Coalition (''MCRC''): Stephen Hannan

National Conference of Commissioners on Uniform State Laws (''NCCUSL''): Michael Kerr

National Foundation for Credit Counseling (''NFCC''): William Binzel

South Carolina Department of Consumer Affairs (''SCDCA''): Carolyn Lybarker

The Association of Settlement Companies (''TASC''): Wesley Young

US Debt Resolve (''US Debt Resolve''): Scott Johnson

United States Organizations for Bankruptcy Alternatives, Inc.(''USOBA''): Jenna Keehnen

U. S. Public Interest Research Group (''USPIRG''): Ed Mierzwinski

[FR Doc. E9–19749 Filed 8–18–09: 8:45 am]

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